


RESEARCH ARTICLE

# In Response to Constitutional Crisis: The Latent Carl Schmitt in Zhang Junmai's Political Thought

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## Abstract

This paper examines two responses to the global constitutional crises in the twentieth century, with a focus on a comparison between Carl Schmitt, a notorious German political theorist and critic of liberal constitutionalism and Zhang Junmai, a constitutionalist in Republican China. After the First World War, both Germany and China experienced constitutional crises, which prompted critical reflections among intellectuals. My paper is the first to discover and examine the latent element of Carl Schmitt in Zhang Junmai's acceptance of the Weimar Constitution. My research shows that Zhang's 1930 article, "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory" (德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位) is his Chinese translation of Carl Schmitt's 1930 article, "Hugo Preuss: His Concept of the State and His Position in German State Theory" ("Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre"). Instead of simply regarding Zhang's writing as plagiarism, my paper interrogates the gaps between Carl Schmitt's original text and Zhang's translation. By examining the intertextual relation between Carl Schmitt and Zhang Junmai, this paper reveals a latent aspect of the spectrum of Constitutionalism in the twentieth century and shows a special dialogue between a German critic of constitutionalism and a Chinese constitutionalist.

**Keywords:** internal politics; external politics; concept of the political; *Rechtsstaat*; neutral state

## 1. Introduction

This paper examines two responses to the global constitutional crises in the twentieth century, with a focus on a comparison between Carl Schmitt, a notorious German political theorist and a critic of liberal constitutionalism and Zhang Junmai (張君勱), a constitutionalist in Republican China. After the First World War, both Germany and China experienced constitutional crises, which prompted critical reflections among intellectuals. My research shows that Zhang's 1930 article, "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory" (德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位) (Zhang 1930, 69–76),<sup>1</sup> published in his name, is his Chinese translation of Carl Schmitt's article, "Hugo Preuss: His Concept of the State and His Position in German State Theory" ("Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre")

<sup>1</sup> This article was published under the name Junmai, Zhang's first name, rather than his full name.

(Schmitt 1930, 1–34), printed earlier that year. My research is the first to discover the latent element of Carl Schmitt in Zhang Junmai's political thought.<sup>2</sup>

It is fundamentally valuable to have a thorough study of Zhang Junmai's 1930 article, "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory" (德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位), because it was one significant text part of Zhang's constitutional practices. Previous scholarship has touched on the importance of this text as it relates to the relationship between the Weimar Constitution, Zhang Junmai's writing of his own version of the Chinese constitution, and the development of constitutionalism in twentieth-century China, but no one has noticed that this text was, in fact, a translation of Carl Schmitt's article. Hence, this text not only shows how Zhang Junmai was attracted to Hugo Preuss and the Weimar Constitution but also shows how Zhang simultaneously introduced a kind of critique of the Weimar Constitution. Thus, my article sheds new light on the history of Chinese constitutionalism and constitutional practice. Moreover, by comparing this text with the *Guoshi* Constitution he drafted in 1922, we can see how Zhang shifted from a constitutionalist supporting the Federalist Movement (*Liansheng zizhi yundong* 聯省自治運動) and provincial autonomy to a constitutionalist who emphasised the decisive power of the state and introduced a critique of the Weimar Constitution. Considering Zhang Junmai's introduction of Carl Schmitt's criticism of liberal constitutionalism, my research challenges previous scholarship that claims Zhang accepted the liberal aspect of the Weimar Constitution. Zhang's treatment of the relationship between the state and professional associations in his translation of Schmitt's text also revealed the internal tension of Zhang's political and constitutional thought, which made him hesitate at different times between the state (which he gradually considered a kind of "*Gemeinschaft*" [political and ethical community] and professional associations [understood more as "*Gesellschaft*"]). Zhang Junmai's hesitation between "*Gemeinschaft*" and "*Gesellschaft*" inherited the intellectual legacy of Max Weber, which was not mentioned by previous scholarship.

My comparison of Schmitt's original ideas and Zhang's translation of them into the Chinese context is not a translation study or technical discussion on translation, because what Zhang Junmai did had several levels and all of them constitute crucial parts of constitutional and legal adventures and practices in modern China: First, as I will discuss later, Zhang's constitutional practices led him to reflect on the limits of pure law and paper constitution and led him to differentiate "theory of politics" and "theory of law" and to decide to practice true law instead of paper constitution. Second, based on his reflections on the constitutional crises in early republican China, Zhang decided to learn more from the latest discussions on related theories of constitutionalism, constitutional state, and

<sup>2</sup> My research on this topic was originally conducted between 2006 and 2010. My findings in this paper, first completed between 2008 and 2009, were then incorporated into my dissertation. See Chen (2010). "Politics and Ethics: Zhang Junmai and the Search for A New Ethical Life in Modern China." PhD diss., Harvard University. Since 2008, I have given several presentations on my findings at the following institutes and conferences: (1) I gave a talk at East China Normal University in June 2009. (2) In May 2013, I organized a panel and gave a presentation entitled "Constitutional Crisis and Translated Weimar Experience: Carl Schmitt in Zhang Junmai's Thought" at the International Conference on Translation and Modernization in East Asia from the 19th to the Early 20th Century, organized by the Research Center for Translation of the Chinese University of Hong Kong (see *Huiyi Baodao* [Conference reports] (2013) from *Hanxue Yanjiu Tongxun* [Newsletter for Research in Chinese Studies], 32(3), pp. 51–52, 2013). In June 2013, I organized an international symposium entitled "Zhang Junmai and Modern China" at the Institute for Advanced Humanistic Studies of Peking University, where I also presented on this topic and discussed with experts in Zhang Junmai studies and modern Chinese intellectual history. In July 2015, I also gave a paper at the ISCLH Biannual Conference co-organized by the International Society for Chinese Law and History and Fudan University, entitled "Theory of Politics vs. Theory of Law: Case Studies of Carl Schmitt and Zhang Junmai." These presentations were all based on my discoveries in this paper, each with its own focus.

neutral state in Germany, thus updating his own understanding of what a constitutional state should be. As I will point out in the following sections, Zhang simultaneously accepted Schmitt's criticism of liberal constitutionalism and the ideas of liberal constitutionalists, which shows the internal tension of his constitutional thought. Such an examination is very important for us to deepen our understanding of the development of constitutionalism in modern China. Thus, my discussion is not just a technical discussion of translation, but a deep exploration of the hidden constitutional landscape in the context of the global twentieth century. What Zhang did was to learn from the German lessons and transplant certain constitutional ideas from Germany to China, and such transplantation of ideas is a crucial part of the constitutional and legal adventures and practices in modern China.

Instead of simply regarding Zhang's writing as plagiarism, my paper interrogates the gaps between Carl Schmitt's original text and Zhang's translation. Based on my close analysis of Carl Schmitt's political ideas shown in his text, as well as Zhang's translation of these ideas, I explore how and why Zhang accepted Carl Schmitt's notions of the political and of decision-making. By investigating how Zhang and Schmitt simultaneously called on the determining power of politics and how Zhang readily accepted Schmitt's emphasis on politics against the so-called pure law, I examine how German and Chinese intellectuals endeavoured to resolve the constitutional crises in Germany and China from the 1910s to the 1930s through their reflections on the concept of the political and the state, as well as the relationship between politics and law.

My research is also the first to deeply explore the hidden intellectual impact of Max Weber and Carl Schmitt on Zhang Junmai, especially on several key issues related to the politics of the nineteenth and twentieth centuries, such as the sovereign and sovereignty, the depoliticising bourgeois intellectuals, the rise of economic interests and the decline of politics and state theory, and so on.<sup>3</sup> As mentioned above, Zhang Junmai's hesitation between "*Gemeinschaft*" and "*Gesellschaft*" inherited the intellectual legacy of Max Weber, which was not discussed by previous scholarship. Here I would like to add Carl Schmitt to the genealogy of state versus society. In Carl Schmitt's original text, Schmitt closely discusses the relationship between the state and society in detail. Schmitt argues that "the most important problem in nineteenth-century state theory—that of the relationship between the state and society—was both clearly understood and openly discussed by the educated bourgeoisie. This generation, who were undeterred by their defeat in 1848, maintained that the state is to be understood as a sphere of the intellect (*Geist*) and ethical life (*Sittlichkeit*). Society, by contrast, is the realm of impulses, emotions and egoism or, as Gneist once put it, of *zoon*, the animalistic nature of the human, who only becomes a *zoon*

<sup>3</sup> My arguments based on my discoveries in this paper, as mentioned above, were included in my 2010 dissertation. After my dissertation, Ryan Martinez Mitchell's paper "Chinese Receptions of Carl Schmitt Since 1929" (2020) mentions that Zhang Junmai cited Carl Schmitt's points on press freedom, opposition party, and election in Zhang's 1931 German article "Die staatsrechtliche Krisis der chinesischen Republik" (published in *JAHRBUCH DES ÖFFENTLICHEN RECHTS*, vol.19, 336–355, 1931). Mitchell argues that Zhang's thought was closest to Schmitt's when Zhang criticized Sun Yat-Sen for imitating foreign models too much and ignoring Chinese traditions. Clearly, my arguments and Mitchell's take different directions. Moreover, Mitchell's paper did not mention my discoveries about Zhang Junmai's 1930 translation of Carl Schmitt's 1930 article "Hugo Preuss: His Concept of the State and His Position in German State Theory," and my related arguments, originally articulated in my 2010 dissertation and further developed in this paper, including my analyses of Zhang Junmai's points on the *Rechtsstaat*, his development of "Theory of Politics" versus "Theory of Law," "Internal Politics" versus "External Politics," true law versus paper law, the determining power of politics as a solution to political difficulties versus pure law and pure economic approaches, based on Zhang's acceptance of Schmitt's concepts of the politics and the *Rechtsstaat*. Mitchell's paper does not touch on another important aspect of my argument—the theoretical genealogy from Max Weber, Carl Schmitt to Zhang Junmai and the internal intellectual connections between them. See Ryan Martinez Mitchell (2020).

*politikōn* once existing in the state” (Schmitt, Loughlin, and Foley 2017, 357–358).<sup>4</sup> Interestingly, in his Chinese translation of Schmitt’s text, Zhang Junmai adds another sentence after this one: “This era considers the position of the state to be above society (Staat über der Gesellschaft)” (Zhang 2006, 347). Here we can see that Zhang Junmai adds a phrase specifically in German—“Staat über der Gesellschaft” and in this phrase, he self-consciously uses “Gesellschaft” to refer to the word “society” in Chinese. From here, we see how the concept of “Gesellschaft” haunts Zhang Junmai’s political thought.

In the same paragraph of Schmitt’s text, Schmitt indicates that in the context of Germany, if the state “becomes the ‘self-organization’ of society” (Schmitt, Loughlin, and Foley 2017, 366), there would be a possible danger to a constitutional state. Schmitt says, “under the Weimar Constitution, it is now left to the powers of society to organize themselves into a state” (Schmitt, Loughlin, and Foley 2017, 366). However, if the state is “only the ‘self-organization’ of the societal body” (Schmitt, Loughlin, and Foley 2017, 366), the state could end up “in the hands of the parties” (Schmitt, Loughlin, and Foley 2017, 366). Schmitt points out that Preuss hopes to include “authentic public opinion” and “a national purpose of the German people” “in the state depicted in the Weimar Constitution” (Schmitt, Loughlin, and Foley 2017, 367) in order to prevent party politics from destroying a constitutional state. And “the question itself is as long-standing as that of the concept of the bourgeois constitutional state” (Schmitt, Loughlin, and Foley 2017, 368). To Schmitt, the only solution is a call to the “political education and intelligence” (Schmitt, Loughlin, and Foley 2017, 368). Schmitt points out that “the state theory of the young Lorenz Stein was based on Hegel. . . . It also provides evidence of the astonishing intellectual power of the increasingly politically-conscious German bourgeoisie” (Schmitt, Loughlin, and Foley 2017, 357). Here, we see how Schmitt emphasises the significance of the political consciousness of the bourgeoisie. Schmitt believes that a national spirit is necessary to achieve authentic public opinion. All of Schmitt’s points here can be found in Zhang Junmai’s political and constitutional activities and related writings. In Zhang’s 1923 lecture “The Internal and External Politics” (*Nei de zhengzhi yu wai de zhengzhi* 内的政治与外的政治) (Zhang 2006, 314–318), he emphasises the importance of “public opinion.” In his later writings on state philosophy, Zhang also appreciates the German state theories, especially those of Hegel’s. Therefore, my research shows that there is a hidden existence of Carl Schmitt in Zhang’s acceptance of Hegel’s ideas, which has not been noticed by existing scholarship, while the intellectual connections between Hegel and Zhang Junmai have been recognised by Zhang himself and previous scholarship. In addition, Zhang’s activities in connection with the Federalist Movement also showed how he dealt with social forces. In founding *Guoli Zizhi xueyuan* 国立自治学院 (National Institute of Self-Government) in 1923, Zhang emphasised the improvement of people’s political interests and political education.

Like Max Weber, Carl Schmitt criticised the German bourgeoisie’s loss of political interest and called on the political education of the bourgeoisie, while Zhang Junmai practised political education in China. Carl Schmitt’s description of true politics as being able to solve difficult problems prompted Zhang to emphasise the government’s ability to solve political difficulties. Carl Schmitt’s emphasis on state theory echoes in Zhang Junmai’s calling for a state philosophy in China’s time of emergency under the shadow of war in the 1930s.

