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Introduction

That is the new *Nomos* of the earth; no more *Nomos*.

Carl Schmitt, *Glossarium*

Do we face a new rule of lawlessness? On the high seas, in matters of international law and human rights, and even in domestic prosecutorial practices, any grounds to place one's trust in the lawfulness of order seem increasingly elusive. The New World Order appears to be no order at all; the century of secular universalisms leaves us in the state of a general and all-encompassing nihilism. Still, rather than signaling a dead end rife with global despair, the collapse of everything that went under the name of the New World Order could be a harbinger of ample opportunities for imagining new and competing forms of legitimacy. Such would be the event of legitimacy in the eclipse of legality.

To be sure, there is an inherent connection between the oceans and lawlessness, as Carl Schmitt argued long ago in *The Nomos of the Earth*; law is by nature telluric, an order that applies to defined territory on dry land.¹ But, in the context of the new rule of lawlessness, has the anarchic politics of the sea extended itself to the ostensibly well-grounded laws of the land? On the sea, piracy continues to put in question the reach of the global mechanisms of legality. The rescue of Captain Richard Phillips, who in turn saved the crew of the *Maersk Alabama* from Somali pirates, was surely welcome news. Was the operation carried out by the American forces that saved him “unilateral”? How could they act without a Security Council resolution? And what would have been the price of inaction sanctioned by the interminable discussion within the international community that let this piracy fester in the first place? While the distinctive character of piracy as a unique category of crime has been recognized since antiquity, perhaps it is time to consider it as an intensely political phenomenon, as opposed to a mere criminal act. The British admiralty, for example, enjoined the Royal Navy from capturing any pirates (who were thereby confined to the permanent state of exception) for fear that doing so would give them claims on the British legal system. Yet given the perpetual bloviating of internationalists about global order, the salient failure to act against piracy is particularly telling.

Telling as well is the manner in which Arab governments have warmly embraced the Sudanese president, Omar al-Bashir, despite the warrant issued for

1. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003), pp. 172–75.

his arrest by the International Criminal Court. Or does the warrant add to his allure? It is hard to imagine flouting the presumed legal world order in any more obvious way or with a more despicable figure. Those who bewailed the Bush administration's resistance to the ICC have yet to say much about this disrespect for the court (could their objections have been politically motivated?) or about the Arab leaders' display of touching solidarity with the man most responsible for Darfur. Instead, we have seen the American president bow down to the Saudi king.

Even in old Europe, the law seems to be in retreat. Last September, a court in The Hague dismissed a suit against the Netherlands brought by Hasan Nuhanovic, a survivor of the Srebrenica massacre, who contended that Dutch forces, acting for the United Nations, had failed to provide the protection to refugees to which Holland was obligated under the European Convention of Human Rights. Stunningly, the court argued that because the Dutch were acting for the UN, they were therefore no longer bound by human rights treaties, to which the UN is not a signatory. Savor that for an instant: a Dutch soldier following UN orders is (you are reading this correctly) absolved of human rights obligations. To recall the sorry events: those Dutch forces turned Bosnian refugees, including Nuhanovic's parents and brother, over to Serb forces, sending them to their death.² The international organization founded in the name of human rights is the organization least willing and least able to defend them.

Nor are matters legal much better off in the United States, where prosecutorial abuse and politically motivated trials have become, with sad irony, the law of the land: the Duke lacrosse fiasco, the political witch hunt that targeted Scooter Libby, the toxic combination of careerist ambition and bureaucratic arrogance in the case against Ted Stevens. Anyone can come into the crosshairs of a trigger-happy district attorney, who may be just like you and me except that the district attorney can make use of the state's monopoly on violence. No one expects the list of arbitrary victims to stop growing. Notably, the recent presidential campaign involved concerns about the politicization of justice; the regime has changed, but the problem may be getting worse. Just as *Telos* author Jean-Claude Paye argued that the restrictions on civil rights in the name of the war on terror were carried out in Europe and not only in the America of George W. Bush (indeed, more vigorously in Europe), it appears that the accrual of state authority and the politicization of law continues and may even be accelerating in the new administration in Washington.³ What's going wrong with legality? This issue of *Telos* turns to Carl Schmitt's considerations of the topic.

2. *H. N. v. Netherlands* (Judgment, District Court in The Hague), LJN: BF0181, Rechtbank's-Gravenhage, 265615/HA ZA 06-1671, September 10, 2008.

3. Jean-Claude Paye, *Global War on Liberty*, trans. James H. Membrez (New York: Telos Press, 2007).

The link between Schmitt's legal and political theories has been a topic of scholarly scrutiny for almost two decades. Missing from the discussion of legality and legitimacy in Schmitt, however, is the notion of the event as a way of mediating between these two terms and, more generally, any extensive awareness of the philosophical underpinnings of his approach to law. To be sure, the gist of Schmitt's critique of legalism is fairly straightforward: one particular mode of legitimacy, legality, identifies itself with this broader term and passes itself off for the "whole" of which it is only a part. In other words, legality, which is only one among several possible forms of legitimacy, claims to be the sole legitimate form of political authority. Thus, this final institution of the rule of law refuses to recognize the authority of any other ruling power, even though, as Schmitt constantly reminds his readers, laws themselves do not rule, since they are unable to interpret themselves, except in the fetishized form they assume in liberal fantasies. The rule of law is also always the rule by men and women with multiple and conflicting political agendas. The usurpation of all legitimacy by legality, a systematic concealing of the political process, is the key to the process of bureaucratization, with its neutralizing, seemingly de-politicizing effects. It is this process that divests political life of its vitality, so that laws no longer express the life of the community they regulate but instead become a function of normative or abstractly derived principles.⁴ In this world, a life not sanctioned by the lawgiver is not a life worth living or, rather, is not a life one is permitted to lead.

Nevertheless, there is much more at stake in this analysis than the false opposition between the law with its claim to carry general validity and the personal dictates of particular political actors. A more subtle Schmittian distinction presents us with two versions of the law itself: the bureaucratic-legalistic model associated with the ideal of the rule of law, on the one hand, and something like a legality without legalism, on the other. While the former locates legitimacy in an abstract proceduralism, the latter implies a thicker version of legitimacy replete with multiple and differentiated modes of legitimation. It is the foundational event of political communities and its repeated symbolic reaffirmation that ground such alternative legitimation.

Both the quiet supplanting of all legitimacy by legality and the preservation of a productive tension between the two terms need to be further thought through under the heading of the event. In a nutshell, the event refers not only to the initial institution of legality but also to its subsequent reinstitution and reaffirmation as the legitimate mode of legitimacy. The lawful community remains political, even (or especially) when the appeal to legality seems to hide politics. It is worth noting, however, that with every renewal of allegiance to an abstract legality, the concept of legitimacy gets further debased, growing ever murkier through a

4. On the divergence of codified law and the life of society, see Louis Brandeis, "The Living in Law," in *The Curse of Bigness* (New York: Viking, 1934), pp. 316–25.

Weberian process of routinization; in other words, the exclusive appeal to legality undermines the viability of legitimacy. No community is merely a rational code of statutes. Such, of course, is Jacques Derrida's take on legality in "The Force of Law," with its argument that the violent origination of law through extra-legal means is forgotten, or at least shrouded in the veil of myth, but remains effective in spite of, or thanks to, this forgetting.⁵ In Schmitt's terms, the originary event of valorizing legality and elevating it above all other modes of legitimacy is not a singular occurrence, nor even a historical process. The appeal to the law (even to its neutrality) inescapably serves the irrepressible extra-legal and deeply political motivations buried in the origins of legality as a modern dogma. Allegiance to the law and, ultimately, to the state that guarantees it, is repeatedly resurrected in every act that reinstates or reaffirms it as the only possible framework of legitimacy. Respect for the law is indelibly political.

It follows then that one should exercise extreme skepticism when anyone enlists legal authority and the rule of law in support of arguments that pretend to be unpolitical. Indeed, much like the appeal to humanity or human rights, these references function as arguments of the last resort, after which the discussion is supposed to stop, with the opponent embarrassingly disarmed. But the victory of abstract legalism should not betoken the absolute neutralization and depoliticization of a formerly antagonistic milieu. Legalistic argument is, rather, a tool to pursue politics by other means, to redefine the terms of engagement in ways advantageous to the liberal proponents of this ideology of law. Schmitt exposes this strategy for what it is: the appeal to neutrality is never neutral. After Schmitt, political actors can be either openly Schmittian or clandestinely Schmittian, with no middle ground to supplement the two. It is disingenuous to claim to pursue law (as defined by the state) without politics (a modicum of violence and force, if only interpretative).

Schmitt's account, forged in the context of Weimar conditions, casts, perhaps not surprisingly, a stark light on current developments. Barack Obama's call for a "politics of hope, not of fear" seems to outline a utopian third option, neither bluntly belligerent nor insidiously manipulative, at least on the surface. This messianic hope, despite considerable uncertainty about its specific goals, involves pursuing a politics in a different key, even an apolitical politics, the philosophical standing of which is best associated with the creative, value-generating powerlessness that Nietzsche identifies with the reactive attitude of the weak: walk softly and carry no stick. The avowed utopian aspiration of this ideology is to distance itself from all politics, or rather, to relegate politics to a corrupt and benighted past, now presumably surpassed in a new age of regained innocence and superior intelligence. Hence the assumption that the pursuit of legality can be undertaken,

5. Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in Gil Anidjar, ed., *Acts of Religion* (New York: Routledge, 2002), pp. 264ff.

fully separated from the violent event of its institution: at stake therefore is law, not national interest, as if the two could be neatly sundered. This implies as well the repression of any reinstatement of the law as governed by a founding violence and, therefore, the need to articulate the possibility of a qualitatively new and markedly innocent beginning. The law to be pursued lies beyond any special interests and therefore beyond politics (or at least any so-called politics as usual, as if there were any other politics).

A significant piece of this program is the strong insistence on legality at its purest, no longer leaving any conceptual space for an independent notion of legitimacy. Law and right are assumed to collapse into one: there is no law that is not fully just, and there is no justice outside of the law. Yet like all utopian projects that pretend to erase the contradictions of human existence, this agenda too quickly begins to display a repressive character. An early casualty of this hypertrophic legality is the very concept of an unjust law, so important, for example, in Martin Luther King's *Letter from a Birmingham Jail*. If all justice is fully within the law, then ethical acts outside the law are not only criminal but, even more cruelly, must themselves be declared unjust. Any action directed against the established order that transgresses against legal procedures is therefore criminal and wrong. So much for civil disobedience. More germane is the systemic skepticism that the new legalism necessarily fuels against any autonomous social dimensions not generated by legislation: traditions, religion, communities, the whole informal life-world. Whatever does not issue from the law cannot be right: hence the unmistakable predisposition toward expansive regulation, for only via regulation can life become legal. Meanwhile this programmatically fetishized legality turns out to be a daydream with a nightmarish quality, as it pursues political agendas masked as a pursuit of law. Indeed one can say that despite the extreme liberalism of its expressed ideology, this legalism turns into a clandestine and disingenuous Schmittianism, constantly pursuing politics while simultaneously stripping it of all political tact.⁶ The third way, the utopia beyond mere politics, just turns out to be an extension of old politics under an ideological cover.

There are numerous indications that, instead of breaking with the event of the extra-legal institution of the law, the politics of hope is becoming exquisitely adept at sublimating, masking, and disavowing this event, the foundational political moment and its extension, the genuine politics beneath the fog and abstractions of parliamentary debate. The classical structure of disavowal—one of the psychic defense mechanisms in Freud—paradoxically combines both an acknowledgement and a repudiation of a slice of disagreeable reality. It is this defense mechanism that the current administration is trying to perfect with reference to the extra-legal

6. As counterintuitive as it may seem initially, liberalism (in its current manifestation as the ideology of administrative power) and Schmitt may end up converging in their defense of strong state power, *but only under certain circumstances*.

domain that it intends to bring under government control, while simultaneously endeavoring to appear unpolitical. A certain ambiguity ensues, to say the least. While the event, loaded with politics, elicits an affirmative response, similar to what Alain Badiou terms “fidelity,”⁷ the ideological promise of a post-political new beginning necessitates a split reaction of acceptance and rejection, encapsulated in the notion of disavowal. It seems that the lawyer Obama’s distaste for extra-legality is so strong that he deploys two divergent rhetorical strategies to combat its terrifying specter: on the one hand, the insistence on the sacredness of the rule of law and, on the other, a quasi-ecstatic discourse of love wrapped in a hybrid theology, mixing a Jewish messianic aspiration to “heal the world” (“tikkun ‘olam”) with a Christian redemption through humility. Hence the frequent religious overtones, which were subject to considerable parody during the campaign. What this excess of rhetorical strategies hides however is a failed attempt to reconcile the cold and dispassionate discourse of the rule of law with that ecstatic-messianic rhetoric of love, or to produce a “mature” mix of realism and idealism, which is after all the leitmotif of *The Audacity of Hope*.⁸ It is surprising that the all-too-obvious contradiction between these two dimensions of the politics of hope did not raise any eyebrows, much less elicit questions as to which of the two commitments, law or love, would define Obama’s political decision-making. That, however, would have required a thoughtfully critical press.

Yet this promised messianic love does not operate as a genuine supplement to the heartlessness of law. Far from a gift that surpasses the formula of the law, the invocation of love acts only as a rhetorical distraction from the genuine extension of legality as state-imposed regulation. It is a compensatory mechanism that serves to sweeten the pill of the new administration’s own brand of deeply political legalism. This pill is especially hard to swallow given the intense efforts to create an appearance of direct democratic and civic participation at the grassroots level during the presidential campaign. Indeed, the campaign offered even more: a mass embrace, the promise of redemption, a program to “move on” and to leave the bad world of politics behind. What has become apparent in the meantime is a new legalism without redemption. Instead of arising from a community that would govern itself through the law, it turns out to be as abstract as any bureaucratic law, as it overlays and stifles community life. The masses, clamoring for love were mobilized for electoral purposes; no longer needed, they become superfluous. If the left continues to hammer at the administration for what it regards as disappointments, it may face the same repressive wrath reserved so far for the right and business leaders in Detroit and on Wall Street. Indeed, some premonitions of such

7. Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. Peter Hallward (London: Verso, 2001), p. 41.

8. Barack Obama, *The Audacity of Hope: Thoughts on Reclaiming the American Dream* (New York: Three Rivers Press, 2006), p. 42.

a pushback have already begun to play out, as the Democratic Party leadership tries to clamp down on the left constituencies advocating for their own agenda. It may just be a matter of time before they face less informal resistance. If the government can prosecute to the right, it can prosecute to the left as well.

For we have already seen how the renewed emphasis on the rule of law has been serving as a ruse for clearly partisan political interests. One disingenuously Schmittian usage of law as politics has been evidenced in Attorney General Eric Holder's overruling of the Office of Legal Counsel opinion concerning the unconstitutionality of the District of Columbia's representation in the Congress.⁹ Perhaps we should just forget the Constitution, which Franklin Roosevelt once notoriously ascribed to the "horse and buggy" era. An even more obvious instance of disrespect for the rule of law is the executive decision of the Obama administration to continue the practice of renditions as a legitimate tool in fighting terrorism.¹⁰ Similarly the Obama administration has not budged one iota on its predecessor's reliance on the "state secrets" position in order to avoid being compelled to turn over sensitive evidence in prosecutions of suspected terrorists. If one argues nevertheless that a politicization of law is inevitable, then at the very least the fiction of legal neutrality becomes untenable.

Although the contours of the politics of hope at the initial stage of its implementation are still fuzzy, a general trend that emerges is an increase in sovereignty—in the classical Schmittian sense of making a decision on the exception—that proceeds in the name of the law. The increase in state authority is justified empirically by the outcome of the elections, interpreted as conferring a mandate, but, more importantly, it is also substantiated metaphysically, with reference to a slightly modified version of Rousseau's general will. The implicit metaphysical assumption operative here is that the electoral majority is a reflection of an absolute unanimity, which, throughout *The Audacity of Hope*, Obama claims to access by piercing through the "superficial" differences between the Republicans and the Democrats and which overrides the actual disagreements and confrontations between political adversaries. In philosophical terms, conflictual politics as a whole is thereby degraded and relegated to the ebb and flow of *accidents* that overlay the unchangeable and non-political common *substance* of the American nation, prophetically formulated by the founding fathers and inherited directly by the new president. Needless to say, the political character of the event as such is irretrievably lost in this resurrected dogmatic distinction, redolent of Scholasticism, for substance is a non-event underpinning all permutations and vicissitudes of politics and lived history. The putative insubstantiality of politics

9. "Alberto Holder: And Democrats Accused Republicans of Politicizing Justice?" *The Wall Street Journal*, April 2, 2009.

10. Greg Miller, "Obama Preserves Renditions as a Counter-Terrorism Tool," *Los Angeles Times*, February 1, 2009.

is but the flip side of the religious-metaphysical projection of History as an inexorable destiny of progress.

Empty abstractions remain rampant, proliferating Hegelianisms on the right and on the left: just as, from the standpoint of the Bush administration, the enemy stood for obstacles in the world-historical march of freedom and, by implication, for the enemy of “humanity,” so the new figure of the enemy haunting Obama’s attempt at a metaphysical de-politicization refers to unenlightened obstacles in the path of social “perfectability,” to use Rousseau’s concept, whether it is understood in terms of the promise of progress in interracial relations, in finding alternative energy solutions, or in resolving international and transnational conflicts. The new enemy is out of touch with the common substance and therefore lacks the fundamental sense of collective belonging that could override the barrage of petty differences and oppositions afflicting political life. The enemy is, in effect, any proponent of partisan politics, that is to say, of the only politics worthy of the name. (Thus, Obama’s initial bipartisan efforts in the formation of his cabinet, ambitiously intended as a team of rivals, yielded little success.) Yet, in the face of the voluble appeal to unanimity, we ought to remember that commonality is never defined on common grounds but is polemically constructed out of the partial perspective of those who invoke it. Any so-called universality turns out, on examination, to be nothing more than the imperious expansion of an arbitrary particularity.

A rethinking of the relation between the universal and the particular in Schmitt provides the backdrop for Alexandre Franco de Sá’s argument in “The Event of Order in Carl Schmitt and the Weight of the Circumstances.” Against the prevalent view of Schmitt as an opportunist who changed his ideological positions depending on the shifting political circumstances, de Sá demonstrates how Schmitt’s overriding concern with the fragility of social order prompted him to support those forces most likely to forge “the event of order” at any given time. This follows from a hyper-modern axiom that order, the arrangement of particulars, is not given once and for all but must always be reconstituted anew. It is this perpetual reconstitution that de Sá calls “the event,” in which the law may function as a pure means for bringing about the desired outcome only under the circumstances that favor the legal way of creating order. In other words, de Sá conceives of the event as a radically context-dependent mediation between the source of all legitimacy (the demand for order) and the variegated mechanisms of accomplishing it (including, but not limited to, the appeal to the law).

Unlike de Sá, Mika Ojakangas subscribes to what Louis Althusser would have called “an epistemological break” in Schmitt’s corpus, expressed in the turn from the decisionism of his early thought to the institutionalism of his “mature” writings. But Ojakangas, too, is interested in the notion of the event as it relates to the law and its “sacred origins,” traceable back to the telluric relation to the earth. Whereas the first legal order arises directly from land appropriation, which

evokes the Heideggerian take on the “event of appropriation,” the reinstatement of the law hinges on the forgetting of its sacred origins, as it does in Derrida’s “Force of Law.” Removed from its roots in sacred space, or the appropriated segment of the earth, law is not only deterritorialized, but it is uprooted from the concreteness of life and transformed into a set of normative rules. For Ojakangas, the event denotes the creation of sacred space and, thus, of the existentially concrete figure of law. Yet the question is whether the history of its subsequent reinstatement, unfolding under the sign of the forgetting of origins, is itself an integral part of the event, since the process of appropriation is unable definitively to set itself apart from expropriation and desacralization.

This question is at the core of Michael Marder’s article, which considers the promise of Schmitt’s political philosophy to lie in the idea that the event of politics harbors the principle of expropriation. If the critical rise in the quantum and energy of antagonisms can politicize any domain of human thought and action, then Schmitt’s notion of the political may be interpreted as an existential possibility that cuts through various “non-political” spheres and lacks a proper field of its own. In this sense, politics is diametrically opposed to economics, where appropriation remains paramount, even though, given the rise in class antagonisms, the economic domain may also become political. Appropriation, including the mythical appropriation of the earth and the birth of concrete *nomos*, is part and parcel of the economic—not the political—logic, while politics depends less on a demarcation of sacred spaces than on the passage of time required for antagonisms to reach a boiling point of politicization. Nevertheless, the relation between the economic and the political retains a certain ambiguity, given that Schmitt wishes to come up with the *concept* of the political, which, read through a Hegelian lens, entails its reappropriation, a reestablishment of its identity with itself.

Roy Ben-Shai further corroborates the argument against appropriation in his formulation of “the unsovereign event” through a reading of Schmitt’s account of Shakespeare’s *Hamlet*. Ben-Shai is interested in Schmitt’s fascination with Hamlet, who, in his indecision, seems to be anathema to the model of the sovereign as the one who decides on the exception. Interpreting the event as a “counter-concept,” he focuses on the eruption of the real into play, both with regard to the actual historical events coded in *Hamlet* and, more abstractly, as a limit to human activity and invention. Effectively, however, this reading of the real in Schmitt is heavily influenced by its Lacanian and post-Lacanian association with trauma, which is a piece of experience we can neither integrate into our identity nor appropriate. Therefore the unsovereign event must assume the guise of a tragedy that bespeaks our unavoidable passivity and, at the same time, curtails the claims of the political heroism of a decision.

In “Notes for a History of the Political: Capital Events and Bodies Politic in the French Revolution,” S. D. Chrostowska teases out what she calls “the eventual history of the political” in Schmitt, analyzing the French Revolution as the

paradigmatic event, both exemplary and exceptional. Like Marder, she dwells on political events as the loci of possibility, not as actual historical occurrences. Modernity is represented by the mechanization of the law, which now assumes a normative dimension described by Ojakangas in his discussion of the deracination of *nomos* and the forgetting of its sacred origins. A sign that the processes of desacralization and equalization have reached a peak, in Chrostowska's view, is the adoption of the guillotine—a machine that literally reconstitutes the French body politic and puts an end to the mystique of monarchical legitimacy. Taking Heidegger's point concerning the uniqueness of one's death to heart, Chrostowska argues that the mechanical production of death by the guillotine paradoxically allowed the new regime to repeat the unrepeatable, paving a way for the modern ideal of indifferent and universally applicable legality as the sole paradigm of legitimacy. Equality before the neutral law began at the guillotine.

In a similar vein, articulating history and politics, Artemy Magun interprets the event as a compass that can provide us with an "orientation"—a term Magun borrows from Kant—in history after the erasure of the traditional lines of demarcation between the political left and right, that is, between a radical openness to the novelty of the future and a conservative turn toward the past. When these overly simplified spatio-temporal distinctions collapse, the paradox of recognizing the new (of inserting it into an old conceptual framework and, thereby, running the risk of losing its novelty) arises alongside the question of the subject who would have the wherewithal to orient itself in the complex historico-ideological milieu. For Magun, Schmitt contributes to the formulation of political subjectivity by elaborating on the subject's affective constitution: a risky openness to others from whom it draws its identity and a capacity to decide on the nature of the relation to them, be it as friend or as enemy. The subjective paradox of simultaneous openness and closure thus reveals the supplementary, not the mutually exclusive, character of retrospective and prospective orientations that come together in the figure of event, such as a revolution with its retrieval of the past and radical innovation.

In relation to Magun's argument, Gabriella Slomp's essay on the event of conscription in Hobbes and Schmitt occupies a position on the opposite end of the spectrum of competing interpretations of Schmitt's work. Slomp leaves no space for subjective openness in Schmittian political philosophy, where all emergencies are public, not private, and where individuals have little or no recourse to challenge the state's unconditional demand that, in dire situations of war, its members be ready to die for it. Unlike Hobbes, Schmitt does not allow for the individual's private deliberation on whether or not, given a threat to the polity, he or she would want to withdraw her obedience to the state. What is provocative in Slomp's paper is the constellation of an existential emergency, the event, and a purely public reaction to it, demonstrating the overwhelming primacy of the political, the exigencies of which will trump all private concerns of the citizens.

The issue concludes with a brief text by Schmitt, “Three Possibilities for a Christian Conception of History,” available here for the first time in English translation, as well as Joseph W. Bendersky’s extended review of Schmitt’s recently published diaries and his correspondence with his student Ernst Forsthoff. Schmitt’s essay, a review of Karl Löwith’s book *Meaning in History*, gives the reader a glimpse into the theological dimension of the event in his thought. Construing Christianity as a singular and “non-appropriable” event that transcends the history in which it arises, permits Schmitt to launch an attack against the leveling of history to a chain of meaningless occurrences, from which meaning may be constructed only *a posteriori*. Bendersky meanwhile draws our attention to the contrast between Schmitt’s private desire to “recoil” and “escape” from the world that overwhelms him, and his political philosophy, which calls for risk-taking and a direct engagement with the existential threats to the life of a political entity.

Russell A. Berman and Michael Marder

The Event of Order in Carl Schmitt's Thought and the Weight of Circumstances

Alexandre Franco de Sá

Talking about Carl Schmitt's thought as a coherent doctrine or a united theoretical body may appear, at first sight, as a relatively hard task. The reasons for such difficulties are immediately clear if one considers the different positions held by Schmitt during the Weimar Republic and the Third Reich. Already, the contrast between his early connections, as a Catholic intellectual, to the Center Party, on the one hand, and the decision to enter the Nazi Party, on May 1, 1933, on the other, was sufficient for some academics to describe it as mere opportunism or, as Karl Löwith put it in 1935, as "nihilism," where a decision is praised that is completely indifferent to the content of what comes to be decided.¹ In fact, how would one explain otherwise, for instance, Schmitt's explicit support for the prohibition of paramilitary political movements, such as the SA and the SS, by Chancellor Brüning and his Minister of the Army, Wilhelm Groener, in April 1932,² and his commitment to the Third Reich only one year later? Or how could one possibly explain, on the one hand, his active support of Papen and Hindenburg's coup against the social-democratic government of Prussia, on July 20, 1932, and, on the other, his later criticism of the plan to promote a change of the Constitution from above, based on his thesis on the subject of presidential power, as well as his support for Papen's

1. Karl Löwith, "Der okkasionelle Dezisionismus von C. Schmitt," in *Sämtliche Schriften*, vol. 8 (Stuttgart: Metzler, 1984), p. 40.

2. In his *Legality and Legitimacy*, trans. Jeffrey Seitzer (Durham, NC: Duke UP, 2004), p. 71, Schmitt explicitly mentions the prohibition of paramilitary militias such as the SA and the SS as an example of the measures that, according to his interpretation of article 48 of the Constitution, the president could take to defend the Constitution.

successor and critic, Kurt von Schleicher, following his appointment as chancellor in early December?

It is, indeed, not surprising that the reviewers of Schmitt's oeuvre often try to select the parts of it that would be most suited to define his intellectual character. In contrast to this approach, the present essay tries to face the challenge of approaching the unity of Schmitt's thought without falling into a unilateral point of view. To accomplish this goal, we shall first consider Schmitt's early work, especially *The Value of the State*. Published in 1914, at the cusp of the First World War, this text is sufficiently important for Schmitt not only to present it in 1916 at the University of Strasbourg as his *Habilitationsschrift*, but also to republish its most important chapter, in the same year, in the Catholic journal *Summa*. Starting from here, it will be possible to consider Schmitt's intellectual work during the 1920s in a different light. Namely, it will be possible to view this work as a way of presenting what Schmitt had thought before World War I under the very different and peculiar context of postwar Germany. Finally, interpreting the unity of Schmitt's texts of the 1920s through his earlier writings will also allow us to understand the wide range of juridical and political positions held by Schmitt during the Weimar Republic and the Third Reich.

I. The Value of the State and the Event of Order

Starting from the Neo-Kantian dichotomy between *Sein* and *Sollen*, between the fact of being and the value of what ought to be, Schmitt presents state power, in *The Value of the State*, not as a mere fact, but as an inevitable articulation between the law and the power needed to realize it in the sphere of facticity. Characterizing the relationship between law and power as inevitable, Schmitt makes two further statements. First, he denies the possibility of law without power. In so doing, he rejects the jus-naturalistic assumption of law as the content of justice independent from power: the content that could claim for itself what the Roman Catholic tradition called *potestas indirecta*, a power that should control and restrain the hypothetical unjust use of state power. If law needs power in order to make it reality, then a powerless "natural law" would never be law, but only an undesired restriction upon a state power, whose essential mission would be, precisely, its realization. "No law can execute itself, only men can be guardians of the law," Schmitt claims, "and who does not put his trust in the guardians cannot be helped by giving the law new

guardians.”³ Second, Schmitt denies the possibility of state power without law. This means, for Schmitt, that state power could neither be defined according to its pure factual strength, or, for that matter, according to its ability to exercise monopolized violence, nor could law be characterized as a mere result of the strongest will. Refusing the positivist assumption that the law is nothing more than the will of the legislator, Schmitt defines the state not as the form through which those possessing the strongest power exercise it, but as an entity the very essence of which consists in articulating the idea of law, on the one hand, and factual reality, on the other. This means that, for Schmitt, though possessing the strongest power, state could not be defined by this possession, but only by the realization of the idea of order in reality. This is why he explicitly claims that “there is no other state than the one determined by the rule of law [*es gibt keinen andern Staat als den Rechtsstaat*],”⁴ as well as that, in the relationship between the idea of order and the exercise of power, it is the former that defines the value and the essence of the latter. It is not because it possesses the strongest power that the state realizes law and order inside political reality. Rather, the opposite is the case: “Law cannot be explained through power,” as Schmitt puts it, “but power through law.”⁵ Thus, in *The Value of the State*, state power has to be the strongest power because its essence consists in the realization of order, in the mediating process that establishes the relationship between the idea of order and reality.

