



CHAPTER

## 3 Carl Schmitt and the Politics of Identity

Reinhard Mehring, Daniel Steuer

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### Abstract

This chapter discusses the life and work of Carl Schmitt, a German legal scholar and professor of law who developed a constitutional theory that declared the liberal and parliamentary state under the rule of law to be outdated, a theory he used to justify rule by presidential decree in the Weimar Republic and then National Socialism. As a legal scholar, Schmitt avoided taking strong positions in terms of theological or philosophical claims, but his friend–enemy distinction provided a counterrevolutionary, apocalyptic, and anti–Semitic language and logic. Schmitt exerted a strong influence as a legal scholar and political commentator. He had a close friendship with Ernst Jünger; he argued for an “authoritarian” transformation of the Weimar Republic; and after 1933, he gave strong support to National Socialism and was influential in forming the Nazi understanding of the law and in the Nazi coordination [*Gleichschaltung*] of jurisprudence.

**Keywords:** Carl Schmitt, jurisprudence, Weimar Republic, National Socialism, Nazism, political theology, constitutional theory, dictatorship, executive state, Germany

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CARL SCHMITT WAS born in 1888 in Plettenberg, Westphalia, Germany, and died there in 1985, at the age of ninety–six.<sup>1</sup> He was a jurist and professor of public law specializing in constitutional law and international law. His career stretched over seven decades, from 1910 to 1982. In the 1920s he developed a constitutional theory which declared that the liberal parliamentary state under the rule of law was outdated, and which he later used to justify rule by presidential decree at the end of the Weimar Republic; he then went on to provide a justification of National Socialism. Schmitt was not only an insightful thinker but also an actor who intervened in politics. While as a jurist he avoided strong theological or philosophical commitments, in political terms he mobilized the distinction between friend and enemy in order to argue for the nationalism and statism of the interwar years and to defend counterrevolutionary, apocalyptic, and anti–Semitic positions. Today, his texts are the subject of debate as the work of both a brilliant and a Mephistophelian author. In terms of Germany’s twentieth–century academic exports, Schmitt’s work is on a par with that of Max Weber, Martin Heidegger, or Jürgen Habermas.

p. 37 Schmitt studied jurisprudence in Berlin, Munich, and Strasbourg, and completed his doctorate “On Guilt and Types of Guilt” (Über Schuld und Schuldarten) by 1910. In the same year, he began legal training at the  
↳ Upper Regional Court in Düsseldorf, becoming familiar with the practical aspects of the work of lawyers and courts. In 1915, a few months after the outbreak of the First World War, he passed his second state examination. He married Carita Dorotič, who not only pretended to be of aristocratic descent but also five years younger than she actually was. This passionate relationship continued to trouble Schmitt, particularly when it came to his academic life, even after the annulment of their marriage in 1924. His second marriage was also marked by various crises.

In his legal work, Schmitt distinguished between the “State of Normality” (*Normalzustand*) and the “State of Emergency” or “State of Exception” (*Ausnahmezustand*). The State of Exception might also be seen as the model for long phases of his personal life. Schmitt did not lead his life as a staid bourgeois scholar but looked at it through the lens of the State of Exception, perceiving all kinds of crises: economic hardship, social dependence, relationship and marital crises, political worries, and intellectual challenges. One might even speak of a harmony between life and work, of a translation of a chaotic life into a theory of the State of Exception. In his programmatic 1922 treatise *Political Theology (Politische Theologie)*, Schmitt developed a theory of sovereignty that called for the overcoming of the State of Exception and the establishment of a State of Normality. In his private life, however, it seems that he still often sought the State of Exception.

## The thinker of the State of Exception

The 1910s was a formative decade for Schmitt. Although he often called himself a Catholic, he always rejected mainstream Catholicism, with its ecclesiastical practices, scholastic belief in a “natural law,” and political commitment to the party of the center (*Zentrumspartei*). Instead, Schmitt held an apocalyptic religious belief that set him apart from the church and the morality of the majority. He was keenly aware of the aesthetic revolution of modern art. During his early years in Düsseldorf and Munich, he socialized with literary bohemians and established a friendly relationship with the renowned expressionist poet Theodor Däubler. At the time, expressionism took on the religious and apocalyptic pathos of early Christianity. Schmitt was not an enthusiastic follower of the nationalist and militarist “ideas of 1914,” and in fact condemned “militarism” in an apocalyptic tone. A key experience that led to his rejection of the Great War was the death of his closest friend, Fritz Eisler, to whom he dedicated not only his 1916 book  
↳ *Theodor Däubler’s Northern Lights (Theodor Däublers Nordlicht)* but also his magnum opus, *Constitutional Theory (Verfassungslehre, 1928)*. Fritz Eisler, the son of a rich Hamburg publisher, was Jewish and of Hungarian extraction. He asked to be naturalized in order to be able to take part in the war, and was killed on September 27, 1914 in northern France. Until 1933 then, Fritz’s younger brother, Georg Eisler, was Schmitt’s closest friend. The Eisler family continued to support Schmitt, particularly financially, as he was permanently pushed for money.

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In 1915, Schmitt entered military service at the deputy general command of the military administration, where he stayed until the summer of 1919, thus avoiding being called up to the front. He thus experienced the Great War and the revolutionary situation following it from the perspective of a military jurist in Munich, a political hotspot at the time.

