

Interpretation

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Looking at Carl Schmitt from the Vantage Point of the 1990s

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The following remarks are based on rereading Carl Schmitt's *The Concept of the Political*.¹ When I was asked to contribute some impressions gained from this rereading to a recent conference on Carl Schmitt I accepted with alacrity, because it seemed to me that it might be of interest to show how one who had been impressed and affected by Schmitt's theories over sixty years ago—one of the few still surviving—would assess Schmitt from the vantage point of the end of the century.

I

The German 1920s were an era of great intellectual excitement, and it is not surprising that the ideas of one of Germany's leading intellectuals in the field of political theory impressed many, especially among the young interested in the social sciences and, more generally, in the great political issues of the times.

When I just referred to "political theory," I must correct myself or, rather, specify. In pre-Nazi Germany there was no political science as we know it today. One would study *Staatsrecht* or *Völkerrecht*, that is, constitutional or international law. Schmitt's official position, for instance, was that of professor of constitutional and international law in the respective faculties of jurisprudence at the universities where he taught. Theoretically speaking, first came the legal norms, with the state somehow disappearing behind them. In Hans Kelsen's, my teacher's, "pure theory of law" (*reine Rechtslehre*), for instance, the state was considered identical with the legal order. Thus it made a tremendous impression when Schmitt, as Max Weber to some extent had done before him, established, or re-established, the state as power holder creating the law, and the political as having its own existence especially in crisis situations of existential threats to organized groups. Formulations such as defining the sovereign as the one who controls the state of necessity (*Wer über den Ausnahmezustand verfügt*), seemed to fit in with the near-civil-war conditions of the early twenties in Germany, when asking who fought whom and who controlled a constant

state of emergency was a more vital question than asking which party was winning an election or backing one or another government coalition.

On rereading *The Concept of the Political* I was struck by what now seem to me the chief characteristics of Schmitt's concepts: extremism, vagueness, and an anthropology that, as Leo Strauss has pointed out,² in contrast even to Hobbes' individualism renders the individual the subject of the political collectivity, i.e., the state. The merit of Schmitt's approach to the political, as Giovanni Sartori has put it, lies in "the uncovering, when the chips are down, of what the routine of normalcy covers up."³ Its extremism is in confining the political to the extreme existential conflict situation of external or internal, i.e., civil war, a conflict situation from which Schmitt even excludes economic or moral-ideological causes and conflicts, reducing it to the existential "to be or not to be."

Which war situation, which enemy is Schmitt aiming at? Not only his extremism but also the vagueness of his concepts is revealed when he defines the political enemy as "the other," "the stranger," as one who is "in a specially intense way, existentially something different and alien," an adversary who intends "to negate his opponent's way of life and therefore must be repulsed or fought in order to preserve one's own form of existence" (*The Concept of the Political*, p. 27). Subsequently, in his *Nomos der Erde*, the enemy is not so existentially defined (at least as far as the members of the *jus publicum Europaeum*, i.e., of the European territorial state system, are concerned); but in *The Concept*, the enemy is the foe who has to be fought and destroyed in order for one to survive, physically or in one's "form of existence." But Schmitt gives no examples. Did he think of World War I, with Britain and France as Germany's "hereditary enemies"? As a friend of mine, Eugene Anselm, who was one of Schmitt's students in the middle twenties, relates in his memoirs,⁴ Schmitt, following the economist Werner Sombart, distinguished *Helden und Händler*, heroes and merchants, or, better, shopkeepers, clearly referring to Germanic heroes as opposed to British (or possibly also American) merchants; but Anselm believes that the latter, denigrating characterization also referred to Jews. And here, the definitions in his *Concept* noted above indeed assume a more sinister character. If one looks for domestic foes (Schmitt occasionally refers to political Catholicism at the time of the *Kulturkampf* and to the Socialists at the time of their outlawry by Bismarck in this respect), one cannot help remembering that German anti-Semites defined the Jew as the "alien," the "other," one who, despite all efforts at integration, would always be an outsider hostile to, and endangering, the German-Aryan way of life. Whether Schmitt was an anti-Semite or not (before 1933 he probably belonged to those among whose best friends or, in his case, whose best colleagues were Jews), nobody faced with such enemy definitions could escape a hidden, code-word type of reference. Whether Schmitt intended it or not, it fitted a racial policy that considered "World Jewry" as the existential enemy of all races, and especially the Nordic-