Stating the intrinsic mutual relationship between order and power, or between the law and state power, Schmitt seems to enter in a “no man’s land” where both jus-naturalism and positivism are rejected. On the one hand, arguing that only the law could determine state power and not the other way around, he finds himself speaking about “natural law,” a law that could only explain the exercise of power and that could not, in turn, be explained by it. On the other hand, refusing to determine “natural law” through the content of justice, rejecting the idea of turning it into what he will call, in *On Dictatorship* (1921), a “natural law of justice” (*Gerechtigkeitsnaturrecht*),⁶ he opposes explicitly the connection between the “natural law” he is talking about and any *potestas indirecta*, any power desiring to

3. Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen* (Tübingen: J. C. B. Mohr, 1914), p. 83.

4. *Ibid.*, p. 53.

5. *Ibid.*, p. 24.

6. Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Berlin: Duncker & Humblot, 1994), p. 21.

appear as capable of restraining or controlling state power. This is why he paradoxically characterizes his “natural law” theory as being “without naturalism” (*Naturrecht ohne Naturalismus*).⁷ However, in and of itself, the paradoxical allusion to “natural law without naturalism” requires us to try to understand more clearly what he had in mind. In so doing, it would be possible to say that Schmitt conceives political order, the order where law finds its basis, as an event, which can take place only *in* and *through* the presence of an undisputed power whose independence from the law should be the condition for its mediation and realization in the world. One can speak here about an “event of order” insofar as order comes to be only *in* and *through* political power. Thus, by talking about the “event of order” we imply here that order is similar to Heidegger’s concept of “event,” of *Ereignis*, something which is not (*ist nicht*), but rather comes to be (*west*) only in what is, something that needs what is in order to come into being (*braucht das Seiende, um zu wesen*). In other words, we could say that order comes to be as an event only *in* political power and, therefore, that law is created only *through* political power’s difference, otherness and subtraction from it. However, if the recognition of the state’s undisputed power, or, for that matter, of an undisputed power within the state, should be the condition for the “event of order” and for law’s mediation and realization in the world, an inevitable question would arise: Where could we find the model for such mediation between order and facticity? Where is it possible to find an example of the state conceived as the “event of order,” as the intrinsic relationship between the law and the power necessary for its realization? For Schmitt, the Roman Catholic Church, as a *societas perfecta*, was the model required to understand this relationship.

In *The Value of the State*, Schmitt alludes to the Catholic Church as the paradigmatic reference required for understanding the state as *Mittler des Rechts*, as law-mediator.⁸ However, in 1917, he publishes in *Summa* a little article—*The Visibility of the Church*—where he develops his understanding of the Church as a model for the state. Here, as a Catholic, Schmitt speaks of a truth that is not an abstract doctrine, but a concrete historical event, whose memory should be preserved and transmitted through generations: the life, death, and resurrection of Jesus Christ, the Son of God, and the announcement that men are living at the end of time. Transmitting this event’s memory and making this announcement requires, as long as

7. Schmitt, *Der Wert des Staates*, p. 76.

8. *Ibid.*, pp. 45 and 95.

history still runs and the world does not come to an end, the existence of a historical and concrete institution, whose essence consists in the revival of this event and, therefore, in realizing or making visible the truth of the incarnation of Logos and the announcement it brings with it. This is why Schmitt claims that “one cannot believe God became a man without believing that there will also be a visible Church as long as the world exists.”⁹ Thus, we could say that the Church is a concrete institution, which, as such, shall exercise factual power, but whose essence consists in making visible in reality a truth that is beyond it. Insofar as the Church is a concrete institution and belongs to the world, it is constituted by a multiplicity of real persons, experiences, and opinions. Yet, when it announces a world-transcending truth, the Church creates a unity from above, not by abolishing the multiplicity present in concrete life, but, while keeping its tension, by representing its unity in the person of its head, the Pope. This is why the Catholic Church not only recognizes the Pope as the representative, in his institutional person, of the concrete person of Christ (calling him the *Stellvertreter Christi*), but also dogmatically assumes that he is able to speak *ex cathedra*, infallibly proclaiming the truth and assuring the Church’s visible unity.

For Schmitt, it is, therefore, papal infallibility, assumed by the Church as a dogma at the First Vatican Council, in 1870, which makes it possible for the modern state, conceived as a law-mediating power, to find a paradigmatic model in the Roman Catholic Church. The direct correspondence between papal infallibility and state sovereignty, making it possible for Joseph de Maistre to state that “infallibility in the spiritual order and sovereignty in the temporal order are perfectly synonymous words,”¹⁰ reveals the overwhelmingly compelling parallel between the Church and the state. The idea of law requires its realization through a law-mediating power, just as the truth announced by the concrete event of Christ must become visible through the Church as its concrete representative. The law cannot be mediated without an undisputed state power, whose essence consists precisely in the realization of law, just as the Church cannot make truth visible without having a personal head, without being represented, in its unity, by a representative person, the Pope, whose decisions must be recognized as undisputable and infallible. Finally, the authority of the state’s

9. Carl Schmitt, “The Visibility of the Church,” in *Roman Catholicism and Political Form*, trans. G. L. Ulmen (Westport, CT: Greenwood Press, 1996), p. 52.

10. Joseph de Maistre, *Du pape* (Tours: Cattier Éditeur, 1878), pp. 29–30.

undisputed power lies not in power itself, but in its law-mediating essence, just as the infallibility of the Pope, resulting from his *auctoritas* and his *summa potestas* within the Church, lies not in the “supreme power” itself, but in the representative essence of the Pope as the visible mediator of the concrete event of Christ. This is why, coming back to this subject in a later text, Schmitt claims that “the infallible decision of the Pope does not establish the order and the institution of the Church, but presupposes it,” and argues that, the Pope being infallible only as a head of the Church, “it is not the other way around, it is not the infallible that is the Pope.”¹¹

II. The Event of Order under New Political Circumstances

According to what we have seen so far, Schmitt’s thought can be characterized, in its essence, by two assumptions strongly connected to each other. First, Schmitt states that order as an event is always associated with an order-realizing power, i.e., that “law” (*Recht*) without the “realization of law” (*Rechtsverwirklichung*) is nothing but an empty abstraction. Second, he states that the realization of law, the mediation of order in its relationship with reality, requires the existence of a power free in its decisions, a power that assumes the form of sovereignty within the state and of papal infallibility within the Church. In as much as order becomes an event *in* and *through* a power free in its decisions, we could say that the existence of these decisions, or, for that matter, the existence of a power able to freely decide them, is the *ratio cognoscendi* of political order, precisely because the “event of order” comes to be only in such a power as its *ratio essendi*.

This twofold thesis, however, requires a common understanding of what order means. And it was precisely this common understanding that, under the circumstances of postwar Germany after November 1918, became more and more problematic. Increased by the Soviet Revolution in Russia and by its discontent with the war, the German communist movement was strong enough to proclaim defeated Germany as a new Soviet republic. The disturbing situation that followed, which was characterized by bloody fights between communists militias, the new social-democratic republican government, and the right-wing old soldiers and war veterans who formed the *Freikorps*, confirmed a civil war atmosphere that seemed to pre-announce the collapse of any order at all. Under these circumstances,

11. Carl Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Berlin: Duncker & Humblot, 1993), p. 22.

Schmitt did not abandon the idea that state power is essentially the “event of order,” the realization of a power-transcending order, but concentrated on the intellectual struggle for defending a sovereign power that should be free enough to mobilize the means necessary to fight disorder and provide peace.

Trying to defend an order-realizing power, Schmitt interprets himself as receiving the legacy of those conservative intellectuals who first had to deal with the socialist insurrection, especially the Spaniard Juan Donoso Cortés. One year after the Parisian revolt of 1848, Donoso Cortés still recognized state power as ultimately grounded on a power-transcending order and legitimacy. However, under the new political circumstances created by the rebellion’s repercussions in Spain, he proclaimed that, given that it was not possible to appeal to order and legitimacy anymore, dictatorship was necessarily on the agenda. Unable to appeal to a common understanding of order, he argued that it was no longer a question of choosing “between freedom, on one side, and dictatorship, on the other side,” but “between a dictatorship of insurrection and a dictatorship of the Government,” “between a dictatorship of the dagger and a dictatorship of the saber.”¹² According to Schmitt, facing an analogous political situation in postwar Germany, the political attitude and the assumption of Donoso’s legacy were required. And it is precisely this legacy that Schmitt assumes in 1922, when he claims, in *Political Theology*, that for Donoso, as “legitimacy no longer exists in the traditional sense,” “there was, thus, only one solution: dictatorship.”¹³ Writing the day after the eclipse of “royalism,” Donoso did not properly reject legitimacy outright, but defended a power that would realize order as a dictatorial one. In an analogous way, under the eclipse of order that characterized the new German Republic, Schmitt did not properly abandon his early thesis, the thesis that legitimated state power as the essential realization of a power-transcending order, but tried to defend state power regardless of the “event of order” that would be inevitably founded on its basis. In other words, instead of concentrating on the “event of order,” Schmitt had to focus on state power itself and on the circumstances that surround political decisions.

12. Juan Donoso Cortés, “Speech on Dictatorship,” in *Selected Works of Juan Donoso Cortés*, trans. Jeffrey P. Johnson (Westport, CT: Greenwood Press, 2000), p. 57.

13. Carl Schmitt, *Political Theology*, trans. George Schwab (Chicago: Univ. of Chicago Press, 1985), pp. 51–52.

The first step performed by Schmitt in order to achieve this result is revealed in *Political Theology*, where he opposes to a normativist juridical doctrine a so-called decisionist one, claiming that order should be created and preserved by a power whose decision has to be, insofar as it creates and preserves it, normatively independent, unconstrained by any norm belonging to the juridical order itself. According to normativism, as it appears mostly in the work of Hans Kelsen, norm and order in a juridical sense are absolutely identical, and the only alternative to them is chaos and violence. Therefore, the state reveals itself to be only the “personification” of a “multiplicity of abstract norms”¹⁴ and, thus, a normative reality within which every decision should be subsumed under a norm. For Schmitt, on the contrary, order and norm are two essentially different things. Opposing normativism’s premise, he states that if a norm is to be applied to a concrete situation, a certain order and the normality of normal life must previously be there. As Schmitt claims: “There exists no norm that is applicable to chaos. For a legal order to make sense, order must be produced.”¹⁵ And this means that the very existence of a juridical order is based on a pre-existing order, which, in turn, demands the existence of an order-creating power, a power that should not be restricted by normative constraints in its capacity to assure and interpret order, i.e., to decide whether normal life is endangered by some concrete situation and, if this were the case, what measures should be taken to come back to normalcy. In other words, far from being just a normative reality, the law consists both in a norm and in a normal situation, an order, which finds its possibility in the existence of a normatively unbounded power that shall decide what is needed for its creation and preservation.

Needless to say, in line with decisionism, the state and the law do not “fall under the same category of a normative order,” as Kelsen had argued,¹⁶ but the existence of the state, corresponding to the existence of a normal situation as a norm-transcending order, is preeminent vis-à-vis the norms. On occasions when blindly following the norms would endanger the state, and in cases where the preservation of normality would demand making an exception to the norm’s applicability, there shall be, according to Schmitt’s decisionism, a normatively unbounded sovereign power that

14. Hans Kelsen, *Der soziologische und der juristische Staatsbegriff: Kritische Untersuchung des Verhältnisses von Staat und Recht* (Aalen: Scientia Verlag, 1962), p. 205.

15. Schmitt, *Political Theology*, p. 13 (translation slightly modified).

16. Kelsen, *Der soziologische und der juristische Staatsbegriff*, p. 87.

will decide a “state of exception” on behalf of the state and order itself. As Schmitt puts it: “In such a situation [of exception] it is clear that the state remains, whereas law recedes. Because the exception is different from anarchy and chaos, order in the juristic sense still prevails even if it is not a legal one. . . . The state suspends the law in the exception on the basis of its right of self-preservation, as one would say. The two elements of the concept *legal order* [*Rechts-Ordnung*] are then dissolved in two independent notions and thereby testify to their conceptual independence.”¹⁷ Identifying the norm with order, normativism has its essential core, Schmitt argues, in rejecting the existence of a sovereign decision, which should preserve order through the possibility of suspending or breaking norms. As sovereignty consists in this normatively unbounded power, one could say that normativism means the very negation of sovereignty within the state. “Kelsen,” as Schmitt puts it, “solves the problem of the concept of sovereignty by negating it.”¹⁸ And it is precisely before this negation that decisionism appears as this negation’s negation, appealing to the dependence of order on a sovereign power whose decisions, he states, “looked at normatively, emanate from nothingness.”¹⁹

If the first step to defending a normatively unbounded sovereign state power, regardless of the power-transcending order it realizes, comes through in 1922, in *Political Theology*, when Schmitt posits decisionism against normativism, the second and definitive step should follow, the step that should assert the compatibility of this defense of sovereign power, on the one hand, and democracy as the political principle assumed by the Weimar Republic, on the other. Schmitt tries to fulfill this task when he writes, in 1923, *The Historical-Intellectual Situation of Contemporary Parliamentarianism*. This book’s first aim is to distinguish two concepts that are often too narrowly related: democracy and liberalism. For Schmitt, liberalism is connected with the nineteenth-century belief that the truth was to be achieved by means of a free discussion and that the parliament was the political institution conducive to this. Appealing to Walter Lippmann’s studies on “public opinion,” Schmitt argues that “modern mass democracy has made argumentative public discussion an empty formality”: “Argument, in the real sense that is characteristic for genuine discussion, ceases. In its place there appears a conscious reckoning of interests and chances

17. Schmitt, *Political Theology*, p. 12 (translation slightly modified).

18. *Ibid.*, p. 21.

19. *Ibid.*, pp. 31–32.

for power in the parties' negotiations; in the treatment of the masses, poster-like, insistent suggestion or—as Walter Lippmann says in his shrewd, although too psychological, American book *Public Opinion*—the 'symbol' appears."²⁰ For Schmitt, it was from this obsolete liberal belief in discussion that democracy had to be distinguished. If self-government is the government of a people by itself, democracy has to be based on the principle of the illegitimacy of any sort of natural privileges and, therefore, on the admission that everyone within a particular society should be equal. Therefore, as democracy means equality, its strength, Schmitt argues, must be found in producing homogeneity within society, in "knowing how to refuse or keep at bay something foreign and unequal that threatens its homogeneity."²¹ Only a homogenized society, a society of equals, could be democratically governed, self-governed through a fundamental identity between the government and those who are governed. Far from being dependent on the existence of different parties, democracy, Schmitt concludes, thus means the self-government of an equal and homogenized people, of a people whose unity and "general will" must be presupposed.

Apart from this requirement of a homogenized society, democracy, however, cannot determine a specific character of government. Proclaiming self-government—the identity between the general will of a homogenized people and the government's will—as the only admissible sort of government, democracy leaves open the determination of the specific way by which the government identifies itself with the people. People's sovereignty and self-government become premises within an overwhelmingly expanded democratic thought. However, insofar as this thought imposes the premise of identity between the people's will and the government's, this premise ceases to be "politically interesting" because "the conflict only concerns the means of identification."²² This is why Schmitt comes to the conclusion that every way of concretely identifying the government's will with the people's will is possible as long as the democratic principle of identity—the premise that the government's and the people's wills are identical—is invoked. As Schmitt puts it: "A democracy can be militaristic or pacifist, absolutist or liberal, centralized or decentralized, progressive or reactionary, and again different at different times without ceasing to be

20. Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 2000), p. 7.

21. *Ibid.*, p. 9.

22. *Ibid.*, p. 29.

a democracy.”²³ It should, thus, be possible for Schmitt to configure democratically the defense of the existence of a normative unbounded sovereign state power, a power characterized as the capacity to decide, within constitutional order, on the necessity of breaking norms and the introduction of a “state of exception.” As a democracy, the Weimar Republic was considered to be a state under the “rule of law,” a state where, at first sight, no power whatsoever could be perceived as able to suspend the application of the law and to decide on the “state of exception.” For Schmitt, far from being incompatible with democracy, the recognition of such a power was an inevitable consequence of the necessity to preserve and guard democracy itself. Moreover, under the political circumstances of the Weimar Republic, only the recognition of a state power unconstrained by norms, the power directly representing the democratic sovereignty of the people, could preserve the German political and constitutional structure from its inevitable collapse.

In 1923, the political circumstances under the Republic were rapidly deteriorating. The occupation of Ruhr by the French troops, the continuous menace of pro-Soviet communism, and the failed Nazi coup in Munich were strong manifestations of this situation, leading many German and European intellectuals, and Schmitt in particular, to praise the political developments in Italy, where, after the so-called March on Rome, in 1922, the strong nationalist movement of Fascism had risen to power. In the German context, for Schmitt, pro-Soviet communism was by far the greatest danger. And this was so because communism explicitly aimed at mobilizing the workers to destroy the old society and create a new Soviet one, exclusively grounded on the affinities of interest and class solidarity. For Schmitt, socialism was at its strongest when it acquired the consciousness that it was not so much a theoretical doctrine but a mobilizing myth of destruction, a consciousness that came through mostly in Georges Sorel’s *Reflections on Violence*. According to Sorel, socialism as a whole was not contained in a theory, but in what he called the myth of the general strike, a collection of images that “are capable of evoking the mass of sentiments which correspond to the different manifestations of the war undertaken by socialism against modern society.”²⁴ And, analyzing Sorel’s myth of destruction in the last chapter of his book, which in 1940 he republished

23. *Ibid.*, p. 25.

24. Georges Sorel, *Reflections on Violence*, trans. Jeremy Jennings (Cambridge: Cambridge UP, 1999), p. 113.

in a collection of articles²⁵ under the title “Political Theory of Myth,” Schmitt had the idea that the defense of the state power independent of norms could not but lead to the development of a political myth that would provide an alternative to the socialist one, a myth that should not be used for the destruction of society, but for its defense and construction. Interpreting Fascism as a political force, which had such a mobilizing myth behind it, Schmitt praised it in 1923, arguing that only a “national myth” would be able to mobilize enough strength to defeat the society-destroying socialist myth of the general strike. Stating that “wherever it comes to an open confrontation of the two myths, such as in Italy, the national myth has until today always been victorious,” Schmitt argues that only Fascism “depicted its communist enemy with a horrific face, the Mongolian face of Bolshevism,” and that, therefore, only Mussolini could call socialism “an inferior mythology.”²⁶

Confronting normativism with a decisionist theory of law, fighting for a sovereign decision “normatively born from nothingness,” in 1922, and appealing to a “national myth” backed up by Fascism and mobilized against the destroying “inferior mythology” of socialism, in 1923, it was essential for Schmitt, at the same time, to make clear that such developments had to be understood not as a new doctrine or a political change, but as the way of developing the thesis of the intrinsic articulation between power and law under very peculiar circumstances. This is why in 1923 Schmitt published the book *Roman Catholicism and Political Form*, which he reprinted with minor changes in 1925. In this book, Schmitt turns back to the idea that Catholicism’s political form might be used as a model for the state. According to Schmitt, the Church is what he calls a *complexio oppositorum*, a complex of multiple doctrines, opinions, and experiences that cannot be united from below. Within the Church, the exercise of power stops the controversies not in the sense that it solves the differences and runs out the disputes, but in the sense that it produces a unity among them while simultaneously conserving their tension. This is possible, Schmitt argues, because of the idea of representation. Representation (*Repräsentation*) does not mean a mere commission through which certain persons delegate, to a leading figure, the task of substituting for them in defending

25. Carl Schmitt, *Positionen und Begriffe* (Berlin: Duncker and Humblot, 1988), pp. 11–21.

26. Schmitt, *The Crisis of Parliamentary Democracy*, pp. 75–76; and “Die politische Theorie des Mythos,” in *Positionen und Begriffe*, p. 20.

their material interests, but rather the factual constitution of the idea of a group's unity—of its unified personality—by representation itself. This is why, Schmitt argues, “the idea of representation is so completely governed by conceptions of personal authority” that “to represent in an eminent sense can only be done by a person, that is, not simply a ‘deputy’ but an authoritative person or an idea which, if represented, also becomes personified.”²⁷ If power within the Church can be exercised infallibly by the Pope, this is because he represents in his person both the authoritative person of Christ and the idea of the unity of the Church, constituting this unity itself within the visible world. And, on the other hand, for the person of Christ to be represented and the unity of the Church constituted, the infallible decision that transforms this idea's unity into an event becomes inevitable. Reinforced in its unity by the possibility of an infallible decision, the Church can, therefore, serve as a model for the concept of a normatively unbounded sovereign power within the state. And this is why the Catholic Church considers itself and the state as two different *societates perfectae* that should be allied against the corrupting forces. The Church, as Schmitt puts it, “wants to live with the state in a special community in which two representations confront each other as partners.”²⁸

III. Fighting for Order under the Eclipse of its Event

The notions that order and power are intrinsically connected and that a normatively free state power is the condition for the “event of order” are, thus, the never-abandoned fundamental ideas of Schmitt's thought. Trying to settle the necessity of a normatively free decision, speaking about a decision “normatively born from nothingness,” decisionism does not consist in denying the intrinsic relationship between order and power. Rather, under the eclipse of order in the Weimar Republic, it only tries to present power in a sort of juridical fiction, to present a normatively unconstrained power *as if* it would stand for itself and would not be constituted in its essence by the realization of order. In the same way, allusions to Fascism and to national political mythology, as well as to the existence of the people's homogeneity and democratic unity, are essentially a way of working out a defense of a normatively unrestrained decision without appealing to the concept of order that, unavoidably, furnished its basis. In 1923, the analysis of *Roman Catholicism and Political Form* is one that can shed light

27. Schmitt, *Roman Catholicism and Political Form*, p. 21.

28. *Ibid.*, p. 35.

upon the fundamental principle of Schmitt's writings. And this principle is the assertion of the intrinsic connection between order and power. On the one hand, a decision is always the representation of an order, which can be decisionistically presented as an "autonomous moment" before the norm. On the other hand, order cannot become an event without the possibility of a normatively free political decision.

Within the framework of the Weimar Republic, defending the existence of a norm-free sovereign power meant fighting for a certain interpretation of the Constitution, an interpretation characterized by the idea that there should be a constitutional figure able to defend the Constitution by deciding on exceptions and possibly suspending the norms. According to Schmitt, as the president of the Reich was universally elected for seven years, being the direct representative of the sovereign people, he should be recognized as this figure. In his role as a jurist during the Weimar Republic, Schmitt's interventions are, thus, guided by the thesis that, under article 48 of the Reich's Constitution, the president should be allowed to use unlimited power in the face of situations that are dangerous for the Republic. Section 2 of the article was formed by two sentences, one affirming that the president could do whatever was necessary to restore order and security within the Republic, including the use of armed forces, and the other enumerating the constitutional guarantees that could be suspended for this purpose. According to a normativist interpretation of these two sentences, the latter, which enumerated specifically the constitutional articles that could be suspended, pointed to the limits of the measures that the president could take to face a crisis. Normativists argued that if only these articles of the Constitution could be suspended by the president in a situation of crisis, this meant that all the others could not, and that the president's actions were normatively limited by such enumeration. With his colleague Erwin Jacobi, in a jurists' meeting in Jena in 1924, Schmitt suggests, against this interpretation, that the two sentences of article 48, section 2, referred to two different situations.²⁹ According to Schmitt, the latter sentence, listing the constitutional guarantees that could be suspended, applied to a crisis that the president would be able to solve only by suspending the articles referring to these guarantees, while the former alluded to a far more critical situation, to a crisis so deep that the president would need to do whatever it takes to defend security and the Constitution, including, if necessary,

29. Schmitt, "Die Diktatur des Reichspräsidenten nach Artikel 48 der Weimarer Verfassung," in *Die Diktatur*.

suspending the latter and making unrestricted use of the army. This is why, between 1924 and 1928, when *Constitutional Theory* was being composed, Schmitt developed the idea that the Constitution could not be reduced to a normative body, but was rather a decision democratically taken by a people about its existence and political form. The democratic idea that the sovereign constituent power of a Constitution should lie in the people, whose members are characterized by their similarity (*Gleichartigkeit*) and form a homogenized substance determined by the principle of identity, allows Schmitt to distinguish between the Constitution and constitutional norm, and to describe the former as the people's original decision regarding its political existence and fundamental political form. If the Constitution is not a norm, but the sovereign's existential decision about its political existence and form, norms should be able to be suspended by the president, whose ability to evaluate the concrete situation, eventually suspending norms and deciding on the "state of exception," is the direct representation of the Constitution considered as the people's sovereign will.

From 1931 on, when the Weimar Republic was already at its last breath, Schmitt started to call the Reich's president the "Guardian of the Constitution." In 1928, in *Constitutional Theory*, he had divided the Constitution into two halves—a "political component" (*politischer Bestandteil*), which prescribed the political structure of the Republic; and a "Rechtsstaat component" (*rechtsstaatlicher Bestandteil*), which guaranteed the citizens' civil, political and economical rights—and, then, rejected the idea that a bourgeois Rechtsstaat component could determine a political form. Stating that "the principles of bourgeois freedom could certainly modify and temper a state" but "they cannot found a political form on their own,"³⁰ Schmitt argues that the sovereign political decision by which the political form is determined, which is represented by the president's power to decide on the suspension of norms on behalf of normality, should not itself be restrained by norms. In 1932, when the Republic was already about to collapse and a majority of anti-constitutional Communist and Nazi deputies occupied the parliament, he argued that the political decision that established the political form was contained in the part of the Constitution that, determining the rights and constitutional guarantees, constituted a substantial, not merely formal, component. Assuming that the Weimar Constitution is the synthesis of two different constitutions—one merely

30. Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC: Duke UP, 2007), p. 235.

formal and procedural, the other substantial and committed to certain values—and further assuming that a choice must be made between the two, “the decision,” Schmitt argues, “must fall for the principle of the second constitution and its attempt to establish a substantive order.”³¹ In other words, if in 1928 Schmitt contended that the substantial content of the second half of the Constitution should not restrict the presidential power to defend the Constitution, in 1932 he defended exactly the same position, but arguing, under the dangerous circumstances of the parliament’s occupation by anti-constitutional parties, that the president should have the right to defend the values included in the substantial part of the Constitution even against the parliament and by suspending or violating constitutional norms. If political circumstances would cause the political parties to endanger constitutional normality, it should be recognized that the president was constitutionally allowed not to respect the rules and norms of constitutional procedures in order to guard the Constitution itself and the original political decision, which lies in its substantive core.

Far from being incoherent or mostly opportunistic, Schmitt’s option to join the Nazi Party can be considered in the same line of fighting for the possibility of a state power able to defend normality even against norms. Schmitt thought that by asking Hitler to form a government, on January 30, 1933, President Hindenburg had admitted that it was impossible to defend the Constitution with the means at his disposal. The liberal duality of state and society—directly expressed in the duality of the president and the parliament—had made it impossible to back up a political decision independent from the norms. In *State, Movement, People*, a book published in 1933, where he tries to give an interpretation of the Nazi movement’s triumph, Schmitt states explicitly that both Papen and Schleicher had failed because “only with the army and the Prussian state power apparatus” were they unable to fulfill the “political vacuum.”³² This vacuum was the absence of political unity, the split between state and society, and between the government and the parliament. The events of 1933 showed that the restoration of political unity implied leaving this split behind and substituting the state-society dualism with an alternative political structure, which, according to Schmitt, was emerging through the threefold articulation of state, movement, and people.

31. Schmitt, *Legality and Legitimacy*, p. 94.

32. Carl Schmitt, *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933), p. 31.

In Nazi Germany, Schmitt argued, the people was the “unpolitical side” (*unpolitische Seite*) of political unity, while the state was only its “static-political part” (*politisch-statische Teil*). Breaking this deadlock and articulating the unity of the two parts, there was the “dynamic-political element” (*politisch-dynamische Element*) of the movement, without which “neither the contemporary state (in the sense of the political unity) nor the German people (as the subject of the political unity ‘German Reich’) could be conceived.”³³ In 1933, appropriating Nazi vocabulary, Schmitt stated that the threefold articulation of political unity was able to reinforce both the homogeneity of the people, transforming the formal democratic similarity (*Gleichartigkeit*) in “substantial sameness” (*Artgleichheit*), and the power of the state to represent its political identity, turning mere government (*Regierung*) into real leadership (*Führung*). Under the circumstances of the Nazis’ rise to power, Schmitt believed that one could find in the concept of leadership the basis for conceiving a power independent from norms, a power able to realize the event of what he now called “concrete order,” and it was basically this thought that brought him close to National Socialism. Nevertheless, during his “Nazi period,” Schmitt was violently criticized for his interpretation of the meaning of National Socialism by “orthodox” Nazi jurists, such as Otto Koellreutter, who blamed him for conceptualizing the people as the “unpolitical side” of political unity, not as a racially homogenized “political substance.”³⁴ From the perspective of the “orthodox” Nazi worldview, these criticisms were completely justified. Joining the Nazi Party, appropriating the Nazi vocabulary, even talking about Judaism as the concrete example of a purely normative relationship to the Law³⁵ and working for the regime as an eminent jurist, Schmitt was not embracing “orthodox” Nazi conceptions about “biologism,” “race superiority,” or the “political *Volk*,” but was taking into consideration the circumstances that would allow him to defend the normatively unrestrained political power that, according to him, was the necessary condition for order to become an event before any normative interventions. Under the peculiar circumstances of Nazi Germany, given the rise of a movement that seemed able to create political unity, appealing to “concrete order” and

33. *Ibid.*, p. 12.

34. Otto Koellreutter, *Volk und Staat in der Verfassungskrise* (Berlin: Junker & Dünhaupt Verlag, 1933), p. 9; Otto Koellreutter, *Volk und Staat in der Weltanschauung des Nationalsozialismus* (Berlin: Pan-Verlagsgesellschaft, 1935), p. 11.

35. See Carl Schmitt, “Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist,” *Deutsche Juristen-Zeitung* 41 (1936): 1194–99.

fighting for “leadership” as its realization became the best way, according to Schmitt, to fight for the “event of order” itself.