In 1916, Schmitt submitted “The Value of the State and the Significance of the Individual” (*Der Wert des Staates und die Bedeutung des Einzelnen*) for his postdoctoral *Habilitation* in Strasbourg (then still part of Germany). But the key experience and the legal theme that became his lifelong interest was the expansion of dictatorial executive powers under the conditions of a war regime and the increasing power held by the military. He began to work on the question of dictatorship.<sup>2</sup> The transformation of the law-governed bourgeois state into a dictatorial and executive state governed by decree would remain his central theme for the rest of his life. He combined it with a philosophical-historical analysis of the transition from the liberal and bourgeois nineteenth century to the “state [*Staat*] of the twentieth century,” which he characterized as the age of the masses and of industrial technology.

In 1919 Schmitt became a full-time lecturer at the Münchner Handelshochschule, a higher education institution for business managers with an emphasis on economics. At that time, he also took part in Max Weber’s seminar. For the winter term of 1921–22, he moved to Greifswald, where he took up a full

professorship before moving on to Bonn University in the 1922 summer term. Over the following years, he published some of the most important writings for which he is famous today. Apart from *Political Theology* and *The Concept of the Political* (*Der Begriff des Politischen*), he completed his systematic textbook, *Constitutional Theory*. During those years, he also had important pupils over whom, as a charismatic teacher, he exerted great influence.<sup>3</sup> Following the theoretical work he did at Bonn, he wanted to get closer to the center of political activity, and in 1928 he moved to the Berlin Handelshochschule.

p. 39 After its initial revolutionary years and the crisis of hyperinflation in 1922–23, the Weimar Republic had more or less stabilized as a law-governed bourgeois state and a “parliamentary legislative state” (*parlamentarischer Gesetzgebungsstaat*). But during the global economic crisis of 1929 the Republic was again beset by a whirlwind of crises, and as a consequence began to devolve into a system of rule by presidential decree rather than by parliament. This made the chancellor dependent on the trust of Field Marshall Paul von Hindenburg, the aged president. Schmitt had for some time observed the transition, in times of crisis, from a liberal parliamentarism to an executive regime, and from at least 1924 had argued for an extensive interpretation of dictatorial authority. As a juridical apologist for rule by presidential decree, he became an advocate of the *Preußenschlag*, an intervention by Chancellor Franz von Papen in the politics of Prussia to dismiss the Social Democratic government of Prussia. Schmitt represented the Reich in the ensuing trial, *Prussia v. the Reich*, probably the most important political trial of the Weimar Republic.

### Schmitt as a political actor

Schmitt did not publicly declare allegiance to National Socialism before January 30, 1933, the date of Hitler’s appointment as chancellor. After the “enabling law” of March 24, 1933, which gave Hitler unlimited legislative power, Schmitt immediately accepted the “legal revolution” of National Socialism as valid and legitimate, joined the Nazi Party, and quickly sought to gain influence over legal policy.

Before 1933, Schmitt had moved in varied political circles. He had had close contact with Chancellor Franz von Papen and less contact with Chancellor Kurt von Schleicher, who, as an opponent of Hitler, was murdered in 1934. Schmitt can thus be associated not only with National Socialism but also with the literary circles of the so-called Conservative Revolution, right-wing intellectual circles that pursued the project of a transformation of presidential rule into an “authoritarian state” (*autoritären Staat*). This “authoritarian” project rejected the liberal and parliamentarian republic of the 1920s, but should not therefore be equated with National Socialism.

p. 40 The details of Schmitt’s attitudes toward the circles around von Papen, Schleicher, and the Nazis are controversial.<sup>4</sup> Nonetheless, it is clear that while in Berlin from 1928 on, Schmitt became increasingly radical in his nationalism, antiliberalism, and anti-Semitism. From 1930 he formed a lifelong, if at times tense, friendship with Ernst Jünger, who, as the spokesperson of the *Frontkämpfer* (frontline soldiers) and chief representative of a “new nationalism,” regarded the soldier as the prototypical figure of the twentieth century. But while Jünger distanced himself politically from National Socialism in 1933, Schmitt tried to gain influence. Through the mediation of von Papen and of his friend Johannes Popitz (then a minister), Schmitt became a member of the commission charged with drawing up the Reich Governors Law (*Reichsstatthaltergesetz*), which placed Reich representatives in the federal states and removed traditional federalism. In terms of legal policy, Schmitt’s support for this was in line with his earlier arguments in favor of a *Reichsreform*, a reformation of the Reich.