<sup>4</sup> When I researched the comparison between the article “Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre” and Zhang Junmai’s 1930 essay between 2006 and 2010, Schmitt’s article was not translated into English. Therefore, I translated parts of Schmitt’s text and included them in my dissertation (Chen, 2010). It is very important that Schmitt’s article was translated into English and published in 2017 (Schmitt, Loughlin and Foley, 2017). For the sake of consistency of expression, I have chosen to use the 2017 English translation when citing Schmitt’s essay in English in this paper.

Carl Schmitt's arguments on the *Rechtsstaat* also influenced how Zhang Junmai understood the rule of law. As mentioned above, both Schmitt and Zhang emphasise the determining power of the political, questioned pure law and the non-political nature of a *Rechtsstaat*. Schmitt believes that the *Rechtsstaat* should go beyond the *Gesetzesstaat* (legislative state) or *Justizstaat* (judiciary state). However, although "being a neutral state" is a characteristic of the *Rechtsstaat*, it also shows the limits of a *Rechtsstaat*, because a neutral state means "a non-intervening, non-interfering, passive, agnostic state." Such neutrality of the *Rechtsstaat* reduced the latter to a "passive state." Here we see Schmitt's criticism of liberal constitutionalism because it is liberals who consciously sought to minimise the functions of the state and to leave problems of the state to the competition of various social forces. Schmitt differentiates two types of non-interference (one between the state and society; and the other between the state and economic institutions of the state). Schmitt also distinguishes two types of neutrality. While criticising neutrality as in the concept of a neutral state, a "passive, agnostic state," Schmitt proposes a kind of neutrality that "facilitates an impartial and fair decision" (Schmitt, Loughlin, and Foley 2017, 369). Schmitt argues that "from a sociological perspective, this requires an entity that is not linked to any particular party. Without this, any bourgeois constitutional state would today be unthinkable. This state encompasses civic education and the belief in a national spirit (*Geist der Nation*)" (Schmitt, Loughlin, and Foley 2017, 369).

Borrowing Schmitt's definitions of two types of neutrality of a state, Zhang Junmai also explores the role of law in compromising social forces, the dichotomies between state and society and between state and economic institutions. It seems that Zhang simultaneously accepted the two levels of neutrality that Schmitt distinguished. In many of his writings, Zhang emphasises the importance of social organisations. Zhang Junmai's practice of creating mature and neutral political subjects outside the control of specific parties also echoes Schmitt's emphasis on the second level of neutrality, which severed its relation to parties. In addition, we also see the hidden influence of Carl Schmitt on Zhang Junmai in Zhang's emphasis on the substance of the state and a national spirit, since Schmitt himself linked the substance of the state to a national spirit.

While Zhang seems to have simultaneously read and accepted parts of the ideas of Carl Schmitt and Schmitt's liberal rivals, a hidden side in Zhang Junmai's thought is his acceptance of Schmitt's critique of liberal understandings of the state and *Rechtsstaat*. Carl Schmitt's question, "Who is the guardian of the constitution?" was also a question for Zhang Junmai. For Schmitt, the judiciary should not act as the guardian of the constitution. It is necessary to avoid the judicial solution of political difficulties (in the broad sense of politics) and the politicisation of the judiciary (in the narrow sense of politics). When Zhang Junmai discussed the rule of law in the context of twentieth-century China, he hesitated between the *Rechtsstaat* (constitutional state) and the *Gesetzesstaat* (legislative state). Later, as China became increasingly caught up in the shadow of the war, Zhang also began to emphasise more strongly the need to avoid the administrativisation of legislation.

By examining the intertextual relation between Carl Schmitt and Zhang Junmai, this paper reveals a latent aspect of the spectrum of Constitutionalism in the twentieth century and shows a special dialogue between a German critic of constitutionalism and a Chinese constitutionalist.

## 2. Historical contexts and intellectual backgrounds

### 2.1. Historical contexts: Germany and China after the First World War

In 1912, the last imperial dynasty of China, the Qing dynasty was replaced by the Republic of China. Although the new regime claimed to be a republic, it was not really a substantial



political body. Several constitutions were drafted before and after 1912. However, in the absence of a mature and widely accepted constitution, the constitutional practices only led to chaos and political struggles among different parties. For a state, a constitution is its foundation; for politicians, to draft a constitution is to gain discursive and substantial power in domestic politics. In addition to the top-bottom action of constitutional drafting, the Federalist Movement (*Liansheng zizhi yundong* 聯省自治運動) brought about constitutional practices at the provincial level. At the same time, the rise of the social fields or social forces since the late Qing brought about the rise of civil or professional associations (Xiao-Planes 2009, 45), which also played their own role in constitutional practices at the provincial level. Thus, the provincial and the professional forces interacted with each other in China's constitutional practices in the early twentieth century (Xiao-Planes 2009, 46). China's chaotic situation at that time also hastened many intellectuals to reconsider the possibility of a new, true constitution. In addition to the government-sponsored constitutional drafts, various intellectuals provided their own versions of China's constitution, including Kang Youwei 康有為, Zhang Taiyan 章太炎, and Zhang Junmai. A former student of politics, Zhang Junmai began his intellectual and political journey as a politician and pioneer constitutionalist in the 1910s and 1920s. First, he was involved in various political activities in the 1910s and 1920s, including criticising the Yuan Shikai government and later participating in anti-Yuan Shikai activities, working for various levels of the government (first in his hometown, Baoshan county, then for the Zhejiang provincial government), being involved in politics in the Beiyang government, and so on. Second, his political activities were also intertwined with his observation of politics in Europe with other intellectuals including Liang Qichao. Third, after examining the political and economic models of Britain, Germany, and the Soviet Union, in 1922, Zhang Junmai drafted one version (甲種) of the *Guoshi huiyi xianfa caoan* 國是會議憲法草案 and also published a book called *Guoxian yi* 國憲議, providing further explanations of the *Guoshi* Constitution. Another version of the *Guoshi huiyi xianfa caoan* (乙種) was attributed to Zhang Taiyan (Cen 1933). According to Zhang Junmai's own account, Zhang Taiyan's version of the *Guoshi* Constitution was also drafted by Zhang Junmai himself at Zhang Taiyan's request (Zhang 2006, 6). So, it shows Zhang Taiyan's blueprint for a Chinese constitution. Interestingly, the *Guoshi huiyi* was organised by the joint Council of National Confederation of Commercial Associations 全國商會聯合會 and the National Confederation of Educational Associations 全國教育會聯合會. The representatives were from civic (professional) associations in various provinces, including commerce, trade, education, agriculture, industrial, press, and lawyer's associations (Cen 1933; Zhang 2006, 6; Xiao-Planes 2009, 46). Although we cannot conclude that the two versions of the *Guoshi* constitutions absolutely represented the voices of the professional associations, since the professional associations themselves were different and both Zhang Junmai and Zhang Taiyan had their own political visions, at least the articles in the constitutions were not against the interests of the professional associations. In fact, in both versions of the *Guoshi* Constitution, representatives from the professional associations can be candidates for the Senate. Moreover, as Fupeng Li argues, Zhang Junmai's version of the *Guoshi* Constitution "translated" the social rights in the Weimar Constitution into articles on *shengji* 生計 (economy) (Li 2020, 134). Such a legal transport also shows that Zhang not only emphasised the social forces as represented by the professional associations but also had his focus among the social forces on the economic. The drafting of constitutions also became a battleground for various groups to fight for, or at least claim, their interests. Zhang Junmai's emphasis on the social and the economic can also be linked to Zhang's later treatment of the relationship between the state and professional associations, which was reflected in his translation of Carl Schmitt's article.

The political vacuum created by the lack of a mature constitution hastened Zhang Junmai's rethinking of what is true constitution, what is true law, and what is true politics. At this point, Germany became the focus of Zhang's attention. In fact, in the development

of Zhang Junmai's political thought, there was a shift from the British model to the German model. Why was Germany so attractive to Zhang Junmai? There are three reasons. First of all, Germany and China at that time shared similar historical and political circumstances. Second, because of his own emphasis on ethics, Zhang Junmai appreciated the ethical dimension in the German theory of the state. Third, Zhang Junmai's insistence on true politics and state sovereignty inclined him to readily accept Carl Schmitt's theory of the political, and his emphasis on a state's ability to solve difficult problems in times of emergency.

From 1918 to 1919, Germany was trapped in a chaotic situation. After being defeated in the First World War, the Second German Empire collapsed. During this period, both the sovereignty of the state and its legitimacy existed in a vacuum. Political theorist Hugo Preuss was then asked to draft a new constitution, which was later called the "Weimar Constitution." As a compromise, the Weimar Constitution was far from perfect and caused many problems.

The situation in China was similar in many ways. The constitution had become a tool used by politicians to carry out their own plans. This constitutional crisis in modern China pushed Zhang to reflect on the determining power of the constitution or the law. In his search for resources to inform his deliberations, the Weimar Constitution became an important precedent for him.

From 1919 to 1921, Zhang Junmai stayed in Europe for three years. In August 1919, the Weimar Constitution came into force. In his book, *On Political Phenomena of Social Democracy in New Germany* (*Xin deguo shehui minzhu zhengxiang ji* 新德國社會民主政象記), Zhang Junmai encloses Hugo Preuss's photo with Preuss's signature and written greetings to him, dated 23 December 1919, as well as Preuss's subsequent letter to him. Thus, the previous scholarship has concluded that Zhang visited Hugo Preuss on 23 December 1919 (Weng 2010, 84; Liu 2003a, 56; Li 2020, 136). In April 2020, Zhang Junmai published his Chinese translation of the Weimar Constitution (Zhang 1920, 39–84), with the hope that Chinese intellectuals could read it "ten thousand times" (Jeans 1997, 33; Liu 2003a, 56). As mentioned above, we also see the influence of the Weimar Constitution in Zhang Junmai's version of the *Guoshi* Constitution.

## 2.2. Intellectual background: Zhang Junmai's reflection on politics

However, is a written constitution enough to establish a new politics? Zhang's answer is "No." Zhang realised the limits of constitutions and began to reexamine the meaning of politics. By emphasising the substantial content of politics, Zhang hoped to transcend the formal level of politics and call on the truth of politics. In 1923, in a lecture entitled "The Internal and External Politics" (*Nei de zhengzhi yu wai de zhengzhi* 内的政治与外的政治), Zhang Junmai says:

What I want to talk about today is not concerned with the constitutions of the provinces, but with politics among the provinces—and not only on the politics among the provinces, but on the truth of politics. What is politics? Let me try to answer this question . . . (Zhang 2006, 315)<sup>5</sup>

<sup>5</sup> All translations in this essay that do not give credits to others have been done by me. We should note that Zhang Junmai's Chinese writings combined both classical Chinese and vernacular Chinese. The elements of classical Chinese are either heavier or lighter in different texts. To better show Zhang's original ideas, I have chosen to use direct translations as much as possible.

What is politics? What is the truth of politics? This is the most fundamental issue pointed out by Zhang Junmai. After a reflection on political practices since the establishment of the Republic of China, Zhang gives his conclusion:

The problem of Chinese politics is that we only talk about external politics rather than internal politics, superficial politics rather than inner politics. In other words, we only work on paper or on the formal level, but never work on the spirit or the heart-and-mind.<sup>6</sup> (Zhang 2006, 315–316)

In Zhang's opinion, political practices so far have only produced "paper constitutions," "formal systems or institutions," and "stagnant rules and laws without progress"—all of which are not politics. Zhang says, "Even if we name them politics, they are only external politics or superficial politics" (Zhang 2006, 316).

Thus, "the so-called law procedures or systems," are mostly "only paperwork, not the crystallization of the public opinion." He continues: "Those so-called political institutions or associations are mostly bodies without souls, not organic systems" (Zhang 2006, 316–317).

Based on the idea of an "organic system," which was quite popular at that time, Zhang calls for a kind of true politics, which he names "internal politics":

Internal politics simply means breaking the old politics which emphasized rules, institutions, and forms, replacing the old politics with a new politics through substantial effort. (Zhang 2006, 318)

When Zhang uses "internal"/"inner" and "external"/"superficial" to describe two political poles, and describes the former as "working on heart-and-mind or spirit" and the latter as "only working on paper or the formal level," we see that his approach is similar to that of traditional Chinese philosophy. However, Zhang's political consciousness as shown here is quite modern. The politics he applauds does not comprise hollow constitutional items, but, rather, actual political actions.

Connected to his concept of "internal politics," Zhang also calls for a "true law." In his opinion, there are two conditions for law:

First: "Law is the principle of the common life of a society."

Second: "The more progressive a society, the more people can express their own opinions. Hence, whether or not law is good depends on whether it is suitable for the community of free-willed people." (Zhang 2006, 337–338)

Based on these two conditions, Zhang argues that "law should aim at allowing all people in a society to be able to freely express their will. This is true law" (Zhang 2006, 338).

As in his definition of politics, Zhang argues that true law is not what is written in paper documents, because once it is put into writing it becomes formal. To Zhang, the fundamental basis of law is the human mind or the will of the people. Moreover, because the human mind and the will of the people always change with time, law also changes with time. The unchangeable nature of law is that it is always based on the people's free will. If Zhang's emphasis on heart-and-mind is more or less rooted in the tradition of Chinese philosophy, then his advocacy of "people's will" and "free will" is more from the tradition of Western political philosophy. Thus, his definition of law reveals a combination of the

<sup>6</sup> "Heart-and-mind" is an important concept in Confucianism.



Chinese and Western traditions. All of his reflections on politics and law made him readily accept Carl Schmitt's ideas of politics and the constitution.