The idea that fighting for a norm-free state power meant, for Schmitt, fighting for the “event of order” is demonstrated, although indirectly, in *The Concept of the Political*, whose different versions—published in 1927, 1932, and 1933³⁶—reflect the different circumstances that surround his thought. In this text, as is well known, Schmitt characterizes the political (*das Politische*) as the capacity to draw a distinction between friend and enemy, telling us that it is not the norm, but only an existential decision, that could establish such a differentiation. As the possibility of war and conflict necessarily follows the capacity to distinguish friends from enemies, ending the war appears to be possible only by erasing the political as such, creating a world without politics, and, thus, establishing the absolute rule of norms. However, according to Schmitt, the intention to make it impossible to decide on the friend-enemy distinction, eliminating political decisions through the absolute rule of norms, would have the inevitable result of intensifying war and conflict, rather than eliminating their possibility. And the reason for that result is very clear, for if one rejects the capacity of sovereign power to decide to go to war without normative constraints, this does not imply the end of war, but the introduction of a war against war, a war that is undertaken by a self-proclaimed interpreter of norms who, limiting sovereignty in the name of these norms, casts himself as one who represents justice, peace, and the whole of humanity against what is now presented as the inhuman enemy, i.e., who transforms the public enemy (the Greek *polemios* or the Latin *hostis*) into the personal enemy (the Greek *echthros* or the Latin *inimicus*). From there Schmitt concludes: “To confiscate the word humanity, to invoke and monopolize such a term probably has certain incalculable effects, such as denying the enemy the quality of human being and declaring him to be an outlaw of humanity; and a war can thereby be driven to the most extreme inhumanity.”³⁷ Therefore, according to Schmitt, it is possible to say that the rejection of a sovereign power that is able to decide on enmity

36. Carl Schmitt, “Der Begriff des Politischen,” in *Archiv für Sozialwissenschaft und Sozialpolitik* (Tübingen: Verlag von J. C. B. Mohr, 1927); *Der Begriff des Politischen* (1932; Berlin: Duncker & Humblot, 1996); *Der Begriff des Politischen* (Hamburg: Hanseatische Verlagsanstalt, 1933). Subsequent editions of the text use the 1932 version, which was also the basis for the English translation, *The Concept of the Political*, trans. George Schwab (Chicago: Univ. of Chicago Press, 1996).

37. Schmitt, *The Concept of the Political* (1932), p. 54.

without normative constraints and the proposal for a rule of norms turn out to be contributing factors in a situation where order is increasingly absent. Facing the inevitable anomic consequence of an absolute rule of norms, *The Concept of the Political* shows that, for Schmitt, the defense of a normatively unbounded political decision meant in every circumstance a fight for the “event of order.” The three versions of this text are not, strictly speaking, “changed,” but they stand for different ways of presenting the same defense of a political decision whose independence from norms is considered to be the necessary condition for order to become an event.

First published as an article in 1927, one year before *Constitutional Theory*, *The Concept of the Political* starts by presenting the political decision on the friend-enemy distinction as a decision taken by a sovereign people, which, so deciding, exists in the “realm of the political” (*Gebiet des Politischen*).³⁸ The political appears here as the realm of the political existence of a people whose similarity (*Gleichartigkeit*), whose identity with itself, creates the possibility for distinguishing its friends from its enemies. The political, Schmitt argues, “can take its strength from different realms of human life, from religious, economic or moral antagonisms.”³⁹ However, if other realms could possibly determine a political relationship of enmity, this would mean that the political realm was corrupted, and that order was disappearing due to the rise of violent antagonism outside the political sphere and beyond public enmity. Within this framework, fighting for order meant fighting for a political power able to concentrate political decisions on enmity within the political realm. In the second version of *The Concept of the Political*, from 1932, Schmitt characterized the political no longer as an “objective realm” (*Sachgebiet*), but as “the intensity of an association or dissociation of human beings.”⁴⁰ If conflicts could emerge from many different spheres, such as morality, economics, or religion, this could only mean, Schmitt now concludes, that these spheres could determine the proper intensity of political antagonism, and that the political, far from being a realm among others, meant rather the most extreme intensity of human association and dissociation that any realm could achieve. Characterizing the political in this way, in a period when the Weimar Republic was already collapsing under both the challenge of a parliament formed by a majority of radical parties and the disorder in

38. Schmitt, “Der Begriff des Politischen” (1927), p. 4.

39. *Ibid.*, p. 10.

40. Schmitt, *The Concept of the Political* (1932), p. 38.

the streets occupied by these parties' militias, Schmitt now argued that political decisions belonged to the state, not to the people as the supposed political substance of the supposed political realm, and that state power should be able to concentrate in itself the possibility of determining friends and enemies, thus imposing an overlapping political unity onto the different parties, interests, and persons present in society. Finally, in the third version of *The Concept of the Political*, published immediately after Hitler's coming into power, while stressing the existential and not the normative character of political confrontation, Schmitt keeps essentially his presentation of the political as the friend-enemy relationship's "degree of intensity,"⁴¹ for which he would be inevitably criticized by Nazi authors interested in a substantial and *völkisch*-oriented conception of the political. Maintaining in 1933 the concept of the political presented in 1932, and presenting the state—and not the "political substance" of people—as the protagonist of the political decision between friend and enemy, Schmitt indicated that, in 1933, he wanted to be consistent with his insight on the intrinsic link between order and the exercise of state power. For him, in that time, supporting the Nazis did not mean embracing a racist, biologist, and *völkisch* ideology, but defending what he then called "leadership" as the possibility of a state power committed to the realization of order and not merely norms. Along his career, under many different circumstances, Schmitt's political thought was a constant struggle for order to become a reality, a constant struggle for the "event of order."

41. Schmitt, *Der Begriff des Politischen* (1933), p. 21.

Carl Schmitt and the Sacred Origins of Law

Mika Ojakangas

Each of the elements has thus found its partisan, except earth—
earth has found no supporter.

Aristotle, *De Anima*

During the formative years of National Socialist Germany, Carl Schmitt abandoned the decisionism he had been developing since the beginning of his career and turned toward institutionalism, known also as “concrete order thinking” and the philosophy of *nomos*. Schmitt had outlined his decisionist theory as a critical response to the normativist approach in legal positivism represented especially by Hans Kelsen. In Schmitt’s understanding, normativism identified law (*Recht*) with legal rules and norms, dismissing the existential dimension of personal judgment and decision in the theory of law.¹ Schmitt’s decisionism meant a revival of this existential dimension: “Law is concretized only in a judgement, not in a norm.”² According to Schmitt, the whole legal order is based on such a judgment—namely, on the sovereign decision. The event of decision is the ultimate origin and the absolute foundation of any legal order and political entity. In itself, however, the decision has no origin or foundation but springs out of a “normative nothingness and from a concrete disorder.”³ The decision is a “founding rupture” of all law and order.⁴

1. Hereafter, I translate *Recht* (French *droit*) as “law” and *Gesetz* (*loi*) as “statute.”

2. Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen* (Munich: C. H. Beck, 1914), p. 79.

3. Carl Schmitt, *Über die Drei Arten des rechtswissenschaftlichen Denkens*, 2nd ed. (Berlin: Duncker & Humblot, 1993), p. 24.

4. On the “founding rupture” as the metaphysical core of Schmitt’s legal and political

Schmitt abandoned this decisionist theory of law when Adolf Hitler came to power. One reason for this move was the status of the *Führer* in the Nazi ideology as Schmitt understood it. The *Führer*'s decisions do not emanate from "normative nothingness" but are inseparable from the essence of the German people. They do not float "freely in the air," as Schmitt described the sovereign decision in his self-critical exposition of decisionism in 1934.⁵ Rather, they are expressions of a pre-existing order of a community. It is this pre-existing order and its normative power that Schmitt identifies with law in his late work. In Schmitt's first book after the turn, published in 1933, this pre-existing order was expressed in terms of ethnicity and race.⁶ In his later works, however, it was increasingly presented in spatial terms, which means that in the ideological horizon of "blood and soil," it was apparently the soil (*Boden*) that fascinated Schmitt more. Indeed, in his works since late 1930s, Schmitt time and again stresses that the true law has an intimate relationship with soil (*Boden*) and land (*Land*). It is always bound to the earth (*Erde*). To such a law Schmitt gave the ancient Greek name *nomos*, which he believed was originally bound to the earth and, more specifically, to a concrete enclosed location (*Ortung*) on the surface of the earth. Yet although a number of books and articles have been written on this theme in Schmitt's work, the exact theme of *nomos* as the authentic form of law (*Recht*) has remained relatively unexplored, especially in the literature available in English.⁷ What is the meaning of Schmitt's *nomos*? This is the question of this article.

theory, see Mika Ojakangas, *A Philosophy of Concrete Life: Carl Schmitt and the Political Thought of Late Modernity* (Bern: Peter Lang, 2006).

5. Schmitt, *Über die Drei Arten*, p. 23.

6. Carl Schmitt, *State, Movement, People*, trans. Simona Draghici (Corvallis, OR: Plutarch Press, 2001).

7. There are of course exceptions to this rule. See, e.g., Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000), pp. 191–200; G. L. Ulmen, "The Concept of 'Nomos': Introduction to Schmitt's 'Appropriation/Distribution/Production'," *Telos* 95 (Spring 1995): 39–52; Wolfgang Palaver, "Carl Schmitt on *Nomos* and Space," *Telos* 106 (Winter 1996): 105–27; Bruno Bosteels, "The Obscure Subject: Sovereignty and Geopolitics in Carl Schmitt's *The Nomos of the Earth*," *South Atlantic Quarterly* 104 (2005): 295–305; Carlos A. Otero, "From the *Nomos* to the Meridian," *South Atlantic Quarterly* 104 (2005): 381–88; Mitchell Dean, "Nomos: Word and Myth," in Louiza Odysseos and Fabio Petito, eds., *The International Political Thought of Carl Schmitt: Terror Liberal War and the Crisis of Global Order* (London: Routledge, 2007), pp. 242–58; Panu Minkkinen, "Hostility and Hospitality," *No Foundations: Journal of Extreme Legal Positivism* 4 (October 2007): 53–60.

Mother Earth

According to Schmitt, *nomos* is not something that we create by will (decisionism) or by reason (normativism) but something that grows naturally. The measures given by *nomos* are natural measures. This is not to say, however, that Schmitt's turn would have been a turn to Scholasticism and, hence, to traditional Catholicism. The natural measures that Schmitt has in mind are not measures of a divinely ruled cosmos, in which the human being participates through the highest part of his reason. Schmitt's natural measures are telluric rather than cosmological. They do not descend from heaven, but ascend from the earth. For Schmitt, this is related to the nature of man as a terrestrial being (*Landwesen*). In the beginning of *Land and Sea* (1942), Schmitt writes: "Man lives, moves and walks on the firmly grounded Earth. It is his standpoint and his base [*Boden*]. He derives his point of view from it, which is also to say that his impressions are determined by it and his world outlook is conditioned by it. Earth-born, developing on it, man derives not only his horizon from it, but also his poise, his movements, his figure and his height."⁸ Yet man is not a terrestrial among terrestrials for Schmitt. In *The Nomos of the Earth* (1950), he explains what kind of terrestrial man is: he is a cultivating terrestrial. It is through cultivation of land that man sows the seeds of the fundamental measures of his collective existence, the just measures of his order and orientation—that is to say, his *nomos*: "Every ontonomous [*ontonomie*] and ontologically just judgement derives from the land."⁹ All in all, Schmitt argues, there is no law without a connection to the earth: "Law is bound to the earth [*erdhaft*] and related to the earth."¹⁰ The earth is the origin of all justice (*Gerechtigkeit*). It is itself "infinitely just" (*allgerecht*).¹¹ This means that everything unrelated to the earth, everything uprooted and deterritorialized, is unjust. The name Schmitt gives to this unjustness is nihilism. To the extent that *nomos* signifies, according to Schmitt, the unity of order (*Ordnung*) and concrete location (*Ortung*), nihilism designates order that is fundamentally and definitively separated from such a

8. Carl Schmitt, *Land and Sea*, trans. Simona Draghici (Washington, DC: Plutarch Press, 1997), p. 1.

9. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003), p. 45.

10. *Ibid.*, p. 42.

11. *Ibid.*

location.¹² Rather than anarchy, such separation entails meaninglessness and disorientation (*Entortung*).

Yet although it is through cultivation that the fundamental measures of human orientation become apparent, Schmitt argues that the cultivating man does not create these measures. Rather, they are the outgrowth of a fruitful collaboration between mother earth and man. Through this collaboration the earth offers man the just measures of order and orientation. First, it offers them to man as a reward for working the land: “The fertile earth contains within herself, within the womb of her fecundity, an inner measure, because human toil and trouble, human planting and cultivation of the fruitful earth, is rewarded justly by her with growth and harvest.”¹³ Second, the earth offers its measures by manifesting them upon itself in the form of fixed boundaries: “Soil that is cleared and worked by human hands manifests firm lines, whereby definite divisions become apparent. Through the demarcation of fields, pastures, and forests, there lines are engraved and embedded. Through crop rotation and fallowing, they are even planted and nurtured. In these lines, the standards and rules of cultivation of the earth become discernible.”¹⁴ And third, the earth offers its measures to man by sustaining them above itself as a public sign of order: “The solid ground of the earth is delineated by fences, enclosures, boundaries, walls, houses, and other constructs. Then, the orders and orientation of human social life become apparent. Then, obviously, families, clans, tribes, estates, forms of ownership and human proximity, also forms of power and domination, become visible.”¹⁵

Of importance here is that the earth is capable of offering the measures of order and orientation to man because it has the inner capacity to be demarcated. It is precisely the demarcation of lines on the soil that marks the point where the authentic law emerges. Therefore, law can never be universal. It exists only in a particular place and consists of what is within its own boundaries: “True and authentic fundamental order [*nomos*] is based, at its essential core, on certain spatial limits and delimitations, on certain measures and a certain partitioning up of the earth.”¹⁶ For this

12. *Ibid.*, p. 66.

13. *Ibid.*, p. 42.

14. *Ibid.*

15. *Ibid.*

16. Schmitt, *Land and Sea*, pp. 37–38 (translation modified).

reason, Schmitt argues, the sea has no law.¹⁷ The sea has no law because it has no “character” in the original sense of the Greek word, *charassein*: to engrave, to scratch, to imprint.¹⁸ Although the riches of the sea (fishes, pearls, and other things) are won by the hard work of human labor, the sea does not give them off according to an inner measure of sowing and reaping. Moreover, no lasting lines can be engraved onto the surface of the sea: “Ships that sail across the sea leave no trace.”¹⁹ Finally, the sea cannot be delineated by fences, enclosures, walls, and houses. Therefore, the measures of order and orientation of human life do not show themselves on the open sea: “On the waves, there is nothing but waves.” On the sea there is no law but mere disorientation.²⁰ To be sure, Schmitt admits that the question concerning man’s proper element is not so simple, because man is “not a creature wholly conditioned by his medium [*Umwelt*].”²¹ In fact, man can go so far as to “change himself into a new form of his historical existence, in virtue of which he readjusts and reorganizes himself.”²² This does not imply, however, that Schmitt would be a relativist in his understanding of the elements. “Man is a terrestrial” means that he should also remain bound to the earth. From Schmitt’s perspective, there is something perverse in man’s “thrust seawards,”²³ not to mention in his thrust airward and even toward the element of fire, which are the more recent elements of human activity.²⁴ Only the element of earth can serve as the genuine foundation for the authentic order of *nomos*.

Land Appropriation

Yet the cultivation of land is not Schmitt’s final word as regards the appearance of the just order and orientation. According to him, even the nomads have their law (*nomos*), although they do not cultivate land. Moreover, this law is based on the very same primeval act as the law of the

17. Schmitt, *The Nomos of the Earth*, p. 43.

18. *Ibid.*

19. *Ibid.*, p. 42.

20. *Ibid.*, p. 43.

21. Schmitt, *Land and Sea*, p. 5.

22. *Ibid.*

23. *Ibid.*, p. 45.

24. “The invention of the airplane,” Schmitt writes, “marked the conquest of the third element, after those of land and sea”—and if “one thinks of the technology necessary for human prowess to manifest itself in the air space,” it seems that the “new element of human activity is fire.” *Ibid.*, pp. 57–58.

agricultural societies. This primeval act is the act of land appropriation (*Landnahme*).²⁵ Before the land can contain, manifest, and sustain law, it must be seized. It is seized either by settling unoccupied land or by conquering already inhabited lands. The appropriation of land is existentially the most fundamental event (*grundlegende Ereignis*) of human history.²⁶ It is the reproductive root of all human order and orientation: “Not only logically, but also historically, land-appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law.”²⁷ Schmitt’s philosophy of *nomos* is characterized by the “*Ur*-thinking” that had become very popular among German right-wing intellectuals between the wars—and it is precisely in the context of land appropriation that Schmitt employs the prefix *Ur* most frequently. Land appropriation is the primeval act (*Ur-Akt*) that founds all law as well as the primeval ground (*Urgrund*) in which all law is rooted. It is the primeval type (*Ur-Typus*) of constitutive legal processes as well as the primeval measure (*Ur-Maß*) from which all the subsequent measures derive. It is the primeval element (*Ur-Element*) and the original source (*Ursprung*) nourishing “everything promulgated and enacted thereafter as degrees and commands.”²⁸

With the shift of emphasis from the cultivation of land to its appropriation, the farmer, as a paradigmatic figure, is also displaced. Farmers are replaced by such warlords as the Biblical Joshua. Joshua, who “seized the whole land,”²⁹ is “a classic example.”³⁰ By expelling Ken’ites, Canaanites, and other peoples from their land, Joshua lays the foundation for order and orientation, and, through destruction and merciless slaughtering, founds *nomos*.³¹ In Schmitt’s view, even Heracles can serve as an

25. According to Schmitt, the nomads also appropriate their lands, although only provisionally. See Carl Schmitt, “*Nomos—Nahme—Name*,” appendix in *The Nomos of the Earth*, p. 341.

26. On appropriation as *Ereignis*, see Schmitt, *The Nomos of the Earth*, pp. 39, 45, 48, and 83.

27. Schmitt, *The Nomos of the Earth*, p. 48.

28. *Ibid.*, p. 48; see also pp. 47, 45 (translations modified).

29. *Ibid.*, p. 81.

30. Carl Schmitt, “Appropriation/Distribution/Production: An Attempt to Determine from *Nomos* the Basic Questions of Every Social and Economic Order,” appendix in *The Nomos of the Earth*, p. 329.

31. “So Joshua came suddenly upon them with all his people of war” and “smote them, until they left none remaining.” Joshua 11:7–8.

example here: “Heracles is the mythical foundation of order. Given that he ‘appropriated’ the cattle of the three-headed giant, he created law; the *Nahme*—the *nomos*—transformed power into law. This is the significance of the often cited Pindar fragment *nomos basileus*.”³² In other words, the true land-bound law (*nomos*) is based on Joshua’s conquest and Heracles’ theft rather than on a peaceful cultivation of land. It is based on a foundationless decision regarding expropriation—not on a fruitful collaboration between mother earth and man.

Does this mean that, after all, Schmitt smuggles his decisionism into his philosophy of *nomos*? Is appropriation a new “founding rupture” of a spatial order? Even more: Has Schmitt become a decisionist without the ethical moment, the moment of personal responsibility, inherent in his early theorizing? Is Schmitt’s *nomos* nothing but the arbitrary right of the stronger? Is Schmitt himself a twentieth-century Callicles? For it was precisely Callicles (Plato’s caricature of a Sophist) who first made use of a poem by Pindar on the myth of Heracles in order to define what is naturally just. According to Callicles, the true meaning of Pindar’s poem is the following: “Heracles drove off Geryon’s cattle, even though he hadn’t paid for them and Geryon hadn’t given them to him, on the ground that this is what’s just by nature [*dikaiou physei*] and that cattle and all the other possessions of those who are worse and inferior belong to the one who’s better and superior.”³³ Like Schmitt, Callicles argues that there is nothing wrong with Heracles’ theft and that, on the contrary, it is just by nature to expropriate whatever one is capable of expropriating. In *The Nomos of the Earth*, however, Schmitt accuses Callicles and the Sophists in general of the destruction of the Greek *nomos*, which originally was, in Schmitt’s view, bound and related to the earth.³⁴ This suggests that there must be a difference between these two positions. But how should we understand the difference between Callicles and Schmitt?

Unlike Callicles, Schmitt does not oppose natural violence to the existing *nomoi*: “Nature [*physis*] and law [*nomos*] are for the most part opposed to each other,” says Callicles in *Gorgias*.³⁵ Rather, in Schmitt’s view, such

32. Schmitt, “*Nomos—Nahme—Name*,” p. 342n19.

33. Plato *Gorgias* 484c. Translations of the Plato passages are from John M. Cooper, ed., *Plato: Complete Works* (Indianapolis, IN: Hackett Publishing Company, 1997).

34. In his (misguided) analysis of the etymological roots of the Greek *nomos*, Schmitt claims that originally it meant appropriation (*Nahme*). See Schmitt, “Appropriation,” p. 326.

35. Plato *Gorgias* 337d.

an opposition reveals that Callicles, like the Sophists in general, equates *nomos* with the enacted statutes (*Gesetze*), not with the act of appropriation itself. Hence, Schmitt's criticism concerns Callicles' mistaken understanding of the notion of *nomos*, not his overall attitude. Appropriating violence is *nomos*, not its antithesis: "In its original sense, *nomos* is precisely the full immediacy of a legal power not mediated by laws [*Gesetze*]." ³⁶ Moreover, we must take into account that, for Schmitt, mere appropriating violence ("passing acts of brute force" ³⁷) is not sufficient to found *nomos*: "Every seizure of land is not a *nomos*, although conversely, *nomos*, understood in our sense of the terms, always includes a land-based order and orientation." ³⁸ Finally, even if an act of appropriating violence founds a *nomos*, as it sometimes does, *nomos* means more than the mere act of appropriation. It is a "total concept," consisting of "concrete order and the concrete organization of a community," as Schmitt wrote in 1934. ³⁹ In *The Nomos of the Earth*, he defines it further: "*Nomos* is the immediate form in which the political and social order of a people becomes spatially visible." ⁴⁰ In other words, it is the spatially visible political and social order itself that constitutes the true *nomos* of a community.

Given especially this last definition of *nomos*, it is understandable that Schmitt rejects Callicles and turns to Aristotle. In the beginning of *Politics*, Aristotle indeed writes: "Justice is the order of political community" (*dikē politikēs koinōnias taxis estin*). ⁴¹ For some reason, however, Schmitt does not refer to this famous passage, or even to the passage where Aristotle equates *nomos* with order (*hê gar taxis nomos*), ⁴² although he otherwise relies on Aristotle in his effort to restore the original meaning of *nomos*. (According to Schmitt, something of the original link between order and orientation remains recognizable in Aristotle, since he understood the rule of *nomos* as the rule of medium-sized, well-distributed landed property.) ⁴³ This raises several questions again: Is Aristotle's well-known definition problematic for Schmitt after all? Does it connote what Schmitt calls the

36. Schmitt, *The Nomos of the Earth*, p. 73.

37. *Ibid.*, p. 82.

38. *Ibid.*, p. 80.

39. Schmitt, *Über die Drei Arten*, p. 55.

40. Schmitt, *The Nomos of the Earth*, p. 70.

41. Aristotle *Politics* 1253a39.

42. *Ibid.*, 1287a19.

43. Schmitt, *The Nomos of the Earth*, p. 68.

“normative power of the given,” an idea that he rejects?⁴⁴ And if it does, we may still wonder why Schmitt rejects the idea. Isn’t his notion of *nomos* (the immediate form in which the political and social order of a people becomes spatially visible) precisely a notion that affirms the normative power of the given? At least, the land is a given. What, then, is Schmitt’s position, the position from which it is simultaneously possible to reject the normative power of the given and to write: “We cling to the hope that we will find the normative order of the earth”?⁴⁵

The Visible

Schmitt is nowhere very clear as to how to distinguish the improper and the proper land-based order. Yet, we already have some clues. Unlike decisionism, which focuses on conscious personal decision, “concrete order thinking” emphasizes the concrete institutional order of a community. From this perspective, *nomos* is not a proper *nomos* until it has become a concrete institutional order. But how does the order become institutionalized? At first, we may assume it is institutionalized by those very “fences, enclosures, boundaries, and walls” in which the orders and orientations of human life become visible.⁴⁶ Schmitt holds that there is no *nomos* without such enclosures: “Every *nomos* consists of what is within its own bounds.”⁴⁷ But it is highly probable that the same rule that applies to the notion of appropriation applies to Schmitt’s notion of enclosure as well: although every *nomos* implies an enclosure, every enclosure is not necessarily a *nomos*. Something more is needed, and if we examine Schmitt’s argumentation carefully, we will find two additional notions that can be considered significant.

The first notion is visibility (*Sichtbarkeit*). At the beginning of the article, we saw that when the solid ground of the earth was delineated by fences, walls, houses, and other human artefacts, the orders and orientations of social life became apparent (*offenkundig*) and the forms of power and domination visible (*sichtbar*). It was also established that Schmitt defined *nomos* as the immediate form in which the political and social

44. *Ibid.*, p. 73.

45. *Ibid.*, p. 49.

46. *Ibid.*, p. 42.

47. *Ibid.*, p. 75. Schmitt quotes here approvingly the words of Jost Trier, a distinguished German philologist and *Altgermanist*. Like Schmitt, Trier joined the NSDAP in 1933.

order of a people becomes spatially visible. In fact, visibility is one of the very basic characteristics of *nomos*, stressed time and again by Schmitt: “The *nomos* . . . becomes visible [*sichtbar*] in the appropriation of land and in the founding of a city or a colony.”⁴⁸ Moreover, if we take into account the central role of visibility in Schmitt’s political theory before his turn to institutionalism, as well as the fact that the theme is by no means exclusive to decisionism, we may presume that visibility also figures as a technical term in his late work. In *Roman Catholicism and Political Form* (1921), Schmitt had argued that the rationality and authority of the Roman Church resides in its capacity to give Christianity form as a visible (*sichtbar*) institution.⁴⁹ In *Constitutional Theory* (1928), he transposed this thesis onto state theory and asserted that visibility is the precondition for the legitimacy of the power of the state, if not for the very existence of the state, linking the notion of visibility with that of representation, as he had done already in the *Roman Catholicism*: “There is . . . no state without representation.”⁵⁰

There are, however, reasons to doubt that visibility would function as a technical term in Schmitt’s late work. On the one hand, Schmitt uses the notion in a non-technical sense of something simply becoming apparent.⁵¹ On the other hand, and more importantly, at this stage he no longer links visibility with the notion of representation. The whole notion is conspicuously absent from Schmitt’s writings after his turn to “concrete order thinking.” He rejects it as early as in *State, Movement, People* (1933), that is to say, in the very first work that testifies to this turn. There, Schmitt argues that the representative model of the Roman Church cannot be applied in the National Socialist state, since representation presupposes an unsurpassable gap between the leader and his following: “Essential in this image is that the shepherd [Pope] remains absolutely transcendent to the flock [Christians].”⁵² In the National Socialist state, such an unsurpassable gap is an impossibility. The National Socialist *Führer* neither transcends the German people nor represents them. The National Socialist leader is

48. *Ibid.*, p. 70.

49. Carl Schmitt, *Roman Catholicism and Political Form*, trans. G. L. Ulmen (Westport, CT: Greenwood Press, 1996), p. 32.

50. Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC: Duke UP, 2008), p. 241.

51. See, e.g., Schmitt, *The Nomos of the Earth*, p. 66.

52. Schmitt, *State, Movement, People*, p. 47.

a concept of the “immediately present and of a real presence.”⁵³ In the leader, the *nomos* of the German people becomes immediately knowable without representation.⁵⁴ Hence, the question concerning the proper and the improper land-bound order still remains unanswered. If a spatial enclosure and the visibility of “forms of power and domination” are not enough to guarantee that we have an authentic *nomos* at hand, something must presumably be added into the picture. What is it that constitutes a land-bound order as a just order?

The Sacred

For Schmitt, the most essential constituent of the just order relates to the justness of its origin (*Herkunft*).⁵⁵ It is the original appropriation that must be recognized as just. Without such recognition, *nomos* “would be nothing more than the arbitrary right of the stronger.”⁵⁶ What, then, makes Joshua’s conquest or Heracles’ theft a founding event of genuine *nomos*? On what grounds may appropriation be recognized as legitimate? For the medieval jurists and theologians, for example, the source of the legitimacy of appropriation was usually agreement.⁵⁷ This was also the opinion of many early modern theorists of natural law: “There is no precept of natural law to be discovered by which men are enjoined to make an appropriation of things, as that each man shall be allotted his particular portion, divided from the shares of others.”⁵⁸ It is naturally just to use things, they

53. *Ibid.*, p. 48.

54. It is true that in *State, Movement, People* Schmitt does not use the word *nomos*, although the idea of law emanating from a pre-existing order (the order of “race”) is clearly present. The term began to dominate his legal theorization in the following years, starting with the publication of *Über die Drei Arten* (1934). According to Wolfgang Palaver, Schmitt mentions *nomos* for the first time in a lecture delivered October 3, 1933. He concluded the lecture with the remark that Hitler’s will is the German people’s *nomos*. Palaver, “Carl Schmitt on *Nomos* and Space,” p. 106n5. In fact, Schmitt had used the notion of *nomos* already in *Constitutional Theory* but without defining it. There he refers to J. Goldschmidt’s word “nomocracy,” which he employs in his critique of the legislative power. In Schmitt’s opinion, what is lacking in such a word is precisely *nomos*. Schmitt, *Constitutional Theory*, p. 184.

55. Schmitt, *The Nomos of the Earth*, p. 82.

56. *Ibid.* p. 73.