Through his membership in this commission, Schmitt got to know such senior Nazi politicians as Hermann Göring and Wilhelm Frick. In his new role as the National Socialist “crown jurist,” he was immediately offered professorial chairs in Heidelberg, Munich, and Berlin. In the 1933–34 winter term, he moved to Berlin University, where he taught until 1945. In 1933, Göring appointed Schmitt to the newly created Prussian Privy Council (*Preußischer Staatsrat*), which, although it soon became practically insignificant, gave Schmitt the hope of founding a “Führer Council” (*Führerrat*) that was intended to provide close access to Hitler. Schmitt saw National Socialism as a revolutionary movement and expected that this force would form new institutions beyond the existing bureaucratic state. His hope that he might be able to access the center of power as a legal advisor in the “charismatic,” or personality-based, Führer-state was not altogether far-fetched but as it happened, Schmitt was disappointed. He never gained access to Hitler, and during 1933 Göring stopped contacting him. Schmitt, however, became acquainted with another National Socialist politician, Hans Frank, then Reich Commissioner for Judicial Coordination (*Reichskommissar für die Gleichschaltung der Justiz*) and later Reich Law Chief (*Reichsrechtsführer*) and governor-general of Poland

(Frank's name is closely associated with the Holocaust). Over the course of three years, between 1933 and the end of 1936, Schmitt was in close contact with Frank.

p. 41 We may distinguish different stages of the seizure and formation of power within the revolutionary and destructive dynamic of National Socialism. Initially, Schmitt assumed that National Socialism would stabilize or, in his own terminology, that there would be a transition from the State of Exception to a State of Normality. At that point, he believed that National Socialism could produce a constitutional state. There is controversy over the question of whether he had in mind a kind of “taming strategy” that aimed to produce a “strong” state along authoritarian and Prussian military lines. Franz von Papen, who remained vice-chancellor under Hitler until July 1934, represented a personal continuity between rule by presidential decree and National Socialism. Any hopes for a stabilization—and so an “authoritarian” rather than “totalitarian” state (a subtle distinction in any case)—became obsolete on June 30, 1934, when the Nazis murdered not only certain SA leaders but also other groups of opponents, among them the former Chancellor Kurt von Schleicher and Edgar Jung, an intellectual leader of the Conservative Revolution and an advisor of von Papen.

This was the point at which Schmitt buried any hopes for a stabilization of National Socialism and thus abandoned his former political companions in his “The Führer protects the law” (“Der Führer schützt das Recht”),<sup>5</sup> an article widely read as one of the most abhorrent justifications of Hitler and National Socialism. Schmitt now considered National Socialism to be a terror regime, a Leviathan in a State of Exception, but he nevertheless still offered legal apologetics for it, which, as a university teacher, he could have avoided doing without fear of punishment. He increasingly argued for aggressive anti-Semitism as providing meaning and ideological justification for National Socialism. He attempted to justify the anti-Semitic Nuremberg Laws of 1935 as “the Constitution of Freedom,” and also organized a large conference on “Jews in Jurisprudence” in the autumn of 1936.<sup>6</sup>

Despite all this, intrigue within the Nazi Party neutralized whatever influence Schmitt, as someone close to Frank, might have had as an actor involved in legal policy formation. Such SS jurists as Reinhard Höhn and Werner Best polemicized against his earlier life and work, which, until 1933, did not at all conform to the ideological script of National Socialism. Nevertheless, from 1939 on, Schmitt regained influence in National Socialist debates over international law on the back of his work on spaces (*Großraumlehre*), which justified Nazi expansionism by presenting National Socialist Germany as a guarantor of order (*Ordnungsmacht*) for central Europe.<sup>7</sup>

p. 42 Schmitt survived the war in Berlin. After the war, he lost his university chair and was interned between September 1945 and October 1946. In the spring of 1947, he was remanded in custody in Nuremberg for a few weeks in connection with the war crimes trials, but finally he was released. He returned to Plettenberg, his Westphalian home, and from then on into old age exerted a far-reaching influence as a private scholar through his publications and via informal channels.

## Work and thought

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Schmitt spoke many languages and was very widely read. He was familiar not only with the legal literature of his time, but he also had a comprehensive knowledge of art and literature, history, theology, and philosophy. A major interest was early modern and modern authors such as Hobbes and Hegel, the authors of the 1848 revolution, and the French avant-garde (Baudelaire, Bernanos). Plato and Aristotle, and also Aquinas and Kant are, by contrast, hardly mentioned. Schmitt rejected the philosophy of the Enlightenment.

One of his most faithful mentors was his doctoral supervisor at Strasbourg, Fritz van Calker. It was also in Strasbourg that Schmitt became acquainted with Paul Laband, the leading positivist scholar of state law in the Wilhelminian era. Early on, Schmitt studied the writings of Hans Kelsen and the Vienna legal school. In Munich he met Max Weber, whose work had a lasting influence on him. Schmitt was able to assimilate a wealth of intellectual influences. His numerous personal contacts and friendships, intense and often not free of tension, were also important for the ideas he forged. Many of those with whom he was in conversation were Jewish intellectuals, and Judaism remained central to Schmitt's oeuvre.

Schmitt's work developed over a long period of time, and it mostly took the form of the short treatise. Just how much unity this body of work possesses is debated. Schmitt's early work was based on fundamental legal distinctions, such as that between morality and right, law and judgment, and power and right.<sup>8</sup> In the

early Weimar Republic, he historicized the bourgeois mentality and constitution, denied the legitimacy and integrative power of liberal parliamentary democracy, and mobilized the personalism of Christianity against the liberal legislative state.<sup>9</sup>