### 3. The latent Carl Schmitt in Zhang Junmai's political thought

#### 3.1. New discovery

Zhang's insistence on true politics and internal politics influenced his acceptance of Carl Schmitt's concept of the political, although Zhang never acknowledged that he was influenced by Schmitt. On 25 December 1930, Zhang Junmai published an article entitled "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory" (*Deguo xinxian qicaoze Bo Lüsi zhi guojia guannian jiqi zai deguo zhengzhi xueshuoshi shang zhi diwei* 德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位) (Zhang 1930, 69–76). This article deserves new interpretations based on my new discoveries because there are many striking similarities between this text and Carl Schmitt's ideas on the state and the political. In the early phase of my study, I found the ideas expressed in this work very similar to those of Carl Schmitt's book *The Concept of the Political*. My first guess was that Zhang had read Carl Schmitt's work and borrowed his ideas. However, Zhang's article was published in *Dongfang zazhi* 東方雜誌, in December 1930. Although the first two editions of Schmitt's article "Der Begriff des Politischen" ("The Concept of the Political") were printed in 1927 and 1928 in two German journals (Schmitt 1927, 1–33; Schmitt 1928, 1–34), the passages that are similar to those in Zhang Junmai's article appear only in the book edition of *The Concept of the Political*, which was published in 1932. Such evidence shows that Zhang's article was not derived from Schmitt's book *The Concept of the Political*. Thus, I had to conclude that the striking similarity between Zhang Junmai and Carl Schmitt was due to the similar historical situations of Germany and China. In similar historical situations during the same period, Zhang Junmai, a Chinese constitutionalist and Carl Schmitt, a German political theorist, shared a similar historical sense. Both of them provided their own critical responses to constitutional crises in China and Germany.

However, a deeper study of Carl Schmitt's works allowed me to discover one of his articles, entitled "Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre" ("Hugo Preuss: His Concept of the State and His Position in German State Theory"). It was published in the 72nd issue of *Recht und Staat in Geschichte und Gegenwart* in 1930. According to the author's preliminary remarks, written in April 1930, the article is based on a speech he delivered on 18 January 1930. In this speech, he provided a brief overview of the historical development of three generations of German constitutional law.

The titles of Zhang Junmai's article, "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory," and Carl Schmitt's article, "Hugo Preuss: His Concept of the State and His Position in German State Theory," are almost the same. There are only two differences. First, Zhang adds a short introduction stating that Hugo Preuss is the author of the new German Constitution, which is helpful to the Chinese reader. Second, Zhang replaces the "state theory" (*staatslehre*) in Carl Schmitt's title with "political theory" in his title. The similarities between the titles prompted me to do a comparative study of the two articles. After a close comparison, my conclusion is that Zhang's article was a Chinese translation of Carl Schmitt's article. This conclusion suggests that Zhang Junmai must have read Carl Schmitt's works, although Zhang Junmai never mentioned having read Schmitt in any of his own writings, lectures or interviews. Because of this, the latent Carl Schmitt in his thought has never been discovered by previous scholarship. Thus, my discovery of the textual relation between Carl Schmitt and Zhang Junmai sheds new light on the scope of Zhang Junmai's intellectual world, as understood from existing scholarship.

In his article, “An Episode of Constitutionalism in Republican China” (“Minguo xianzheng de yiduan wangshi 民国宪政的一段往事”), Liu Xiaofeng laments that Zhang Junmai did not pay attention to the major reflections on the constitution at that time by German theorists such as Carl Schmitt (Liu 2003b). However, my discovery shows the intertextual relation between Zhang Junmai and Carl Schmitt. Carl Schmitt gave his speech in January 1930 and revised it into an article the following April, while Zhang Junmai translated this article with its original title into Chinese and published it in his own name on 25 December 1930. The fact that Zhang introduced Carl Schmitt’s article into China so soon after its initial publication, shows that Zhang Junmai was actively following the latest works concerning the German Constitution and state.

It is not productive to simply regard Zhang’s article as plagiarism. Due to the long tradition of quoting others’ works without any footnotes in works of literature and scholarship in ancient China, intellectuals since the late Qing had not established a mature, modern attitude towards copyright. Many famous scholars, including Yan Fu and Liang Qichao, published their translations of foreign works in their own names, without mentioning the original authors. Thus, having established the textual relation between Zhang Junmai’s and Carl Schmitt’s articles, I will focus on the following questions: What does Carl Schmitt discuss in his article? What is Schmitt’s attitude toward Hugo Preuss’s idea of the state, which also reflects his own idea of the state? How does Schmitt evaluate the situation of Germany after the publication of the Weimar Constitution? Why did Zhang Junmai, after translating and introducing the Weimar Constitution drafted by Hugo Preuss, choose to also introduce Carl Schmitt’s article to the Chinese people? What points in Carl Schmitt’s article “Hugo Preuss” attracted Zhang Junmai?

### **3.2. Carl Schmitt’s major arguments in “Hugo Preuss: His concept of the state and his position in German state theory”**

In “Hugo Preuss: His Concept of the State and His Position in German State Theory,” Carl Schmitt makes several major arguments:

First, Schmitt addresses his ideas on political concepts and the friend–enemy dichotomy, which are later readdressed in the 1932 book *Der Begriff des Politischen* (*The Concept of the Political*). (Table 1: Comparison between the first paragraph of Carl Schmitt’s article and an important paragraph in his book *Der Begriff des Politischen*.)

From Table 1, we see that in the two texts—Carl Schmitt’s 1930 article “Hugo Preuss—sein Staatsbegriff und seine Stellung in der deutschen Staatslehre ” (“Hugo Preuss: His Concept of the State and His Position in German State Theory”) and his 1932 book *Der Begriff des Politischen* (*The Concept of the Political*), Schmitt emphasises four points: first, there is no political concept that is free from a concrete situation. Second, political concepts cannot be abstractly understood. Third, a concrete situation is often a friend–enemy situation. Fourth, political notions such as sovereignty, the constitutional state, dictatorship, and economic planning are not neutral; they should always be placed in concrete, friend–enemy situations.

Second, Carl Schmitt criticises the so-called pure theory of law or “pure jurisprudence” for avoiding political difficulties and the most fundamental issues in politics. At the beginning of the second paragraph of his article “Hugo Preuss—sein Staatsbegriff und seine Stellung in der deutschen Staatslehre” (“Hugo Preuss: His Concept of the State and His Position in German State Theory”), he quotes a popular critique of Hugo Preuss at that time:

Ein Staatsrechtslehrer und Publizist wie Hugo Preuß, der jahrzehntelang in der politischen Opposition stand und immer wieder auf die Prinzipien von Staat und Verfassung zurückging, mußte der herrschenden Staatslehre seiner Zeit als ein

Table 1. Concept of the political

Carl Schmitt, <i>Der Begriff des Politischen</i> (German edition, 1932)	Carl Schmitt, <i>The Concept of the Political</i> (English edition)	Carl Schmitt's Article, "Hugo Preuss—sein Staatsbegriff und seine Stellung in der deutschen Staatslehre" ("Hugo Preuss: His Concept of the State and His Position in German State Theory") (1930)	The 2017 English translation of Carl Schmitt's Article, "Hugo Preuss—sein Staatsbegriff und seine Stellung in der deutschen Staatslehre" ("Hugo Preuss: His Concept of the State and His Position in German State Theory") (2017)
Erstens haben alle politischen Begriffe, Vorstellungen und Worte einen polemischen Sinn; sie haben eine konkrete Gegensätzlichkeit im Auge, sind an eine konkrete Situation gebunden, deren letzte Konsequenz eine (in Krieg oder Revolution sich äußernde) Freund-Feindgruppierung ist, und werden zu leeren und gespenstischen Abstraktionen, wenn diese Situation entfällt. Worte wie Staat, Republik, Gesellschaft, Klasse, ferner: Souveränität, Rechtsstaat, Absolutismus, Diktatur, Plan, neutraler oder totaler Staat usw. sind unverständlich, wenn man nicht weiß, wer in concreto durch ein solches Wort getroffen, bekämpft, negiert und widerlegt werden soll. (Schmitt 1932, 18)	All political concepts, images, and terms have a polemical meaning. They are focused on a specific conflict and are bound to a concrete situation; the result (which manifests itself in war or revolution) is a friend–enemy grouping, and they turn into empty and ghostlike abstractions when this situation disappears. Words such as state, republic, society, class, as well as sovereignty, constitutional state, absolutism, dictatorship, economic planning, neutral or total state, and so on, are incomprehensible if one does not know exactly who is to be affected, combated, refuted, or negated by such a term. (Schmitt 2007, 30–31)	Alle politischen Begriffe entstehen aus einem konkreten, außen- oder innenpolitischen Gegensatz und sind ohne diesen Gegensatz nur mißverständliche, sinnlose Abstraktionen. Es ist deshalb nicht zulässig, von der konkreten Situation, d. h. von der konkreten Gegensätzlichkeit, zu abstrahieren. Auch die theoretische Betrachtung politischer Dinge kann nicht davon absehen. Jeder politische Begriff ist ein polemischer Begriff. Er hat einen politischen Feind im Auge und wird in seinem geistigen Rang, seiner intellektuellen Kraft und seiner geschichtlichen Bedeutung durch seinen Feind bestimmt. Worte wie Souveränität, Freiheit, Rechtsstaat und Demokratie erhalten ihren präzisen Sinn erst durch eine konkrete Antithese. Wenigstens für eine wissenschaftliche Erörterung sollte man das beachten. Im übrigen gehört es zu den bequemsten Mitteln des parteipolitischen Betriebes, das eben nicht zu beachten, sondern sich der Phantastik abstrakter Redensarten zu bedienen, um den für die kleinen Kampfmythen der Tagespolemik nötigen Wortnebel zu schaffen. (Schmitt 1930, 5)	All political concepts arise from a concrete foreign or domestic conflict and are, without this conflict, merely ambiguous, senseless abstractions. It is therefore impermissible to abstract from the concrete situation, that is, from that specific opposition. Even theoretical treatment of political matters must comply with this injunction. Every political concept is a polemical concept. It has a political enemy in its sights and its meaning is determined, in its mental ranking, intellectual force, and historical importance, by virtue of this enemy. Words like sovereignty, freedom, constitutional state ( <i>Rechtsstaat</i> ), and democracy acquire a precise meaning only through a specific antithesis. One should keep this in mind, not least in scholarly discussion. It is, I might add, one of the most advantageous strategies of party-political practice precisely to forget this and to invoke fantastical abstract expressions to produce the fog of words ( <i>Wortnebel</i> ) required for the petty mythological struggles of everyday polemical argument. (Schmitt, Loughlin, and Foley 2017, 350)

polemischer Schriftsteller erscheinen. Daher konnte ihm jeder, der hinter der herrschenden Lehre Deckung nahm, sehr leicht vorwerfen, daß er politisiere und daß es nicht reine Jurisprudenz sei, was er treibe. Heute durchschauen wir diese Art juristischer Reinheit. Wir wissen, daß es ein spezifisch politischer Kunstgriff ist, sich selbst als unpolitisch und den Gegner als politisch hinzustellen. (Schmitt 1930, 5–6)

A public law professor (*Staatsrechtler*) and publicist such as Hugo Preuss, who for many decades worked in political opposition and was constantly obliged to return to the basic principles of state and constitution, must have appeared, in the context of the dominant state theory of his time, to be a polemical writer. It was therefore possible for anyone hiding behind the then-prevailing theory to make the glib accusation that he had a tendency to politicize the subject and to claim that what he produced was not pure jurisprudence. Today, we see through this kind of juristic purity. We know that to declare oneself apolitical and one's enemy to be political is a specific political manoeuvre. (Schmitt, Loughlin, and Foley 2017, 350)

Schmitt argues that there is no field that is not penetrated by politics; all problems are political problems. The concept of “the political” used here is “the political” in the broad sense. This means that it concerns important issues such as the state, sovereignty, and so on. People who claim to be “non-political” are nonetheless trapped in politics, though not politics in the broad sense, but in the narrow sense—politics that wrestles at the superficial level and far from the most fundamental issues: bureaucratic politics, judicial politics, and so on. Regarding those who insist on the so-called “pure law,” Schmitt argues that their emphasis is solely on judicial and administrative issues and that they never pay attention to difficult political problems. The goal of “a jurisprudence” is to legitimise the *status quo*. The notion of pure law works only on a superficial level—rules, institutions, procedures—and in turn, neglects the most fundamental questions of politics (Schmitt 1930, 6). Schmitt's criticism of the pure theory of law was linked to his reflections on the limits of the constitution.