57. See, e.g., Thomas Aquinas, *Summa Theologiae* (London: Blackfriars, 1968), 2a 2ae, q. 66. a. 2.

58. Samuel Pufendorf, *Of the Law of Nature and Nations* (Oxford: Lichfield, 1703), bk. 4, ch. 4, §4. See also Hugo Grotius, *The Freedom of the Seas* (New York: Oxford UP, 1916), ch. 5.

argued, but appropriation and ownership rest on the foundation of mutual agreement. John Locke famously repudiated this view, asserting that appropriation is indeed a matter of natural justice: although God had given the earth to the children of men in common, He allotted man also to work and hence, to fence the area he has cultivated as his own.⁵⁹ Yet Schmitt does not endorse either of these views. The medieval theory of agreement is too liberal for his taste. Moreover, although there is some resemblance between Schmitt's reflections on the cultivation of land as a constituent of *nomos* and Locke's idea of work as the source of ownership (and hence, of civilized society), the legitimacy of appropriation in Schmitt's theory does not lie in "human toil and trouble." Where, then, does it lie? Schmitt writes: "A land-appropriation is constituted only if the appropriator is able to give the land a name."⁶⁰

What name? "What then is the name of the law?" Schmitt himself asks. "Is it Jean-Jacques or Napoleon?"⁶¹ Is it Amerigo Vespucci, the cartographer after whom the New World was named America? These are not the names that Schmitt has in mind, and here we encounter the second and the most important element of justification: *the name has to be sacred*. For an appropriation to gain true legitimacy, it has to be recognized as a sacred event: "We are concerned," Schmitt writes, "with the formative, even festive processes of many land-appropriations that are able to make *Nahme* a sacred act."⁶² This, I dare to say, is Schmitt's final word in his philosophy of *nomos*. *Nomos* is not a wall, but it can be described as a wall, "because, like a wall, it, too, is based on sacred locations."⁶³ Sacredness is the true criterion for the existence of a genuine *nomos*: "Something walled or enclosed, or a sacred place"—all of them "are contained in the word *nomos*."⁶⁴ This is also the critical point, at which the opposition between

59. See John Locke, *Two Treatises of Government* (Cambridge: Cambridge UP, 1960), bk. 2, ch. 5.

60. Schmitt, "Nomos—Nahme—Name," p. 348.

61. *Ibid.*, p. 349.

62. *Ibid.*, p. 348.

63. Schmitt, *The Nomos of the Earth*, p. 70.

64. *Ibid.*, p. 78. Hence, contrary to Arturo Leyte's claim ("A Note on The Nomos of the Earth," *South Atlantic Quarterly* 104 [2005]: 292), according to which Schmitt "does not realize that surrounding *nomos*, as well as polis but not the modern state, is a sense of the sacred," I argue that Schmitt realizes very well that *nomos* is surrounded by such a sense: the sense of the sacred is the very reason why he wants to restore the ancient meaning of *nomos*. In this respect, I agree with Carlos A. Otero: "The *nomos* can be thought of only as sacred." Otero, "From the *Nomos* to the Meridian," p. 383.

land-based orientation (*Ortung*) and sea-based disorientation (*Entortung*) becomes visible. Even though it is possible to appropriate the sea, on the maritime expanse there are no “consecrated sites, no sacred locations,”⁶⁵ which is to say, no sacred *tout court*.

Thus, a land-based order becomes legitimate only if land appropriation, the drawing of boundaries, is conceived as a sacred act, an event that creates the sacred space. *This* is the reason why Joshua represents a classic example for Schmitt. Joshua conquered the lands of Canaan, demarcated them with the boundary lines, and allocated them to the twelve tribes, but the resulting order became a genuine *nomos* only because the appropriation was based on God’s promise. Schmitt quotes from Bible: “Joshua took the whole land, according to all that the Lord said onto Moses.”⁶⁶ It is God’s promise that makes Joshua a classic example—and the word “classic” is not employed by Schmitt without a moral tone.⁶⁷ Indeed, according to Schmitt, a political and social order that does not have divinity on its side is necessarily “hollow and already dead.”⁶⁸ This is the basic reason why he quotes the Heraclitus fragment (DK 44) in *The Nomos of the Earth*: “All human laws are nourished by a single divine law.”⁶⁹ It is such nourishment that endows men with order and orientation, not only in antiquity but on the eve of modernity as well: “The last great, heroic act of the European peoples—the land-appropriation of a new world and of an unknown continent—was not accomplished by the heroes of the *conquista* as a mission of the *jus commercii*, but in the name of their Christian redeemer and his holy mother Mary.”⁷⁰ Appropriation creates an order endowed with legitimacy, insofar as it takes place or is *ex post facto*

65. Schmitt, *The Nomos of the Earth*, p. 43.

66. *Ibid.*, p. 81.

67. Nowadays, Schmitt’s profound anti-Semitism has become evident. See, e.g., Raphael Gross, *Carl Schmitt and the Jews* (Madison: Univ. of Wisconsin Press, 2007). Why, then, does Schmitt choose Joshua as a classic example of appropriation? The reason is that for Schmitt Joshua represents Judaism that is still bound to the land. It is the Diaspora Judaism that he despises—both ancient and modern. According to Schmitt, Philo of Alexandria was the first Hebrew Sophist because he identified *nomos* with the post-exilic notion of law detached from land and appropriation. See Schmitt, “*Nomos—Nahme—Name*,” pp. 343–44.

68. Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes* (Westport, CT: Greenwood Press, 1996), p. 61.

69. See Schmitt, *The Nomos of the Earth*, pp. 70–71.

70. Schmitt, “*Nomos—Nahme—Name*,” p. 349.

sanctified in a name that cannot be put into question.⁷¹ Such a name can only be a sacred name and, more particularly, a name that can be localized in a concrete space.⁷²

This also explains why Schmitt refuses to call modern territorial states within fixed boundaries genuine land-bound orders. Even though the modern state realizes the principle *cujus regio, ejus religio* (“whose region, his religion”), thus localizing religion in space, metamorphoses in the sphere of the Christian religion unraveled all the unifying effects of this localization. With the rise of Protestantism, religion was transformed into a matter of conscience of a private individual, which paved the way for the withdrawal of the religious from politics. Hence, although religion becomes localized in the modern state, it is simultaneously delocalized since it is privatized, individualized, and depoliticized. This is also the reason why Schmitt argues that there is an unbridgeable gap between the heroes of the *conquista* and the modern state. The heroes of the *conquista* belonged to a spiritual world of a medieval community—and the distance that separates that world from the world of the state is enormous: only the medieval community recognized divinity in public life, discernible for instance in the divine right of kings as well as the divine right of estates to resist an unlawful ruler.⁷³ In the modern state, there is no place for such divine rights. With this displacement, the “original and natural unity of politics and religion” is necessarily destroyed.⁷⁴ In the modern state, the immemorial alliance of religion and power has come to an end. It is for this

71. In Joshua’s case the legitimization was clearly *ex post facto*, given the fact that the passage of Genesis where God promises the land to Abraham’s descendants was written centuries after Joshua’s conquest. On the other hand, nowadays it is generally held that Israelites established their presence in Canaan by a piecemeal process rather than by a conquest. Thus, Joshua’s very conquest (this “classic example”) is a mere myth representing a late reconstruction of Israel’s early history, intended to illustrate certain post-exilic political and theological aspirations. See, e.g., John Strange, “The Book of Joshua: Origin and Dating,” *Scandinavian Journal of the Old Testament* 16 (2002): 49–50.

72. Undoubtedly, for Schmitt, the most favorite name for a sacred space was Rome: “*Raum* and *Rom* are the same word.” Carl Schmitt, *Ex Captivitate Salus* (Cologne: Greven Verlag, 1950), p. 90. All in all, space is not a geographical notion for Schmitt but rather a mythopolitical one. In the foreword to *The Nomos of the Earth*, p. 38, Schmitt refers to Johann Jacob Bachofen—whose studies in mythology had become very popular in Germany during the interwar period—and writes: “The ties to mythological sources of jurisprudential thinking are much deeper than those of geography.”

73. Schmitt, *The Leviathan*, p. 46.

74. *Ibid.*, p. 10.

reason that Schmitt calls the modern state a machine, or the “first modern mechanism in a grand style.”⁷⁵ Its truth and justice do not reside anywhere except for “its technical perfection.”⁷⁶ Hence, although the modern state is an enclosed territorial order, it is not an order that could endow men with orientation, because its public personifications and laws lack divine legitimacy. In the modern state, to use Sophocles’ words, “laws of the land” (*nomous chthonos*) are no longer woven together “with oath-bound justice of the gods.”⁷⁷ Without such weaving, there is no law. This, I believe, is Schmitt’s final word on *nomos*, in that it alone explains why Schmitt considers our contemporary situation “completely deteriorated [*zersetzt*].”⁷⁸

Volksnomostheologie

In his article “*Nomos—Nahme—Name*,” Schmitt complains about the reception of *The Nomos of the Earth* by a German specialist in international law. According to Schmitt, this specialist radically misunderstood his reference to the Marian image of the *conquista*. He scorned it as a “Christian trimming.”⁷⁹ But Schmitt does not explain how this image should be understood. If my analysis is correct, Maria should be understood as a historical example of a sacred name. Maria is not a trimming, nor is she mentioned because she is a Christian figure. Maria is a name that sanctifies appropriation and the order that follows it. Every genuine order of *nomos* presupposes sanctification, and all genuine sanctification concerns the question of origins. And, precisely due to its sacredness, *nomos* is capable of endowing men with orientation. The sacred opens up a space, a meaningful world, because it localizes and hence fixes a perspective that is beyond subjective vacillations.⁸⁰ The sacred fixation (*sakrale Ortung*), thus, makes an order normative. Yet, for Schmitt, no fixation is absolute or universal. *Nomos* is not only spatially localized but also historically

75. *Ibid.*, p. 42.

76. *Ibid.*, p. 45. In *The Leviathan*, p. 15n12, Schmitt argues that one of the worst consequences of such “technologizing of the state” is that it makes “superfluous all distinctions among Jews, heathens, and Christians,” culminating in the “realms of total neutrality.”

77. Sophocles *Antigone* 365–70.

78. Schmitt, *The Nomos of the Earth*, p. 71.

79. Schmitt, “*Nomos—Nahme—Name*,” p. 349.

80. “*Raum* is not a closed circle nor a domain but a *world*.” Carl Schmitt, “*Raum und Rom: Zur Phonetik des Wortes Raum*,” in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (Berlin: Duncker & Humblot, 1995), p. 492.

evolving and developing, to the extent that every *nomos* grows naturally but also dies naturally. At some point, every *nomos* withers away, when it loses its vitality based on its ties to a divine source. In Schmitt's view, the withering based on the loosening of ties with the divine means a crisis of order and orientation. In his view, however, it does not mean nothingness. A new *nomos* can also emerge from the depth of the crisis through fierce battles (*Ringgen*) of the old and new forces. Precisely in such battles, understood as great historical events, "right measures and meaningful proportions" (*nomos*) eventually originate.⁸¹

That said, it is obvious that this article is a contribution to the (in)famous "theological twist" in Schmitt studies. However, my intention is not to argue that Schmitt was a traditional Catholic, nor that his Catholicism was a form of Christianity that rejects its roots in Judaism in favor of pagan foundations. Rather, following Raphael Gross,⁸² I argue that there is a close link between Schmitt's notion of *nomos* and the German *Volksnomos-theologie* developed by such ultra-nationalist (and eminently antisemitic) Lutheran theologians as Wilhelm Stapel, Emanuel Hirsch, Friedrich Gogarten, and Paul Althaus. Hirsch was a distinguished Lutheran church historian, who during the Nazi regime not only joined the party but entered the auxiliary of the SS as a supporting member. He had reviewed approvingly three books by Schmitt in 1923 and 1924, yet indicated that Schmitt had taken the wrong road by ignoring the notion of *Gemeinschaft* as the point of intersection between theology and constitutional history.⁸³ In his own theology of *Volksnomos*, Hirsch argued that every community stands on a threefold foundation of God-given *horos*, *nomos*, and *logos*, meaning uncrossable boundary (*horos*), conditions of order, life, and thought (*nomos*), and a "self-expressive" living spirit (*logos*). Moreover, he—like his Lutheran colleagues—saw God's hand in the elevation of Hitler to power, and believed that the revolution introduced by National Socialism represented a proper reintroduction of *horos*, *nomos*, and *logos* to German life. The Nazis, Hirsch argued, are conscious of divine boundaries not

81. Carl Schmitt, "The New *Nomos* of the Earth," appendix in *The Nomos of the Earth*, p. 355. Schmitt repeats here the concluding words of *Land and Sea*, p. 59.

82. See Gross, *Carl Schmitt*, pp. 51–59.

83. See John Stroup, "Political Theology and Secularization Theory in Germany, 1918–1939: Emanuel Hirsch as a Phenomenon of his Time," *Harvard Theology Review* 80, no. 3 (1987): 338–39.

created by artificial reason but born in a “holy storm” that had come over the Germans.⁸⁴

As far as I know, however, Schmitt does not mention Hirsch in his studies on the notion of *nomos*. Yet, he mentions his and Hirsch’s mutual friend Stapel in *The Nomos of the Earth*: “I have great respect for the efforts of Wilhelm Stapel and Hans Bogner, who have given *nomos* the meaning *Lebensgesetz*.”⁸⁵ Indeed, in his book *Der Christliche Staatsmann* (1932), for instance, Stapel (a publicist, an editor of *Deutsches Volkstum*, and also a supporter of the Nazi regime) had defined *Lebensgesetz-nomos* as follows: “Every *Volk* is hold together by a law of life, which corresponding to its nature defines its inner and outer form, its cult, its ethos, its constitution, and its law: by its *Nomos*.”⁸⁶ But it was Bogner (Stapel’s friend and a Hellenist, also mentioned by Schmitt) who had first identified *nomos* with *Lebensgesetz*, that is, with the notion that had become very popular among the right-wing nationalist intellectuals emphasizing the *völkisch* roots of law during the 1920s.⁸⁷ (Hence, Bogner’s innovation was not that he translated *nomos* as *Lebensgesetz* but that he identified the already existing idea of the *völkisch Lebensgesetz* with the Greek *nomos*.) For the Greeks, Bogner argues, *nomos* was that divine power that constituted and maintained the order of life of the *polis*. It expressed the unity of Greek spirit and race, determining their politics and war, their mores, language, and religion, at least before it became “deteriorated” (*zersetzt*) by the Sophists!⁸⁸ Bogner’s definition of *nomos*, especially as it was presented in his book *Die verwirklichte Demokratie: Die Lehren der Antike* (1930), thus paved the way for the use of the notion in the ultra-nationalist Lutheran theology, which previously had become known as the theology of the “orders of creation”

84. See Robert P. Ericksen, *Theologians under Hitler: Gerhard Kittel, Paul Althaus and Emanuel Hirsch* (New Haven, CT: Yale UP, 1985), esp. pp. 151–53.

85. Schmitt, *The Nomos of the Earth*, p. 70n10. As far as I know, Bogner and Stapel (the editor of Bogner’s books) never published anything together: Stapel just adapted Bogner’s definition of *nomos* in his own writings.

86. Wilhelm Stapel, *Der Christliche Staatsmann: Eine Theologie des Nationalismus* (Hamburg: Hanseatische Verlagsanstalt, 1932), p. 174. Quoted in Wolfgang Tilgner, *Volksnomostheologie und Schöpfungsglaube* (Göttingen: Vandenhoeck & Ruprecht, 1966), p. 115.

87. In Nazi Germany, *Lebensgesetz* became increasingly popular notion and it was understood primarily in racial terms.

88. Hans Bogner, *Die verwirklichte Demokratie: Die Lehren der Antike* (Hamburg: Hanseatische Verlagsanstalt, 1930). See also Tilgner, *Volksnomostheologie*, p. 114; Gross, *Carl Schmitt*, p. 55.

(*Shöpfungsordnungen*) and which now wanted to give the idea of the *Volk* as a God-given entity a more “refined” intellectual foundation.⁸⁹ It also became the intellectual foundation for Schmitt’s philosophy of *nomos* conceived as a divinely sanctified law of growth.

To be sure, Schmitt also criticized Stapel and Bogner, but it is merely the term *Lebensgesetz* that is problematic for him, not the basic meaning they give to *nomos*. The reason why Schmitt rejects the notion of *Lebensgesetz* has to do with a linguistic degeneration of the terms *Leben* and *Gesetz*, not with the idea it implies (law’s inseparability from life): *Leben* has become a biological term, excluding other (especially spiritual) aspects of life, whereas *Gesetz* expresses only the positivistic artifice of what is enacted, not what grows naturally.⁹⁰ But it is also true that Schmitt’s *nomos* cannot be reduced to the *Volksnomostheologie*. Although the advocates of the *Volksnomostheologie* similarly emphasized crisis, conflict, and battle at the foundation of the development of *nomos*, unlike Schmitt they did not pay attention to the “original” event of land appropriation. We cannot find any interest in the thinking of “elemental orders” in their writings either. Still, Schmitt’s mythopolitics of *nomos* would be quite incomprehensible without taking into account its engagement with the Lutheran *Volksnomostheologie*, the theology that found the “primeval powers” (*Ursprungsmächte*) of human existence in blood, soil, and the fate of the nation.⁹¹

Concluding Remarks on the Concept of Nomos

If we rely on Martin Ostwald’s studies of the Greek law,⁹² there is little evidence that the Sophistic distinction between *physis* and *nomos* would

89. On the *Volksnomostheologie*, the theology of the “order of creation,” and their historical background, see Tilgner, *Volksnomostheologie*. One of the basic ideas of the theology of the “orders of creation” was that God manifests himself first in nature and history and only secondarily in the gospel. Especially such natural-historical entities as *Volk* and race are expressions of God’s will, and, therefore, to act against such holy entities is sin—including universalistic aspirations and the mixing of races. See also Hans Tiefel, “The German Lutheran Church and the Rise of National Socialism,” *Church History* 41 (1972): 326–36.

90. Schmitt, *The Nomos of the Earth*, p. 70n10.

91. See Tiefel, “The German Lutheran Church,” p. 332, quoting Gogarten.

92. Martin Ostwald, “Ancient Greek Ideas of Law,” in Philip P. Wiener, ed., *Dictionary of the History of Ideas*, vol. 2 (New York: Charles Scribner’s Sons, 1973–74), pp. 674–84; Martin Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford: Clarendon Press, 1969).

have had a great impact on the process that resulted in the conception of *nomos* as a written statute. All in all, *nomos* played no major role in the Greek language of law before the fifth century, although it otherwise was a common word, usually designating a way of life. Before Solon, the two most common terms for law were *themis* and *dike*. They were both much more Schmittian than *nomos* ever was. They both designated more than merely a set of legal rules by which right and wrong were determined; rather, they formed a part of a social order that viewed them as having existed from time immemorial and believed that they would continue to exist without change, since the permanence of the order is guaranteed by the gods.⁹³ Hence, it was not the land-bound *nomos*, as Schmitt argues,⁹⁴ but *themis* and *dike* that were replaced by *thesmos*, the term designating law in the Solonian legislation. According to Schmitt, moreover, Solon's *thesmoi* were later called *nomoi*.⁹⁵ This is true, but what Schmitt does not notice is that *thesmos* as *nomos* no longer had the same meaning that it had had in the Solonian legislation. Originally, *thesmos* had connotations that could be associated with *themis* and *dike*: although Solon's *thesmoi* were written, writing was rather an accidental than an essential attribute for them. Furthermore, although *thesmos* was not part of a universal order, was never personified, and was always thought of as having had a beginning in human time, it also meant institutional order. When *nomos* became the technical term for law, all these connotations were displaced.

According to Ostwald, the last confirmed use of *thesmos* as a technical term for law in Athens is the prescription of a reenactment of Draco's law against tyranny in 511, reported by Aristotle.⁹⁶ During the following decades, *nomos* became the technical term for law, designating now a written statute and nothing more. In other words, the deployment of *nomos*

93. According to Ostwald, *themis* (deriving from a stem meaning "place" and "establish") is the wider concept of the two and defines those aspects of the social structure that give order and regularity to the whole, whereas *dike* (whose etymology links it to a stem meaning "show" and "point in a given direction") usually describes the place assigned to individuals within human society. Ostwald, "Ancient Greek Ideas of Law," p. 675. Schmitt's *Ortung*, a key word in his philosophy of *nomos*, contains both of these significations.

94. Schmitt, *The Nomos of the Earth*, p. 75.

95. *Ibid.*

96. "There are the ordinances [*thesmia*] and ancestral principles of Athens: if any person rise in insurrection in order to govern tyrannically, or if any person assists in establishing the tyranny, he himself and his family shall be disfranchised." Aristotle, *Athenian Constitution*, in *Aristotle in Twenty-Three Volumes*, vol. 20 (London: Heinemann, 1971), 16.10.

occurs simultaneously with the dissolution of the conception that law signifies the institutional order of *polis*. Therefore, although Schmitt notices the change in the meaning of law during the classical period, this change does not take place within the concept of *nomos*, as he claims. The change took place when the Greeks replaced *themis*, first, by *thesmos* and, later on, by *nomos*. Moreover, in Schmitt's view, the change in the meaning of *nomos* occurred as a consequence of the dissolution of *polis*,⁹⁷ but it is equally possible to argue that it was a precondition for the emergence of the classical *polis*, at least if that is how we understand the democratic Athens. The emergence of *nomos* as equivalent to law, designating written statute, coincides, on this view, with the emergence of Athenian democracy. It was democracy that saw it necessary to distinguish law from the divinely legitimized order of things. In that respect, even the Solonian *thesmos* appeared as non-democratic, since it was given from above and excluded the notion of popular consent as its basis of legitimacy.

Hence, if we accept Ostwald's analyses concerning the situation in which *nomos* became the substitute for *thesmos*, we will recognize that a much more important single factor than the Sophistic distinction between *nomos* and *physis* or the dissolution of the *polis* was the appearance of a democratic constitution. The positivist interpretation of law was the result of a deliberate policy of democratic Athens.⁹⁸ In Schmitt's estimation, such an interpretation, prevalent again today, testifies to a state of complete deterioration, but, at the same time, we must remember that it also testifies to the situation in which democracy has become the insurmountable horizon. In such a situation, law cannot emanate from any other source than from the will of the people, as Schmitt himself wrote in *Constitutional Theory*. If we follow Schmitt, however, the will of the people has to be understood in terms of what he calls secularization: the will of the people in democracy is the exact equivalent to the will of God in theistic theology. But today the will of the people is no longer a secularized theological notion; it has ceased to be a substitute for God's will. There is nothing divine in people's will, not even an imitation of the divine. To use Schmitt's words, it is the "sum of private opinions of each individual."⁹⁹

97. Schmitt, *The Nomos of the Earth*, p. 75.

98. The first attested use of *nomos* in the sense of statute is in Aeschylus's *Suppliques* (387–91), first performed in 464 BC. See Ostwald, "Ancient Greek Ideas of Law," p. 682.

99. Carl Schmitt, "The Liberal Rule of Law," in Arthur J. Jacobson and Bernhard Schlink, eds., *Weimar: A Jurisprudence in Crisis* (Berkeley: Univ. of California Press, 2000), p. 294.

This means that law has become thoroughly profane as well, a mere tool “devoid of all sacredness of content,” as Max Weber once said of modern law.¹⁰⁰ Schmitt experienced a “feeling of emptiness” before such law,¹⁰¹ and this was surely one of the reasons why he sought to “restore to the word *nomos* its energy and majesty.”¹⁰² In today’s culture, where the feeling of emptiness is cured by other and perhaps less majestic forces, such a pursuit is but an anathema.

100. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, trans. Ephraim Fischhoff et al. (Berkeley: Univ. of California Press, 1978), 2:895.

101. Schmitt, “The Liberal Rule of Law,” p. 295.

102. Schmitt, *The Nomos of the Earth*, p. 67.

From the Concept of the Political to the Event of Politics

Michael Marder

“From the concept of the political to the event of politics”: as always, the title is a promise and a contract. In keeping with this titular undertaking, which outlines a certain itinerary or trajectory, the reader might expect to be guided from the abstract sterility of the concept to the concrete level of political events as they unfold in history, from a higher to a lower level of analysis, from the general to the singular, from the speculative (in the Hegelian sense) to the positively demonstrable.¹ Right from the outset, let us be clear on the terms of the contract by noting that these expectations will be frustrated for three reasons. First, the concept of the political in Schmitt is neither sterile nor abstract, given that it is existentially embodied and lived in a determinate enemy/friend opposition. Second, the meaning of the event diverges from the colloquial sense of a mere historical occurrence and hinges on the thinking of *Ereignis* and *événement*—the event of appropriation and expropriation in Heidegger and Derrida. Third, there is, strictly speaking, no transition from one to the other, but only an eventalization of the concept itself, a structural opening of the concept onto the event, a premonition of the ungraspable and the extra-conceptual in the concept that remains “of the political” only to the extent that it is not identical to itself, as Adorno might put it. It is doubtful, then, whether this

1. On the historical background of the much debated distinction between politics and “the political,” see Kari Palonen, “Politics or the Political? An Historical Perspective on a Contemporary Non-Debate,” *European Political Science* 6 (2007): 69–78. I concur with Palonen that the abstract privileging of the political “provides the scholar with an excuse to retain a pro-political attitude while remaining disinterested in the actions of politicians” (p. 78). This disengagement, however, does not mark Schmitt’s political philosophy discussed in the article.

presumed transition would ever leave its point of departure, or whether the emergence of the event in the concept would supplant the latter from the inside. If the second alternative applies, then the destination of this movement will have been already included in its point of departure in the guise of the concept of the political that does not ideally coincide with itself but anticipates its internal disarticulation by the event.

A Philosophical Primer:

Snapshots of the Event in Heidegger and Derrida

Without denying the complexity and the heterogeneity of the contemporary philosophies of the event, I propose to map them on the axis running from appropriation to expropriation. The paradigm cases for the two extremes of this continuum are Martin Heidegger and Jacques Derrida, who, largely, fuel the current interest in the notion of the event. Most emblematically, Heidegger's second *magnum opus*, *Beiträge zur Philosophie (Vom Ereignis)*, translated as *Contributions to Philosophy (From Enowning)*, both thematizes and traces its own sources back to the event (*Ereignis*). Heidegger breaks the German word for the event into *Er-ignis* only to supplement its strict etymology, its derivation from *eräugen* ("to bring into view or come into view"²), with the semantic (though not etymological) sense of that which is one's own, *eigen*.³ Henceforth, the event will carry ownness within itself and will elliptically designate the event of appropriation. There are no significant contributions to philosophy that do not proceed from this event, which appropriates the first, essentially Greek philosophical origin born in the thought of the pre-Socratics, Plato, or Aristotle and, at the same time, brings into view the second origin, where conceptual philosophy reverts into "inceptual thinking," which, alone, is in the position to encounter the first beginning.⁴

In *Being and Time*, the phenomenological dimension of the event of appropriation, of "bringing into view" and, thereby, providing a non-transcendental condition of possibility for phenomenality, is interpretation

2. Richard Polt, *The Emergency of Being: On Heidegger's Contributions to Philosophy* (Ithaca, NY: Cornell UP, 2006), p. 73.

3. "...the *er-* in *Ereignis* has the function of stressing and putting forth the movement of *eigenen* in *-ignis*." Parvis Emad and Kenneth Maly, "Translators' Foreword," in Martin Heidegger, *Contributions to Philosophy (From Enowning)*, trans. Parvis Emad and Kenneth Maly (Bloomington: Indiana UP, 1999), p. xx. See also Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford UP, 1999), p. 117.

4. Heidegger, *Contributions to Philosophy*, p. 40.

(*Auslegung*), which dispenses to the faculty of understanding what is its own, since “in it the understanding appropriates understandingly that which is understood by it.”⁵ What this means is that, although phenomena, such as sights, sounds, and so forth, are given to us already imbued with meaning, the initial pre-interpretation is incomplete without the appropriative grasp of understanding that engages in the hermeneutics of the given and draws out what is implicit in it. Heidegger further recognizes that, more often than not in everyday life, the initial pre-understanding does not pass into an explicit appropriative interpretation and, therefore, does not give rise to the event. His code word for the inauthentic arrest of the phenomenological hermeneutic is *Gerede*, idle talk, which “is the possibility of understanding everything without previously making the thing one’s own.”⁶ In the public world of “the they” (*das Man*), knowledge circulates like an empty rumor that is on everyone’s lips but belongs to no one in particular. And it is this inauthenticity of *Gerede* that becomes one of the sites wherein deconstruction sets itself to work as the inversion of *Ereignis* into the event of *expropriation*, the displacement of the very propriety of the proper, and the inflection of appropriation with the improper and the inappropriable.

Derrida’s argument advances in a sequence of carefully planned steps. In order to prepare the scene for the inversion of the Heideggerian event, he demonstrates that the most proper is, at the same time, the most singular, idiomatic, and, therefore, necessarily inappropriable, abyssal. *Ereignis* is, thus, consigned to the abyss of singularity it strives toward: “It is therefore in the abyss of the proper [*dans l’abîme du propre*] that we are going to try to recognize the impossible idiom of the signature.”⁷ *Ereignis* in abyss (*Ereignis en abîme*) seduces with “the allure of the inappropriable event [*l’allure d’un événement inappropriable*]⁸ that indefinitely defers the situation, in which one would find oneself in absolute proximity to oneself, the situation every metaphysics of presence counts upon.⁹ The paradox is that the event of appropriation is internally expropriated by its

5. Martin Heidegger, *Sein und Zeit* (Tübingen: Verlag, 1993), p. 148.

6. *Ibid.*, p. 169.

7. Jacques Derrida, *Signésponge/Signsponge*, trans. Richard Rand (New York: Columbia UP, 1984), p. 28.

8. *Ibid.*, p. 102.

9. Thus, in Jacques Derrida’s *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore: Johns Hopkins UP, 1997), the property of *representamen* “is not to be *proper* [*propre*], that is to say absolutely *proximate* to itself (*prope, proprius*). The *represented* is always already a *representamen*” (p. 50). See also Derrida’s “White Mythology,” in

most extreme instantiation: by the absolutely proper, singular, and idiomatic (hence, inappropriate) “thing.”

Although appropriation and expropriation are not bound together by a dialectical logic of the antithetical co-belonging, the latter hypostatizes a particular moment of the former. In and of itself, Heidegger’s *Ereignis* does not grasp something definitively present but performatively creates the second beginning of philosophy precipitated by the “inceptual” leap that does not land on any preexisting terrain. It follows that groundlessness, an abyssal and vertiginous bottomlessness, characterizes *Ereignis* well before its deliberate expropriation. A simple inversion or re-valorization (presaged, from the start, by that which is inverted) does not suffice, which is why Derrida drowns the difference between the proper and the improper in the indifference of immemorial expropriation by the sponge, one of many deconstructive metaphors for writing: “Insofar as it ingests, absorbs, and interiorizes everything, proper or not [*du proper comme du non-propre*], the sponge is certainly ‘ignoble.’”¹⁰ To be sure, the sponge does not entirely erase the difference between the proper and the improper but makes it unstable, porous, and undecidable. Its “ignobility,” thus, symbolizes the meta-impurity of the opposition between the pure and the impure, between the authentically grasped and the inauthentically pre-interpreted, and, finally, between the events of appropriation and expropriation.