p. 43 Schmitt saw the constitutional battles in the wake of 1789 as a struggle between revolution and counterrevolution, between democratic legitimacy and dictatorship. He dismissed traditional conservatism and dynastic legitimacy as the ideology of the restoration, and positioned himself alongside the counterrevolution, in part through the life and work of Juan Donoso Cortés, the nineteenth-century Spanish critic of liberalism. During the 1920s, Schmitt fought against the legitimacy of the status quo established by the Treaty of Versailles and the League of Nations.<sup>10</sup> He emphasized the revolutionary energy and sovereignty of the nation, addressing himself to the antiliberal and extraparliamentary movements of the Weimar Republic.<sup>11</sup> He systematized the distinction between liberalism and democracy to explore the notion of an antiliberal presidential democracy,<sup>12</sup> identified a drifting apart of legality and legitimacy, and defended a dictatorship of a president legitimized by plebiscite in order to support a transformation of the Weimar Republic into a “strong” and “authoritarian” state.<sup>13</sup> Throughout these writings, he aimed to elaborate a legal theory and constitutional doctrine that reconstructed valid constitutional law, legality, and legitimacy, all on the basis of political forces and “fundamental decisions” (*Grundentscheidungen*), a key concept of *Constitutional Theory*.

Schmitt’s constitutional theory is also characterized by binaries: friend and enemy, power and right, State of Exception and State of Normality, liberalism and democracy, legality and legitimacy, law and measure, legislative state (liberal and parliamentarian) and executive state (legitimized by plebiscitary democracy). Schmitt sees a transition from the State of Normality to a State of Exception, and a paralysis of the law-governed bourgeois state and its transformation into the crisis regime of an “authoritarian” and dictatorial executive state.

## “Theology” as postulate

As a jurist, Schmitt took on the role of analyst and hermeneutician for his contemporaries. He did not formulate strong confessional or philosophical-essentialist theses. Although he repeatedly called himself a Catholic and Christian, he did not observe the majority of the tenets of contemporary Catholicism and always argued in favor of the primacy of the state and of secular politics. And although in his programmatic treatise on *Political Theology* he rejected atheist metaphysics and the modern “philosophy of immanence”<sup>14</sup> and presented his “counterrevolution” as a Christian movement, he did not develop Christian doctrines but rather argued on the basis of transcendental pragmatics, in terms of necessary conditions. The state figures in anthropomorphic fashion as a person and is imagined as a sovereign. In his *Political Theology*, Schmitt states:

p. 44 The sovereign produces and guarantees the situation in its totality. He has the monopoly over this last decision. Therein resides the essence of the state’s sovereignty, which must be juridically defined correctly, not as the monopoly to coerce or to rule, but as the monopoly to decide.<sup>15</sup>

In this passage, Schmitt draws on Thomas Hobbes, whom he calls a “classical representative of the decisionist type,” in order to argue against Max Weber. Hobbes, he says, “advanced a decisive argument that connected this type of decisionism with personalism.”<sup>16</sup>

*Political Theology* develops the idea that the intellectual process of the early modern and modern periods leads from God’s transcendence to conceptions of immanence that weaken the authority of the sovereign and result in the “democratic thesis of the identity of the ruler and the ruled.”<sup>17</sup> Schmitt constructs a necessary connection between theism, personalism, and “decisionism,” without, however, formulating this on the basis of theism as a theological notion; rather, he puts it forward as a hypothesis or presupposition necessitated by the authoritarian decision. For the jurist there can be no doubt: if God did not exist, then he would need to be invented for the sake of the authority of the sovereign. The morality of the intellectual, according to Schmitt, consists of the “final consequences.”<sup>18</sup> Schmitt believed that just as atheism ultimately leads to political anarchism, the political decision in favor of authority and dictatorship implies a need for theism and religious meaning. Following Donoso Cortés, Schmitt therefore speaks in apocalyptic and counterrevolutionary terms of the State of Exception as a “decisive bloody battle.”<sup>19</sup>

Thoughts of this kind, which can be found throughout his work, reveal Schmitt to be not a conservative and Christian thinker but a modern secularized Christian, and—primarily—a political thinker who looks at the present as a permanent battle over authority, rule, and order. This is what determines his position in post-1789 conservatism, in the Conservative Revolution of the interwar years, and as one of the key thinkers of the radical Right. Schmitt's close friendship with Ernst Jünger already suggests that he was a central figure in this group. As early as 1914, he also became acquainted with the publicist Arthur Moeller van den Bruck, another important intellectual pioneer of the Conservative Revolution, and later he also met Julius Evola. Oswald Spengler, by contrast, is rarely mentioned. Schmitt probably considered Spengler's encyclopedic deliberations on the theme of cyclical cultural decline as a betrayal by the educated bourgeoisie of the expressionist apocalyptic thought that he clearly sided with in his 1916 book on Däubler.

p. 45 Schmitt's central motifs as a thinker emerge from his juridical approach. He looked at the world of politics as a battle for self-assertion (*Selbstbehauptung*), as he pointed out especially in *The Concept of the Political*.<sup>20</sup> But he did not affirm political power and violence, battle and war, as such; rather, as a jurist, he required the stabilization of political forms as legal relationships. In 1934 Schmitt labeled this "concrete order-thinking" (*konkretes Ordnungsdenken*).<sup>21</sup> This is why we find in him both an apocalyptic perspective on the State of Exception and an alarmist and dramatic perspective on the possibility of crisis characterized by recurrent worries about the erosion and disintegration of a relatively stable State of Normality into a State of Exception.