Third, Schmitt emphasises the importance of decision-making. He criticises the tendency of decision suspension which is evident in the insistence of pure law:

Auf der Grundlage eines wirklich oder scheinbar stabilen außen- oder innenpolitischen *status quo* bildet sich leicht eine Jurisprudenz, deren Sinn und Ziel es ist, den *status quo* zu legitimieren und ihm die Weihe unpolitischer, „reiner“ Richtigkeit zu verleihen. Ein weiterer Grund für die Herrschaft einer Lehre kann darin liegen, daß man schwierige und politisch bedenkliche Erörterungen vermeiden will und für die tägliche Praxis von Justiz und Verwaltung handliche, unverfängliche Formeln braucht. Das dient dem technischen Interesse einer schnell und reibungslos funktionierenden Bürokratie und ist insofern unpolitisch; freilich nur in einer sehr oberflächlichen Art, denn keine Bürokratie arbeitet im leeren Raum und im reinen Äther; auch sie steht unter außen- und innenpolitischen Bedingungen und in einer konkreten politischen Situation. (Schmitt 1930, 6)

In the context of a stable foreign or domestic policy status quo, whether real or apparent, a legal doctrine can easily be formed, whose meaning and purpose is to legitimate the status quo and to confer on it the seal of apolitical, ‘pure’ validity. Another reason for the predominance of a doctrine is that, given the desire to circumvent difficult and politically questionable discussions in the everyday practice of law and administration, practical and innocuous formulae are needed. This requirement serves the technical interests of a speedily-operating and smoothly functioning bureaucracy. It is in this sense apolitical, but only, it must be added, in a very superficial respect. This is because no bureaucracy operates in a vacuum or in

the pure ether; even a bureaucracy is subject to the demands of foreign and domestic policy and must operate in a concrete political situation. (Schmitt, Loughlin, Foley 2017, 351)

Schmitt traces it back to the pre-war period:

In der deutschen Vorkriegszeit hat die damals herrschende Staatsrechtslehre, die angeblich rein juristische Methode Labands, beides miteinander verbunden, die Legitimierung des *gouvernementalen status quo* und die Evasion vor politischen Schwierigkeiten. Sie antwortete auf schwierige staatsrechtliche Fragen mit Schein-Antithesen . . . . Jene Methode der Umgehung politischer Prinzipien entsprach durchaus der innenpolitischen Struktur des Bismarckschen Reiches und seiner Verfassung, die sich nur als ein System umgangener Entscheidungen begreifen läßt. (Schmitt 1930, 6–7)

In pre-war Germany, the prevailing constitutional theory, that of the ostensibly pure juristic method of Laband, combined these two methods: the legitimization of the *gouvernementalen status quo* and the evasion of political difficulties. It answered difficult questions of public law with pseudo-antitheses . . . . This method of circumventing political principles was in perfect accordance with the domestic political structure of the Bismarckian Empire and its constitution, which can only be properly conceived as a system of decision-avoidance (Schmitt, Loughlin, and Foley, 2017, 351).

To Schmitt, the “evasion of political difficulties” and “circumventing political principles” are compromises and thus construct a system of decision-avoidance and end up with “suspension of difficult political decisions.” Behind this, we can see the “political purpose” of the “apolitical and ostensibly pure legal method” (Schmitt, Loughlin, and Foley 2017, 351).

### 3.3. Theory of law versus Theory of politics: Zhang Junmai’s acceptance of Carl Schmitt’s article

By a close comparison between Schmitt’s original article “Hugo Preuss: His Concept of the State and His Position in German State Theory” and Zhang’s translation, I find a few points that deserve attention in Zhang Junmai’s acceptance of Carl Schmitt’s ideas addressed in this article.

First, Zhang’s commitment to the search for true politics made him readily accept Schmitt’s concept of the political while overlooking Schmitt’s distinction between enemy and friend.<sup>7</sup> We can see this point by comparing Schmitt’s original text and Zhang’s (Tables 2–4).

From the three tables, we see that Schmitt emphasises that all political concepts are not abstract concepts; they all come from concrete oppositions. Zhang Junmai’s translation of the German words *Gegensatz*, *Gegensätzlichkeit*, and *Antithese* as “*duidai qingxing*” (antithesis) captures the basic meaning of Schmitt’s original text. However, although Zhang’s translation retains Schmitt’s friend–enemy dichotomy, it does not draw full attention to it. Zhang’s own reflection on the truth of politics made him readily accept Schmitt’s concept of the political, although he focuses very little on Schmitt’s concept of the friend–enemy dichotomy.

Second, Zhang Junmai incorporates Schmitt’s criticism of pure jurisprudence into his elaboration on the theory of politics as opposed to the theory of law (*falü lun* 法律论).

<sup>7</sup> Zhang’s translation retains Schmitt’s friend–enemy dichotomy, but does not fully emphasize it.

Table 2. Concept in concrete conflict

Carl Schmitt's Article, "Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre"	The 2017 English translation of Carl Schmitt's Article "Hugo Preuss: His Concept of the State and His Position in German State Theory"	Zhang Junmai's Article, "The Author of the New German Constitution, Preuss's Concept of State and His Position in the History of German Political Theory" (Zhang's Chinese Translation of Schmitt's Article)
Alle politischen Begriffe entstehen aus einem konkreten, außen- oder innenpolitischen Gegensatz und sind ohne diesen Gegensatz nur mißverständliche, sinnlose Abstraktionen. (Schmitt 1930, 5)	All political concepts arise from a concrete foreign or domestic conflict and are, without this conflict, merely ambiguous, senseless abstractions. (Schmitt, Loughlin, and Foley 2017, 350)	凡政治概念，皆起于具体的外交上及内政上之对待情形， <sup>8</sup> 苟无对待情形，则所谓概念者，乃无意识之抽象之言。(Zhang 2006, 342) [My English translation of Zhang's Chinese text] <sup>9</sup> : Concerning political concepts, they all emerge from a concrete diplomatic and domestic antithesis; <sup>10</sup> if there is no such antithesis, then the so-called concepts are merely unconscious, abstract words.

From Table 5, we see that in his translation, Zhang Junmai deletes the word “pure” before “jurisprudence” and translates “pure jurisprudence” as *falü lun* 法律论 (theory of law), which negates the specific connotation of the concept of “pure jurisprudence.” He also changes “politicising” into the “theory of politics.” Such changes do not violate the basic meanings of Schmitt’s words. Rather, through re-narrating Schmitt’s theory in his own language, Zhang Junmai provides his creative interpretation of Carl Schmitt’s emphasis on the political and turns it into his own distinction between the theory of politics and the theory of law.

Table 6 provides a close comparison between Schmitt’s original text and Zhang Junmai’s translation:

From Table 6, we see that Zhang’s translation captures the basic meaning of Schmitt’s argument and makes a clear differentiation between the theory of law and the theory of politics: the former claims to be pure “legal theory,” but cannot avoid being trapped in politics, while the latter embodies the following ideas: politics exist in concrete situations; politics penetrates all fields; true politics should be able to solve difficult political problems (Zhang 2006, 343).

Third, Zhang Junmai turned Carl Schmitt’s emphasis on decision-making against decision suspension into his own emphasis on the “solution of difficult political problems.”

<sup>8</sup> Zhang Junmai uses the same Chinese phrase *duidai qingxing* (对待情形) to translate both *Gegensatz* and *Antithese*.

<sup>9</sup> As mentioned above, Zhang’s Chinese writings mix classical Chinese and vernacular Chinese. In the whole essay of “Deguo xinlian qicaoze Bo Lüsi zhi guojia guannian jiqi zai deguo zhengzhi xueshuoshi shang zhi diwei (德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位), the elements of classical Chinese are much heavier, which makes Zhang’s text more difficult to explain. As I want to show in this paper, Zhang’s text is his translation of Schmitt’s article. And he chose to translate it in a very roundabout way with the style of classical Chinese. I try to use direct translations to better show Zhang’s circuitous style and his interpretations of Schmitt’s text.

<sup>10</sup> Because Zhang translates the German word *Antithese* as *duidai qingxing* (Tables 1 and 2), I have chosen to translate *duidai qingxing* back into “antithesis” in my English translation of Zhang’s article.



Table 3. Political concept as polemical concept

Schmitt's Article, "Hugo Preuss—sein Staatsbegriff und seine Stellung in der deutschen Staatslehre"	The 2017 English translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Es ist deshalb nicht zulässig, von der konkreten Situation, d. h. von der konkreten Gegensätzlichkeit, zu abstrahieren. Auch die theoretische Betrachtung politischer Dinge kann nicht davon absehen. Jeder politische Begriff ist ein polemischer Begriff. Er hat einen politischen Feind im Auge und wird in seinem geistigen Rang, seiner intellektuellen Kraft und seiner geschichtlichen Bedeutung durch seinen Feind bestimmt. Worte wie Souveränität, Freiheit, Rechtsstaat und Demokratie erhalten ihren präzisen Sinn erst durch eine konkrete Antithese. (Schmitt 1930, 5)	It is therefore impermissible to abstract from the concrete situation, that is, from that specific opposition. Even theoretical treatment of political matters must comply with this injunction.  Every political concept is a polemical concept. It has a political enemy in its sights and its meaning is determined, in its mental ranking, intellectual force, and historical importance, by virtue of this enemy. Words like sovereignty, freedom, constitutional-state ( <i>Rechtsstaat</i> ), and democracy acquire a precise meaning only through a specific antithesis. One should keep this in mind, not least in scholarly discussion. It is, I might add, one of the most advantageous strategies of party-political practice precisely to forget this and to invoke fantastical abstract expressions to produce the fog of words ( <i>Wortnebel</i> ) required for the petty mythological struggles of everyday polemical argument. (Schmitt, Loughlin, and Foley 2017, 350) <sup>11</sup>	因此立论不应脱离具体情形及具体之对待情形。此讨论政治者所不应忽略者也。盖政治概念皆有与人辩驳之性质，以政治上之敌人为对垒，其理智力量与历史意义，皆因其敌人而定。譬如政治上之概念如主权、自由、法治国、民主政治之确定意义，皆由其具体的对待情形而定，在学理研究者自能注意及之 (Zhang 2006, 342)。 [My English translation of Zhang's text]: Thus, any argument should not be separated from a concrete situation and a concrete antithesis. This is what people who discuss politics should not ignore. For any political concept has a polemic nature; it is in contrast with its political enemy; its intellectual power and historical significance are determined by its enemy. For example, the exact meanings of political concepts such as sovereignty, liberty, <i>Rechtsstaat</i> , democratic politics, are all determined by their concrete antitheses. People who do theoretical research should be able to notice it.

If we compare Carl Schmitt's original text with Zhang Junmai's translation, we find two differences (see Table 7):

Zhang Junmai's translation changes two sentences. First, Zhang translates "circumventing political principles" into "avoiding the method of political thought." Second, while the original text describes Bismarck's approach as "a system of circumventing decisions," Zhang Junmai's translation emphasises that "Bismarck's purpose" is "only to avoid complete solutions." In Carl Schmitt's article "Hugo Preuss," Schmitt calls attention to political situations; he emphasises that political principles are more fundamental than psychological approaches. Zhang Junmai's translation keeps the basic meaning of Schmitt's original text while presenting it in his own language. By changing "political

<sup>11</sup> Another version of the English translation of this passage is as follows: "Therefore, it is not admissible to abstract from the concrete situation—i.e., from concrete political antagonism. This applies to theoretical considerations of political phenomena as well. Every political concept is a polemic concept. Every political concept has a political enemy in mind, an enemy which determines much of its intellectual standing and power as well as its historical importance. Words like 'sovereignty,' 'liberty,' '*Rechtsstaat*,' and 'democracy' receive their precise import only by means of a concrete antithesis." (Slagstad, 1988, p. 111). Rune Slagstad's translation of *Gegensätzlichkeit* as "political antagonism" has suggested an emphasis on concrete political oppositions as well as Schmitt's notion of "political enemy."

Table 4. Strategies of Party-Political practice

Carl Schmitt's Article "Hugo Preuss"	The 2017 English Translation of Schmitt's Article	Zhang Junmai's Chinese Translation of Schmitt's Article
Wenigstens für eine wissenschaftliche Erörterung sollte man das beachten. Im übrigen gehört es zu den bequemsten Mitteln des parteipolitischen Betriebes, das eben nicht zu beachten, 改为 "sondern" sich der Phantastik abstrakter. Redensarten zu bedienen, um den für die kleinen Kampfmýthen der Tagespolemik nötigen Wortnebel zu schaffen (Schmitt 1930, 5).	One should keep this in mind, not least in scholarly discussion. It is, I might add, one of the most advantageous strategies of party-political practice precisely to forget this and to invoke fantastical abstract expressions to produce the fog of words ( <i>Wortnebel</i> ) required for the petty mythological struggles of everyday polemical argument. (Schmitt, Loughlin, and Foley 2017, 350)	... 在学理研究者自能注意及之。至于政党鼓吹，专从抽象方面着想，而不顾具体情形者，则往往造成文字上之迷离恍惚，为自便之计耳 (Zhang 2006, 342–343)。 [My English translation of Zhang's text]: People who do theoretical research should be able to notice it. Concerning any party propaganda, it always considers abstract aspects while ignoring concrete situations. It always makes the language misty and indistinct for its own convenience.

Table 5. Theory of Politics vs. Theory of law

Schmitt's Article, "Hugo Preuss" (Second paragraph, first and second sentences) (Schmitt 1930, 5)	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Ein Staatsrechtslehrer und Publizist wie Hugo Preuß, der jahrzehntelang in der politischen Opposition stand und immer wieder auf die Prinzipien von Staat und Verfassung zurückging, mußte der herrschenden Staatslehre seiner Zeit als ein polemischer Schriftsteller erscheinen. Daher konnte ihm jeder, der hinter der herrschenden Lehre Deckung nahm, sehr leicht vorwerfen, daß er politisiere und daß es nicht reine Jurisprudenz sei, was er treibe. (Schmitt 1930, 5–6)	A public law professor ( <i>Staatsrechtler</i> ) and publicist such as Hugo Preuss, who for many decades worked in political opposition and was constantly obliged to return to the basic principles of state and constitution, must have appeared, in the context of the dominant state theory of his time, to be a polemical writer. It was therefore possible for anyone hiding behind the then-prevailing theory to make the glib accusation that he had a tendency to politicize the subject and to claim that what he produced was not pure jurisprudence. (Schmitt, Loughlin, and Foley 2017, 350)	国家学者与舆论主持者柏吕斯氏，数十年来在政治上立于反对党地位，持论不出乎国家与宪法两大问题。当时盛行之国家学说常以柏氏为好辩之著作家，每曰此乃政治论，非法律论也 (Zhang 2006, 343)。 [My English translation of Zhang's text]: Hugo Preuss, a scholar of state theory and a moderator of the public voices, has been in the position of an opponent party for several decades; his views were not beyond the two issues: state and constitution. The dominant state theory at that time often regards Preuss as a polemic writer, and always states that [his theory] is a theory of politics, not a theory of law.

principles" into "method of political thought," Zhang Junmai emphasises a theory of politics at the level of methodology. By using "complete solutions" to interpret "decisions," he omits Carl Schmitt's notion of "political decision;" however, his interpretation as "complete solutions" still captures the inner spirit of Schmitt's idea of making decisions in the face of political difficulties.