Germanic one, an enemy who, therefore, had to be exterminated. When Hitler, in *Mein Kampf*, said, "*Ich aber beschloss, Politiker zu werden*" ("I decided to become a politician"), he meant by politician and politics something essentially in agreement with Schmitt's concept of the political. To be sure, prior to 1933 Schmitt was not a Nazi; he even was opposed to Hitlerism (on this see below). But the trend of his concepts, whether intended or not, could well be used to build up a racist doctrine underlying policies of persecuting and, eventually, exterminating an existential enemy. As Heine once put it, Hitler might well have said, "*Ich bin die Tat von Deinen Gedanken*" ("I am the deed that sprang from your ideas").⁵ So much for Schmitt's vague extremism or extremist vagueness. Just one more word on his anthropology, his basic view of man. It is, as I mentioned, a collectivist one where, differing from Hobbes who establishes Leviathan to protect the individual, the individual is supposed to sacrifice, if need be, his life for the community. One is reminded of Bert Brecht's *Der Ja-Sager*, a play written about the time Schmitt wrote his *Concept*. There, one member of a group is asked to sacrifice his life, the only way the group can complete a task that will save the lives of many. He is not forced but eventually says "yes" to his doom. This was heroism as seen from the Left. While Schmitt surely would not have promoted such class-struggle collectivism, it explains the occasional emergence of a leftist Schmittism using Schmitt's power emphasis for its own political purposes (exactly as a Hegelian Left used Hegelian dialectic for its purposes, although the Schmittian Left so far has not produced its Karl Marx).

II

One major criticism one might level against Schmitt's definition of the political is its exclusivism, narrowly limiting the political to the friend-enemy situation of existential survival. On the face of it, this excludes from the realm of the political all normal political activities and policies, economic policies, labor and industrial policies, now environmental policies, you name them, as well as the political institutions and processes connected with them, such as parliaments, political parties, judiciaries, and so forth, at least as long as they are not involved in existential conflict. Now Schmitt's concepts, like all concepts, are products of conceptualization. Everybody is free to define and conceptualize, coming more or less close to "reality." But Schmitt's conceptualizations are not in agreement with "common" conceptualizations. They do not fit what is commonly comprised under "political reality," and thus Schmitt's political realism comprises only one aspect of the "political," that of conflict and enmity. It neglects, or at least plays down, the realm of compromise and cooperation, and this way is hardly useful for a political analysis of most modern industrial states and their more or less liberal-democratic societies. The American constitution

and type of governance seem to be farthest removed from Schmittian conceptualizations. With its separation of powers, checks and balances, independent judiciaries watching over broad realms of the state's noninterference with individual and group rights, its federalism, and so forth, this system pushes concentrated executive power away from the normal functioning of government toward true emergency situations. Even the vital decision about "enmity," that is, the declaration of war, is denied the executive. An existential war in the Schmittian sense, that is, one placing the survival of the union in jeopardy, happened only once in the history of the United States, and even in the Civil War (where the question was the admittance to society of the alleged racial stranger, the Negro), the only emergency measure Lincoln was compelled to take was the temporary suspension of habeas corpus. Thus the state of the exception has been the exception, not only in the history of the United States but in that of modern France, Britain, even Germany (the Federal Republic) and other modern, i.e., developed industrial nations. Schmitt's concepts are more applicable to Third World countries, where democratic processes like elections and institutions like parliaments are frequently meaningless fig leaves concealing the real power holders.

If we don't take Schmitt too literally and extend his concepts of the political to the normal sphere of what is commonly called politics, however, his emphasis on the power factor, on conflict, on decision making can prove extremely valuable. To give just one example, taken from recent arguments concerning the jurisdiction of the United States Supreme Court: An allegedly objective interpretation of a document like the American Constitution (of terms like "due process," "liberty," "equal protection of the law") under Schmittian lights reveals its political, that is, value-setting character, whether it tends toward more liberal or more conservative values. Equally valid is Schmitt's criticism of the parliamentary system considered as a forum for discussion that eventually will yield "the truth."