Schmitt's pessimistic crisis-centered perspective was not naturally counterbalanced by Christian belief and trust, but instead postulated God as a civil-theological political requirement. As a secularized Christian, however, Schmitt did not draw the radical conclusion of a naturalism and biologism that tended toward racism and imperialism, especially in Germany. His anti-Semitism was formulated primarily within a religious discourse. He used Christian dogmas as political myths, and affirmed the politics of myth as a kind of political propaganda. His book on *The Leviathan in the State Theory of Thomas Hobbes* (*Der Leviathan in der Staatslehre des Thomas Hobbes*) bears this out. Its subject matter is not Hobbes's philosophy but the "meaning and failure of a political symbol," as its subtitle (*Sinn und Fehlschlag eines politischen Symbols*) shows.<sup>22</sup>

Schmitt's theory of sovereignty also bears on gender politics. He codes the sovereign as male and anarchic situations as feminine, finding an inclination toward matriarchal myths in anarchist authors. If one wanted to link life and work at this point, one might not only attribute to the theoretician of sovereignty a strong urge to establish hermeneutic hegemony and discursive domination—an urge that is evident even at the level of style, in the epigrammatic nature of his theses and his obvious penchant for novel terminology—but also point to his licentious behavior, which, particularly in the 1920s, saw him making use of street prostitutes almost every day. Schmitt's continual use of prostitutes was a way of proving his sovereign masculinity. He also reflected on the machismo in the ritual of bullfighting, which he saw as a model of gender relations. In his diary he noted in 1923: "The fundamental affect in my life: life is a battle. Certainly. But a battle that takes place in an arena, in front of spectators, especially female spectators who have trophies ready to be presented; the feeling of a torero, a gladiator. The other idea of life as a battle: the battle of the ↪ marauding knight, the buccaneer, the pirate, the trooper [*Landsknecht*]." <sup>23</sup> After 1945, Schmitt referred to himself again and again as a *picaro*: a soldier of fortune trying his luck through the moments of States of Exception.

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## Identity politics

What is characteristic of Schmitt's work is not Catholic dogmatism but an existentialist vocabulary. He formulates his political existentialism succinctly and poignantly, especially in *The Concept of the Political*, of which there are four versions, published in 1927, 1932, 1933, and 1963. He constitutes identity by way of distancing: friendship and enmity. While *Political Theology* highlights the "decisionist" concept of the "decision," *The Concept of the Political* emphasizes the connection between decisions and the drawing of distinctions and making of identity claims. These reflections are fundamental to Schmitt's major legal work *Constitutional Theory*, which interprets positive constitutional decisions as "fundamental decisions" against constitutional alternatives.

*The Concept of the Political* is Schmitt's best-known and most influential work, providing both theory and practice. Schmitt sketches a "category" and a "criterion" for identification in political action (as opposed to the aesthetic realm or economic action), and seeks to identify the enemy in the political situation of 1927—



this conceptually fundamental text is also a nationalist manifesto. Even the famous introductory formula, “The concept of the state presupposes the concept of the political,”<sup>24</sup> has this in mind: political action is “existential” and cannot be equated with the actions of a state. Political institutions are based on the political actions of citizens, on the existential forces of political self-organization. Such forces may also be directed against the state, and may, for example, identify the institutions of the Weimar Republic as their political opponent and enemy. Schmitt’s later *Theory of the Partisan*,<sup>25</sup> which is particularly relevant today, expands on this. But *The Concept of the Political* has in mind Germany’s foreign policy situation after Versailles. Schmitt says:

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The political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may be advantageous to engage with him in business transactions. But he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something ↪ different and alien, so that in the extreme case conflicts with him are possible.<sup>26</sup>

Schmitt also speaks of the “case of emergency” (*Ernstfall*),<sup>27</sup> which implies “the existential negation of another being,”<sup>28</sup> and he emphasizes the possibility of fighting and of real war as the “exceptional case” (*Ausnahmefall*).<sup>29</sup> Schmitt talks of a “war of state against state” and of “civil war,”<sup>30</sup> and he considers the *jus belli* of states, including the state’s legal and legitimate demand for “the readiness to die and unhesitatingly to kill,” as a functional condition for the political achievement of “assuring total peace within the state.”<sup>31</sup> Schmitt affirms a “pluralism of states” and questions the humanitarian idea of a League of Nations. Following Machiavelli, Hobbes, and Hegel, he adopts a negative or “pessimistic” political anthropology, which postulates that constructive political theories should assume that humans are in need of authority and rule. Ultimately, Schmitt defends the thesis that liberal thinking ignores this precondition of a constructive politics because it is biased toward universalist ideologies. He writes:

In a very systematic fashion, liberal thought evades or ignores state and politics, and moves instead in a typical always recurring polarity of two heterogeneous spheres, namely ethics and economics, intellect and trade, education and property.<sup>32</sup>

Schmitt believed that a universalist ethics typically conceals economic interests. His 1932 version of *The Concept of the Political* ends with a philosophical-historical characterization of the early modern period under the heading “The Age of Neutralizations and Depoliticizations,” in which Schmitt shows how all attempts at neutralization and depoliticization end up in failure. Striving after depoliticization will only trigger new enmities and lead to the development of new ways of defining one’s enemy. Liberalism, in particular, should shed the illusion that it acts unpolitically and has no political effects, and it should not consider its moral convictions and economic practices to be unpolitical.