Table 6. The So-called “Apolitical”

Schmitt's Article, “Hugo Preuss” (Second paragraph, Sentences 3–6)	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Heute durchschauen wir diese Art juristischer Reinheit. Wir wissen, daß es ein spezifisch politischer Kunstgriff ist, sich selbst als unpolitisch und den Gegner als politisch hinzustellen. In Wirklichkeit verhält es sich so, daß eine politische Macht ihre politische Intensität gerade dadurch beweisen kann, daß sie eine bestimmte Lehre oder Methode herrschen läßt. Auf der Grundlage eines wirklich oder scheinbar stabilen außen-oder innenpolitischen <i>status quo</i> bildet sich leicht eine Jurisprudenz, deren Sinn und Ziel es ist, den <i>status quo</i> zu legitimieren und ihm die Weihe unpolitischer, „reiner“ Richtigkeit zu verleihen. Ein weiterer Grund für die Herrschaft einer Lehre kann darin liegen, daß man schwierige und politisch bedenkliche Erörterungen vermeiden will und für die tägliche Praxis von Justiz und Verwaltung handliche, unverfängliche Formeln braucht. Das dient dem technischen Interesse einer schnell und reibungslos funktionierenden Bürokratie und ist insofern unpolitisch; freilich nur in einer sehr oberflächlichen Art, denn keine Bürokratie, arbeitet im leeren Raum und im reinen Äther; auch sie steht unter außen- und innenpolitischen Bedingungen und in einer konkreten politischen Situation (Schmitt 1930, 6).	Today, we see through this kind of juristic purity. We know that to declare oneself apolitical and one's enemy to be political is a specific political manoeuvre. In reality, a political power demonstrates its political intensity precisely by permitting a particular doctrine of method to dominate. In the context of a stable foreign or domestic policy status quo, whether real or apparent, a legal doctrine can easily be formed, whose meaning and purpose is to legitimate the status quo and to confer on it the seal of apolitical, 'pure' validity. Another reason for the predominance of a doctrine is that, given the desire to circumvent difficult and politically questionable discussions in the everyday practice of law and administration, practical and innocuous formulae are needed. This requirement serves the technical interests of a speedily-operating and smoothly-functioning bureaucracy. It is in this sense apolitical, but only, it must be added, in a very superficial respect. This is because no bureaucracy operates in a vacuum or in the pure either; even a bureaucracy is subject to the demands of foreign and domestic policy and must operate in a concrete political situation. (Schmitt, Loughlin, and Foley 2017, 350–351)	我人自今日观之，乃知此种批评之语，以自己为非政治的，以敌人作为政治的，乃出于一时之手段作用。实则彼等学说，亦为一种政治势力，其学说之所以盛行，即出于政治上之力量。当时内政外交为一时平静时代，彼等乃创造所谓法理学，其目的在于维持当时现状，而自居于非政治的纯粹的法律学派。彼等所重，在平日之司法行政问题，而于困难之政治问题，则置之不论不议之列。如是，正所以保护官僚政治而避免政治论也。官僚政治何能在真空中作用，何尝能处于内政外交具体情形之外 (Zhang 2006, 343)。 [My English translation of Zhang's text]: From today's point of view, we know that such criticism, claiming itself as apolitical and its enemy as political, is the product of a temporary strategy. In fact, this theory is also a political force. The prevalence of this theory was also brought about by a political force. According to the domestic and diplomatic context of the time, it was an age of peace. Thus, those [scholars] created the so-called “jurisprudence” in order to maintain the <i>status quo</i> at that time, while claiming themselves as an apolitical school of the “pure theory of law.” They emphasised daily judicatory and administrative problems but never discussed difficult political problems. This was to protect bureaucratic politics and to avoid the theory of politics. How could bureaucratic politics function in a vacuum? How could this be outside of specific domestic and diplomatic situations?

Table 7. Decision-Avoidance

Schmitt's Article "Hugo Preuss" (Second paragraph, Sentences 7–10)	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
In der deutschen Vorkriegszeit hat die damals herrschende Staatsrechtslehre, die angeblich rein juristische Methode Labands, beides miteinander verbunden, die Legitimierung des <i>gouvernementalen status quo</i> und die Evasion vor politischen Schwierigkeiten. Sie antwortete auf schwierige staatsrechtliche Fragen mit Schein-Antithesen und nötigenfalls, z. B. auf die Frage nach der Bedeutung eines Mißtrauensvotums des Deutschen Reichstages, mit einem Witz. Psychologisch erklärt sich der Erfolg einer solchen Art Jurisprudenz aus dem heute kaum noch faßbaren Sicherheitsgefühl der Vorkriegszeit. Doch reicht eine nur psychologische Erklärung nicht aus, denn das Problem liegt tiefer, weil es in der politischen Situation liegt. Jene Methode der Umgehung politischer Prinzipien entsprach durchaus der innenpolitischen Struktur des Bismarckschen Reiches und seiner Verfassung, die sich nur als ein System umgangener Entscheidungen begreifen läßt. (Schmitt 1930, 6–7)	In pre-war Germany, the prevailing constitutional theory, that of the ostensibly pure juristic method of Laband, combined these two methods: the legitimisation of the <i>gouvernementalen status quo</i> and the evasion of political difficulties. It answered difficult questions of public law with pseudo-antitheses, answered difficult questions of public law with pseudo-antitheses. Whenever a response was required, such as to the question of the purpose of a vote of no confidence within the German Parliament, it was answered with a joke. From a psychological point of view, the success of this particular type of jurisprudence can be explained by the sense of security that prevailed during the pre-war period, and which today is hard to comprehend. But a psychological account is not enough since the problem runs much deeper: it is engrained in the political situation. This method of circumventing political principles was in perfect accordance with the domestic political structure of the Bismarckian Empire and its constitution, which can only be properly conceived as a system of decision-avoidance. (Schmitt, Loughlin, and Foley 2017, 351)	欧战之前，德国盛行之国法学说，即赖般德(Laband)之法律论，实兼有两个目的：第一，政府现状之正统化；第二，避免政治上之难问题。彼等遇有国法上之难问题，仅触及其表面上之相反情形而止，德国议会之不信任投票问题，以滑稽态度对待之。彼等法律派之立场，所以能成功者，在心理学上观之，实由欧战以前，国内基础安定之所致。惟此问题之根基甚深，另有其政治情形在，不能以心理学上之解释了事。此种避免政治学说之方法，实根于俾斯麦式之国家构造及宪法而言，简单言之，俾氏宗旨不外避免彻底之解决而已 (Zhang 2006, 343)。 [My English translation of Zhang's text]: Before the European war, the dominant constitutional theory, i.e. the legal theory of Laband, in fact, had two purposes: first, to legitimise the <i>status quo</i> of the government; second, to avoid the difficult questions in politics. When confronted with difficult problems of constitutional theory, they stop before the antithesis at the superficial level and treat the vote of no confidence in the German Parliament with a mocking attitude. The reason for the success of the stance of the school of (pure) law, from a psychological point of view, was because of the stable status of the domestic environment before the European war. However, the root of this problem is rather deep; it has its political situation, which cannot be explained merely psychologically. Such a method of avoiding political thought is in fact based on the structure of Bismarck's state and its constitution; to put it simply, Bismarck's purpose is only to avoid complete solutions.

**Table 8.** Suspension of difficult political decisions

Schmitt's Article, "Hugo Preuss"	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Es kann überaus praktisch und ganz unvermeidlich sein, schwierige politische Entscheidungen zu suspendieren. Wenn die politischen Kräfte einander gleich sind, bleibt vernünftigerweise nichts anderes übrig. Auch die Weimarer Verfassung enthält genug Kompromisse. Nur wäre es töricht und auf die Dauer schädlich, sich über die Art und Bedeutung solcher Kompromisse absichtlich im Unklaren und Unbewußten zu halten. Das aber war gerade der politische Sinn jener angeblich unpolitischen und angeblich rein juristischen Methode. (Schmitt 1930, 7)	The suspension of difficult political decisions can be extremely useful and may even be entirely unavoidable. When political powers are equal to one another, there may be no other choice. Even the Weimar Constitution includes many compromises. But it would be foolish, and in the long term damaging, to keep oneself consciously in the dark about the nature and the significance of such compromises. Yet this was precisely the political purpose of this apolitical and ostensibly pure legal method. (Schmitt, Loughlin, and Foley 2017, 351)	政治难题之彻底解决暂时停顿, 自有其实际上不得已之情形。因政治上两造之力量相等, 其解决之法, 固惟有暂时停顿也。威玛宪法论, 何尝能免于调停之论。调停办法, 使难题限于迷离恍惚之境, 为国家长久计, 实有害而无害, 然彼等法律学派之国家学者, 则以此不彻底方法为妙用 (Zhang 2006, 343)。 [My English translation of Schmitt's article]: The temporary suspension of the complete solving of difficult political problems has its practical "have-to" situation. Because the two powers in politics were equal, the method of solution is only a temporary suspension. The Weimar Constitution could not avoid such mediation. The method of mediation caused difficult problems to be trapped in a vague situation, which is harmful rather than helpful to the state in the long run; however, those scholars of state theory who belonged to the school of (pure) law, considered this incomplete method to be a clever method.

### 3.4. Translation and reinterpretations of notions

In the third paragraph of Carl Schmitt's original text, Schmitt deepens his analysis on the suspension of difficult political decisions; Zhang Junmai's translation captures the basic meaning of Carl Schmitt's article "Hugo Preuss" despite some revisions at the level of expression (see Table 8):

From Table 9, we see that Zhang Junmai continues to translate "decisions" into "complete solutions." In Schmitt's text, he admits that it is difficult to completely avoid the suspension of difficult political decisions. However, in severe situations, if politicians cannot make decisions, then difficult problems cannot be completely solved and may end up in a standstill. Where there are opposing political sides, if their strengths are equal, the likely outcome is a stalemate between them. The Weimar Constitution was such a negotiation. Schmitt believes that this method of negotiating would turn difficult political problems into a deadlock, and so would not be useful, but harmful, to the future of the state. By defining this type of negotiation or compromise as a political application of the so-called "apolitical" and "purely legal methods," Schmitt uncovers the political face of those scholars who claimed to be apolitical. If we compare Schmitt's original sentence with Zhang Junmai's translation, we see that Zhang leaves out Schmitt's emphasis on the political face of the so-called apolitical method. Rather, Zhang interprets it as a position of those scholars who insisted on a theory of law to approach the issues of the state. While Schmitt highlights those legal scholars' political strategy behind their apolitical gesture,

Table 9. The unsolved constitutional question

Schmitt's Article "Hugo Preuss"	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Die deutschen Verfassungen des 19. Jahrhunderts haben den eigentlichen Streitpunkt der innerpolitischen Kämpfe, die fundamentale Verfassungsfrage, offen gelassen, nämlich, staatstheoretisch formuliert, die Frage nach dem Subjekt der verfassungsgebenden Gewalt: Souveränität des Monarchen oder Souveränität des Volkes (Schmitt 1930, 7).	German constitutions of the nineteenth century allowed the real points of contention in domestic conflicts to remain unresolved. From the perspective of constitutional theory, the fundamental constitutional question remained that of who held constituent power: the sovereignty of the monarch or the sovereignty of the people. (Schmitt, Loughlin, and Foley 2017, 351–352)	十九世纪之德国，宪法中关于君主主权与国民主权之难题，即为暂时不决之问题 (Zhang 2006, 343)。 [My English translation of Zhang's text]: In nineteenth-century Germany, the difficult problem concerning the sovereignty of the monarch and the sovereignty of the people is a suspended problem.

Zhang Junmai emphasises the method of negotiation and the nature of the Weimar Constitution as a compromise (See Table 9):

From Table 9, we see that Zhang Junmai's translation captures the main meaning of Schmitt's sentence, though omitting one important point. In Schmitt's text, "German constitutions of the nineteenth century allowed the real points of contention in domestic conflicts to remain unresolved;" "the real points of contention in domestic conflicts" are linked to "the fundamental constitutional question:" "that of who held constituent power." Although the 2017 English translation translates "staatstheoretisch formuliert" as "from the perspective of constitutional theory," it can also be translated as "in terms of state theory." In fact, in the genealogy of German state theory or constitutional theory, a group of terms including *Staatsrechtswissenschaft*, *Staatsrechtslehre*, *Staatsrecht*, or those labelled as "staatstheoretisch" are often translated in the following ways: state theory, constitutional law, or public law. For example, the 2017 English translation translates "Staatsrechtler" as "public law professor." From Schmitt's text, we see the emphasis on "state theory" and the sovereignty of the state. For Schmitt, these are among the most fundamental issues of politics. Zhang Junmai's translation does not reveal this point in Table 9, but Table 8 shows that he draws attention to "those scholars of state theory who belonged to the school of (pure) law." Moreover, Zhang Junmai's advocacy, in 1937, for the establishment of a Chinese state philosophy, still shows the influence of German state theory, from Hegel to Schmitt.