There is no such thing as the “political sphere”!

What presents itself as the unbounded versatility of the concept of the political, which may be derived from any other field (whether economic, religious, or otherwise) provided that the intensity of antagonisms within it reaches a boiling point, constitutes, precisely, the kind of opening onto the event that I have begun to chart above. Schmitt writes: “The political can derive its energy from the most varied human endeavors, from the religious, economic, moral, and other antitheses. It does not describe its own substance [*es bezeichnet kein eigenes Sachgebiet*] but only the intensity [*nur den Intensitätsgrad*] of association or dissociation of human beings . . .”¹¹ George Schwab generally translates the German *Sachgebiet*

Margins of Philosophy, trans. Alan Bass (Chicago: Univ. of Chicago Press, 1982), especially the part titled “The Flowers of Rhetoric,” pp. 245–57.

10. Derrida, *Signésponge/Signsponge*, p. 72.

11. Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: Univ. of Chicago Press, 1996), p. 38.

as “domain,” but in this instance he prefers to render it as “substance,” and does so for obvious reasons. Is it conceivable that a book treating the concept of the political would deny the existence of an autonomous political sphere, field, or domain? Isn’t it the explicit task of the text at hand to delimit such a sphere, separating it from what is not political? Or else, what are we to make of Schmitt’s strange contention that the political parasitically inhabits other regions of human activity but lacks a domain of its own?

The difficulty with Schwab’s reading is that, on countless occasions, Schmitt polemically insists on the substantiveness and concreteness of the political, in contrast to liberal depoliticizations that go hand in hand with the evacuation of substance from politics. Moreover, we ought to remember that Schmitt is interested in the *concept* of the political and that it would be erroneous to equate this or any other concept with the sphere of activity it effectively enables. Even if we could demarcate a properly political *Sachgebiet*, such a domain would not coincide with its rigorously delineated concept. And it is this proper domain that is absent whenever we touch upon the subject of the political. Devoid of a playing field of its own, the concept under consideration shuns clear topographical distinctions, transgresses ontological boundaries, and, as a result, gains the plasticity expressed in its ability to dwell in and transmogrify all other domains, the ability exemplified in the “spongy” and absorbent *complexio oppositorum* (the complex of opposites) that distinguishes the political form generated by Roman Catholicism.¹² In other words, it fails to establish either an internal economy, broadly understood as a domicile, or an external economy with the spheres it inflects.

I would like to emphasize this necessarily unequal exchange corroborating Schmitt’s anti-economism, which, as we shall see, extends much deeper than its overt formulations in *Roman Catholicism and Political Form*, where the economic represents a simple negation of the political, the administration of men by things. In return for giving up the right to claim a domain of its own, the political comes to reside in all other domains as the intensity of oppositions peculiar to them. In expropriating itself, it expropriates the spheres it inhabits, since above a particular degree of

12. Cf. Carl Schmitt, *Roman Catholicism and Political Form*, trans. G. L. Ulmen (Westport, CT: Greenwood Press, 1996), p. 7; and Michael Marder, “Carl Schmitt’s ‘Cosmopolitan Restaurant’: Culture, Multiculturalism, and *Complexio Oppositorum*,” *Telos* 142 (Spring 2008): 29–47.

antagonism they cease to be moral, religious, economic, etc., and instead become political. That which has no proper terrain of its own spirits away the basis or the ground of other regional ontologies that are always, to some extent, economic in their capacity as regions or domiciles. Similarly, depoliticization is not a historical accident that befalls the political, but its “truth,” an idiosyncratic expression of expropriation, to which the political non-sphere is not immune.

The aneconomic relation of the political to various zones of human activity and the absence of a political topography *proper* should not lead us to the conclusion that Schmitt’s thinking is sloppy or that it exhibits conceptual laxity. On the contrary, *The Concept of the Political* is a quest for the “specific meaning [*spezifischen Sinnes*]” of politics.¹³ As such, it stands for a radical continuation of Kant’s Copernican turn in the history of twentieth-century philosophy and, especially, in the rich phenomenological tradition extending from Husserl to Heidegger and Derrida. To concentrate on the *meaning* of Being, as Heidegger does, or to investigate the “specific meaning” of the political, as Schmitt proposes to do, is to recognize the naiveté of the presumably objective treatments of Being and of the political. Positively put, it is to sensitize oneself to the problems of interpretation (and, by implication, the appropriative *Ereignis*) pertaining to whatever comes under the light of investigation and to reassert the ultimate irreducibility of the interpreter, be it Dasein—a being who raises the question of Being—or the sovereign who gauges the levels of intensity and determines those critical points, not objectively set once and for all, where the quantitative surge in hostility accomplishes a qualitative shift toward politicization in the categories of collective existence.

Thus, Schmitt frames his discussion of the political in a kind of negative ontology, in the non-space or, better yet, in the displacement of different domains of human action. As a result of this originary dislocation, that which is purely political, namely, the carefully distilled intensity of antagonism, is neither empirically accessible outside the spheres it eventually transforms, nor is it transcendently given in the manner of Kant’s *a priori* conditions of possibility. That is not to say that “possibility” does not play a crucial role in Schmitt’s theory of the political, with its presupposition of the real and ever-present possibility of war (*die reale Möglichkeit des Kampfes*) and a prospect of the physical annihilation of the enemy, without

13. Schmitt, *The Concept of the Political*, p. 72.

which politics is insipid and meaningless.¹⁴ Just as Heidegger, who privileges possibility he posits “higher than actuality” in *Being and Time*,¹⁵ Schmitt substantiates the existential character of his philosophy by accentuating the possible.¹⁶ One implication of the political existential stance is that there is no such thing as a separate political sphere because every sphere is *potentially* political or politicizable thanks to a possible increase in the intensities of association and dissociation structuring it.¹⁷ But, in line with the political hermeneutic commitment, this condition of possibility can be retrieved only retrospectively, *a posteriori*, after the interpretive decision on the sphere’s transfiguration has been made. That is why no liberal depoliticization can do away, *in toto*, with the political, which is not a domain amenable to being supplanted, but the overarching principle of displacement and, hence, the dynamic governing depoliticization as well.

In this context, it is instructive to recall Schmitt’s famous statement in *Political Theology* that “[a]ll significant concepts of the modern theory of the state are secularized theological concepts.”¹⁸ Along with the claim that “all political concepts, images, and terms have a polemical meaning,”¹⁹ it completes the structural *displacement of political conceptuality* in two distinct ways. On the one hand, political concepts do not appear *sui generis* but derive from the theological sphere in a definite process of dislocation called “secularization.” (Now, if the first of the four major stages of neutralization and depoliticization identified by Schmitt is the theological, then the entire succession of stages begins with the restoration of the origin, a negation of the negation, de-secularization, or, at least,

14. *Ibid.*, p. 32.

15. Heidegger, *Sein und Zeit*, p. 38.

16. In *Heidegger and the “Jews”*, Jean-François Lyotard, having acknowledged a certain proximity between Schmitt and Heidegger, hurries to distance the latter from the former, with the excuse that political theology does not go far enough in the direction of “a rigorous deconstruction of the categories of ontotheology and politics.” Lyotard, *Heidegger and the “Jews”*, trans. Andreas Michel and Mark S. Roberts (Minneapolis: Univ. of Minnesota Press, 1997), p. 72. As we shall see, Derrida perpetuates this way of treating Schmitt that remains oblivious to the existential character of his political thought that is not tethered to its “Catholic” sources.

17. Joseph Bendersky notes that this potential politicizability of every sphere is intended to combat the liberal contention that there are neutral or apolitical spheres. See Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton, NJ: Princeton UP, 1983), p. 88.

18. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985), p. 38.

19. Schmitt, *The Concept of the Political*, p. 30.

a retreat from the political back to its displaced source.) On the other hand, the polemical meaning of political concepts harkens back not to other concepts, such as the theological, but to the other of the concept: the strategic, situational context, wherein we sustain concrete confrontations with the enemies or forge alliances and association with the friends. The dual displacement of the political by other concepts and by the other of the concept points toward the event both in the everyday sense of a singular happening or occurrence—of everything that falls under the heading of the polemical context—and in the special sense of expropriation that reduces to pure nonsense all appeals to the “pure origination” of the political, renders impossible its emplacement, circumscription, economization, or domestication, and undermines a permanently valid demarcation of the variegated fields of human activity.

An imprint of the event of the political is discernible in the quotation marks to which Schmitt confines the domains transfigured by a quantitatively produced qualitative shift: “The often quoted sentence of quantity transforming into quality has a thoroughly political meaning. It is an expression of the recognition that from every ‘domain’ the point of the political is reached and with it a qualitative new intensity of human groupings [*daß vom jedem ‘Sachgebiet’ aus der Punkt des Politischen und damit eine qualitative neue Intensität menschlicher Gruppierung erreicht ist*].”²⁰ The quotation marks around “Sachgebiet” that are missing from the English translation betray the expropriation of every “domain” at the point of the political (*der Punkt des Politischen*), where each sphere loses its identity *qua* the theological, the economic, the moral, etc., and where it ceases to exist as a sphere the moment it becomes politically charged. The event of expropriation aporetically combines extreme indeterminacy, insofar as it may be reached “from every ‘domain’ [*vom jedem ‘Sachgebiet’*],” and utmost determination emanating from the precise turning point of politicization and from the particular criteria that distinguish the political from the “relatively independent endeavors [i.e., domains] of human thought and action [*relativ selbständigen Sachgebieten menschlichen Denkens und Handelns*].”²¹ If Schmitt declares the *relative* independence of these non-political spheres, it is in order to point out that, at any moment, they may undergo a process of politicization and that, therefore, they rely on the political in the last instance.

20. Schmitt, *The Concept of the Political*, p. 62 (translation modified).

21. *Ibid.*, p. 25.

Of course, this reliance is exceptionally risky, in that instead of supplying a secure foundation, the political withholds even the least topographic supports from whatever is relatively independent of it.²² The point of the political, like the point of the decision that lies at its core, is an instant of the greatest risk, an experience of groundlessness, of being admitted into a region that is not a region. The political is not the most basic stratum propping up the rest of the edifice of human thought and action, but a veritable earthquake that disarticulates, unhinges, or un-grounds the latter. Curiously enough, the abyssal character of the political is metonymically reduced to a phase of *nomos*'s decoupling from land appropriation and its transposition onto the uncertainty of the sea: "On the sea, fields cannot be planted and firm lines cannot be engraved. Ships that sail across the sea leave no trace [*hinterlassen keine Spur*]. 'On the waves there is nothing but waves'."²³ As a disruption in the ideal co-implication of order and orientation (*Ordnung* and *Ortung*), the anarchic spatiality of the marine trace-erasure, like the political itself, cannot be forced into a determinate system of enclosures, regional divisions, and appropriations. Better than the land, the sea lives up to the political event of radical expropriation.

Notwithstanding the acute deconstructive sensibility he exhibits in *The Politics of Friendship*, Derrida misses, precisely, the non-regional and, in some measure, extra-conceptual determination of the political in Schmitt, when he writes: "it [Schmitt's discourse] offers a pure and rigorous conceptual theory of the political, of the specific region of that which is properly and without polemical rhetoric called *the* 'political,' the politicity of the political. Within this region, in the enclosure proper to a *theoretical* discourse, all examples, all facts, all historical contents should thus issue in *knowledge*..."²⁴ Needless to say, in Schmitt's discourse, the political does not and cannot be confined to a specific region, though it does feature a specificity of meaning or sense. In addition to this obvious lapse in his interpretive vigilance, Derrida willfully forgets the impure

22. While Heinrich Meier, in *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, trans. J. Harvey Lomax (Chicago: Univ. of Chicago Press, 1995), is right to distinguish the political from all other "relatively independent domains," he is somewhat careless in attributing a "fundamental" (p. 16) dimension to it, the dimension that ought to be taken with more than one grain of salt, as the current analysis shows.

23. Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003), pp. 42–43.

24. Jacques Derrida, *Politics of Friendship*, trans. George Collins (London: Verso, 1997), p. 117.

and “improper” genealogy of the concept of the political issuing from its theological (thus, non-political) origins, with this impropriety magnified manifold by the subversive role of the political in the expropriation of the remaining domains of human action. As for the usual meta-accusation that the polemical gist of political images and concepts does not make itself known in the Schmittian thinking of the political, it is not hard to read between the lines *who* Schmitt’s enemy is and *against whom* his theory is formulated, namely, the liberal democratic model of state administration predicated on the practices of economic management.

In light of these corrections and rejoinders, how is it still possible to insist on the purity and propriety of something that lacks a particular domain and is, perhaps, allergic to the logic of appropriation as such? Pursuing this line of thought, we will uncover nothing more and nothing less than Derrida’s own polemical program. It is not by chance that in this seemingly innocent depiction of Schmitt’s political philosophy he includes words with the heaviest metaphysical luggage, “pure” and “proper,” that he has submitted to a stringent deconstructive reading, as early as in *Of Grammatology* and *Margins of Philosophy*. But we will need to wait for a rather long time—more than one hundred pages of *The Politics of Friendship*, to be exact—before he puts his cards on the table, disclosing the motivation for imposing these terms on Schmitt and for violently forcing him into the “enclosure proper to a *theoretical* discourse.” Without further ado, this motivation has to do with what Derrida puts forth as an “interesting hypothesis,” according to which “Schmitt would . . . become the last great metaphysician of politics, the last great spokesperson of European political metaphysics.”²⁵ The enclosure of the political concept Derrida imputes to the non-place of the political will, henceforth, mirrors the closure (*clôture*) of metaphysics, where Schmitt replaces Heidegger, who occupies the place of Nietzsche as “the last great metaphysician” responsible for accomplishing, without ever completing, the final reversal of Platonism. Such a reading overlooks not only the clearest of indications that the political does not have a particular sphere of its own but also that Schmitt has condensed and slotted metaphysics in its entirety into the second stage of neutralization and depoliticization in his 1929 essay. To be more precise, Derrida is only partly correct in ascribing a metaphysical program to Schmitt who radically expropriates the political, yet finally

25. Derrida, *Politics of Friendship*, p. 247.

puts it in the service of guarding and protecting that which is one's own for the purpose of preserving, at any price, "one's own form of existence [*der eigenen Art Existenz*]"²⁶ in the face of the existential threat stemming from the enemy. To absolve Schmitt of the charges that he clandestinely practices a garden variety of metaphysics, one would need to contend with this mixed heritage and to recommit a Schmittian politics to the event of expropriation constitutive of the political.

***Schmitt's Anti-economism Revisited:
Nomos/Appropriation, Politics/Expropriation***

By now, Schmitt's anti-economism is, generally, a jaded topic that fails to surprise anyone acquainted, however superficially, with the arguments of *Roman Catholicism* and *The Concept of the Political*. In the mind-set of the liberal democratic governance, the economic supplies a blueprint for the impersonal pursuit of politics devoid of danger and risk, ostensibly free from the element of decision-making, which becomes synonymous with tyranny, and, at the extreme, disbanding the last shreds of representation into the sheer presence of things.²⁷ The catalogue of these merciless attacks on economism would not be complete without mentioning that, for Schmitt, the economic is the final and, perhaps, the most decisive stage of neutralization and depoliticization and that it is intimately tied to the despotism of technology that militates against the possibility of spiritual life. To sum up, his anti-economism reflects an anti-anti-political stance, an assault on everything that weakens political concepts and phenomena.

A mere invocation of the critique of presence directed against the economic predominance of things and warily moderated with the rejection of abstract, disembodied concepts (e.g., "humanity") should have sufficed in the initial defense of Schmitt against the charges of smuggling heavy metaphysical luggage into his theory of the political. The notions of the human and the thing, two facets that, along with the animal, make up the architecture of Aristotle's metaphysics,²⁸ elicit some of the bitterest scorn from Schmitt in his early work. As though this were not enough, on the positive side, his thinly veiled attack on metaphysics entails the avowal

26. Schmitt, *The Concept of the Political*, p. 27.

27. Schmitt, *Roman Catholicism and the Political Form*, p. 20.

28. The notion of the thing is a cornerstone of the Aristotelian metaphysical edifice, where the animal is "the living thing" and the human is "the political animal," or, by implication, "the political living thing."

of “concrete representation” and of its corollary, “invisible visibility,”²⁹ which resembles the Derridian trace, an absent presence or present absence muddling the purity of philosophical constructs. Be this as it may, even if Schmitt could be interpreted as advocating a proto-Arendtian autonomy or primacy of the political vis-à-vis the social and the economic,³⁰ he would not be satisfied with a simple inversion of the Marxist base-superstructure model, given that the political is not one domain among others, indispensable for the continuation of the life of spirit as it might be. Rather, we must assume the task of reconfiguring the relationship between the political and the economic, in a way that leaves direct determinations and even overdeterminations behind. In the course of this reconfiguration, I will show that the lines of demarcation between the two also pass at the heart of the Heideggerian and Derridian meditations on the event of appropriation and expropriation.

Abstractly, then, politics is the antithesis of economy; the tacit goal of the analysis of economism is to rescue the realm of “spirit” from the predominance of things that triggers the all too familiar scheme of reification.³¹ Concretely, however, there two obstacles in the path of this easy solution. First, economic oppositions can become political, if they are imbued with an appropriate intensity of antagonism. As Schmitt puts it in *The Concept of the Political*, “[w]hen it reaches a certain quantity, economic property, for example, becomes obviously social (or more correctly, political) power, *propriété* turns into *pouvoir*, and what is at first only an economically motivated class antagonism [*Klassengegensatz*] turns into a class struggle [*Klassenkampf*] of hostile groups.”³² Note the subtle irony of this example: the embodiment of the economic, the ultimate receptacle of appropriation—property—is expropriated *qua* property, becomes “improper,” and turns into power under the sway of the political transformation. This kind of expropriation does not facilitate the Hegelian synthesis

29. Cf. Carl Schmitt, “The Visibility of the Church: A Scholastic Consideration,” an appendix to *Roman Catholicism and the Political Form*, pp. 47–59.

30. This is the position Eckard Bolsinger defends in his *The Autonomy of the Political: Carl Schmitt’s and Lenin’s Political Realism* (Westport, CT: Greenwood Press, 2001).

31. John McCormick does well to compare Schmitt’s critique of economic rationality with the Lukácsian notion of reification, even if this comparison overlooks some of the complexities involved in the anti-economism of the former thinker. See McCormick, *Carl Schmitt’s Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge UP, 1999), esp. pp. 57ff.

32. Schmitt, *The Concept of the Political*, p. 62.

of two previously antithetical terms but reveals that even the most neutralized category is amenable to a sudden politicization. The opposition of the political and the non-political is subordinate to the antagonism constitutive of the political that erases this very opposition. Second, there can be no symmetry in the relation between economy and politics because, unlike the former, the latter has no domain of its own and, consequently, does not partake of the most basic and definitive economic operation, the act of appropriation. This absence of symmetry confirms, once again, that the political and the economic will not constitute an economy, not even the economy of oppositional relationality and mutual negation that inheres in every antithesis. Their antithetical interrelation will be understood as thoroughly historical and polemical, not as an ontological given.

Before proceeding any further, it is important to realize that Schmitt does not take for granted the meaning of economy but, instead, approaches the subject matter in a meticulously philosophical fashion guided by the question “What is the economic?” In Greek, economy is a composite term conjoining the “*nomos*” and the “*oikos*” (the house) in a combination that is more or less tautological: “. . . the unity of *nomos* is only the unity of the *oikos*.”³³ Much will depend, therefore, on the interpretation of *nomos* that holds the key to the unity and the essence of the economic.

Schmitt considers the *nomos* of eco-nomy in the *Materials for the Constitutional Theory*, amassed between 1924 and 1954. He isolates three pertinent bases of the Greek noun, from *nehmen* (to take or appropriate) through *teilen* (to divide or distribute) to *weiden* (literally, pasturage, or productive work).³⁴ Appropriation is the most fundamental etymological and conceptual stratum of the economic *nomos*, one that makes possible distribution and production alike in the tripartite economy of “economy.” By the same token, it is the most forgotten of the three meanings of *nomos* (forgotten to the point of utter repression), whose descent into oblivion accelerates in the aftermath of the eighteenth-century Industrial Revolution. Parallel to the forgetting of Being in Heidegger, the question of

33. Schmitt, *The Nomos of the Earth*, p. 345.

34. Carl Schmitt, “Appropriation/Distribution/Production: Toward a Proper Formulation of Basic Questions of any Social and Economic Order,” trans. G. L. Ulmen, *Telos* 95 (Spring 1993): 54–55. Much of these reflections on the meaning of *nomos* are a condensed form of the systematic and monumental effort preserved in *The Nomos of the Earth*. The semantic list of the meanings of *nomos* is far from exhausted here, for it can have a plethora of “derived” senses, from “a mere rule” to the opposite of *physis*. Cf. Schmitt, *The Nomos of the Earth*, pp. 67ff.

appropriation, responsible for the event of the economic par excellence, migrates to the blind spot of utopian socialism (Proudhon) and to the outskirts of liberalism obsessed with the truncated and perverted sequence of the production and distribution of wealth.³⁵ Conversely, Marx's ingenuity lies in his recovery of this repressed economic stratum on the edge of its transformation into the political, that is, in the recuperation of the principle of appropriation and the demand for the expropriation of the expropriators that, alone, lends credibility to radical *political* economy: "Marx . . . concentrates the whole weight of his attack on the expropriation of the expropriators, i.e., on the procedure of appropriation [*Vorgang des Nehmens*]. In place of the old right of plunder and the primitive land-appropriations of pre-industrial times, he substituted the appropriation of the total means of production."³⁶ This nuanced approach implies that the Schmittian attack on economism targets primarily the factors responsible for the impoverishment of the political potential of the economic, its reduction to the spheres of production and distribution, and, most recently, to sheer productivism driven by technological demands and by instrumental rationality.

What distinguishes production from distribution and, especially, from appropriation is that it does not require a great deal of decision-making, dissolving this capacity into the productive apparatus and into the general order of things. At the most "founded"—to resort to a Husserlian notion—ossified, and superficial level of production, which Marx considered to be the "inner abode" or the deeply buried source of the capitalist self-valorization of value, economic rationality is at its most material, "concerned only with things,"³⁷ preoccupied with that which can be appropriated but indifferent to the act of appropriation itself. The political, on the other hand, inevitably entails *Unsachlichkeit*. The English translation of this word in terms of "a lack of objectivity"³⁸ built into the subjective decision-making capacity is an obvious and correct one. Still, in a twist on the negative determination of political immateriality, *Unsachlichkeit* can also mean "unthingliness." The literal connotations of this term resonate with the idea that the political does not have a domain of its own, its proper *Sachgebiet*, its circumscribed realm of things (*Sachen*), for the sovereign

35. Ibid., p. 59.

36. Ibid., p. 62.

37. Schmitt, *Roman Catholicism and the Political Form*, p. 16.

38. Schmitt, *The Concept of the Political*, p. 32.

and constitution-making decisions cannot be entirely diffused in an impersonal field but are concentrated in a concrete will, whether individual or collective. And if the political is unthingly, then it *a priori* withdraws from the act of appropriation, assuming that only a thing can serve as the target for such an act.

Thus far, the trajectory of the argument easily falls prey to the tactical maneuvers Derrida finesses in *Of Spirit*, which juxtaposes Heidegger's definition of the thing as "worldless" to the world, which is always spiritual.³⁹ On this view, Schmitt has succumbed to an unquestioned metaphysical distinction between the spiritual (politics) and the spiritless (the economy) and has unambiguously taken sides in this artificial theoretical scaffold redolent of the crudest idealism. And yet, the idealist scenario is lopsided and cannot be attributed squarely to Schmitt; the political appears to be purely spiritual and immaterial only from the standpoint of economic rationality. A symptom of complexity in Schmitt's examination of the relationship between the spirit and the thing, metonymically designating the political and the economic, is his refusal to consider it as a simple binary opposition, let alone as the point of friction between a thesis and an antithesis.

The penultimate sentence of "The Age of Neutralizations and Depoliticizations" readily furnishes the evidence for this complexity: "For life struggles not with death, spirit not with spiritlessness [*und der Geist nicht mit der Geistlosigkeit*]; spirit struggles with spirit, life with life, and out of the power of an integral understanding of this arises the order of human things [*die Ordnung der menschlichen Dinge*]."⁴⁰ I underline just two aspects of this incredibly fertile passage, which invites an otherwise interminable analysis: (1) There is never a standoff between spirit, the world, politics, on the one hand, and spiritlessness, the thing, the economy, on the other, seeing that any struggle they might be involved in will be asymmetrical and will take place as an inner division within spirit, the world, and so on, engulfing their opposites; (2) These inner splits and fissures of spirit against itself—the splits and fissures that galvanize the friend-enemy distinction at the heart of the political and that include the divergence of

39. Jacques Derrida, *Of Spirit: Heidegger and the Question*, trans. Geoffrey Bennington and Rachel Bowlby (Chicago: Univ. of Chicago Press, 1987), pp. 47–48.

40. Carl Schmitt, "The Age of Neutralizations and Depoliticizations," in *The Concept of the Political*, exp. ed., trans. George Schwab (Chicago: Univ. of Chicago Press, 2007), p. 96.

the political from the economic rationality—result in the order of human things, now transcribed not as *Sachen* but as *Dinge*. The barely perceptible linguistic shift from one appellation of the thing to the other signals that the political, too, possesses a material, “thingly” dimension and, further, conveys that the struggle of life against life and of spirit against spirit affects the thing itself subject to the clash between the order of human *Dinge* and the impersonal, administrative arrangement of *Sachen*. Such is the event of the thing divided against itself and, therefore, no longer resting in the self-identity of an inanimate entity abstractly opposed to spirit. It, thus, partakes of the event of politics, where the registry of what is expropriated includes, first and foremost, every stable and rigid identity of life, spirit, or the thing with itself and, additionally, the spatiality of the political devoid of its own region or domain.

What is the place of the concept in this framework? In the Hegelian dialectics, the concept longs for its identity with itself, awaiting that time outside of time when identity bridges and reconciles the identical and the non-identical across all the unrests and tribulations that befall Spirit in its historical instantiations. But the eventful expropriation of the firmly established conceptual identity infinitely postpones the moment of the concept’s final return to itself and, by implication, defers the end of the political division between friends and enemies, life and life, spirit and spirit. . . . The concept of the political, *der Begriff des Politischen*, will not be able to drive away this irreducible difference without, at the same time, annihilating the political “itself.” That of which it is a concept (the political) will prevent its closure and absolute homecoming, will put it on the brink of the event, will fatefully entwine the concept with its own expropriation. *Der Begriff des Politischen* is uncanny because, instead of grasping (*greifen*) the political, it permits the latter to grasp us, to push us to the extremity of the limit, where the sovereign decision on the exception and the real possibility of killing and being killed by the enemy grips and unsettles us, making life both interesting and dangerous, as Leo Strauss quips in his influential commentary on Schmitt. The existential concept is nothing if it is not an outlet for the event portending the possibility of its (and *our*) expropriation.

How to remain faithful to the event of politics?

In raising this question, I do not have in mind what Alain Badiou terms “fidelity to the event” that performatively produces the subjectivity of the

subject who affirms his or her commitment and allegiance to it. Badiou's "fidelity" still clings to the modality of the event that equally appropriates the subject and the "thinking of the situation": "To be faithful to an event is to move within the situation that this event has supplemented, by *thinking*... the situation 'according to' the event."⁴¹ The situation is the ontological super-domain, indifferent and indeterminate, where the paths of the fourfold event of art, science, politics, and love are differentiated and charted. To be faithful, in this context, is to exercise the interpretive appropriation of the otherwise neutral situation thought "according to the event."

Returning to Schmitt, we face a much more difficult dilemma if we ask how it is possible to maintain, at the level of concrete material practices, the potential of the event of expropriation that blasts open the concept of the political. Does Schmitt himself succeed in the task of transferring or translating the ungrounded notion of the political, which does not belong in any particular sphere, to political practices that concretely embrace this non-belonging? This is where his political philosophy is vulnerable in the face of the Derridian diagnosis of its metaphysical entrenchment. It is as though Schmitt shrinks back from the structural displacement of the concept of the political and vacillates to the other extreme of the event (appropriation) when he subjects the friend-enemy distinction to the exigencies of preserving "one's own form of existence [*der eigenen Art Existenz*]."⁴² In so doing, he perpetuates the intellectual inheritance that Spinoza, that scandalous seventeenth-century metaphysician, bequeathed to Western philosophy by embedding the abstract principle of identity in the concrete predicament of the living desire to maintain oneself in existence.⁴³

In what follows I will advance a somewhat counterintuitive argument that Schmitt does not abandon the political event of expropriation, though he does misconstrue the concept of expropriation as nothing but the negative mode of appropriation. The misconstrual I am referring to

41. Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. Peter Hallward (London: Verso, 2002), p. 41.

42. Schmitt, *The Concept of the Political*, p. 27.

43. "Considered juridically, what exists as *political* power has value because it exists. Consequently, its 'right to self-preservation' is the prerequisite of all further discussions; it attempts, above all, to maintain itself in existence, 'in suo esse perseverare' (Spinoza)..." Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC: Duke UP, 2008), p. 76.

occurs in the 1953 text on the basic questions of any social and economic order and, in particular, in the reflections on the Marxist “expropriation of the expropriators,” *die Expropriation der Expropriateure*: “If the essence of imperialism lies in the precedence of appropriation over distribution and production, then a doctrine such as the expropriation of expropriators is obviously the strongest imperialism because it is the most modern [*offenbar stärkster, weil modernster Imperialismus*].”⁴⁴ Besides exhibiting a narrow understanding of expropriation as the underside of appropriation, this passage fails to ask whether the event of the expropriation of the expropriators leaves the notion of appropriation intact, or whether it fatefully alters this notion and rids it of its imperialist overtones. Does appropriation remain the same before and after the expropriation of expropriators has taken place? I believe that it does not, if expropriation is not taken as yet another instant of appropriation but betokens a momentary paralysis of the economic order and the radical displacement of ownership in a way that remains faithful to the event of politics.