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This basis for political existentialism would alone have been enough to turn Schmitt into a classical author of the new nationalism, antiliberalism, and antiuniversalism. Schmitt always saw himself as a participant and political actor. His political theory of identity was therefore correctly received as an intervention aiming at political polarization and mobilization. However, Schmitt would have complemented this by saying that a sharp ↪ articulation of opposing views is a precondition for political acknowledgment, for the institutionalization of a conflict. This is why he later spoke of “hedged” enmity and—in *The Nomos of the Earth*—the “bracketing of war,”<sup>33</sup> and argued for a “nondiscriminatory” international law that would recognize war as a legal and legitimate political means. After 1945, Schmitt registered the end of “the era of statehood,” and sought a new understanding of the law, one that saw it from the perspective of “land-appropriation” and the domination of space as the “unity of order and orientation.”<sup>34</sup> As a witness of the events of the twentieth century, he described, in retrospect, the constitutional transformation of a liberal law-governed bourgeois state into an executive state whose democratic legitimacy rested on a plebiscite, and the transition from the classical nation state to a multipolar and supranational order.

Schmitt was always perceived to be an outstanding intellectual, and he enjoyed early academic success. Even during his time in Bonn, he was already seen as a controversial figure due to his juridically programmatic texts and his generous interpretation of dictatorial powers. His broad conception of legal studies as including politics and the “history of ideas,” as well as his terse, proclamatory, and also associative style provoked vigorous opposition. In the debate about the orientation of state law in the Weimar Republic, Schmitt soon became the antipode to legal positivism and Hans Kelsen’s “pure” theory of law. Schmitt’s defense of rule by presidential decree further isolated him within his profession, and as a result his work was increasingly taken up by the antiliberal and nationalist circles of the Conservative Revolution.<sup>35</sup> In the debates of the early 1930s, his publications featured practically everywhere. Through his quick rise to the position of National Socialist “crown jurist,” Schmitt gained influence over legal policy formation and personnel. Thus, his pupils, some of whom were brilliant themselves, soon became powerful within National Socialist jurisprudence. From 1933, beginning with Italy, France, and Spain, there was also a strong international response to his work. The worldwide influence of his constitutional theory on all kinds of authoritarian and dictatorial theories of the state cannot be separated from his National Socialist career. But Schmitt’s thought was influential not only in the context of pre-1945 European Fascism, and not only in southern and eastern Europe, but also very much in South America and ↪ Asia, including a demonstrable influence on processes of constitutional legislation.

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In the context of the Federal Republic of Germany, Schmitt, as an inspiring partner in debate, influenced highly talented young intellectuals such as Reinhart Koselleck, Ernst-Wolfgang Böckenförde, and Hermann Lübbe.<sup>36</sup> Böckenförde read Schmitt from a liberal perspective and in the context of the State of Normality characterizing the Federal Republic, and so revived the reception of his work in legal studies. Schmitt was thus active and present not only before and after 1933 but also after 1945, into his old age. He had, so to speak, three lives: one before 1933, one after 1933, and one after 1945.

The secondary literature on him, and the systematic investigation of his life, already began before 1933 in the form of important review articles.<sup>37</sup> Leo Strauss, Helmut Kuhn, and Karl Löwith criticized Schmitt’s *The Concept of the Political* as laying the foundations for a political existentialism, a sort of counterpart to Heidegger’s *Being and Time*.<sup>38</sup> While Hugo Ball pursued a “theological” approach to reading Schmitt, Huber laid the foundation for the discussions of constitutional theory. For a long time after 1945, Karl Löwith’s critique of “political decisionism” was particularly influential. More recently, the mimetic exegesis by Leo Strauss, who compared Schmitt with Hobbes, has increasingly been the subject of debate.

In the early Federal Republic, Schmitt was criticized as a representative of antidemocratic thinking in the Weimar Republic and as an intellectual pioneer of the “total” Führer-state. In 1964, following Löwith’s criticism of Schmitt’s “political decisionism,” Hasso Hofmann published the first important comprehensive critique from the perspective of legal philosophy.<sup>39</sup> Hofmann’s *Legitimacy versus Legality* (*Legitimität gegen Legalität*) saw Schmitt’s thinking on legitimacy as addressing a fundamental problem in legal history. After the student revolution of 1968, the Marxist and left-wing reception of Schmitt, represented before 1933 by Otto Kirchheimer and Walter Benjamin,<sup>40</sup> was taken up again as part of a critique of the Federal Republic, and Marxist political economy was supplemented with the Schmittian perspective of a “political theology.” In his last monograph, *Political Theology II*, Schmitt still defended himself against various “theological” appropriations of his work. In the 1970s, in old age, he again became particularly interested in conversations with Jewish intellectuals, among them Jacob Taubes and Hans Blumenberg, so that we can say that the engagement with Judaism, or with stereotypes of what Schmitt ↪ considered the “Jewish spirit,” was a political-theological topic throughout his life, a lifelong riddle, or—in one of Schmitt’s favorite formulations—his “own question as a form” (*eigene Frage als Gestalt*).