Why was the Weimar Constitution a compromise? Carl Schmitt argues that,

Weder war die Monarchie stark genug, sich in ihrer Absolutheit zu halten, noch das deutsche Volk imstande, »sich selbst eine Verfassung zu geben«. Die Verfassung der deutschen konstitutionellen Monarchie beruht daher in ihrem Kern auf einem Kompromiß, und zwar einem besonders gearteten, die Entscheidung aufschiebenden, dilatorischen Kompromiß von Monarchie und Demokratie. (Schmitt 1930, 7)

The monarchy was not strong enough to maintain absolutism, but neither was the German people in a position to 'give itself its own constitution'. The constitution of the German constitutional monarchy was therefore built fundamentally upon a compromise. To be precise, it was built upon a strange, dilatory compromise in which the decision between monarchy and democracy was postponed. (Schmitt, Loughlin, and Foley 2017, 352)



Table 10. Decision postponed

Schmitt's Article, "Hugo Preuss"	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Weder war die Monarchie stark genug, sich in ihrer Absolutheit zu halten, noch das deutsche Volk instande, »sich selbst eine Verfassung zu geben«. Die Verfassung der deutschen konstitutionellen Monarchie beruht daher in ihrem Kern auf einem Kompromiß, und zwar einem besonders gearteten, die Entscheidung aufschiebenden, dilatorischen Kompromiß von Monarchie und Demokratie (Schmitt 1930, 7).	The monarchy was not strong enough to maintain absolutism, but neither was the German people in a position to 'give itself its own constitution.' The constitution of the German constitutional monarchy was therefore built fundamentally upon a compromise. To be precise, it was built upon a strange, dilatory compromise in which the decision between monarchy and democracy was postponed. (Schmitt, Loughlin, and Foley 2017, 352)	君主之力量既不能长久保持其专制政治, 而国民又无力起而自定其宪法。因此德意志君主立宪国之宪法, 即在于推宕此问题之解决, 而徘徊于民主与君主之间 (Zhang 2006, 343)。 [My English translation of Zhang's text]: While the power of the monarch could not maintain its despotic politics for a long time, citizens were unable to rise and determine their constitution by themselves. Hence, the constitution of the German constitutional monarchical state was swaying between democracy and monarchy, in its delaying of the solving of this problem.

Table 10 provides a close comparison between Schmitt's original text and Zhang's translation.

From Table 10, we see again Zhang Junmai's translation changes Schmitt's notion of "decision-making" into a "complete solution of problems." While Schmitt criticises the German Constitution as a particular kind of compromise, a decision-suspending, dilatory compromise between monarchy and democracy, Zhang Junmai translates "decision-suspending" as "delaying of the solving of" the problem of sovereignty. From this instance and similar examples above, we can conclude that Zhang Junmai understands Schmitt's arguments on "decision," "decision-making," and "decision-suspending" in terms of solutions to difficult political problems.

After pointing out the historical reasons why the German Constitution was a compromise, Carl Schmitt criticises that the so-called purely legal approach is hollow:

In der Sache sind sie Ausweichungen und Umgehungen, Versuche einer Harmonisierung und Versöhnung widersprechender politischer Staatsformprinzipien und werden um so mehr zu inhaltlosen Reflexen des innerpolitischen *status quo*, je mehr sie rein juristisch zu sein und alles Politische streng zu vermeiden vorgeben. (Schmitt 1930, 8)

They are, in reality, evasions and avoidances; they are attempts to harmonize and reconcile contradictory political principles concerning the form of government; and the more they purport to be purely legal and to strictly avoid anything political, the more they become pointless reflections of the domestic status quo. (Schmitt, Loughlin, and Foley 2017, 352)

Zhang Junmai's translation of this sentence is as follows:

简单言之, 则两种冲突之国体论之迁就与调和而已。即以纯粹法律为立场, 而避免一切政治论, 则所谓定义与解释云云, 不过为维持内政上之现状, 固并无真正之内容也。 (Zhang 2006, 344)

Simply put, it is the harmonization and reconciliation of the two opposing forms of the state. If [scholars] stick to the stance of the “pure law” and try to avoid any theory of politics, then the so-called “definitions” and “interpretations” are only to maintain the *status quo*. They do not have real contents. (My translation)

In Schmitt’s opinion, the evasion of making political decisions or avoidance of political difficulties would defeat all political attempts at harmonisation and reconciliation of conflicting political principles and would result in a failure to solve political problems. Zhang Junmai also correctly highlights Schmitt’s criticism of pure legal theory as lacking real content. In addition, while criticising the theory of law, Zhang recommends the theory of politics. In other words, by correctly introducing Schmitt’s main points in his article, Zhang’s translation also embodies a creative reinterpretation of Schmitt’s arguments and constitutes a dialogue with Schmitt’s original text.

#### 4. Theory of politics versus theory of law in the Chinese and German contexts

Why did Zhang Junmai choose to translate this article and introduce it to China? There must have been some points in Schmitt’s article that attracted him. First of all, Zhang’s reflections on true politics, true law, and the relationship between politics and law, are in accord with Carl Schmitt’s thinking. Thus, Zhang readily accepted Schmitt’s concept of the political as the fundamental category that permeates all other spheres of activities. As discussed in previous paragraphs, Zhang Junmai argues that, what is most important is not what specific politics or constitution China decides to adopt, but what is the truth of politics. In his 1923 lecture entitled “The Internal and External Politics,” Zhang had criticised the laws of China as being nothing but paperwork. What he would promote is true law, or the truth of law. His constant disdain for the so-called purely legal details made him inclined to support Carl Schmitt’s theory of politics against the theory of law.

In fact, since the late Qing, the scholarly understanding of the theory of law has been quite developed. As early as 1902, in “A Brief Introduction to Karl Rathgen’s *Politics* 那特經政治學小引 (集錄)” (*Xuan bao*, no.17, 1902, 6–10),<sup>12</sup> the school of jurisprudence 法理學派 and its advantages and disadvantages are discussed. The methods of the jurisprudence school are considered deduction and logic. It is also criticised for using judicial explanation to interpret a state’s legal relations. Because it does not focus on the key issues of a state’s economy and how a state governs and benefits people, it often ends up as a formal theory of the state, which in turn hinders the development of a state in its substantiality (*Xuan bao*, no.17, 1902, 8–9).

If we consider that in 1906, another important intellectual Liang Qichao, in his article entitled “The History of Development of Chinese Jurisprudence 中国法理学发达史论” (Liang 2001, 340–375), also distinguished between the rule of law (law) and a state’s governance strategies and techniques (politics), we see that at the beginning of the twentieth century, Chinese intellectuals had a primary sense of the differences between the theory of law and the theory of politics, which, constituted a special dialogue with similar German ideas at that time.

In the 1928 edition of *The Concept of the Political*, Carl Schmitt also mentions the antithesis of law and politics:

Man wird selten eine klare Definition des Politischen finden. Oft wird das Wort nur negative als Gegensatz gegen verschiedene andere Begriffe gebraucht, in Antithesen wie Politik und Wirtschaft, Politik und Moral, Politik und Recht, innerhalb des Rechts dann wieder Politik und Zivilrecht. (Schmitt, 1928, 1)

<sup>12</sup> The Chinese translation of Karl Rathgen’s book *Politics* was published by Guozhi shuju 廣智書局 in 1903.

Table 11. The So-called juristic purity

Schmitt, <i>Der Hüter der Verfassung</i> ( <i>The Guardian of the Constitution</i> )	Schmitt, <i>The Concept of the Political</i>	Schmitt, "Hugo Preuss: His Concept of the State and His Position in German State Theory" (The 2017 English translation)
Inzwischen haben wir die Erfahrung gemacht, daß es ein spezifisch politischer Kunstgriff ist, die eigene Auffassung als unpolitisch, die Fragen und Meinungen des Gegners als politisch hinstellen. (Schmitt 1996, 3)	... designating the adversary as political and oneself as nonpolitical (i.e. scientific, just, objective, neutral, etc.) is in actuality a typical and unusually intensive way of pursuing politics. (Schmitt 2007, 21)	Today, we see through this kind of juristic purity. We know that to declare oneself apolitical and one's enemy to be political is a specific political manoeuvre. (Schmitt, Loughlin, and Foley 2017, 350–351)

One seldom finds a clear definition of the political. The word is most frequently used negatively, in contrast to various other ideas, for example in such antitheses as politics and economy, politics and morality, politics and law; and within law there is again politics and civil law, and so forth. (Schmitt 2007, 20)

In a note attached to this passage, Carl Schmitt goes further to emphasise the difference between the antithesis of law and politics and that of civil and public law. Moreover, in the 1932 edition of *The Concept of the Political*, we find that Schmitt's argument on the clash between the political and the non-political is similar to his point in the article "Hugo Preuss: His Concept of the State and His Position in German State Theory." Schmitt says,

Triepel then justly criticizes the ostensibly nonpolitical, purely juristic approach of the Gerber-Laband school and the attempt at its continuation in the postwar period (Kelsen). Nevertheless, Triepel had not yet recognized the pure political meaning of this pretense of an apolitical purity, because he subscribes to the equation of politics = state. As will still be seen below, designating the adversary as political and oneself as nonpolitical (i.e., scientific, just, objective, neutral, etc.) is in actuality a typical and unusually intensive way of pursuing politics. (Schmitt 2007, 21)

Let us make a comparison among three passages from Carl Schmitt's different texts (See Table 11):

From the table above, we see the intertextual relation among these three texts of Carl Schmitt. In the article "Hugo Preuss: His Concept of the State and His Position in German State Theory," after criticising Laband's juristic method (Zhang Junmai translates it as "theory of law"), Carl Schmitt also indicates that Hugo Preuss is not only influenced by Gneist and Laband, but also "constantly aligns himself most firmly with Gierke's organic state and social theory" (Schmitt, Loughlin, and Foley 2017, 354). Schmitt emphasises that Preuss deeply believes in the ideas of freedom and a constitutional regime, which could place limits on the powers of both the monarchy and the people. Then the following question would be: what is a constitutional state?

## 5. *Rechtsstaat* and the neutral state

The constitutional state, or *Rechtsstaat*, is a complex concept with different implications for different contexts. To Carl Schmitt, a constitutional state is a transcendence of *Gesetzstaat*

or *Justizstaat*.<sup>13</sup> In his book, *Der Hüter der Verfassung* (*The Guardian of the Constitution*), which was published in 1931, Schmitt addresses the question of who indeed is the “guardian” of the constitution. In Schmitt’s opinion, the judiciary cannot provide the source of preservation of the constitution. Regarding the tendency to look for the guardian in the judicial sphere, Schmitt indicates that this is due to certain misunderstandings:

Zunächst aus einer mißverstandenen und abstrakten Vorstellung vom Rechtsstaat. Es liegt nahe, die justizförmige Erledigung aller politischen Fragen als rechtsstaatliches Ideal aufzufassen und dabei zu **übersehen**, daß mit einer Expansion der Justiz auf eine vielleicht nicht mehr justiziable Materie die Justiz nur geschädigt werden kann. (Schmitt 1996, 22)

Schmitt argues that it is a misunderstanding of the concept of the constitutional state if one considers the judicial treatment of all political questions as an ideal of the constitutional state and ignores the fact that an expansion of the judiciary into a matter that should no longer be treated judicially, cannot be good to a constitutional state.

Equating the judiciary solution with the idea of a constitutional state would bring about not only a juridification of the political but also a politicisation of the judiciary. To Schmitt, such an approach reveals a purely formalised way of thinking. Although Schmitt claims that he is against the politicisation of the judiciary, we should notice that the “political” that Schmitt mentions here refers to politics in the narrow sense, rather than politics as the fundamental nature that defines other spheres. Later in the same paragraph, Schmitt continues to criticise the tendency of formalising the constitutional into the judiciary. Schmitt argues that the abstract use of the term *Rechtsstaat* is meaningless because it cannot lead to any concrete systems. Moreover, such an abstract concept implies too many different mechanisms with various forms which cannot coexist. Thus, Schmitt emphasises that people should focus on concepts and differentiations of specific constitutional theories, rather than quoting the term *Rechtsstaat* abstractly (Schmitt 1996, 22–23).

In his article “Hugo Preuss: His Concept of the State and His Position in German State Theory,” after defining the concept of the state in the Weimar Constitution as the “*neutralen Staat*” (neutral state) (Schmitt 1930, 18), Carl Schmitt argues that the neutral state was born of the conciliation between the bourgeoisie and the working class, as they sought mutual accord in constructing the Weimar Constitution (Schmitt 1930, 18). Schmitt believes that “the procedures of the bourgeois constitutional state” “are the most neutral possible for a state confronted with domestic conflicts” (Schmitt 1930, 18–19; Schmitt, Loughlin & Foley, 2017, 363). Schmitt argues that “the concept of a domestically neutral state is a typically liberal idea. In its initial meaning, the state was reduced to a minimum and delegated the resolution of all social problems to the competitive struggle between social forces. The neutral state in this sense was a non-encroaching, non-intervening, passive and agnostic state” (Schmitt 1930, 19; Schmitt, Loughlin, and Foley 2017, 365). In quoting Hugo Preuss’s explanation of why there is still inequality that cannot be measured by the laws of the state, despite the claims of equality within the law, Schmitt argues that this shows that “against the extreme position of the all-knowing state, we have here the other extreme of the state with no knowledge, unable to make any evaluations and wholly agnostic” (Schmitt 1930, 20; Schmitt, Loughlin, and Foley 2017, 366).