Here, however, we encounter the limits of the Schmittian approach. He is inclined to interpret into non-Schmittian theories and policies the same polemical extremism that characterizes his own. Thus he interprets all liberalism as antistate, authority-negating, basically anarchic or integral-pacifist doctrine and movement.⁶ This may be true for some more radical liberal theorists and movements that assume the basic goodness or perfectability of man or his natural freedom and equality, but it certainly does not apply to those whose aims are liberal in a broad sense but who, like the fathers of the American Constitution, are pragmatists, well knowing that a parliament, for instance, far from being a tool for getting at some truth, constitutes an arena for the peaceful settlement of issues, for holding the executive accountable, for preparing an opposition to possibly becoming the next government (thus providing for that "alternation of power" that marks a democratic system). Even in the international arena, where

the power factor is strongest, what one may call a pragmatic pacifism has been the norm, with warlike policies the exception. Hans Morgenthau, surely not a utopian idealist but a power realist, gave his magnum opus, *Politics among Nations*, the subtitle *The Struggle for Power and Peace* and considered diplomacy, not settlement of conflicts by force, i.e., war, the normal conduct of foreign affairs.⁷

This way one arrives at what may be called a realist liberalism that is midway between the poles of a Hobbesian or Schmittian power realism and a utopian idealism. It is equidistant from advocacy of, or being resigned to, authoritarian or totalitarian power concentration and corresponding power politics, and from anarchistic individualism and integral pacifism. While it recognizes the presence of the power and conflict factor in all human relations, and surely in politics, it tries to mitigate power and to oppose the ever-present abuses of power (whether police brutality or judicial partiality, executive arbitrariness or even the tyranny of an overweening majority) through the liberal-democratic institutions and processes mentioned before, remembering Jefferson's "eternal vigilance" needed for the preservation of freedom. I myself, starting from a political realism of the Hobbesian, Machiavellian, or Schmittian variety, in the late 1930s began to develop a theory of what I called "realist liberalism," summed up in a book that appeared much later, in 1951, *Political Realism and Political Idealism*. Such idealist realism, or, if you want, realist idealism, in my opinion is the only way to incorporate what is valuable and important in Carl Schmitt into minimally decent and civilized politics.

III

As far as Schmitt's impact on actual political developments is concerned, this impact, from a liberal-democratic viewpoint, has been nefarious, perhaps even more so before 1933 than after he became Hitler's "crown jurist." To understand this one has to keep in mind the fundamental weakness of Weimar caused by the continuation, after the establishment of the Republic, of the authoritarian tradition of Germany, its *Sonderweg* where, in contrast to the Western countries, the middle classes had remained satisfied with feudal-militarist-nationalist-conservative rulership in return for security in the economic sphere.⁸ This had shaped the attitudes of the entire German elite, including the intellectuals in the academe. Authoritarian attitudes pervaded the German elites, in government and judiciary, schools and universities, even in business and trade-union organizations, and, in the absence of determined reform, continued into the Weimar Republic. One who, like me, grew up in the 1920s, can attest to the utterly conservative-nationalist spirit that imbued most of the teachers as well as the young brought up in that system.⁹ It rendered most of them con-

temptuous or at least suspicious of the new democratic institutions and processes, such as political parties, elections, parliaments (derisively referred to as *Schwätzbuden*, talking shops), etc.

It can easily be seen that Schmitt, sharing this tradition with most of his colleagues (those among constitutional lawyers who supported the new system, like Anschütz, Kelsen, Heller, were few and far between), contributed to the weakening of the Weimar system. This was not only through his teaching and his writings (where his unceasing attack upon parliamentarism could not fail to have its impact), but above all in his political activities. Two of them emerge as particularly significant. One was his defense of the conservative-authoritarian Papen cabinet before the Supreme Court in the affair of the *Preussenschlag*, when the Reich government had undertaken to deprive republican-democratic forces of their last bastion, the state government of Prussia and its control over the Prussian police. The court decided in favor of the Reich, thus destroying that last bastion.

Schmitt's well-known attempt to prevent the Nazi assumption of power through making the Reich President, alleged "guardian of the constitution," a temporary dictator, similarly reflected his belief in the effects of concentrated emergency power. Schmitt probably meant Hindenburg to be a "commissarial dictator," as distinguished from a "sovereign" and permanent dictator.¹⁰ He should have known that Germans were not likely to allow a temporary dictatorship to return powers to democratic government after the emergency was over, and I doubt whether he would even have favored such a return. As it was, the presidential system simply led to the Nazi-totalitarian one. Thus Schmitt belonged to the gravediggers of Weimar democracy.