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Following Schmitt’s death in 1985, the discussions—and the available sources—changed significantly. The main texts were made available again and were widely translated. But most importantly, apart from a plethora of secondary literature, numerous crucial source texts (diaries and correspondence) were published; these changed and deepened the image of Schmitt. Among the more recent interpretations of Schmitt are both academic and nonacademic publications; there are contributions to debates in law, political science, theology, and philosophy; there are attempts to describe Schmitt’s actual life and put him in historical context; there are interpretations that make marginal and selective use of his work; and there are substantial appropriations and transformations of his theories.



While today neonationalist and antiliberal authors everywhere refer to Schmitt, Schmitt himself only ever addressed his contemporaries and expressed very clearly the limits to the applicability of his work: he warned against the resurrection of old answers by later generations. An intellectual answer, he often said, “is true only once” as a concrete answer to its own time. His lack of interest in the “national question” regarding a reunification of Germany after its division in 1945 was intended as a warning: after 1945 Schmitt no longer propagated an aggressive nationalism. His complex and challenging work cannot be reduced to simple formulas and concepts; he wanted it to be understood primarily as juridical intervention. Any attempt today to appropriate Schmitt in the form of political slogans, without putting forward an analysis of the substance of today’s legal situation, would not do justice to the aspirations and the status of his work.

The quality of Schmitt’s work means that it ultimately requires an academic response. Since the 1990s, Schmitt has become part of the classical canon and one of the major thinkers in great debates. Jürgen Habermas has repeatedly criticized Schmitt as the main representative of German neonationalism, and reconstructed Kant’s universalist conception of international law in response to Schmitt. Jacques Derrida deconstructed Schmitt’s category of enmity in the service of a “politics of friendship.” Giorgio Agamben adapted Schmitt’s State of Exception, and Chantal Mouffe used Schmitt’s antiuniversalism in her critique of globalization.<sup>41</sup> As a classic author of antiliberalism, statism, nationalism, and National Socialism, Schmitt’s work today is pressed into service by thinkers of many different political stripes. His analysis of the transition from the liberal constitutional state to an authoritarian and dictatorial system remains relevant and informative. Today, both within Europe and beyond, there are again numerous alliances between authoritarian executive regimes and “populist” mobilizations of the masses. But Schmitt’s work is also relevant to the search for new forms of politics and new strategies for obfuscation, and to the task of identifying the holders of power operating behind the scenes. Schmitt wanted to pull down the masks of power and identify the sovereign. This is the reason he became susceptible to fantasies and conspiracies. Beyond this contemporary relevance, he remains an example of German interwar radicalism, and a paradigmatic case of the entanglement of spirit and power.

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## Notes

1. For the vast literature on Schmitt, see [www.carl-schmitt.de/neueste\\_veroeffentlichungen.php](http://www.carl-schmitt.de/neueste_veroeffentlichungen.php). See also Jens Meierheinrich and Oliver Simons, eds., *The Oxford Handbook of Carl Schmitt* (Oxford: Oxford University Press, 2016), and Reinhard Mehring, *Carl Schmitt zur Einführung*, 5th ed. (Junius-Verlag: Hamburg, 2017); *Carl Schmitt: A Biography* (Cambridge: Polity, 2014); *Carl Schmitt: Denker im Widerstreit: Werk–Wirkung–Aktualität* (Freiburg: Alber-Verlag, 2017). For jurisprudence, Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, vols. 3/4 (Munich: C. H. Beck, 1999/2012), and Horst Dreier, *Staatsrecht in Demokratie und Diktatur* (Tübingen: Mohr, 2016). For historical context, Ulrich Herbert, *Geschichte Deutschlands im 20. Jahrhundert* (Munich: C. H. Beck, 2014).
2. Carl Schmitt “Diktatur und Belagerungszustand,” *Zeitschrift für die gesamte Strafrechtswissenschaft* 38 (1916): 138–162; *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Munich: Duncker and Humblot, 1921); “Die Diktatur des Reichspräsidenten nach Art. 48 der Reichsverfassung,” *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* 1 (1924): 63–104.
3. Especially Ernst Rudolf Huber, Ernst Forsthoff, Otto Kirchheimer, and Waldemar Gurian.
4. Ernst Rudolf Huber, “Carl Schmitt in der Reichskrise der Weimarer Endzeit,” in *Complexio Oppositorum: Über Carl Schmitt*, ed. Helmut Quaritsch (Berlin: Duncker and Humblot, 1988), 33–50; Gabriel Seiberth, *Anwalt des Reiches: Carl Schmitt und der Prozess: Preußen contra Reich* (Berlin: Duncker and Humblot, 2001); Andreas Koenen, *Der Fall Carl Schmitt: Sein Aufstieg zum “Kronjuristen des Dritten Reiches”* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1995); Dirk Blasius, *Carl Schmitt und der 30. Januar 1933: Studien zu Carl Schmitt* (Frankfurt: Lang, 2009); ↪ and *Carl Schmitt: Preußischer Staatsrat in Hitlers Reich* (Göttingen: Vandenhoeck and Ruprecht, 2001).
5. Carl Schmitt, “Der Führer schützt das Recht: Zur Reichstagsrede Adolf Hitlers vom 13. Juli 1934,” *Deutsche Juristen-Zeitung* 39 (1934): 945–950.
6. Carl Schmitt, “Die Verfassung der Freiheit,” *Deutsche Juristen-Zeitung* 40 (1935): 1133–1135; “Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist,” *Deutsche Juristen-Zeitung* 41 (1936): 1193–1199.
7. Carl Schmitt, *Völkerrechtliche Großraumlehre mit Interventionsverbot für raumfremde Mächte: Ein Beitrag zum Reichsbegriff des Völkerrechts* (Berlin: Deutscher Rechtsverlag, 1939).
8. Carl Schmitt, *Über Schuld und Schuldarten* (1910); *Gesetz und Urteil* (1912); *Der Wert des Staates und die Bedeutung des*