<sup>13</sup> In his book *The Liberal Nationalism in Modern China* (Xiandai zhongguo de ziyou minzu zhuyi 现代中国的自由民族主义), Weng Hekai also cites related scholarship on *Rechtsstaat*, *Gesetzstaat* and *Justizstaat*, and discusses that if a *Rechtsstaat* is reduced to a kind of formal *Rechtsstaat*, it would become a *Gesetzstaat* or *Justizstaat*. See Weng, 2010, p. 79.

Table 12. Neutral State

Schmitt's Article "Hugo Preuss"	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Die Vorstellung eines innerpolitisch neutralen Staates ist eine typisch liberale Vorstellung. Sie bedeutet ursprünglich, daß der Staat sich auf ein Minimum reduziert und die Lösung aller sozialen Probleme dem Wettstreit der sozialen Kräfte überläßt. Der neutrale Staat in diesem Sinne ist der sich nicht einmischende, nicht intervenierende, passive, agnostische Staat. (Schmitt 1930, 19)	The concept of a domestically neutral state is a typically liberal idea. In its initial meaning, the state was reduced to a minimum and delegated the resolution of all social problems to the competitive struggle between social forces. The neutral state in this sense was a non-encroaching, non-intervening, passive and agnostic state." (Schmitt 1930, 19; Schmitt, Loughlin, and Foley 2017, 365)	内治上国家之中立性云云，实起于自由主义者之说，原意谓应将国家之地位缩之于最小限度，而种种社会问题之解决，听诸社会各种力之互为胜负。故所谓国家之中立性，实即不干涉的、旁观的、怀疑的国家之谓也。(Zhang 2006, 350) [My English translation of Zhang's text]: The neutrality of a state in domestic politics originated from a liberal idea, originally implying reducing the position of the state to a minimum and leaving the solution to various social problems to a contest of various social forces. Hence, the so-called neutrality of a state means a non-intervening, onlooking, sceptical state.

Table 13. Agnostic State

Schmitt's Article "Hugo Preuss"	The 2017 English Translation of Schmitt's Article	Zhang's Chinese Translation of Schmitt's Article
Als Gegensatz gegen das Extrem vom allwissenden Staat erscheint hier das andere Extrem eines nichts wissenden, nichts unterscheidenden, agnostischen Staates. (Schmitt, 1930, 20)	Against the extreme position of the all-knowing state, we have here the other extreme of the state with no knowledge, unable to make any evaluations and wholly agnostic." (Schmitt 1930, 20; Schmitt, Loughlin, and Foley 2017, 366)	此说中可以窥见除其全知之国家外，尚有一不可知之国家在，此所谓怀疑的国家观也。(Zhang 2006, 350) [My English translation of Zhang's text]: In this thought, we see that in addition to an omniscient state, there is another agnostic state, which is the so-called sceptical state.

Zhang Junmai's translation of Carl Schmitt's points on the neutral state in Weimar Germany also shows his own understanding of the neutral state. The following is a close comparison between Carl Schmitt's argument and Zhang's translation (see Tables 12 and 13):

Zhang's translation captures the basic meaning of Carl Schmitt's sentences, though he changes "a neutral state" into the "neutrality of a state." At the same time, he also revises Schmitt's definition of a "neutral state" into his own notion of the "neutrality of a state" by translating "non-encroaching, non-intervening, passive, and agnostic state" into a "non-intervening, onlooking, sceptical state." Here, Zhang replaces the notion of "agnostic state" with his own interpretation: "sceptical state."

Table 13 shows that Zhang Junmai insists on using the "sceptical state" to explain the "agnostic state," although he does not delete this notion in his translation.

Table 14. “Neutral State” as liberal idea

Schmitt's Article “Hugo Preuss”	Schmitt's book <i>Der Hüter der Verfassung</i> ( <i>The Guardian of the Constitution</i> )
<p>Die Vorstellung eines innerpolitisch “neutralen Staates” [ist eine typisch liberale Vorstellung. Sie bedeutet ursprünglich, daß der Staat sich auf ein Minimum reduziert und die Lösung aller sozialen Probleme dem Wettstreit der sozialen Kräfte überläßt. Der neutrale Staat in diesem Sinne ist der sich nicht einmischende, nicht intervenierende, passive, agnostische Staat. (Schmitt 1930, 19) (The 2017 English translation) The concept of a domestically neutral state is a typically liberal idea. In its initial meaning, the state was reduced to a minimum and delegated the resolution of all social problems to the competitive struggle between social forces. The neutral state in this sense was a non-encroaching, non-intervening, passive and agnostic state.” (Schmitt, Loughlin, and Foley 2017, 365)</p>	<p>Diese Art „neutraler Staat” “ist der nichts mehr unterscheidende, relativistische <i>stato neutrale ed agnostico</i>, der inhaltlose oder doch auf ein inhaltliches Minimum beschränkte Staat. Seine Verfassung ist vor allem auch gegenüber der Wirtschaft neutral im Sinne der Nichteinmischung (Wirtschafts- und Vertragsfreiheit) . . .” (Schmitt 1996, 112) This kind of neutral state is a non- differentiating, relativistic neutral and agnostic state, a state without substance, or at least restricted to a minimal content. Its constitutional system, above all, is also neutral towards the economic sphere, in the sense of non-interference (economic freedom and freedom of contract) (my translation)</p>

If we compare Schmitt’s discussion of the neutral state in the article “Hugo Preuss: His Concept of the State and His Position in German State Theory”<sup>14</sup> with that in *Der Hüter der Verfassung*, we find there are several interesting similarities (see Table 14):

Carl Schmitt’s argument, in the second part of *Der Hüter der Verfassung*, divides the notion of the neutral into several types, the first of which is named “Neutrality in the sense of non-intervention” (*Neutralität im Sinne der Nicht-Intervention*). Because the article “Hugo Preuss: His Concept of the State and His Position in German State Theory” was published before *Der Hüter der Verfassung*, we see the genealogy of Carl Schmitt’s reflections on the notion of the neutral state defined by the Weimar Constitution. Schmitt’s points can be summarised in the following aspects regarding the implication of the neutrality regulated by the Weimar Constitution: (1) reducing the function of a state to minimum; (2) a state of non-intervention; (3) an agnostic state. However, the emphases of these two texts are slightly different. First, in *Der Hüter der Verfassung*, Schmitt describes two types of neutrality: (1) the neutrality of the state as a kind of neutrality which allows the state, as a counterpart of religious groups, to be independent from the church (“*Neutralität des Staates gegenüber den Religionen und Konfessionen*” (Schmitt 1996, 111). (2) the neutrality of the state and its constitutional system towards the economic sphere. Here we see the dichotomy between the state and society and the state and the economy. Schmitt describes “*Neutralität des Staates gegenüber den Religionen und Konfessionen*” as “the internal political neutrality” that first appears in “historical consciousness” (“*die innerpolitische Neutralität des Staates zuerst in das geschichtliche Bewußtsein*”) (Schmitt 1996, 111), meaning that this neutrality was rooted in the historical and cultural-political contexts of Europe throughout its history, and that state and church constitute a dichotomy of power relations. However, in the article “Hugo Preuss: His Concept of the State and His Position in German State Theory,” Schmitt places the state in a dichotomy with society. The neutrality Schmitt emphasises in this article is the neutrality of the state as a counterpart of society.

<sup>14</sup> Fupeng Li gives his interpretation of this article and Zhang Junmai’s treatment of “neutrality,” focusing mainly on how Zhang Junmai had a dialogue with Hugo Preuss and how Zhang transforms “neutrality” into the traditional Chinese concept of the middle way. (See Li, 2020, pp. 136–138.) However, as I mentioned above, Zhang’s treatment of “neutrality” has its origins in Carl Schmitt’s treatment of “neutrality.”



From here we see another reason why Zhang Junmai accepted this article, because he also insists on the separation between state and society and places the state in a higher position. Second, in *Der Hüter der Verfassung*, when Schmitt defines “non-intervention” as one of the characteristics of a neutral state, such “non-intervention” can also be understood in the relationship between the state and economics—in other words, it refers to the mutual “non-intervention” between the state and its economic institutions. However, in the article “Hugo Preuss: His Concept of the State and His Position in German State Theory,” Schmitt understands the mutually non-intervening relationship in the dichotomy between state and society and thus turns the mutual “non-intervention” between the state and its economic institutions into a mutual “non-intervention” between state and society.

Ryan Martinez Mitchell’s article (Mitchell 2020) correctly captures two similarities between Zhang Junmai and Carl Schmitt—emphasis on “social structures” and “understanding the state as an organic social unity,” but this is only one side of the coin of Schmitt and Zhang’s positions on the state. Mitchell also mentions that Zhang Junmai quotes a definition of “national *Rechtsstaat*” from “Schmitt’s (at the time) ‘liberal nationalist’ rival Otto Koellreutter,” but this is also only one side of Zhang Junmai’s acceptance of German theories of the state and *Rechtsstaat* at that time. As mentioned above, another hidden side is Zhang Junmai’s acceptance of Schmitt’s critique of liberal understandings of the state and *Rechtsstaat*. Linking Zhang Junmai to another Chinese legal theorist, Xu Daolin 徐道邻, Mitchell argues that both Xu and Zhang “shared some criticisms of Schmitt’s Executive-focused state.” However, on the one hand, it may be one-dimensional to label Schmitt’s theory of the state as “executive-focused;” on the other, we should note that Zhang Junmai seems to have simultaneously read and accepted parts of the ideas of Carl Schmitt and Schmitt’s liberal rivals.

## 6. State theory and political consciousness of the bourgeoisie: Max Weber, Carl Schmitt, and Zhang Junmai

Before highlighting the notion of the neutral state in the context of Weimar Germany as a non-intervening, agnostic state at the first level, Carl Schmitt has addressed his own emphasis on the political nature of state theory, which is based on the political consciousness of the bourgeoisie. In the article “Hugo Preuss: His Concept of the State and His Position in German State Theory,” Schmitt argues that the biggest problem of the bourgeoisie in nineteenth-century Germany was their lack of political consciousness. Schmitt bemoans that the change of the government’s focus from politics to economics under Bismarck’s reign depressed the bourgeoisie’s interest in discussing political issues:

Bismarcks großer Erfolg hat das innerpolitische Schicksal, Deutschlands bestimmt. Nicht der eigene Mißerfolg von 1848, nicht einmal der ungeheure außenpolitische Erfolg des Gegenspielers, sondern erst die ihm verdankte wirtschaftliche Prosperität brach den politischen Sinn des deutschen Bürgertums. (Schmitt 1930, 14)

Bismarck’s greatest victory sealed Germany’s domestic fate. It was not the German bourgeoisie’s defeat of 1848, nor even the great foreign victory of their opponent that broke their political purpose; rather, it was the increase in economic prosperity which was attributed to Bismarck. (Schmitt, Loughlin, and Foley 2017, 359)

“Politischen Sinn” can also be translated as “political sense.” Carl Schmitt’s criticism of the decline of political interests and political consciousness in the German bourgeoisie was greatly influenced by Max Weber.<sup>15</sup> In his article “The Nation State and Economic Policy,”

<sup>15</sup> A lot of scholarship has shown the influence of Max Weber upon Carl Schmitt.

**Table 15.** The weakening of the German Bourgeoisie’s political ideas

The 2017 English Translation of Schmitt’s Article “Hugo Preuss”	Zhang’s Chinese Translation of Schmitt’s Article
Bismarck’s greatest victory sealed Germany’s domestic fate. It was not the German bourgeoisie’s defeat of 1848, nor even the great foreign victory of their opponent that broke their political purpose; rather, it was the increase in economic prosperity which was attributed to Bismarck. (Schmitt, Loughlin, and Foley 2017, 359)	然德国中产阶级政治观念之消沉，亦未有甚于俾氏时代者：1848 年之失败不足以使之丧气，俾氏外交之成功不足以眩人耳目，所以使其政治观念消沉者，实俾氏时生计事业之兴盛有以致之 (Zhang 2006, 347)。 [My English translation of Zhang’s text]: During the years under the governance of Otto von Bismarck, the German bourgeoisie’s political idea was most weakened. This was not because the failure of the 1848 revolution left them disillusioned, nor because Bismarck’s diplomatic success dazzled them. In fact, what brought about the weakening of the German bourgeoisie’s political idea was the development of economic enterprise in Bismarck’s time.

Max Weber also criticises Otto von Bismarck for not being able to address political reforms needed to accommodate changes in the economic structure. Weber believes that Bismarck did not bring about the “inner unification of the nation” instead of the merely external one (Lassman and Speirs 1994, 22). The genealogy from Max Weber to Carl Schmitt is echoed by the intertextual relationship between Schmitt and Zhang Junmai. Let us do a close comparison between Schmitt’s original argument and Zhang Junmai’s translation (see Table 15):

Zhang’s translation captures the main points of Schmitt’s argument: the decline of the bourgeoisie’s political interests.