As far as Schmitt's post-1933 attitudes are concerned, the much-discussed question of whether he was an opportunist when openly turning to anti-Semitism, to defending Hitler's random killings of SA leaders and assorted generals in the Röhm affair, etc., may be left open.¹¹ Even had he become a convinced Nazi (and, as I have pointed out, he might have used some ideas from his *Concept of the Political* for that purpose), this would not have excused his attempt to legitimize the Röhm killings through a Hobbesian *potestas facit legem* argument, because Hitler, as also later in the holocaust case, did not even claim that the law forbidding murder was no longer valid. Schmitt's writings on international law between 1933 and 1938, little noticed even by subsequent Schmittians, which I analyzed in the 1930s,¹² would seem to reveal opportunism. One essay, *Nationalsozialismus und Völkerrecht*, with its quite un-Schmittian natural-rights and natural-law approach, served to underpin Hitler's deceptive "peace policy,"¹³ while an abrupt turn toward power politics, advocating German regional hegemony (*Völkerrechtliche Grossraumordnung*, with the revealing subtitle *mit Interventionsverbot für raumfremde Mächte*) served to legitimize Hitler's first conquest outside the "Germanic" realm, the takeover of what remained of Czechoslovakia after Munich.

Why, after 1945 when it was no longer dangerous, did Schmitt never return to these activities (not to mention apologize for them)? Why, indeed, did he never analyze in any depth the new factors in politics, especially in world politics, like the nuclear weapon and the change from the traditional, multipar-tite nation-state system to the bipolar superpower system of “existential” ene-mies?¹⁴ With the brilliance of his earlier analyses he might have revealed things succeeding generations of social scientists were never able to. The more’s the pity.

NOTES

1. Carl Schmitt, *The Concept of the Political*, trans. George Schwab (New Brunswick, NJ, 1976).

2. Leo Strauss, “Comments on Carl Schmitt’s *Der Begriff des Politischen*,” trans. in *The Concept of the Political*, pp. 81ff. What Strauss reveals as Schmitt’s “warlike morality” (p.95) in contrast to Hobbes requires the individual “to sacrifice life” in war (p.35).

3. Giovanni Sartori, “The Essence of the Political in Carl Schmitt,” *Theoretical Politics*, 1, No.1 (Jan. 1989), 63ff. (p.68). At the time of this writing I read in Isaiah Berlin’s essay “Joseph de Maistre and the Origins of Fascism” (*The New York Review of Books*, Sept. 27, Oct. 11, Oct. 25, 1990): “His [i.e., de Maistre’s] genius consists of the depth and accuracy of his insight into the darker, less regarded, but potent factors in social and political behavior” (Oct. 25, p. 64). Like much else said in this essay on de Maistre’s ideas, this fits Carl Schmitt. One might almost define Schmitt as de Maistre sans Pope.

4. Eugene Anselm, *The World of A German Jew* (private printing, 1990), p.85.

5. One might almost quote Schmitt himself to that effect when he ends his book *Völker-rechtliche Grossraumordnung mit Interventions verbot für raumfremde Mächte* (Berlin-Vienna, 1939) with the sentence: “The Führer’s deed has lent the idea of our Reich political reality, historical truth, and a great future of international law” (my translation).

6. “Liberal thought evades or ignores state and politics”; “liberalism provides a series of methods for hindering and controlling the state’s and government’s power” (*The Concept*, p.70).

7. To be sure, Morgenthau, like other “political realists,” such as Reinhold Niebuhr, agrees with Schmitt’s anthropology of considering man as basically “dangerous,” i.e., “evil,” and draws from this overly power-political conclusions. I myself believe that, in view of the complexity of man’s nature, any characterization of his nature as “good” or “evil” suffers from oversimplification. I have based my own political realism on the “security dilemma” that faces politically organized human groupings, especially those which, like nation-states so far, have no higher authority above them. On this see my *Political Realism and Political Idealism, A Study in Theories and Realities* (Chicago, 1951).

8. The *Sonderweg* interpretation of modern German history—an interpretation that emphasizes Prussia-Germany’s authoritarian attitudes and structures in contrast to the liberal-democratic ones of the West (Britain, France, the United States, etc.)—is contested. I believe it is justified, provided one does not see its cause in any “innate German national character” but in the three defeats that German liberal movements suffered in the nineteenth century, after 1815, in 1848, and, in Prussia, in the 1860s.