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9. Carl Schmitt, *Politische Romantik* (1919); *Die Diktatur* (1921); *Politische Theologie* (1922); *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923); *Römischer Katholizismus und politische Form* (1923).
10. Carl Schmitt, *Die Rheinlande als Objekt internationaler Politik* (1925); *Die Kernfrage des Völkerbundes* (1926).
11. Carl Schmitt, *Volksbegehren und Volksentscheid* (1927); *Der Begriff des Politischen* (1927).
12. Carl Schmitt, *Verfassungslehre* (1928).
13. Carl Schmitt, *Der Hüter der Verfassung* (1931); *Legalität und Legitimität* (1932).
14. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985), 50.
15. *Ibid.*, 13.
16. *Ibid.*, 33.
17. *Ibid.*, 49.
18. *Ibid.*, 65.
19. *Ibid.*, 63.
20. Schmitt, *Concept of the Political*, 33 (Chicago: University of Chicago Press, 1996).
21. Carl Schmitt, *On the Three Types of Juristic Thought* (Westport, CT: Praeger, 2004).
22. Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, trans. George Schwab and Erna Hilfstein (Westport, CT: Greenwood Press, 1996).
23. Carl Schmitt, *Der Schatten Gottes: Introspektionen, Tagebücher und Briefe 1921 bis 1924*, ed. Gerd Giesler, Ernst Hüsmert, and Wolfgang H. Spindler (Berlin: Duncker and Humblot, 2014), 482.
24. Schmitt, *Concept of the Political*, 19.
25. Carl Schmitt, *Theory of the Partisan*, trans. Gary L. Ulmen (New York: Telos, 2007), originally published as *Theorie des Partisanen* (1963).
26. Schmitt, *Concept of the Political*, 27.
27. *Ibid.*, 35.
28. *Ibid.*, 33.
- p. 53 29. *Ibid.*, 35.
30. *Ibid.*, 37.
31. *Ibid.*, 46.
32. *Ibid.*, 70.
33. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York: Telos, 2003), 55.
34. Schmitt, *The Nomos of the Earth*, 42.
35. Stefan Breuer, *Carl Schmitt im Kontext: Intellektuellenpolitik in der Weimarer Republik* (Berlin: Akademie-Verlag, 2012).
36. See the standard work on this by Dirk van Laak, *Gespräche in der Sicherheit des Schweigens: Carl Schmitt in der politischen Geistesgeschichte der frühen Bundesrepublik* (Berlin: Akademie-Verlag, 1993). See also Mehring, *Carl Schmitt: Denker im Widerstreit*.
37. Hugo Ball, "Carl Schmitts Politische Theologie," *Hochland* 21 (1924): 263–286; Eric Voegelin, "Die Verfassungslehre von Carl Schmitt: Versuch einer konstruktiven Analyse ihrer staatlichen Prinzipien," *Zeitschrift für öffentliches Recht* 11 (1931): 89–109; Ernst Rudolf Huber, "Verfassung und Verfassungswirklichkeit bei Carl Schmitt," *Blätter für Deutsche Philosophie* 5 (1931/1932): 302–315; Otto Kirchheimer and Nathan Leites, "Bemerkungen zu Carl Schmitts 'Legalität und Legitimität,'" *Archiv für Sozialwissenschaft und Sozialpolitik* 69 (1932): 457–487.
38. Leo Strauss, "Anmerkungen zu Carl Schmitts 'Der Begriff des Politischen,'" *Archiv für Sozialwissenschaft und Sozialpolitik* 67 (1932): 732–749; Helmut Kuhn, "Carl Schmitt 'Der Begriff des Politischen,'" *Kantstudien* 38 (1933): 190–196; Karl Löwith (Pseudonym: Hugo Fiala), "Politischer Dezisionismus," *Internationale Zeitschrift für Theorie des Rechts* 9 (1935): 101–123.

39. Hasso Hofmann, *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts* (Neuwied: Luchterhand Verlag, 1964).
40. Reinhard Mehring, "Otto Kirchheimers Promotionsakte," in *Kriegstechniker des Begriffs: Biographische Studien zu Carl Schmitt*, ed. Reinhard Mehring (Tübingen: Mohr, 2014), 31–46, 137–152.
41. Jürgen Habermas, "Kant's Idea of Perpetual Peace: At Two Hundred Years' Remove," in *The Inclusion of the Other* (Cambridge: Polity, 1999), 165–201; "Does the Constitutionalization of International Law Still Have a Chance?" in Jürgen Habermas, *The Divided West* (Cambridge: Polity, 2006), 113–93; Jacques Derrida, *The Politics of Friendship* (London: Verso, 2005); Giorgio Agamben, *The State of Exception* (Chicago: Chicago University Press, 2005); Chantal Mouffe, ed., *The Challenge of Carl Schmitt* (London: Verso, 1999).

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