The following description from Schmitt’s article explains the development of Gierke’s theory and also embodies a critique of the non-political nature of the theory:

Nach 1870 wird die Wendung von Jahr zu Jahr deutlicher, und in wachsendem Maße bedeutet jedes Jahrzehnt einen Abstieg des staatstheoretischen Bewußtseins. Der erste Band von Gierkes Genossenschaftslehre, der 1868 erschienen war, ist ganz von aktuellen politischen Energien und einem kühnen politischen Fortschrittsbewußtsein erfüllt. Mit dem zweiten, 1873 erschienenen Band beginnt schon teils das rein Geschichtliche, teils das rein Privatrechtliche zum Hauptinteresse zu werden, und schließlich endet das Werk 1913 in ungeheuren historischen Materialhaufen, die keine Beziehung zur politischen Gegenwart haben. (Schmitt 1930. 14–15)

After 1870, the shift<sup>16</sup> became each year more apparent and each new decade increasingly heralded a decline of consciousness in the field of state theory. The first edition of Gierke’s fellowship theory,<sup>17</sup> which had been published in 1868, is full of contemporary political energy and expresses a strong sense of political progress. The second edition, published in 1873, in some parts takes the purely historical as its main focus and in others concentrates solely on private law matters. Finally, the work is completed in 1913 with a huge historical mass of material which was of no relevance to the contemporary political landscape. (Schmitt, Loughlin, and Foley 2017, 359–360)

<sup>16</sup> Carl Schmitt uses “the shift” to refer to the decline of the German bourgeoisie’s political consciousness and political interests and the turn of their interests to economic issues since the Bismarckian era.

<sup>17</sup> “Genossenschaftslehre” can also be translated as “theory of cooperation/association/community.”

**Table 16.** The decline of the German State theory

The 2017 English Translation of Schmitt's Article "Hugo Preuss"	Zhang's Chinese Translation of Schmitt's Article
<p>After 1870, the shift became each year more apparent and each new decade increasingly heralded a decline of consciousness in the field of state theory. The first edition of Gierke's fellowship theory, which had been published in 1868, is full of contemporary political energy and expresses a strong sense of political progress. The second edition, published in 1873, in some parts takes the purely historical as its main focus and in others concentrates solely on private law matters. Finally, the work is completed in 1913 with a huge historical mass of material which was of no relevance to the contemporary political landscape. (Schmitt, Loughlin, and Foley 2017, 359–360)</p>	<p>自1870年后, 年复一年, 但见德国国家学之衰颓不振。奇尔克氏组合论于1868年第一册出版, 满纸皆政治能力、政治进步之自觉之表现, 1873年第二册出版时, 仅存历史上与私法上之兴趣, 及1913年最后一册出版, 徒堆积历史性质之材料, 与当时政治绝无关系矣。(Zhang 2006, 347)</p> <p>[My English translation of Zhang's text]: Since 1870, year by year, we only see the decline of the German state theory. When the first volume of Gierke's Theory of Associations was published in 1868, it was filled with arguments on the people's political ability and their self-consciousness of progress in politics. When the second volume was published in 1873, only the interest in history or private law remained. When the last volume was published in 1913, it was only filled with historical materials and had no relationship to the politics of that time.</p>

Table 16 shows a close comparison between Schmitt's original argument and Zhang Junmai's translation:

Carl Schmitt believes that the German bourgeoisie's political consciousness is closely related to state theory. Behind the weakening of the bourgeoisie's political consciousness, there was also a decline of state theory and people's consciousness of the state theory in Germany. In Schmitt's opinion, the bourgeoisie's political consciousness should be cultivated in a kind of political education, focusing on state theory. According to Schmitt, while the first volume of Gierke's work is still able to reveal the political life of the German bourgeoisie, their political energies and political consciousness, the second and third volumes of his work only record the retreat of the German bourgeoisie from the political sphere. In this sense, as Gierke shifted his interest from politics to historical materials and materials related only to private law, his work also lost its political nature and its ability to reveal the substantiality of the political life of his age. Zhang's translation mainly captures Schmitt's criticism of the German bourgeoisie's loss of political consciousness and political vision. Schmitt indicates that organic state theory still treats the relationship between the state and society, and considers the state one of the "fellowship-groups" instead of marking it as the highest. Thus, the state is understood "as a social entity equal to other social entities" (Schmitt, Loughlin, and Foley 2017, 360).

To Carl Schmitt, a theory of politics should contain a theory of the state and a theory of sovereignty. However, the specialisation of disciplines in modern times has moved scholars' interest away from the issue of the state as a whole. Schmitt says,

... die große Gelehrsamkeit Georg Jellineks trennte sich in Jurisprudenz auf der einen, Soziologie oder Geschichte auf der andern Seite, und diese Trennung wurde schließlich—mit viel Methodologie und wenig Methode—zu einem mehr taktisch als wissenschaftlich interessanten Werkzeug eines leerlaufenden Formalismus. Das theoretische Interesse am Staat wanderte ab, zu den Nationalökonomien und den Sozialpolitikern, zu Historikern oder den damals wenig beachteten Soziologen. (Schmitt 1930, 16)

... the great scholarly work of Georg Jellinek was broken up into jurisprudence, on the one hand, and sociology or history on the other. With much methodology but little method, this division, rather than being an academically interesting device, ultimately became a tactical tool of empty formalism.

Theoretical interest in the idea of the state migrated elsewhere, towards the national-economists, the socio-political theorists, the historians, or the largely overlooked sociologists. (Schmitt, Loughlin, and Foley 2017, 361)

Zhang Junmai's translation of this passage is as follows,

... 耶林纳克氏之国家学，分为二部，一方为法律，一方社会学、历史学，因此划分之结果，国家学上产生一种羌无内容之形式主义而已。世人之兴趣，不集于国家方面，转入于生计学、社会政策、历史与尚未发展之社会学 (Zhang 2006, 348)。

Georg Jellinek's theory of the state was divided into two parts—law on the one hand, and sociology and history on the other. The result of such division is that the theory of state became a kind of formalism without any substance. Hence, people's interest was no longer in the issues of the state, but was turned to economics, social policy, history, and undeveloped sociology. (My translation)

Schmitt argues that “the educated German bourgeoisie neither promoted nor persisted with state theory” (Schmitt, Loughlin, and Foley 2017, 361). People's interests turned to other fields: economics, history, and sociology, or they tended to use different ways of thinking from the perspectives of other disciplines. Zhang Junmai's translation captures Schmitt's main points. Later, in Zhang Junmai's calling for a state philosophy in China's time of emergency in the 1930s, we also see the echo of Carl Schmitt's emphasis on state theory (Chen 2015).

## 7. Conclusion: Calling for political education of the bourgeoisie

In his article “The Nation State and Economic Policy,” Max Weber points out that,

In every sphere we find that the economic way of looking at things is on the advance. Social policy has superseded politics at the forefront of thinking, just as economic power-relations have replaced legal relations, and cultural and economic history have ousted political history. (Lassman and Speirs 1994, 17)

Weber criticises the abuse of such an economic perspective without any limit. In contrast, he calls for a political perspective, with a primary concern on the issue of sovereignty: what kind of person or group can function as the leader of the state? Weber's political criterion points to the sovereign's political maturity. After indicating that “*economic power and the vocation for political leadership of the nation do not always coincide*” (Lassman and Speirs 1994, 20), Weber continues,

This brings us to some concluding reflections of a more practical-political nature. We economic nationalists measure the classes who lead the nation or aspire to do so with the one *political criterion* we regard as sovereign. What concerns us is their *political maturity*, which is to say their grasp of the nation's enduring economic and political power interests and their ability, in any given situation, to place these interests above all other considerations. (Lassman and Speirs 1994, 20–21)

Similarly, Carl Schmitt calls attention to the political consciousness of the German bourgeoisie as a possible leading class for Germany. After describing the non-political tendency of German society, a society experiencing an inevitable social differentiation and stratification, Schmitt claims that the intelligentsia among the German bourgeoisie in the 1890s failed to construct a new theory of the state to accommodate changes taking place in their society. Based on Max Weber's description of the two types of intellectuals in German society—the bureaucrats and the literati—Carl Schmitt goes further to criticise education in Germany. He points out that “by 1914 the education of the German bourgeoisie scarcely covered any state theory. It was, on the one hand, an apolitical, technical bureaucratic education and, on the other, an equally apolitical, obscure literary education mainly provided for private, aesthetic consumption” (Schmitt 1930, 16; Schmitt, Loughlin, and Foley 2017, 361). Unsatisfied with the non-political nature of such an education, Schmitt emphasises the importance of political education as a crucial part of improving civil education. What is the purpose of this education? Schmitt indicates that it would lead to the cultivation of a kind of “political intellect” independent of all parties.

In the article “Hugo Preuss: His Concept of the State and His Position in German State Theory,” Carl Schmitt laments that the neutrality of the state at the first level, the “neutrality of the passive, agnostic state can no longer survive in the current social and economic state” (Schmitt 1930, 24; Schmitt, Loughlin, and Foley 2017, 369). Accordingly, Carl Schmitt points to a second level of neutrality, which refers to “neutral forces” (*neutrale Kräfte*) (Schmitt 1930, 24) in politics. Schmitt argues that without such neutral forces, which can mediate among different parties competing for the control of the regime, a constitutional state under democracy cannot be maintained. Who can function as this neutral power? Carl Schmitt argues that the subject or the agent of such neutral powers should be the bourgeoisie. They should not be limited by any parties and their contributions should be respected by the entire country, making them the intellectual “backbone” of society. They should not limit themselves to narrow spheres controlled by particular organisations, but rather, they should base their positions on their free, open, objective spiritual power; they should have the ability to call on the entire country, to function as the intellectual core, and thus, they should develop a discursive environment for expression of public opinions. This kind of “neutrality that facilitates an impartial and fair decision” “requires an entity that is not linked to any particular party;” “without this, any bourgeois constitutional state would today be unthinkable” (Schmitt 1930, 23–24; Schmitt, Loughlin, and Foley 2017, 369).

Here, we find another reason for Zhang Junmai's interest in Carl Schmitt's article, in which Schmitt calls for the improvement of the political education of the bourgeoisie, which emphasises the development of spiritual elements rather than a strict observance of the law. Schmitt's critique of the nineteenth-century German intelligentsia seems very attractive to Zhang Junmai, whose interest in the improvement of the people's political consciousness and political skills made it easy for him to accept Schmitt's stress on the education of the bourgeoisie, particularly “political education.” This should also be connected to Zhang's practice of education in reality. As early as 1920, Zhang Junmai and Liang Qichao discussed the importance of the university as a means of introducing civilisation (Ding and Zhao 1983, 896–897).<sup>18</sup> In 1922, when the governor of the Jiangsu province asked Zhang Junmai about the method of renovating the politics of Jiangsu, Zhang addressed the proposal of establishing an Institute of Self-Government (自治学院).

<sup>18</sup> Zhang Junmai and Liang Qichao, who believed that “schools, newspapers, and lectures are the three sharp weapons for spreading civilization (傳播文明三利器),” discussed together five specific things which would help, including (establishing) “universities (大學)” and “sending students to study in Germany (派留德學生).” Zhang thought it might be better to ask the provinces to help set up universities than to set up universities themselves. He later fulfilled such a task of founding a university.

In 1923, Zhang started to work as the president of *Guoli zizhi xueyuan* 国立自治学院 (National Institute of Self-Government). Zhang's purpose in establishing such a school was to develop people's political character and administrative knowledge. Zhang also believed that the enlightenment of the people should be led by the bourgeois intellectuals.

The translation of Carl Schmitt's article provides access to Zhang's understanding of the *Rechtsstaat* in the context of Republican China in the 1930s when Zhang reflected on "democracy versus dictatorship." In his lecture entitled, "The Rule of Law and Dictatorship" (*Fazhi yu ducai* 法治与独裁) in 1934, Zhang argues that the highest purpose of a state is to maintain its legal life (Zhang 2006, 375), and that the most fundamental condition for China to become a modern state is the law. To become a modern state, the first step is to become a constitutional state 法治国 (*Rechtsstaat*). For Zhang, a constitutional state means government by law, not by man. Zhang goes on to assert that a constitutional state not only means governing by law but also requires respecting the people's rights. These points reveal Zhang Junmai's eager acceptance of the most common opinions about constitutionalism. At the same time, Zhang had translated Carl Schmitt's article on Hugo Preuss, which embodies many reflections and criticisms on the common understanding of liberal constitutionalism. Zhang criticised the lack of subjectivity of political groups in China, which echoed his concept of cultivating people into political subjects through political education. In "The Rule of Law and Dictatorship," Zhang understands that a constitutional state should be a routine for a modern state, while a dictatorship can function for a short time as an emergency response in times of crisis. Such points continue Zhang's dual understanding of constitutionalism: on the one hand, maintaining a belief in the principles of a constitutional state, and on the other, considering dictatorship as a solution when the routine rule of law is trapped in a crisis. Zhang's acceptance of Carl Schmitt's reflections and criticisms on the common understanding of liberal constitutionalism, as reflected in Schmitt's article on Hugo Preuss, enabled him to maintain his unique position and views on "democracy versus dictatorship" in 1930s China. Although Zhang accepted many of Schmitt's points, Zhang still maintained a strong belief in constitutionalism, even after he had questioned the constitutional movement in Republican China. Zhang's more optimistic attitude can be read together with Carl Schmitt's worry about the function and future of liberal constitutionalism. Such complicated responses to the constitutional crises from the 1910s to the 1930s have shown us the uneven topology of constitutional development on the global stage in the twentieth century.

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