Despite a rushed dismissal of expropriation as “the most modern” form of imperialism, Schmitt’s political philosophy falls on the Derridian side of the event articulated in the suspension of the “proper.” When Schmitt solicits support from the Spinozan *conatus essendi*, does he not contravene his prior adherence to the political unfettered from various neutralizations and depoliticizations, including the metaphysical ones? More specifically, the exigencies of preserving “one’s own form of existence” need to be set in the context of *The Concept of the Political*, from which they issue. Immediately before he adopts this defensive attitude, Schmitt stresses the absence of a neutral third party that could adjudicate the existential conflict with the other: “These [conflicts] can neither be decided by a previously determined general norm [*in vorhaus getroffene generelle Normierung*] nor by the judgment of a disinterested and therefore neutral third party [*eines ‘unbeteiligten’ und daher ‘unparteiischen’ Dritten*].”⁴⁵ Instead, the decision is with the actual participants in the conflict and their judgment—“Only the actual participants can correctly recognize, understand, and judge the concrete situation and settle the extreme case of conflict”⁴⁶—that remains existentially groundless insofar as it hinges neither on the externality of the general norm nor on the whim of a neutral third party.

44. Schmitt, “Appropriation/Distribution/Production,” p. 63.

45. Schmitt, *The Concept of the Political*, p. 27.

46. *Ibid.*

The unambiguous rejection of the norm, which is but an example of sham neutrality that surreptitiously caters to particular interests, cannot open an exception for the *conatus*, or the law of perseverance in one's essence, without, at the same time, stripping the parties to the conflict of their decision-making ability and re-establishing the primacy of the impersonal metaphysics of "substance." In contrast to Spinoza, Schmitt cannot afford to exempt the question concerning the preservation of one's own form of existence from the practices of decision-making. Now, the decision not to preserve this form is a dangerous one, and it may spell out the end of further political decisions. Yet, in the absence of a possibility to make this choice, a determinate general norm (e.g., the "natural law" of self-preservation) is reinstated only to annul the decision as such.⁴⁷ An event worthy of its name admits even the possibility of its own closure, a situation precluding a series of future existential decisions. Regardless of the content of what is decided in each case, the existential decision will have singled out and committed itself to one of at least two options. Otherwise, we are left with the "either" divorced from the "or," that is to say, with a predetermined program of action that is no longer political, for example, a normative and "necessarily antagonistic exclusion of concrete others."⁴⁸

From the existential point of view, while the objective outcome might be the same, the different paths that have led to its actualization are crucial for its evaluation. When Schmitt derides the pacifist indecision, crystallized in the proclamation that a "people has nothing but friends," he concludes, in an extremely disconcerting way, that such political exhaustion will cause a "weak people [*ein schwaches Volk*]" to disappear.⁴⁹ But it certainly matters whether this disappearance has come about as a result of indecision or thanks to a deliberate choice not to preserve one's own form of existence,

47. Schmitt does not oppose pacifism to the natural law, as Robert Howse claims, but to the decision on whether one should maintain one's form of existence. See Howse, "From Legitimacy to Dictatorship—and Back Again: Leo Strauss's Critique of the Anti-Liberalism of Carl Schmitt," in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham, NC: Duke UP, 1998), p. 66.

48. In a recent article, Matthias Fritsch imputes precisely such normativity to Schmitt. See Fritsch, "Antagonism and Democratic Citizenship (Schmitt, Mouffe, Derrida)," *Research in Phenomenology* 38 (2008): 174–97.

49. Schmitt, *The Concept of the Political*, p. 53. On my treatment of the "indecisive deracination of the political," see Michael Marder, "Carl Schmitt and the Risk of the Political," *Telos* 132 (Fall 2005): 5–24.

to expropriate oneself.⁵⁰ If the latter is the case, then the same outcome must be interpreted as a sign of strength, not of weakness, a sign that, in the long run, the meaningfulness of the most crucial political decision will be maintained. Therefore, in the spirit of Schmitt's political philosophy, which occasionally clashes with its letter, one needs to tackle not only the metaphysical-nationalist but also the moral residue in the foreboding value judgment passed on *ein schwaches Volk* by restricting it to instances of political fatigue that do not encompass the decision to let go of one's form of existence.

An obvious objection that might arise at this point would be that no one in the right frame of mind (i.e., having the good clearly in sight) is prepared consciously to give up one's *conatus essendi*, that which keeps one fast to existence. And, assuming this were possible, would the event of the political be nothing but an elaborate façade for a political suicide? This is the direction in which Derrida takes the thought of the event in *Rogues*, where he exposes the aporiae haunting the binaries of heteronomy and autonomy, absolute hospitality and sovereignty, the host's self-expropriating openness to alterity and the desire to occupy one's spot under the sun. The general heading for these aporiae is "autoimmunity," or the capacity of a living entity to "destroy, in an autonomous fashion, the very thing within it that is supposed to protect it against the other."⁵¹ In other words, in the process of defending itself from the other, an entity can autonomously effectuate its own heteronomy and expose itself to alterity. And, conversely, what a skeptic might dub "political suicide," the autonomous choice to expropriate oneself, breathes life and meaning into the political decision on the form of one's own existence. (I submit, in passing, that the concept of the political is itself suicidal, in that, as a concept, it strives toward identity and reconciliation, negating the agonistic potential of the political.) The autonomous effectuation of heteronomy marks the maximal sense of the event of expropriation.

If we are attentive to the fine grain of Schmitt's text, we will observe that it is not political existence as such but the *form (Art)* of this existence that is preserved or rejected in the decisive confrontation with the enemy. To cling to an outmoded form of existence is to keep the old status quo on artificial respiration, long after the content from which it had arisen

50. For instance, when a minority group assimilates into the mainstream society.

51. Jacques Derrida, *Rogues: Two Essays on Reason*, trans. Pascale-Anne Brault and Michael Naas (Stanford, CA: Stanford UP, 2005), p. 125.

withered away. A regular revisiting of the decision prevents the dissociation of the content of existence from its form, in that it measures and assesses the changes in the former to ensure that the latter has not petrified or ossified. Here, the event of expropriation is diluted to its minimal sense, namely, a discarding of the old form of political existence that no longer corresponds to its content. As a result, the minimal event of expropriation forms a nexus between the second and the third “absolute meanings” of the constitution in *Constitutional Theory*: between the constitution as a living form or a “special type of political and social order . . . not detachable from . . . political existence” and as “the principle of the *dynamic emergence* of political unity, of the process of constantly renewed *formation* and *emergence* of this *unity* from a fundamental or ultimately effective *power* and *energy*.”⁵² In the process of renewal that adumbrates the living connection between the form and the content of politics, expropriation is the obverse of the “emergence” and “formation” of new unities (forms of political existence) and the inalienable aspect of decisions on the constitution as a whole. It is necessitated by the fact that there is no proper, ideal, or trans-historical mode of life perfectly befitting a concrete political unity once and for all.

Does the concept, on its part, escape the fate of those unities that form and dissolve in the process of renewal? When Schmitt revisits the insights of his 1932 work *The Concept of the Political*, after World War II and outlines the shifts of political focus from clearly identifiable state actors to irregular partisan formations, he warns, precisely, against what he calls *Begriffsauflösung*, “concept dissolution,” in the treatment of the figure of the partisan: “In some cases, the re-interpretation leads to a general symbolization and dissolution of the concept [*allgemeinen Symbolisierung und Begriffsauflösung*]. Then, ultimately, any individualist and non-conformist can be called a partisan. . . . Such conceptual dissolutions are noteworthy signs of the times, which deserve a separate examination.”⁵³ The prospects of concept dissolution that sees the partisan turn into everything and nothing in particular are most salient at the time of the transition and, hence, in the emergence of a new *conceptual* unity. At this level, the minimal sense of expropriation is relevant to the concept of the political, permitting its form to adjust to the increasingly more significant partisan

52. Schmitt, *Constitutional Theory*, pp. 60–61.

53. Carl Schmitt, *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*, trans. G. L. Ulmen (New York: Telos Press, 2007), pp. 18–19.

content and interspersing this period of adjustment with hyperbolic extensions and over-valuations of the partisan.

More importantly, the maximal sense of expropriation looms over the horizon of the concept's dissolution in excess of Schmitt's disparaging rhetoric. Far from being a mere "sign of the times,"⁵⁴ this dissolution, which is synonymous with the event of expropriation, is folded into the concept of the political that refuses to insulate itself in stable identities, constantly falls apart, and, thereby, turns itself into an outlet for the event of politics. Although it might appear that the concrete features of the partisan (including irregularity, greater mobility, and increased intensity of engagement⁵⁵) threaten to replace the rigorously conceptual form with an obscure, energetic, and embodied figure, whose outlines are necessarily blurred, they are, to the contrary, a sign of the utmost fidelity to the concept that feeds off the logic of displacement, lacks a clearly identifiable domain of its own, and transgresses the boundaries of all other domains. With the partisan's rise to prominence, the concept of the political expropriates itself, autonomously effectuates its heteronomy, and welcomes the event of politics.

54. Preparing the ground for the argument advanced in *Theory of the Partisan*, Schmitt writes in *Constitutional Theory*: "One may generally say that the concept renders itself relative and pluralistic as soon as the consciousness of political existence undermines itself..." (p. 95). But what if, instead of being a symptom of such self-undermining, the relativization (and, indeed, the dissolution) of political concepts is necessary for their adjustment to a new content of such existence? After all, isn't it his contention that all concepts in the spiritual sphere are marked by an unavoidable pluralism?

55. Schmitt, *Theory of the Partisan*, p. 20.

Schmitt or Hamlet: The Unsovereign Event

Roy Ben-Shai

Thus conscience makes cowards of us all,
And thus the native hue of resolution
Is sicklied o'er with the pale cast of thought,
And enterprises of great pitch and moment
With this regard their currents turn awry
And lose the name of action . . .

William Shakespeare, *Hamlet*¹

One of the most popular facets of Schmitt's philosophy is his theory of sovereignty and decisionism, as developed in his early essay *Political Theology* (1922). There, Schmitt offers an original outlook on the political implications of the secularization of modern Europe and philosophy's purported turn away from theology. The "death of God," along with the gradual disappearance of the political institution of monarchy, are only symbols of the decline of sovereignty in general. What is lost in the process is not sovereignty as such, since it can assume new forms, such as "reason," "nature," "the people," or "the state." What is lost is, rather, the "decisionistic and personalistic element in the concept of sovereignty."² The old sovereign was a *real, specific person of the sovereign*—someone who is not a mere instance, or carrier, of preexisting law, but one who is "behind" the law, deciding both on the law and its suspension.

1. William Shakespeare, *Hamlet*, ed. Ann Thompson and Neil Taylor, The Arden Shakespeare (London: Thomson Learning, 2006), 3.1.82–87.

2. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985), p. 48.

An action that ensues from a personal sovereign decision neither follows an order nor awaits justification and authorization but is retroactively justified and authorized by the order *it* creates. Not unlike Nietzsche, the Schmitt of *Political Theology* is not so much nostalgic for an irretrievable past, nor does he long for the resurrection of a transcendent God. He is, rather, derisive of those ideologies that tend to celebrate the decline of sovereignty, or make it into a supreme value, be they of the liberal, anarchist, or positivist variety. This kind of ideology is termed by him a “philosophy of immanence,” and he finds its climax in Hegel and nineteenth-century philosophy. Paradoxically, by denying personal sovereignty, and therefore any concrete transcendence, this philosophy asserts unlimited power and scope to the order it creates.³ And, in celebrating the decline of sovereignty, it promotes in fact, if not in principle, mediocrity, mechanical repetition, and a mentality of “cautious half measure.” Personal decisions and assertions are replaced by “everlasting discussions” and negotiations in which no actual decision (i.e., no exception, nothing *else*) is ever made.

According to Mika Ojakangas’s excellent overview of Schmitt’s philosophy, the sovereign decision is but a “good example” of a basic structure or common pattern that exists in most of Schmitt’s essays. He writes: the “same holds true for all of Schmitt’s central political concepts. They are all exceptions, extreme cases.”⁴ The common thread is Schmitt’s search for the *concrete*, which for him means always an *exceptional event* (*Ereignis*). The event as such, whatever its specific content is, indicates “resistance to the absolutization of immanence.”⁵ The event for Schmitt, says Ojakangas, “introduces a rupture—a void—into the closure of order immanent to itself.”⁶ Each of Schmitt’s essays introduces a key concept to designate this rupture, such as the sovereign, the enemy, the constitutive power, and land appropriation (and we may perhaps add the partisan to this list). And each of these concepts is a counter-concept, or *Gegenbegriff*, since it designates

3. To get a sense of the paradox, consider Schmitt’s critique of Mikhail Bakunin (“the greatest anarchist of the nineteenth century”). Schmitt remarks that by opposing sovereignty as such, Bakunin in effect had “*to decide against the decision*,” which is itself a sovereign act. This renders Bakunin “in theory, the theologian of the antitheological and in practice the dictator of an antidictatorship” (*ibid.*, p. 66). It is the image of a new brand of sovereign.

4. Mika Ojakangas, “Philosophies of ‘Concrete’ Life: From Carl Schmitt to Jean-Luc Nancy,” *Telos* 132 (Fall 2005): 32.

5. *Ibid.*, p. 30.

6. *Ibid.*, p. 29.

what is real or concrete, that is to say, what is not conjured up by thought, nor what follows some preexisting or overarching logic or rationale, but what simply *happens* or *irrupts*. It, therefore, emerges from *outside* the conceptual order, rupturing it, eventually determining or re-determining its parameters from within.

In what follows I will offer a close, interpretative analysis of Schmitt's 1956 *Hamlet or Hecuba: The Irruption of Time into Play* (*Hamlet oder Hecuba: Der Einbruch der Zeit in das Spiel*), a lesser known essay which analyzes Shakespeare's *Hamlet*.⁷ My reading will show that this essay serves as another good example of the pattern Ojakangas highlights. It should be noted in advance, however, that identifying similarities and a common pattern is never enough. After all, it is not necessarily a perfectly unified theory that we're after in Schmitt, if only because such an image of unity would not fit well with precisely that element which unifies his thought, namely, the exception.

Upon reading *Hamlet or Hecuba*, one finds it remarkable that the great theorist of decisionism should have become so fascinated by one of the most indecisive characters in the history of literature. It is, precisely, Hamlet's indecisiveness or inaction that fascinates Schmitt and serves as his main theme. Whatever the motives and circumstances of this essay, and however subtle and implicit its claims in this regard, we find a profoundly revised assessment of the rise of modern politics and the fall from (or of) sovereignty. What is certain is that if this text, indeed, exemplifies a turn in Schmitt's thinking of sovereignty, then no Schmittian theory of the event can be complete without proper attention to it.⁸

A number of "counter-concepts" are interwoven into Schmitt's argument in *Hamlet or Hecuba*: the tragic event, reality, irruption, and myth (as will be shown, the word "tragic" does not signify a species of the genus "event," but a clarification of the meaning of eventality as such). The

7. Carl Schmitt, *Hamlet or Hecuba: The Irruption of Time into Play*, trans. Simona Draghici (Corvallis, OR: Plutarch Press, 2006).

8. At the risk of venturing an analogy too broad to be sustained in this context, it could be suggested that the event of National Socialism effected a turn [*Kehre*] in Schmitt's thought analogous to the one found in Heidegger. The turn from preoccupation with the personal sovereign to a reflection on an unsovereign event, as I call it here, would accordingly be analogous to the turn in Heidegger from the resolutely appropriating Dasein to the still less personal (only quarter-human) event of "propriation" (*Ereignis*). But even if so, it must be stated that Schmitt's turn is not nearly as radical or "theological." He remains firmly (perhaps even more firmly than before) on all too human grounds.

exceptional event in this essay is portrayed as *a fateful irruption of the real into play, which turns it into tragedy and thereby becomes a myth*. Importantly, however, this event in its concretion, particularity and historicity is now grasped in opposition to, or as restricting, sovereign invention or intervention. It is not that this event is now impersonal, but that the meaning of personhood itself undergoes revision.

A Real Tragedy

Hamlet, for Schmitt, is not just any other play. A play famous, among other things, for staging a “play within a play,” *Hamlet* reflects a more general structure, the structure of playfulness, which is not unique to the theater but is a central facet of our communal existence.⁹ Shakespeare himself is famous for the statement, “all the world’s a stage,” and Schmitt echoes this sentiment a number of times throughout the essay, as when he cites the dictum *ludens in orbe terrarum* (playing in the world), referring to the theological view that the world is a playground for God, and when he quotes Schiller’s words: “the great play of the world.”¹⁰ Schmitt realizes that in certain senses, and especially approaching the baroque age, “the whole world has become a stage, a *theatrum mundi*” and “to act in public was to act in a theater . . . it was a theater performance.”¹¹ It is not hard to recognize here the familiar pattern of Schmitt’s thought. Setting up the notion of play or stage as an all-inclusive order that admits of no bounds corresponds to Schmitt’s broader concern with the totality of immanence, which acknowledges nothing beyond itself.¹²

9. The play within a play takes place in the third act, where Hamlet requests a group to stage a play for the court (the content of the play and its circumstances will later be discussed). Hamlet writes some of the script for the play and partially “directs” it, using the occasion to comment on the ethics of acting and the theater in general, in particular expressing his distaste for “overacting”—which is a theme in *Hamlet*. This gives the impression that Hamlet somehow transcends, almost feels uncomfortable with, his existence as a character in a play.

10. Schmitt, *Hamlet or Hecuba*, p. 40.

11. *Ibid.*, p. 35.

12. The relation between “exception” and “seriousness” (as opposed to playfulness) is already stressed in *Political Theology*, where Schmitt writes, “The exception can be more important . . . than the rule . . . because the *seriousness* of an insight goes deeper than the clear generalization inferred from what ordinarily repeats itself. . . . In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition” (Schmitt, *Political Theology*, p. 15, my emphasis). But it is also significant that

The “play within the play” in *Hamlet* is not, Schmitt proposes, a baroque gesture, a duplication of the playfulness of play, or an increase in its ludic character. Nor is it a self-parody or a “glimpse behind the scenes” into the apparatus of the play as such. On the face of it, we could suggest that since Hamlet is such an unusually self-reflective character, whose demeanor is always “sicklied with the pale cast of thought,” the play within the play is likely to be an extension of his character to the play as a whole—a self-reflection of the play itself. But self-reflection, for Schmitt, is, at most, a sign or an indication, not the thing itself. For him, the play within the play exposes the reality of the play as such, and therefore the socio-politico-historical reality to which it belongs and in which it is situated. Furthermore, since it hits upon the limits of the play, or stage, it already approaches the tragic. The play tends toward the tragic for Schmitt, to the extent that it makes it difficult, or irrelevant, for the audience, made self-aware, to “cry for Hamlet.” This point is put more emphatically in the second act of the play, in which Hamlet reflects, in a mixture of dismay and admiration, on the readiness and competence of one of the players in the group to cry for Hecuba “on demand”:

Is it not monstrous that this player here,
 But in a fiction, in a dream of passion,
 Could force his soul so to his own conceit
 That from her working all his visage wann’d,
 Tears in his eyes, distraction in his aspect,
 A broken voice, and his whole function suiting
 With forms to his conceit? And all for nothing!
 For Hecuba!

What’s Hecuba to him, or he to her,
 That he should weep for her? . . .¹³

Schmitt insists that we distinguish between “tragic drama” or mourning play (*Trauerspiel*) and tragedy, and the crux of this distinction lies for him in understanding the properly tragic as earnest (rather than “sad”), and the opposite of playacting. “The tragic ends,” Schmitt writes, “where playacting begins, even if the play is meant to make us cry. . . . It is impossible to overlook the fact that the tragic is not compatible with

the totality of play is not precisely the same as the totality of mechanistic or rationalistic systems.

13. Shakespeare, *Hamlet*, 2.2.486–94.

playacting, particularly in the case of Shakespeare's dramas, with their ludic character, which is apparent even in those that are customarily called tragedies."¹⁴ Tragedy, therefore, is precisely what is not performed; it is the only thing, perhaps, that cannot be performed. But this non-performativity itself must be first chosen or rejected. As Schmitt's title seems to suggest, we are faced with a choice: Hamlet or Hecuba. Are we to face, in *Hamlet*, that which makes it truly tragic, or are we to indulge in its playfulness all the way, either laughing or crying? This choice is presented to us by *Hamlet* itself.

What renders *Hamlet* a tragedy—its earnest aspect—is the fact that, as Schmitt repeatedly stresses in the last few pages of his article, the play assumes a “hard core” or “kernel” of reality, “an extremely powerful present and actuality,” which is irreversible, irrevocable, and incontestable.¹⁵ This real core, Schmitt maintains, is “an extraordinary quality,” a “surplus value” of the tragic, and here we recognize the familiar figure of the exception. “This surplus value,” Schmitt writes,

lies in the very reality of the tragic events, in the enigmatic concentration and imbrication of human beings that are incontestably real. It is on it that the earnestness of the tragic events rests, events that cannot be object of conjecture or relativization, and consequently do not lend themselves to play. All the participants are aware of an irrevocable reality which no human brain has devised, but on the contrary, is there, *thrust on from the outside*. This irrevocable reality is the dumb rock against which the play breaks, and the surge of the truly tragic moves forward in a cloud of foam.¹⁶

14. Schmitt, *Hamlet or Hecuba*, p. 35. The contrast to Hans-Georg Gadamer is interesting on this point. Gadamer shares with Schmitt the thought that the structure of play, which Gadamer regards as “the clue to ontological explanation,” applies beyond the scope of particular activities designated by this name. But Gadamer also stresses that “play itself contains its own, even sacred, seriousness.” Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall (London: Continuum, 2004), p. 102. It is therefore not surprising that he regards tragedy as a paradigm of, rather than a limit to, play. Schmitt does not necessarily deny that play can be serious in certain senses of the word, but what he means here by the term “serious” *just is* the limit of play, however expansive our definition of play may be. Serious is the exceptional event which disrupts the *structure* or *order* of play. The dispute between their philosophies on this matter would therefore involve the question: can the very applicability of the structure of play (and perhaps of ontological explanations in general) admit of a *limit*, an exception?

15. Schmitt, *Hamlet or Hecuba*, pp. 37–44.

16. *Ibid.*, p. 39 (my emphasis).

That the tragic, after its irruption, does not immediately recede but “moves forward in a cloud of foam” is already a metaphorical expression of the nature of myth, the discussion of which will have to be deferred to a later occasion. For now, two things must be noted concerning this passage. First, the emphasis on the “concentration” and “imbrication” of human beings—phrases that signal what I have suggested is a revision of Schmitt’s conception of personhood. This will be further elaborated as we move on. Second, the source of the tragic is reality, and if *Hamlet* is a veritable tragedy and not a mourning play, it is only because “historical time irrupts into the time of the play.”¹⁷ *This irruption is the event.* As the German suggests, irruption (*Einbruch*) is what breaks in from the “outside,” and it breaks, breaks and enters, disrespecting the boundaries and the autonomy of art and of the play. Unintended, uninvited, and unannounced, reality in the event is not outside, but inside, the play.

Reality is generally defined in Schmitt’s essay through its contrast to human invention, conjecture, or imagination. The opposition between event and invention is most fully apparent in Schmitt’s critique of the romanticist “cult of genius,” which propagates the “poet’s freedom of invention” and his power of “free and sovereign creation.”¹⁸ In general, Schmitt rejects the validity of all attempts by other interpreters of *Hamlet* to determine the meaning of the plot by surmising the subjective intentions of its author. If subjectivist readings are limited, it is not because the author does not play a crucial role; it is, rather, because their conception of subjectivity or personhood is limited. Assuming the author’s sovereignty, and misguidedly liberating him from his concrete dependency on the surroundings, such readings fail to treat his person as a figure belonging to its time and place and as a member of a living public sphere. Schmitt stresses that it is not accidental that precisely those romanticist theorists of art who attribute “freedom” to the poet were themselves “home workers,” namely, working *from* home and producing primarily *for* home consumption (i.e., for print)—such is the nature of *their* public sphere. Shakespeare, however, although often placed among the emblematic representatives of the creative genius, lived and worked in a radically different atmosphere. He wrote for a particular audience, an audience that for the most part would not have read the plays in print, but only witnessed their performance on stage.

17. *Ibid.*, p. 38.

18. *Ibid.*, pp. 28–29.

Finally, it is because reality irrupts (*bricht ein*) into the “world stage” that it is truly fateful.¹⁹ A contrived fate, Schmitt suggests, is no fate at all, and he adds that “invention and tragic events are incompatible and mutually exclusive.”²⁰ What irrupts into the play is a force that no one in particular controls, and so it no longer merits the name of “action” (or decision) but is primarily an impingement, a restriction, an *inaction*. This kind of restriction is at least in part connected to the constraints involved in living in a common, public space, within an “imbrication of human beings.” Schmitt writes:

A playwright, whose works are meant for immediate performance before an audience well-known to him, finds himself . . . sharing a common public space [with them]. By their material presence, the spectators assembled in the house form a public space that brings together the author, the stage director, the actors and the very audience, in an all-inclusive way. The attending public must understand the action of the play . . . [otherwise] the common public space dissolves or turns into a mere theater scandal. . . . This kind of public space sets a permanent limit to the dramatist’s freedom of invention.²¹

The “personalistic” element is here radically decoupled from the “decisionistic.” The person seems to be the one who is exceptionally impacted, affected, even restricted or maimed, by his or her surroundings, essentially and deeply implicated in a constellation of forces and personalities, which forms a common public space. What is provocative in Schmitt’s account is that he insists that this does not apply to every individual. Therefore, the general strand of a “philosophy of authenticity” that was suggested in Schmitt’s decisionism is retained, albeit in a less proactive and individualistic form. In this case, it is detectable in the contrast between this kind of personal, real involvement, which is exceptional, and impersonal “playacting,” which is the rule. Again, it takes a particular constellation of personalities and an exceptional event to make such fateful impact.

We still need to familiarize ourselves with what it was, exactly, that irrupted into *Hamlet* and what it was that Shakespeare’s public had known and that restricted or interrupted his creativity, thereby producing the

19. *Ibid.*, p. 42.

20. *Ibid.*

21. *Ibid.*, p. 31.

unique genius of this work. But before we approach Schmitt's concrete analysis of Hamlet, a word of caution is needed. Schmitt protests against what he calls the "division of labor" in the academy, a division that again follows the presumption, by each "division," of sovereignty and autonomy. Different competence areas, Schmitt states, have become "well established value systems, which only acknowledge their own passports and affidavits, accept only their own visas, and do not grant to anybody else the right of entrance and transit." It is for that reason that, in "the sphere of the beautiful . . . questions of history and sociology become tactless and in bad taste."²² As always, Schmitt does not offer a programmatic solution to this state of division, but presents an exception to it. When reading a play like *Hamlet*, Schmitt seems to suggest, we simply have no choice but to get tactless and in bad taste.

First Opening: Taboo

... we find ourselves before a *taboo* which the playwright simply observed and which constrained him to place the question of the mother's guilt or absence of it between brackets, although both morally and dramatically it rests at the core of the revenge drama.²³

According to Schmitt's analysis, reality irrupts into *Hamlet* via two "openings"—"shadows," "obscure zones," or "doorways," as he alternately calls them—in the play. These are named by him *the taboo of the queen* and the *transformation of the avenger type*. It is now time to inspect each of them separately.

Put simply, what is meant by the "taboo of the queen" is the fact that, for reasons of fear and prudence, Shakespeare could not afford to make explicit, or even plainly implicit, suggestions regarding the complicity of Queen Gertrude, Hamlet's mother, in the murder of her first husband, Hamlet's father. This is due to the unmistakable similarity between her case and that of Queen Mary Stuart of Scotland. Mary Stuart's second husband and cousin, Lord Darnley, was allegedly murdered in 1567 (more than thirty years before *Hamlet*'s first performance), and it was suspected that his murderer was James Hepburn, Earl of Bothwell, who would later become Mary's third husband. It was also suspected that Mary conspired

22. Ibid., p. 29.

23. Ibid., p. 15.

and plotted the murder with Bothwell. The case was investigated and debated already in Mary's lifetime. What made this affair particularly sensitive in the early 1600s was the approaching death of the heirless Queen Elizabeth of England, and the uncertainty regarding the identity of her successor to the crown—Mary's son, James, being one of the leading candidates. The play was, therefore, situated right in the midst of political and historical turmoil, and the affinities between the characters of the play and those of the real historical drama that erupted "outside" were evident. Since the dying Queen Elizabeth "did not want to hear 'funeral tolls,'" nobody, Schmitt writes, "dared to talk about that delicate situation openly."²⁴ Still, clandestine campaigns were conducted by interest groups in support of the competing candidates, to the mortal risk of all those involved. Shakespeare's own company had to quit London for a while because of the persecution of his patrons, who were supporters of James. And James himself, whether for emotional or coldly political reasons, was known to be rigorously unforgiving of anyone who would have his mother's name slandered. The similarity, in any case, between the drama of the Stuart family and that of the Hamlets, could not have escaped the attention of the contemporary spectator, including James himself.

Therefore, according to Schmitt, the whole question of Queen Gertrude's involvement in the murder of her husband stood under the sign of a taboo. And so, although this question "forces itself upon the play from the beginning to the end and cannot be suppressed," it is nevertheless "carefully evaded, and so remains unanswered."²⁵ This peculiarity is only reinforced in view of the fact that *Hamlet* is, at least on the face of it, a "revenge drama," and that its hero is therefore supposed to be an "avenger type." The point is that, given that Hamlet's mother married Claudius—his father's brother and alleged murderer, who thereby took over the throne—the suspicion regarding the mother's involvement and the need to decide on the question of her complicity must have played a decisive role in Hamlet's quest for revenge. And yet, the question is "carefully evaded."²⁶

24. *Ibid.*, p. 17.

25. *Ibid.*, p. 13.