9. For my personal impressions of German schools and universities in the Weimar period see my autobiography, *Vom Überleben—Wie ein Weltbild entstand* (Dusseldorf, 1984). The power of the monarchical, or quasi-monarchical, leadership idea can be seen from the fact that even Max Weber, surely a strong critic of William II’s regime and Bismarck’s impact on an all-too-submis-sive German middle class, favored a plebiscitarian democracy for the new republic, with a popu-larly elected president as counterweight against parliament and parties—an attitude not too remote

from Carl Schmitt's. Compare with this the *Sonderweg* of one prominent member of the German cultural elite, Thomas Mann. In his *Betrachtungen eines Unpolitischen* (*Reflections of an Unpolitical Man*), the term "unpolitical" had meant almost the opposite, Mann coming close to Schmitt's concept of the political, what with his strongly authoritarian attitude and its polemical thrust against Western "civilizational" anarchistic-utopian individualism (subsequently, and unforgettably, personified by the Settembrini of his *Magic Mountain*). But then, realizing what German power politics and nationalism had wrought, Mann turned into a defender of the pragmatic liberal-democratic policies of the Weimar Republic. Had more members of the elite (especially the educational one) followed his example, the Republic's fate might have been a different one.

10. On Schmitt's distinction between *kommisarisische* and *souveräne* dictatorship see his *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (1921). More generally on Schmitt's activities in 1932 (his ideas on setting up von Hindenburg as presidential dictator pro tem, etc.) see Joseph W. Bendersky, *Carl Schmitt, Theorist for the Reich* (Princeton, 1983), chaps. 6–8, and George Schwab, *The Challenge of the Exception*, 2d ed. (Westport, CT, 1989), chap. 4.

11. On the "opportunism" debate see George Schwab, "Carl Schmitt, Political Opportunist?", in *Intellect* (Feb. 1975), pp. 334–37 and my reply in *ibid.* (May-June 1975), pp. 482f. Regrettably, I must still consider applicable to the Schmitt of the Nazi period an anecdote about Richard Strauss, related in my reply to Schwab: When Arturo Toscanini, stout anti-Fascist and anti-Nazi, was asked what he thought of Strauss (who had allowed himself to be made the head of the Nazi-controlled Reich Culture Chamber, just as Schmitt had allowed himself to be appointed "Prussian State Councillor" by Göring), he answered, "Before Strauss the composer I take off my hat; before Strauss, the man, I put it on again."

12. Eduard Bristler (John H. Herz), *Die Völkerrechtslehre des Nationalsozialismus* (Zurich, 1938). I had to use a pseudonym to protect my family then still living in Germany. The book, of course, was immediately suppressed by Nazi censorship and thus could be neither read nor discussed in Germany and Austria (annexed in 1938) until after 1945.

13. See Bristler, pp.118–21; also on Schmitt cf. pp.76, 78, 83f., 149. With all his adaptations to Nazi concepts and verbiage, Schmitt occasionally still tried to make use of his basic approach, sometimes in almost absurdly exaggerated fashion, as when his *konkrete Ordnungsdenken* (thinking in terms of concrete orders) makes him consider the "Geneva League of Nations" a different organization each time an important member enters or leaves (the entrance of the Soviet Union made it "the seventh League"). A listing of Schmitt's widely scattered international-law writings of the period 1933–38 may be found in Bristler, p.223. On Schmitt's international law in the Nazi period see also Detlev Vagts, "International Law in the Third Reich," *American Journal of International Law*, 84, No. 3 (July 1990), 661–714.

14. Any future biographer of Schmitt will have to face the question of why he neglected decisive world developments after 1945 and, even in his one major postwar work, *Nomos der Erde*, in his illustrations and exemplifications hardly ever goes beyond the events of World War I and its aftermath. He remains as if obsessed with things like the British attempt, in alleged violation of the rules of sea warfare, to defeat Germany through a "hunger blockade" (never mind that Germany, too, had violated these rules in its unrestricted submarine warfare. As one Briton remarked at the time, Britannia rules the waves, Germany waives the rules.). The war seemed to him to inaugurate the end of the era of "limited war" (*gehegter Krieg*) that, according to Schmitt, had characterized the relations of territorial states under the *jus publicum Europaeum*. (That war was hardly that "limited" during most of those centuries I have tried to show in my contribution to George Schwab, ed., *Ideology and Foreign Policy, A Global Perspective* [New York, 1978], "Power Politics and Ideology? The Nazi Experience," pp. 14ff. See pp.28–30.) Germany's defeat in World War I seems to have been the traumatic event in Schmitt's emotional life. That of all nations the "nation of shopkeepers" had defeated the "nation of heroes" must have seemed the height of injustice to him, although the author of *The Concept of the Political*, who had defined the existential decision of war as being beyond morality, *jenseits von gut und böse*, could never openly have admitted to such moral evaluation.