26. Schmitt's claim that the question is "evaded" is arguable. Hamlet seems to be obsessed with this question throughout the play and his rage against his mother is only barely suppressed. But it is never made clear *what* precisely he accuses her of. Naturally, he accuses her of getting married with his uncle not even two months after the murder. It

This evasion is the result of a taboo that Shakespeare had to observe, namely, the fact that it was dangerous, to say the least, to condemn the queen (Gertrude/Mary) outwardly, seeing as her son James would not have it. More importantly than the prohibition on “telling the Queen out,” however, this ambivalence, or hole, in the play allowed the real character of Mary, with its enigma (it was never clear whether she was or was not involved in killing her husband, though there was good reason to suspect that she was), to break or irrupt into it.²⁷

As Schmitt writes: “A terrifying reality shed a faint light through the masks and costumes of a theatre play. No interpretation, whether philological, philosophical, or aesthetical, however subtle, can change that.”²⁸ Nothing can change the real intervention of these historical events in the composition of the play as we know it; the play bears their imprint, not just in passing details and contours, but at its very heart and in its structure, subverting all the elements of the traditional plot of a revenge play, producing the hesitation, the introspection, the pervasive silence, and the suppressed rage. This, for Schmitt, is not “open for interpretation.” Mind the phrase “nothing can change,” and note how it is bound up with critiques of philosophic or aesthetic interpretations, a critique that is carefully woven throughout Schmitt’s texts. Schmitt’s point seems to be that any interpretation that fails to take into account the operation of the taboo and its fateful impact on the play is simply blinded to its central problematic.

is not clear, however, if he accuses her of being involved in the *killing* of his father. Even his father’s ghost is not explicit on the matter, but only instructs him to let her be, and later intervenes at the point where Hamlet seems to come dangerously close to blatantly accusing her of murder. This is in fact the only occasion—more suggestive in how fleeting and cautious it is than in anything else—that Hamlet mumbles the forbidden words: “A bloody deed. Almost as bad, good mother/As kill a king and marry with his brother” (it happens right after he kills Polonius). Shakespeare, *Hamlet*, 3.4.27–28. At his mother’s dismay on hearing his remark (“As kill a king?”), Hamlet does not retreat from his words (“Ay, lady, it was my word”), nor does he ever repeat them, and no more is said of the matter.

27. In his biographical novel on Mary Stuart, Stefan Zweig gives the impression that the enigma around Mary’s guilt was inherent to her character and the conflict ridden atmosphere of the time. As he writes: “The answers to the riddle of Mary’s life and character are almost as contradictory as they are manifold. Some regard her as a murderess, others as a martyr; some as intriguer, others as saint. . . . In the thousands upon thousands of documents, reports, records of trials, letters, etc., relating to her, the question of her guilt or innocence is continually being re-examined, and the re-trial has continued for three centuries.” Stefan Zweig, *Mary Queen of Scotland and the Isles*, trans. Eden and Cedar Paul (New York: Broughton Press, 2008), p. v.

28. Schmitt, *Hamlet or Hecuba*, p. 18.

This blindness results, perhaps, from a predetermination of what “art,” in general, is or ought to be.

For what is it that we are talking about here, really? Shakespeare’s incapacity to address the inevitable question of the queen’s involvement? In one single stroke, this banal allusion both degrades Shakespeare’s genius, introducing petty concerns of court diplomacy into his masterpiece, and deprives the play of its immortality, its artistic capacity to be timeless, to be a text or, at most, a performance. Worse still, this is not even an event, in the sense of something that actually takes place within the play, but an evasion, a silence, around which the long string of words and thoughts timidly dances and swirls. But it is just this problematic, Schmitt argues, that determines the fate of the story, the peculiarity of its characters and its poetry. And it is just here that reality shines through despite the creator, a reality, coercing his artistic efforts, of which he is just a part. Finally, it is just this peculiarity that eventually bestows upon it the extraordinary power of myth.

Second Opening: Hamletization

But Gertrude/Mary herself plays only a subordinate role, especially since her problem is carefully evaded. The situation is more complex in the case of Prince Hamlet: “The avenger, the hero of this revenge drama, in other words, the decisive character, has been rendered problematic in an unimaginable manner. . . . This amazing character has rightly become famous not as a revenge-seeker but the opposite, as a problematic character, subject to doubt and ill-assured of his avenging task.”²⁹ Hamlet’s character (which “overflows its mask”) marks for Schmitt the second irruption of real time into the time of play, after the irruption of the taboo. It is “the transformation [later to be coined ‘Hamletization’] of the avenger into a melancholic entangled into his own musings.” An explanation for what Schmitt calls Hamlet’s “singular inaction” cannot be found anywhere in Shakespeare, he suggests.³⁰

Reflect, if you will, on the difference between the event of decision of *Political Theology* and the event of the “Hamletization of the avenger,” as Schmitt calls it here. For one thing, is not a decision that one *takes*, but a change of character and motivation that one *undergoes*.³¹ At the same time,

29. *Ibid.*, p. 20.

30. *Ibid.*, p. 19.

31. *Ibid.*, p. 21.

however, this change of character peculiarly names this person, rendering him who he is. The impersonal form of “the avenger” is a classic character, an archetype, or rather a stereotype (a model or a pattern), whereas Hamlet is a prototype, not repeated but transformed, problematized, indistinguishably marked and remarked by its “singular inaction.” It is what Hamlet is incapable of doing that makes him who he is, a singular personality and a thinker.

In stark contrast to Hamlet, the Nordic Amleth of the Norse saga (upon which *Hamlet* is said to be based) “is not a doubter but a practical activist who reaches straight for the goal which he has set for himself. . . a born-avenger . . . driven by his instinct of revenge.”³² Note that the “practical activist” is here reduced to the level of a stereotype, a pattern. In general, while “inaction” merits the adjective “singular,” action is almost synonymous in this essay with playacting and, therefore, something constitutively “inauthentic.” Of Hamlet, on the other hand, Schmitt remarks that “this peculiar avenger does practically nothing else about his avenging task but to set up [a] theatre performance . . . a play within the play.”³³

This other play, already mentioned, is meant to serve Hamlet as a “mousetrap” by means of which to conclusively implicate Claudius in the murder of his father. The murder is reenacted on stage, along with a rather explicit, but of course indirect, text that Hamlet composed for the occasion, in order to test Claudius’ reaction. In Hamlet’s words:

The play’s the thing
Wherein I’ll catch the conscience of the King.³⁴

However, Hamlet’s “mousetrap” seems uncalled for, since he has already been told earlier in the play, by the ghost of his dead father, who the murderer was. Schmitt explains this by suggesting that the function of this play within the play is not only to test Claudius’s reaction, but to judge, by his reaction, the validity of the ghost’s testimony and the authenticity of the ghost itself. It is to reassure Hamlet that the apparition of his father’s ghost is really his father and not the working of a devil. Had he not been

32. Ibid.

33. Ibid.

34. Shakespeare, *Hamlet*, 2.2.539–40. If we imagine these words as Shakespeare’s rather than Hamlet’s, their meaning miraculously transforms. Who’s the king whose conscience Shakespeare hoped to catch? What is “conscience,” and how does one “catch” it?

uncertain of that, he would have had no need of a “mousetrap.” For the Nordic Amleth, in any case, no such apparition, genuine or otherwise, is needed in the first place. He knows who the guilty one is and goes for the kill.

This hesitation, the problematic of deciding on the nature of the ghost and on the nature of existence altogether, which makes for Hamlet’s “singular inaction,” is already a second doorway in the plot. “Hamlet the stage character,” Schmitt maintains, “flows over the limits of his mask . . . against [him] another figure has been propped.”³⁵ The contemporary actor, spectator, and patron knew and recognized well who that other figure was. It was James, Mary Stuart’s son.

As Schmitt records, James was, since childhood, “kidnapped, abducted, imprisoned, captured and threatened with death.” He was “literally catapulted from his mother’s womb into the chasm of his era.”³⁶ It is only fitting that this child of a chasm would also turn to reflection and scholarship, trying to settle in his writings many of the paradigmatic disputes and ruptures of his time—disputes and ruptures he could not even begin to settle any other way. This chasm, as we can learn especially from the two appendices to Schmitt’s essay, can be seen as twofold. Primarily, it has to do with the religious controversies and wars, most specifically, those between Protestantism and Catholicism, which ruptured James’s own personality and family, and which Schmitt finds to be nothing less than “the chasm that defined Europe’s destiny.” This chasm is also “the ultimate and essential aspect of the Hamlet theme.” As he writes:

Hamlet finds himself right at the center of the opposition between Catholicism and Protestantism, between Rome and Wittenberg. Even his doubts about the apparitions of his father’s ghost are decided in the opposition between Catholic and Protestant demonologies, resulting from the difference in the dogmas of purgatory and hell.³⁷

35. Schmitt, *Hamlet or Hecuba*, p. 20.

36. *Ibid.*, p. 24.

37. *Ibid.*, p. 53. Schmitt remarks that of the three great symbolic figures of modern European literature—Don Quixote, Hamlet, and Faustus—only Hamlet bespeaks this chasm, as Don Quixote is a good Catholic and Faustus a good Protestant (*ibid.*, p. 45). He therefore questions the sufficiency of Walter Benjamin’s diagnosis, in *The Origin of German Tragic Drama* (1928), that Hamlet is “peculiarly Christian.” “Whatever may here be considered Christian,” he claims, “has gone through James, Mary Stuart’s son, who is totally implicated in the religious confrontation” (*ibid.*, p. 53).

The second fold of this chasm is of a temporal nature, and not unrelated to the first.³⁸ It is the transition period in which the insular and increasingly maritime kingdom of England finds itself at the dawn of the seventeenth century: no longer “barbaric” (feudal) and not yet “political” (a modern, sovereign state). Accordingly, Shakespeare’s theater, too, “and his *Hamlet*, in particular, are no longer ecclesiastical, in the medieval sense. On the other hand, they are not yet a political state theater, in the concrete sense that state and politics acquired on the Continent as a result of the development of state sovereignty in the sixteenth and seventeenth centuries.”³⁹ This difference is essential to the interpretation of *Hamlet*, he insists, because “the *core* of this play cannot be grasped by means of the categories of art and cultural history, such as Renaissance and Baroque.”⁴⁰ A political history, or the history of the concept of the political, underlies aesthetic categories and relativizes them, simply because the play itself, the theater, is subordinated to a certain social and political order.

These unbridgeable chasms, in any case, are embodied in the person of James, and in his reflection, and are given expression in Hamlet’s every turn. And the “fact remains recognizable” that

the transformation of the typical revenge-seeker can only be explained by taking into consideration the historical presence of King James. In times of religious schisms, the world and its history lose their established forms, and a series of human problems becomes visible, on the basis of which no purely aesthetical consideration is any longer capable of producing the hero of a revenge drama. The historical reality is stronger than any aesthetics, and also stronger than the most original subject. A king who by his character and destiny was himself the product of the dismemberment of his era was present in his concrete existence there, under the nose of the author of the tragedy.⁴¹

We sense that Schmitt’s interpretation insists on two very different points. On the one hand, it insists on locating a concrete particular personality behind Hamlet’s stage character, rather than allowing him to be either a figment of Shakespeare’s creative imagination or, as he is usually made

38. The chasm between Catholicism and Protestantism is, after all, a chasm between the old and the new, though the “new” here is still shadier, more intertwined, conflicted, and bounded with the old, than the Enlightenment ideal of a post-theological modernity.

39. *Ibid.*, p. 51.

40. *Ibid.*, p. 53 (my emphasis).

41. Schmitt, *Hamlet or Hecuba*, p. 26.

out to be, a metaphorical image of the “modern subject/individual,” which would again bring us back to Shakespeare’s philosophical genius and creative imagination. On the other hand, Schmitt also insists that this singular and particular personality behind Hamlet is itself but a “product of the dismemberment of the era”; it is not “authentic,” “heroic,” or “original,” only real and paradigmatic at that. Thus, extending Hamlet into James, Schmitt rescues Hamlet from the hold of Shakespeare, his creator, as well as from that of the interpreter, the performance, and the text. Hamlet is not simply a mirror image of James, but rather James, in his troubled existence, *Hamletizes* him.

Irruption and the Problem of Historicism

In an appendix to his *Truth and Method*, Hans-Georg Gadamer advances a critique of Schmitt’s essay, arguing that “in [his] opinion, Schmitt falls victim to a false historicism when, for example, he interprets politically the fact that Shakespeare leaves the question of the queen’s guilt open, and sees this as a taboo.”⁴² This is an “immanent critique” of Schmitt. Gadamer uses the phrase “*falls victim* to false historicism” because he is aware that Schmitt endorses an explicitly *anti*-historicist stance. For example, we read in Schmitt that it is only the “grotesque misunderstanding of historicism,” and one of the “monumental errors associated with the word ‘history,’” that history is considered merely as something past, over-and-done-with, something for the archives.⁴³ These allegations are addressed precisely against what Gadamer calls “false historicism,” namely, the kind of historicism that reduces all considerations to one. This, however, does not contradict the fact that, as mentioned earlier, Schmitt rebels against the “division of labor” that bans historical and sociological considerations altogether from the land of art, and vice versa.⁴⁴

Gadamer, in any case, cannot see how Schmitt’s appeal to history is anything but false historicism, one which overdetermines the significance of the play, reducing it to a reference to specific historical reality. I will not try to disqualify this critique, because there is evidently something to it, but I do take it as an occasion to observe a few important qualifications that Schmitt makes regarding his notion of irruption, for he makes them, I believe, precisely, in order to fend off critiques of this sort. As suggested,

42. Gadamer, *Truth and Method*, p. 499.

43. Schmitt, *Hamlet or Hecuba*, p. 44.

44. *Ibid.*, p. 28.

it is as an *irruption of real time into the time of play* that Schmitt characterizes the event, and it is the “evental” status of this irruption that renders it something other than a piece of historical data. He distinguishes his notion of “irruption” from two other modes of relation between play and reality. These are allusions and reflections.⁴⁵ Allusions are references, invoked within the play itself, to actual events with which the audience might be familiar. Reflections occur more at the character level, namely, real-life characters of the period are reflected into, and reflected by, stage characters. Schmitt remarks that such characters do not have to be unproblematically self-identical: “pictures and figures, situations and events blend dream-like on the stage.”⁴⁶ Prince Hamlet, for example, is not only a reflection of James but, as Schmitt suggests, a compound reflection of both him and the Earl of Essex. In any case, it arises from Schmitt’s account that reflections are truer than allusions. Reflections work like a mirror, which really coexists with what it reflects, rather than as reference to something totally distinct. Reflections are, therefore, not mere signposts and accessories, but living and dynamic correspondences with reality. What allusions and reflections nevertheless have in common is that they both retain the reality-play opposition present in every theory of representation. Irruption, on the other hand, poses a different sort of relation altogether. We could perhaps illustrate it as follows:

← ALLUSION

←→ REFLECTION

→ IRRUPTION

This illustration has its limitations, but it serves to indicate that, as suggested, irruption breaks in, rather than refers to or mirrors, the outside. The notions of reflection and allusion suggest then, to different degrees, that the “outside,” or “reality,” remains outside. Once we understand, however, that the play and its public performance themselves are real, and that the structure of play extends far beyond the actual stage, it becomes plainer that these distinctions between play and reality, and between an inside and an outside, while not without specifically determinable coordinates, are superficial. False, or reductive, historicism stops short at this level. In irruption, however, the play-reality distinction itself is violated, but

45. *Ibid.*, pp. 22–23.

46. *Ibid.*, p. 23.

only for that reason is it substantiated for the first time.⁴⁷ Only in irruption does the play immanently realize a limit, and only in the negative mode of a limit, a boundary, a restriction, can something like reality be said to intervene.

Schmitt draws these distinctions in order to clarify *why* the two “openings” or “doorways” he uncovers in the text are not to be reductively understood. His tracing of the character of James as lurking behind the avenger type’s Hamletization is not to be interpreted as a case of simple reflection, nor is the taboo of the queen a mere allusion to a historical fact. These are not, he insists, “simple historical-political implications, nor simple allusions or true mirror-like reflections, but data recorded into the play, observed by the play, and round which it turns timidly.”⁴⁸ It is, therefore, *in* the play, not merely in the historical situation “outside” of it, that this imprint occurs. The play itself is the event, and the reference to James and Mary is necessary in order to explain how it happened and what is specific to it as such, given that events are always concrete for Schmitt. But if a play is an event, then it is no longer a mere play, for it is a tragedy.

The Myth

One can imagine, perhaps, the spectators of the original performances of *Hamlet* inspecting each other’s reactions as the words escape from Hamlet’s mouth, elusively accusing his mother of murder.⁴⁹ And one can notice, perhaps, that these are the same sort of gazes that were exchanged earlier on stage, between the actors-turned-spectators during the “play within the

47. The groundwork for a theory on the concept of “truth” shines through these remarks by Schmitt, especially through his rather methodical deployment of adjectives. Schmitt does not develop such a theory, nor will I try to do so here, but I will offer a few indications for further reflection. Notice the use of adjectives: Schmitt writes about “*simple* allusions” (ibid., pp. 22, 31) or “*fleeting* allusions” (ibid., p. 23), but about “*true* reflections” (ibid., pp. 22, 23, 31). And yet when irruptions are introduced, we suddenly find the sentence: “in this play, the superiority of the *true* irruption over the *simple* reflection becomes manifest however veridic the latter may be” (ibid., p. 24, my emphasis). There seems to be a scale of “veridity” that stretches not from “false” to “true,” but rather from “simple” and “fleeting” to “true,” implying that truthfulness (referring, so it seems, to the extent of *impact* historical reality makes on a given text or occurrence) is always relative. The irruption is true (and truly tragic), because it is not simple (meaning perhaps that it is not a one-to-one relation), and it is pervasive to the play in all its dimensions rather than fleeting.

48. Ibid., p. 38 (my emphasis).

49. Shakespeare, *Hamlet*, 3.4.26–27.

play.” One can imagine, along with Schmitt, how the boundaries of the play were thus shaken, how reality irrupted into it, and how it rose to the level of a tragedy, not because of the stage character’s lamentable fate, but because of the fatefulness of the moment for everyone involved. “A terrifying reality shed a faint light through the masks and costumes of a theatre play.”⁵⁰ One can also follow Schmitt’s thought that Shakespeare, in the words of Hamlet, tried to “catch,” without grasping or inventing, “the conscience of the King” within the play. This yielded a new type, or prototype, of character: one who is condemned by his position and circumstances to sublimate or to repress his vengefulness in thoughts and words, and to question every facet of his existence and demeanor. But the question still remains as to the significance of this historical event *for us*, that is to say, its mode of endurance.

Gadamer, again, believes that insofar as the interpretation traces the significance of the play back to Shakespeare’s England, it overdetermines it, closing it off from our involvement as contemporary spectators. Accordingly, while Schmitt sees the greatness of *Hamlet* in its allowing the irruption of time into play, i.e., the irruption of a certain political reality, which is a constitutive event, Gadamer sees this kind of observation as rather depriving the play of its power to continually become a new event. In Gadamer’s words, it denies the play’s power to “*irrupt into time*” (our time, for example).⁵¹ The play loses its “eventuality” when its significance is overly rooted in a specific and over-and-done-with historical event.⁵²

It may well be, however, that for Schmitt the opposite is the case and the fateful impact of the event is no more available to the contemporaries than it is to us. It is only in the mythologization of the event that its historical truth comes to bear. When Shakespeare, with James “under his nose,”

50. Schmitt, *Hamlet or Hecuba*, p. 18.

51. Gadamer, *Truth and Method*, p. 499.

52. I will only mention that Gadamer’s own work, as well as his critique of Schmitt, essentially draws on a Heideggerian conception of time. It might be the result of this ontological commitment (or should I say prejudice) that Gadamer all but overlooks the fact that Schmitt’s brand of anti-historicism, unlike his own, rests on a distinction between two temporal dimensions—real time and time of play—which is probably more Freudian in influence than Heideggerian. In any event, even if the time of play is portrayed by Gadamer as hectic, shifting, and open-ended, indeed “ecstatic” in the Heideggerian sense, it is nevertheless organized in each case *hermeneutically*. For Schmitt, and on this point he is explicit, “real time” irrupts independently of hermeneutics, and hence independently of play.

Hamletizes the avenger and riddles the figure of his mother, he already mythologizes them, and thereby “the surge of the truly tragic moves forward in a cloud of foam.”⁵³ This is not merely in grace of Shakespeare’s creative powers, for these alone would never have had the capacity to make a myth.

Since Hamletization is already mythologization, Schmitt remarks in the introduction to the essay that “interpretations and symbolizations of Hamlet are not limited to the psychology of one individual being. Whole nations too may assume Hamlet’s traits.” Accordingly, one of the questions that guide his work in this essay is precisely “To what is due the fact that a play of the last years of the Elizabethan era gave birth to this rarity—a modern European myth?”⁵⁴ To my understanding there are two kinds of answers provided by Schmitt’s essay, one of them structural (or general) and the other particular. As for the structural, Schmitt maintains that beyond both psychologist and historicist methods of interpretation, “there is the question of the source of the tragic event in general: a question which if left unanswered renders what is special about Hamlet’s entire problem incomprehensible.”⁵⁵ The particular pertains to the concrete historical personalities, the “imbrication of human beings” of this unique time and place. I hope I managed in this essay to address and develop both the structural and the particular dimensions of Schmitt’s response.

The play is transformed into a tragedy, not by adhering to a certain genre and not by inventing a new one, but by allowing the irruption of the real into the play, which, ultimately, resulted in a singular and fateful transmutation of a genre (in this case, “the revenge drama”).⁵⁶ Furthermore, since the event cannot be subsumed into “the time of play” it cannot be a matter for “historical records” either. As Schmitt claims, no “archive, museum or library can conjure up the presence of a myth by its own kind

53. Schmitt, *Hamlet or Hecuba*, p. 39. Schmitt differentiates between modern mythology and ancient mythology. While the Ancients have picked up their myths from an existing arsenal of folktales (which was nevertheless the living presence of real history and a shared public place), Shakespeare, here a paradigm of the modern, “has made a myth from the reality which he lighted upon” (ibid., p. 42).

54. Ibid., p. 11.

55. Ibid..

56. The Hamletization of the revenge drama does not quite yield a new genre, since the prototypical (and hence mythic) nature of a tragedy as such does not permit generalization. It may, however, inspire the evolution of genres. I should note that the remarks in this essay about “genre” as well as about “prototypes” and “stereotypes” are not Schmitt’s but mine.

of authenticity.”⁵⁷ It is precisely here that the significance of art, which is, in a sense, a play within a play, can be felt. Shakespeare’s art records not “facts” but the irruption of reality, an event. *If reality turns the play into a tragedy, then the tragedy, in turn, transforms reality to myth.*⁵⁸ The myth marks an enduring living history, or the living presence of real history. Therefore, myth and reality are more closely bound up together than is perhaps normally assumed. The bond between these two concepts sheds light on what Schmitt means by each of them. “Reality” needs to be distinguished from “fact,” and “myth” from what is “mystical,” “fantastic,” or “unreal.”

On this note I can refer again to Ojakangas’s essay on Schmitt. Ojakangas takes issue with Schmitt’s fascination with the mythical. He claims that the problem with “philosophies of the concrete,” such as Schmitt’s and Heidegger’s, is that, “especially because they identify the concrete with the exceptional event, [they] seem to have a tendency to mythical and mystical thinking.” This tendency, he suggests, “at least partly explains [Schmitt’s and Heidegger’s] involvement with Nazism.”⁵⁹ This critique, like Gadamer’s, should be left standing and cannot be dismissed. I did try to emphasize, however, that in *Hamlet or Hecuba* the paradigm of the “heroic,” decisive sovereign undergoes “Hamletization,” just as the political seems to be marked less by a stark friend-enemy distinction than by a common public space exceptionally pervaded from within by agonism, chasms, taboos, intrigues, and threats. The emphasis on personal involvement shifts to an emphasis on “an imbrication of human beings” as well as on the “singular inaction” of the hero, the playwright, and the king. It can be suggested, then, that although Schmitt remains perfectly loyal in this essay to the familiar structure of thought that Ojakangas’s essay highlights, the climate of his thought changes and so do the resonances of concepts like “myth” and “exception.”

To conclude, it seems as if this particular time of chasm, these non-sovereign rulers in a non-sovereign state, continue to lurk alongside and

57. Ibid., p. 44. Zweig’s biography again expresses the same sentiment, as he writes that in Mary Stuart’s case, more so than in others, “The more meticulously we scrutinize the documents, the more painfully do we become aware how dubious is the authenticity of historical evidence, and how untrustworthy therefore the conclusions of historians.” And he contends that her case has always lent itself more easily (and repeatedly) to poetry and legend than to history books. Zweig, *Mary Queen of Scotland*, p. v.

58. Ibid., p. 41.

59. Ojakangas, “Philosophies of ‘Concrete’ Life,” p. 25.

underneath more established and unified forms of government and ideologies, even today, irrupting through the doorways of this play. “Even for us today,” Schmitt concludes, “Mary Stuart is something more and something else than Hecuba. Neither is the fate of the Atrids so close to us as that of the unfortunate Stuarts.”⁶⁰ And in the epigraph to his essay, he cites a passage from the 1603 edition of *Hamlet*:

Why these Players here draw water from eyes:
 For Hecuba, why what is Hecuba to him,
 Or he to Hecuba?
 What would he do and if he had my losse?
 His father murdered, and a Crowne bereft him . . .⁶¹

60. Schmitt, *Hamlet or Hecuba*, p. 45.

61. *Ibid.*, p. 7.

Notes for a History of the Political: Capital Events and Bodies Politic in the French Revolution

S. D. Chrostowska

I.

Carl Schmitt's *The Concept of the Political* (1927; revised 1932 and 1933) has come to be widely recognized as a work of rare insight into the formative logic of the state. Much less apparent is that implicit within this theoretical distillation is a new type of political history. There is every indication—given the philosophical, theological, and aesthetic aspects of Schmitt's writings, no less than his overtly personal beliefs in this regard—that a *history of the political* relative to the modern state, which is the focus of his historical interest, would entail more than the mere rarefaction of traditional, pragmatic historiography qua history of (political) events (*histoire événementielle*). In direct parallel to the opening of Schmitt's essay, one could say that the concept of the political presupposes the concept of the event—or, rather, and by more than a mere grammatical analogy, the concept of *the evental*. Both concepts share an emphasis on *possibility*; thus, the domain of events is to the evental as the domain of politics is to the political.

In pursuing this line of inquiry across Schmitt's oeuvre, one soon notices his frequent use of a particular category of historical event to reference theoretical points in the discussion. Such events are often posited by Schmitt as *cases* at once *exemplary* and *extreme/exceptional*¹—paradoxical conditions that evince a resistance to generalization, in keeping

1. Cf. "That the extreme case appears to be an exception does not negate its decisive character but confirms it all the more." Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: Univ. of Chicago Press, 1996), p. 35.

with the non-reductive conception of events noted by Schmitt scholars.² This suggests what a hypothetical history of the political might be like: not a history of actual events per se, which lie in the already constituted domain of politics, but of particular, theoretically representative cases; not a history of links (means, ends, and other causal relationships) among events defining politics, but of the evental subtending the political, i.e., the possibility, hence the function and collocation, of events in their inherent phenomenological position between repetition and exception. The dynamism of events is, thus, the dynamism of politics. This latter exposes the political to crisis and, *in posse*, to the end of the political. In the simplest terms, it would seem that, to merit inclusion and discussion in such a history as a *case* punctuating the continuum of politics, an event would have to be *critical* in an existential-political sense, or, in other words, to reveal the real possibility of conflict, of actual political upheavals and transformations—high points that testify to the vitality and autonomy of the political sphere precisely by challenging and putting it into question. The model of such a case, in Schmitt's estimation, is the *extremus necessitatis casus* ("extreme case of necessity"), the state of exception.

The history of the political, then, would be seen to comprise, on one level, a chronological and non-causal account of political existents: concrete historical events correlated with, as well as embodying and disclosing, specifically political antagonisms, which renegotiate the meaning of political relations, terms, concepts, images.³ On another level, however, such a history would correlate the exceptional/exemplary potential of events to the potential for violation inherent in historical friend/enemy groupings. As Schmitt states, "the sphere of the political is in the final analysis determined by the real possibility of enmity."⁴ That is to say, the political does not reside in war as such but (merely) in its real possibility ("the most extreme possibility"⁵), which can be actualized or, on the

2. George Schwab, introduction to Schmitt, *Concept of the Political*, p. 7. On this point Schwab cites Julien Freund's preface to *La notion de politique: théorie du partisan* (Paris: Calmann-Lévy, 1972), pp. 22–27.

3. Cf. Schmitt, *Concept of the Political*, p. 30. The two pertinent passages are: "The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping"; and, noted in passing, "the substance of the political is contained in the context of a concrete antagonism" (pp. 29–30).

4. *Ibid.*, p. 64.

5. *Ibid.*, p. 35.

contrary, averted by political means or other forces. The political event can, therefore, be a case of combat as much as a case of stasis or combat avoided, or, alternatively, a situation where, for the time being, the very possibility of combat is eliminated. In the latter case, one must draw the line between the event's political status/effect and its non-political effect, expressed in the absence of a potential or actual adversary. Either way, the political event is indissociable from antagonism and conflict, as opposed to consensus and compromise. It is ultimately realized as a matter of life and death of the individual and of the state as bodies political. The generation of war, moreover, is a regeneration of the political (rather than its degeneration), stoking the potential for confrontation. For this reason, wars occupy a favored position in political history.⁶

Whether or not Schmitt had ever projected a series of historical cases to substantiate his main theoretical contributions as a history of the political is of minor speculative importance. To be sure, most of Schmitt's major writings contain elements of such a history insofar as they articulate the specific conditions of political existence in conjunction with past events.⁷ Nowhere—in no one event, regardless of its proportions—is the political, as a historical constant, articulated *in toto*. It falls beyond reasonable doubt, however, that the revolutions of 1775–83, 1789–99, 1848, and 1917, the last three of which receive mention within the modest span of *The Concept of the Political*, would count as not only nodal but pivotal modern historical elaborations of the political, concretizing the ever-present possibility of combat as well as establishing the fully political character of civil war, in which Plato saw only the “self-laceration” of the *polis* and Hobbes the death of the *civitas*.⁸ It is no less axiomatic that the French Revolution would hold a privileged place among them in such an account, as a controversial precedent, a multilayered articulation of crisis in all quarters of the

6. “For only in real combat is revealed the extreme consequence of the political grouping of friend and enemy. From this most extreme possibility human life derives its specifically political tension” (*ibid.*).

7. These are mainly *Political Romanticism* (1919, 1925), *On Dictatorship* (1921), *Political Theology* (1922, 1934), *Roman Catholicism and Political Form* (1923), *Constitutional Theory* (1928), and *The Leviathan in the State Theory of Thomas Hobbes* (1938). Other scholars have effectively used Schmitt's notion of the political as a foil for their own contributions to its history, most notably Giorgio Agamben in *State of Exception*, trans. Kevin Attell (Chicago: Univ. of Chicago Press, 2003).

8. See Schmitt, *Concept of the Political*, p. 29n, and Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge UP, 1996), p. 9. Schmitt's position is articulated on p. 32.

national and international political arena, and a fundamental transformation of social and political unity. Along with the American Declaration of Independence, the French Revolution signified “the beginning of a new epoch, which is not defined by the extent to which the originators of these great precedents were conscious of the scope of their action,”⁹ in Schmitt’s concluding words in *Constitutional Theory*, clearly echoing the old dictum that speaks so well to the duality of the event: “Men make history but do not know the history they are making.”¹⁰ Subliminal actions and events are undecidable (and likewise unpredictable) until they are constituted as events *in their possibility* through acts of historical retrospection and retrodiction.

The rest of this essay concerns itself with the historical conception and a way of accounting for a politically critical event. Let me begin these theoretical-historical notes with the following set of observations and propositions drawn from my reading of Schmitt:

(1) An event’s exemplarity does not preclude its exceptionality. The apparent contradiction between example and exception can be resolved by noting the terms’ etymological proximity. Example: from *exem-*, *exim*, “to take out,” with the primary sense of “something taken out, a sample, specimen.” Exception: from *excip*, “to take out,” with the first sense of “to take or leave out (of any aggregate or collective whole) . . . to exclude . . . to leave out of account or consideration.”¹¹ The senses of “to take out” in the two cases differ in their relation to the source (category, theory, continuum): in the first, one “takes out” to include, on condition of inclusion of what is taken out for purposes of illustration; in the second, one “takes out” to exclude so as to include, through this negation, what was not excepted, to establish its exclusiveness. In order to constitute an example, an event must be removed from the temporal continuum but remain in a positive relation to it by way of inclusion. In order to constitute an exception, an event must be removed from the continuum and remain in a negative relation to it through exclusion. Here, its removal necessarily confirms the consistency of what is included. Up to a point, the phenomenal substance

9. Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC: Duke UP, 2007), p. 126.

10. This oft-quoted paraphrase of Marx has frequently been cited by the eminent historian of the French Revolution, François Furet. See, e.g., *Interpreting the French Revolution*, trans. Elborg Forster (Cambridge: Cambridge UP, 1981), p. 22.

11. *Oxford English Dictionary*, 2nd ed., s.vv. “example” and “exception.”

of a historical exception is a positive example of the inconsistency of a causal continuum, and, at the point at which it is established as an exception, a negative example of its consistency. As already noted, a history of the political eschews causality between events qua cases that serve as theoretical models, which allows them to be simultaneously exceptional and exemplary in a positive sense. A history grounding the political as a prescriptive theory must retain a hereditary relation to the history of events, i.e., a relation of selectivity, to make exemplary use of historical exceptions. A history of the political substantiating the latter as a descriptive theory must include such exemplary exceptions. Schmitt's theory is normative inasmuch as it emphasizes the exceptionality of historical examples; its explanatory strength is measured by its ability to account for historical exceptions, instead of excluding them from the political. Granted this theoretical duality and the uniqueness of events, the model historical case of the political is not a repetition; rather, it must *emerge* from the historical continuum to meet the dual demands imposed by the logic of the political on historical events. Just as the political rests on the friend/enemy dichotomy and distinction,¹² with the extreme case of such a grouping that makes conflict possible, so the evental is characterized by the binary distinction of exception/repetition and the extreme case of this relation that correlates to the political event. The relations between the exceptionality of events and the extremity of cases are dealt with below.

(2) The uniqueness of an event is to be taken in its proper, unqualified (absolute) sense.

(3) An event is any sequential compound of moments whose significance springs from their inherence in this compound.

(4) The totality of an event depends on the scale of historical representation, so that every event is resolvable into its constituent events.

(5) On each level of representation, a line must be drawn between the political event and its political/non-political effects and ramifications, which may themselves constitute political events of equal complexity. As regards politics, the reaction to an event may very well inform the political dimension of that event if subsumed by it, but its own unique categories and distinctions may be overlooked as a result.

(6) To be constituted in the political sense, an event must not only have political meaning, by its implication in a polemic, but it must also perform

12. Schmitt, *Concept of the Political*, p. 26.

a political idea or be the material manifestation of a political theory or doctrine, i.e., one subtended by the friend/enemy antithesis. In other words, it should constitute an existential *revelation* of the political distinction. We might say that historiography is a medium of such revelations.

(7) Given the essence of the political, each political event falls on either side of the political dialectic. That is, it is either a decisive contribution to actual hostility or a decisive intervention in, or prevention of, such a course of action, where the real possibility of physical strife is anticipated and thwarted by the concerned parties.

(8) The scale, complexity, context, and impact of an event variously determine its historical importance. In the case of events for a history of the political, these factors are gauged by sovereignty, political entities and systems of rule (or lack thereof), diplomacy, polemic, oppression, use of terror, armed conflict, etc. Here it could be added that the relation between the exceptional (*emergent*) political event in the above sense and the autonomous decision on the exception (*Ausnahmezustand* is also “state of emergency”) is not merely superficial, as both are relational and normative concepts. “The exception reveals most clearly the essence of the state’s authority”¹³—theoretically and historically—in the same way as the exceptional event reveals most clearly the authority of history. An instance of sovereign exception, or as Schmitt notes at the opening of *Political Theology*, a “borderline case” pertaining to the “outermost sphere” of power, is a political event of the first order and always, by definition, a political-historical exception. In order for an event to be both politically constituted and historically exceptional (i.e., important), it must demonstrate something about sovereign decision-making and/or power’s extension to the outermost sphere.

On another level, the destruction of the legal norm, through the decisive suspension of the juridical order, as definitive of the exception, becomes crucial for the preservation of the state and the eventual establishment of a new political order to the same degree that departures from the norm as definitive of exceptional events are crucial for the existence of history, hence also for the historical continuation of politics.¹⁴

13. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985), p. 13.

14. It is perhaps useful to recall Schmitt’s clarification: “every legal order is based on a decision, and also the concept of the legal order, which is applied as something self-evident, contains within it the contrast of the two distinct elements of the juristic—norm

Knowledge of history lies, for Schmitt, in the unique irregularities of historical existence. To make his point, he cites a long quotation from “a Protestant theologian,” Kierkegaard: “And if one wants to study the general correctly, one only needs to look around for a true exception. . . . If they [exceptions] cannot be explained, then the general also cannot be explained. The exception . . . thinks the general with intense passion.”¹⁵ To think the exception—in both of its senses—is to think history with intense passion.

The exceptional event, however, is not limited to the sovereign exception; it merely fulfills the same vital function within the order of the evental that the exception performs within the order of the political. From a historical angle, in exceptional cases the norm only recedes in the sense of a recess of the normal situation—and not in any obviously legal-prescriptive sense. The order of events is, of course, not commensurate with the order of laws; where the latter is formulated as legislation, the former belongs to real life, in which rules of conduct are more or less effective, and which they therefore, to an extent, structure, but do not determine (requiring socio-legal historical case studies to reveal the extent of their congruity). From the perspective of the political, the possibility of a political event is inseparable from the possibility of the violation, suspension, abrogation, or alteration of laws and, thus, the possibility of violence; it is these violations, etc., that would have priority in any determination of historical importance in Schmitt’s sense. The sovereign exception is merely a special, limit case in a history focused on the politically exceptional.

One way of thinking the evental is as the event’s becoming: its unfolding from its immanent real potential to its actualization, such that it is not reducible to either potentiality or actuality. This becoming-event, grasped through the dichotomy of repetition and exception, differentiates actual events, their uniqueness notwithstanding, as either repetitive or exceptional. The historical event is rarely constituted through its overt causes and effects alone; hidden causes and outcomes ascribed to it, as well as its perceived potentiality (eventality), all factor into our understanding of the course of events and our responsibility toward history. From a phenomenological viewpoint, the potentiality of events is *a fortiori* pervasive where it remains subliminal; historiography is a way of raising and relating

and decision. Like every other order, the legal order rests on a decision and not on a norm” (ibid., p. 10).

15. Ibid., p. 15.

to events what once lay below the threshold of consciousness as much as what lay above it. It sometimes happens that the potential of momentous events is registered generally as a micro-tremor, or not at all. Whatever the eventual magnitude, the warning signs go unnoticed when the earth already shakes with activity occupying historical actors. This was certainly true of the 1789–99 Revolution, a seismic event many contemporary observers admitted to not having seen coming. Such, too, is the gist of its only mention in *The Concept of the Political*:

The aristocratic society in France before the Revolution of 1789 sentimentalized “man who is by nature good” and the virtue of the masses. Tocqueville recounts this situation [in *The Old Regime and the Revolution*] in words whose shuddering tension arises in him from a specific political pathos: nobody scented the revolution; it is incredible to see the security and unsuspectingness with which these privileged spoke of the goodness, mildness, and innocence of the people when 1793 was already upon them—*spectacle ridicule et terrible*.¹⁶

The above questions and the remarks that follow them concerning the historical place and presentation of the political event in Schmitt’s sense are perhaps best addressed by way of an example. Keeping in mind the larger constellation of the French Revolution, we shall, for the sake of exposition, narrow our focus to a subcategory of events: the iterative beheadings of the body politic as real and symbolic groundwork for a transfiguration of sovereignty. This long series with a double claim on “extremity” offers itself as the microcosm of the larger conflict. The movable and multiple site of capital punishment, in particular the scaffold where the decapitating machine was deployed, became elevated as the stage of the political show-down, the Revolution’s ground zero. In this singular set of proceedings, one stands out as the iconic concentration of contemporary political complexities to which it was inextricably bound, but which in another sense it bound inextricably. This of course is the decapitation of Louis XVI.

The arraignment, trial, and execution of the king constituted an exemplary exception. It was the apogee of the revolutionary friend/enemy relation up to that point. It was an answer to the question of the political status of the exceptional (in the 1791 Constitution still inviolable and sacred) royal body vis-à-vis that of the popular body, reeling until it was integrated or coordinated via the exception decided on by the Jacobin

16. Schmitt, *Concept of the Political*, p. 68.

dictatorship.¹⁷ It broke a taboo in a secularized political struggle, which ascribed to it a ritualistic, sacrificial significance with explicit allusions to the Passion. It also fully inaugurated the use of the guillotine as a “governing machine,”¹⁸ an instrument of political surgery for which no member was inviolable when the health of the body was at risk. Indeed, if one thinks through the aggregate of events surrounding this rupture, the single stroke that took off the king’s head emerges as the phenomenal *punctum* of the Revolution. To single it out here is not only to draw attention to the existential singularity and potential brevity of extreme political events, but to foreground in general the politically motivated sacrifice of human life—a paradigmatic political event, temporary discontinuity that continues the political.

II.

An instantaneous change of the whole body-politic, the soul-politic being all changed . . .

—Thomas Carlyle, *The French Revolution*¹⁹

Contemporary concepts and figurations of sovereignty and the body politic are but one framework for modeling the extreme case of regicide into an element of a history of the political. It is important to recall how dramatically, how “instantaneously,” the conception of state sovereignty and internal power relations changed in the initial years of the revolutionary decade. During the Revolution’s moderate phase, the king’s body—whose sanctity and untouchability once stemmed from the Divine Right of Kings—was, owing to constitutional circumscriptions on absolute

17. Sections 3 and 4 of the 1926 lexicon article “Diktatur” (reprinted in Carl Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, ed. Gunter Maschke [Berlin: Duncker & Humblot, 1995], pp. 33–37) encapsulate Schmitt’s views on the origins of the concept of “dictatorship of the state of exception” in the French Revolution and on the difference between “commissarial” and “sovereign dictatorship,” equated with Abbé Sieyès’s distinction between *pouvoir constitué* and *pouvoir constituant*, respectively. Of Sieyès, Schmitt notes: “He rightly designated it as an act of the Revolution that the Revolution immediately at its inception established the difference between constitutive and constituted power” (*Constitutional Theory*, p. 127). Schmitt’s main statement on the subject, however, is *On Dictatorship [Die Diktatur]*.

18. Daniel Arasse, *The Guillotine and the Terror*, trans. Christopher Miller (London: Penguin, 1989), pp. 49, 5.

19. Thomas Carlyle, *The French Revolution: A History* (New York: Random House, 2002), p. 561.

authority, considerably cut down in its representation of the polity. It was only natural that this same body, denounced as tyrannical, monstrous, and traitorous while the Revolution radicalized itself, would eventually be made to pay the ultimate price. It was still more fitting that the physical object of this attack would be the king's head, a symbol of monarchical omnipotence, of the sole and highest lawgiver, falling victim to the will to power of the *tiers état*. Through humiliation and decapitation, the two royal bodies (physical and symbolic) would merge and Louis XVI would become Louis the Last; this, in turn, would regenerate and bestow unity on the extant national body. The transfer of sovereignty would be complete.

This immolation of the sacred "member" reflected the secularizing forces at play and an increasingly materialist-technical notion of the state. In his excellent study of the guillotine's revolutionary career, Daniel Arasse speaks at length of the corporeal counterpart to the new structure of the body politic outlined by the Republic. The scientific establishment, criticized for a machine whose very precision produced, instead of instant corpses, grotesque thinking (and suffering) heads, reconfigured the hierarchical, vertical model of vital functions, with the brain as the seat of consciousness and "sovereign" over sensation, into one that was egalitarian and horizontal, with the brain downgraded to an internal organ whose vitality now turned on the unity of the bodily machine.²⁰ This horizontality found literal expression in the placement of the guillotine's victims, bound prone to a level plank directly beneath the axe that would sever the head's connections to the trunk even before fully completing its fall.

As the technological representative of the new laws and, later on, of the exception, the machine not only stood for the people's sovereignty in its "equalizing" work, but also—as its various proper names and attributes, such as *Sainte*, indicate—positively personified or deified it. The mechanization of state and man went hand in hand with the anthropomorphization of the machine. Indeed, whether one is "for or against" the guillotine's use/abuse—as the epitome of reason or, on the contrary, the expression of reason's dialectical opposite—the guillotine itself was the supreme brainchild of the Revolution's instrumental, abstract rationalism.²¹ It represented a

20. For a summary of the philosophical-medical discussion, see Arasse, *The Guillotine and the Terror*, pp. 37–42.

21. Schmitt presents the chief pro- and counter-revolutionary stances in the Romantic debate about the Revolution's (ir)rationality, and states: "What drove on a schoolmaster like Robespierre would not have been the vital abundance of irrational energies, but rather

logical extension into the administration of justice of the “mechanization” of the body politic, which Schmitt found so revolutionary in Hobbes’s theory of the state.²² The mechanistic idea of the human organism likewise corresponded closely to the Hobbesian synthesis of the organic analogy with the contractual theory (where the contract is an artifact of individual wills that could, at will, be disassembled and re-assembled) in the figure of the “artificial man,” with sovereignty for an “artificial soul” to give the body “life and motion,” etc.²³ In Hobbes’s conception, the state, the *magnus homo*, is not a “total person,” and as such “is drawn into the mechanization process and becomes absorbed by it.”²⁴ Its symbol, the Leviathan, the hybrid man-machine, symbolized absolute monarchy and internal peace, whose subversion received its own monstrous figuration: the Behemoth, representing for Hobbes the forces of revolution, anarchy, a throwback to the state of nature.²⁵ Because of their antithetical parity, the Leviathan triumphs only by subjugating—or, rather, by *continuously holding down*—the Behemoth, who always threatens to rear its head. (In times of civil war, the two monsters become locked in combat, affording a dialectical image of *stasis*.) Ultimately, because of the inadequacy of the Leviathan as a political symbol, the state that would give the theory its highest expression saw the emergence of revolutionary anarchism. At the same time, Hobbes’s theory of the constitutionality of the state found, via Rousseau’s generalization to every kind of state, an application in the National Constituent Assembly.²⁶ The impact of the French Revolution stripped the monarchy’s supernatural legitimacy of all political power. This leads Schmitt to speak of positivist law as a “technical instrument” for binding and decommissioning the Leviathan—by then, a grotesque human

the frenzy of empty abstractions.” Carl Schmitt, *Political Romanticism*, trans. Guy Oakes (Cambridge, MA: MIT Press, 1986), p. 28.

22. “[B]ecause of Hobbes, the state became a huge machine.” Carl Schmitt, “The State as Mechanism in Hobbes ad Descartes,” in *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, 1996), p. 98.

23. Hobbes, *Leviathan*, p. 9.

24. Schmitt, “State as Mechanism,” p. 99.

25. For Schmitt’s comments on the *Behemoth*, Hobbes’s historical account of the English Civil Wars between 1640 and 1660, see pp. 21–22 and 79 of his *Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, trans. George Schwab and Erna Hilfstein (Westport, CT: Greenwood, 1996).

26. *Ibid.*, p. 8.

invention and little more than hollow casing.²⁷ As the model of monarchy shifted, over the eighteenth and nineteenth centuries, from *potestas* to *auctoritas*, political relations would be demarcated within an increasingly rational-legal framework.²⁸

The French king's deposed existence was perceived as a logistic threat to the stability of the political body. His disposal became a matter of utmost necessity, "a sacred duty . . . far above 'constitutional niceties'."²⁹ On trumped-up charges of violating civil liberties and treason, he was designated the premier public enemy. In November 1792, a belligerent Saint-Just addressed the Convention: "The same men who want to judge Louis have a republic to found. For me, there is no middle ground: this man should reign or die. . . . I say that the king should be judged as an enemy; *that we have less to judge than to fight*."³⁰ Or, in the words of Robespierre from December of that year, "There is no case to make here. Louis is no accused, we no judges. . . . We do not have a sentence to pass for or against a man, but a measure of public safety to implement, an act of national providence to perform."³¹ The above-cited rhetoric of distinction, a high point in these polemics, makes it clear to whom sovereignty attached, *de facto* and *de jure*.³² Although from the perspective of inchoate national sovereignty the king was as good as dead ("annihilated by the people"), letting him live on as a phantom head, "a secret centre for the Disaffected," impeded the physio-political healing and reforms pending under the new law.³³ The question "what is to be done with Louis?" seems to have "absorb[ed] all other questions and interests," so that only "from it and the decision of it" could "they all, so to speak, be *born*, or new-born."³⁴ Under these exigent circumstances (and the ensuing tug-of-war

27. *Ibid.*, p. 65.

28. *Ibid.*, pp. 65, 53–63.

29. Arasse, *The Guillotine and the Terror*, p. 51, quoting Robespierre's address of December 3, 1792.

30. Christophe Levalois, *Symbolisme de la décapitation du roi* (Paris: Guy Trédaniel, 1993), p. 44, quoted in Julia Kristeva, *Visions capitales* (Paris: Réunion des musées nationaux, 1998), p. 102. This and subsequent translations are my own.

31. *Ibid.*

32. "The high points of politics are simultaneously the moments in which the enemy is, in concrete clarity, recognized as the enemy." Schmitt, *Concept of the Political*, p. 67.

33. Maximilien Robespierre, "On the Trial of the King: 3 December 1792," in *Virtue and Terror*, trans. John Howe, ed. Jean Ducange, intro. Slavoj Žižek (New York: Verso, 2007), p. 60; Carlyle, *The French Revolution*, p. 573.

34. *Ibid.*, p. 575.

over Louis's fate), the summary trial raced ahead to a foregone conclusion. The king's constitutionally enshrined exceptionality left him included by virtue of exclusion alone; it "removed him from the register of citizens, and he could not therefore be judged as one: only his crimes made a citizen of him, and he should therefore be judged as a 'foreign enemy'."³⁵ In effect, his execution would differ only in the details from that of a common criminal.

Louis's demotion notwithstanding, his beheading consecrated the guillotine as the political arm of the law and initiated a bizarre process of "re-growth" as the Republic put on a new head. Despite competing accounts, "[r]oyalists and revolutionists agreed in fact on the religious value of the event: the ones denouncing the blasphemy, the others saluting the all-saving alchemy."³⁶ In putting to death the sacrosanct person—his status reaffirmed in the coronation (*sacre*), which in 1775 caused this threat to cut short his reign to appear on the wall of the Reims Cathedral, where (on May 11) he was crowned: "Sacré le 11, massacré le 12"—the revolutionary government effectively inverted the sacrament, or performed a kind of "sacramental substitution."³⁷ The debates prior to the execution "had allowed revolutionary eloquence to 'draw a secondary circle [*sacer*] around an exceptional being', and on him the guillotine's blade descended as if on an expiatory sacrifice."³⁸ In a period of transition from a loosely crown-and-altar model of ruling to one based on their separation, this dual act of sacrilege and sacralization clearly illustrates the historical/structural correspondence between theological and political notions of sovereignty, one of Schmitt's key theoretical assertions.³⁹

35. Arasse, *The Guillotine and the Terror*, p. 50. His criminality doubled this dialectic of inclusion-exclusion and his status as enemy. At the time, *criminal*, *traitor*, and *enemy* were linked by synonymy. As Foucault adduced, Rousseau's words rang truer than ever: "Every malefactor, by attacking the social rights, becomes, by his crimes, a rebel and a traitor to his country; by violating its laws he ceases to be a member of it; he even makes war upon it. In such a case the preservation of the state is inconsistent with his own, and one or the other must perish; in putting the guilty to death we slay not so much the citizen as the enemy." Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1979), p. 90.

36. Kristeva, *Visions capitales*, p. 102. For analysis of republican and royalist versions of the execution, see Arasse, *The Guillotine and the Terror*, pp. 65–70.

37. Rebecca Comay, "Dead Right: Hegel and the Terror," *South Atlantic Quarterly* 103 (2004): 390.

38. Arasse, *The Guillotine and the Terror*, p. 50.

39. See Schmitt, *Political Theology*, p. 36, for the *locus classicus* for his view. Pp. 48–49 have direct bearing on the French Revolution.

The freedom from censorship allowed for the crystallization of these ideas from the borderland of politics and theology in public consciousness. One of the highlights in the rich iconography of the Revolution, and part of a series of extremist propaganda prints depicting severed heads held up to view like trophies by an executioner's disembodied hand, is the engraving of the head of Louis, shown in profile, with blood dripping from the site of amputation—"to slake our soil," in the words of the *Marseillaise* printed beneath. What such images, and especially those of the king, documented is the surgical removal of tumors from the body politic; for the revolutionaries, the "impure blood" of the other was good enough for manuring the ground under their feet, for filling in furrows (between cobblestones in Parisian squares hosting the guillotine?) to mark the spectacle of abolitionary triumph, or else for "baptizing" the Republic and "cementing" the happy liberty of the People.⁴⁰ The only value remaining for blue blood within the natural order was as a signifier of the successful reversal of this order. Robespierre's words, excerpted from a speech delivered on December 28, 1792, which played a decisive role in the outcome of the trial, appear in a long caption in the bottom part of the image: "On Monday, 21 January 1793, at ten fifteen in the morning on *Place de la Révolution, ci-devant* Louis XVI, The Tyrant fell under the blade of the laws. This great act of justice dismayed the Aristocracy, annihilated the Royal superstition, and created the republic . . ." ⁴¹ As in a similar engraving of the head of Custine, entitled *Ecce Custine*, the captions present "the ideological relations between the singular and plural, which reflect, on the lexical plane, the very fundamental political distinction between individual and *People*."⁴² The reproduction and distribution of these heads through the capital did not pretend to reverse these proportions. In fact, even as it agitated for the individual's emancipation through raising civic consciousness, the Revolution transformed the individual into the people's enemy. In 1793, individualism was acceptable only in its collective form: the guillotine's singular window beckoned the man who put his individual will above the

40. Amélie Marty, "31. Tête coupée de Louis XVI," in Kristeva, *Visions capitales*, p. 162.

41. Villeneuve, *A Matter for crowned monarchs to consider*, engraving (Musée Carnavalet, Paris), reproduced in both Arasse, *The Guillotine and the Terror* (unpaginated illustrations), and Kristeva, *Visions capitales* (p. 104, fig. 31), cited in the latter as *École française, Tête coupée de Louis XVI* (Bibliothèque nationale de France, Paris).

42. Arasse, *The Guillotine and the Terror*, p. 136.

indivisible general will of the state, his private interest above that of the *publicum*.⁴³

Another posthumous portrait of Louis, showing only his severed head, was printed in the same year with the overhead caption “ECCE VETO,” in an ironic, parodic even, political-theological analogy with *Ecce Homo*. The message is clear: behold what is left of the man, his gospel, his veto; behold our veto, or how we have vetoed him. Julia Kristeva sees the print’s author as “establishing a comparison, if not an equivalence, between ‘this taboo’ (of the monarchy) and ‘this man’ (eternal and divine). A similar implication . . . betrays a sacrilegious fascination and, more than merely a heroization of the monarch, [its] unconscious mythification.”⁴⁴ Christian mythology permeated not only the revolutionary iconography but also its ideological exponents: the supporters of Robespierre—the initiator in 1794 of a cult of the discarnate Supreme Being—saw him as a Christ figure. As Chateaubriand noted in his memoirs, “A vengeful obsession forced these cutters of Christian throats to utter endlessly the name of Christ.” And, further on:

Did not Saint Robespierre say, in his speech on the Supreme Being, that *belief in God gave the strength to brave misfortune*, and that *innocence on the scaffold would make the tyrant in his triumphal chariot grow pale*? The equivocation of an executioner speaking tenderly of God, misfortune, tyranny, the scaffold in order to persuade men that he was only slaying the guilty, and indeed as an act of virtue . . . Have not great civilisers, as they are *called*, always murdered human beings, and is it not for that reason, as has been *proved*, that Robespierre was the heir of Jesus Christ?⁴⁵

The guillotine’s sublimity lay in part in the fact that it repeated mechanically what was existentially unique.⁴⁶ It is easy to see how the machine, in the apparently invariable release and descent of its blade, in the apparent

43. *Ibid.*, pp. 81–83.

44. Kristeva, *Visions capitales*, p. 103.

45. François-René de Chateaubriand, *Mémoires d’outre-tombe*, trans. A. S. Kline, bk. 9, chap. 4, sec. 2; bk. 42, chap. 4, sec. 2; bk. 24, chap. 6, sec. 1. Available online at the Poetry in Translation website, <http://tkline.pgcc.net/PITBR/Chateaubriand/Chathome.htm>.

46. Paraphrase of Roland Barthes’ remark on the nature of the photograph, quoted in Arasse, *The Guillotine and the Terror*, p. 133.

sameness and hiatus-like invisibility of the death it dispensed to the condemned, was ostensibly an anti-event, the nemesis of the political event, overshadowing the uniqueness of each politically justified killing. That this annihilation of the event was only a political-juridical illusion (like the abstract “equality” from which its strength derived) becomes clear when we consider the normativity of the device then adopted—its design was such as to normalize “capital” death by universalizing a highly reliable form of execution, all but eliminating the margin of human error and intervention. Its legal prescription truncated the role of the executioner and removed his most taxing citizenly duty: headsman-ship. The festivals of capital punishment under monarchical law belonged, in their protraction, variety, fallibility, and unpredictability, to a wholly other order of terror.⁴⁷ By contrast, the new machine “exhibit[ed] in plain view the essentially destructive, rending, agonizing potential of every instant,” that infinitesimal unit of time.⁴⁸

The uniqueness of each death, even its status as event, may have disappeared from view in light of the newly legislated model of execution,⁴⁹ but the reported disappointment of witnesses of these “enlightened” spectacles should not be mistaken for their ineffectiveness. While torture ceased to be a visual source of terror, the non-event of death, the mechanized demise of countless individuals doomed on vengeful political-ideological, instead of moral or judicial, grounds, combined with the antinomies and volatility of status quos during the civil war, provoked an indiscriminate terror of the political/evental—the *possibility* (yet endowed with the force of necessity) of being overtaken by events. Every beheading actualized the potential of the friend/enemy dynamic in rendering visible each “enemy” *in hora mortis* and after death, through the customary display of their severed head. Chateaubriand captured this threat of the possibility, suspended above the revolutionaries in its most familiar form, in his physiognomy of Robespierre: “Because of his pallor, the sharpness of his teeth, his ensanguined dribble, his head appeared to be cut off. A cadaver presiding without a head,

47. Foucault thus described the exceptionality of earlier methods of torture qua sovereign vengeance: “an effect of terror as intense as it is discontinuous, irregular and always above its own laws, the physical presence of the sovereign and his power.” Foucault, *Discipline and Punish*, p. 130.

48. Arasse, *The Guillotine and the Terror*, p. 36.

49. The relevant parts of the French Penal Code of 1791 are articles 2 and 3. The guillotining of condemned personages was sometimes treated exceptionally, given its greater edifying value, and standard procedure was slightly modified to allow them to stand out from the rest.

for the sake of equality, over decapitations.”⁵⁰ One could also mention an anecdote from the *Grand Larousse du XIXe siècle*, a perfect, if dubious, *tableau vivant* of the zeitgeist: In one of the Parisian *hotels*, aristocrats who failed to make an escape following the events of August 10, 1792, “killed time” at the dinner table with a miniature guillotine; the elaborate dessert centerpiece struck off the heads of dolls modeled on “our best magistrates,” spilling red liqueur from their bottlenecks to general amusement, a decadent pleasure indeed.⁵¹ Death seemed imminent and inevitable, imposing itself with arbitrary necessity. “The power of horror is contagious,” as Kristeva put it.⁵² Terror’s appeal spread, not unlike a virus, throughout an increasingly desensitized, autoimmunized political organism. The mood found its complement, too, in the macabre optimism of more privileged citizens celebrating these “joyful orgies of blood, steel and fury”: “Saint Guillotine is quite wonderfully active,” assured one of them, “and the beneficent terror accomplishes in our midst, as though by a miracle, what a whole century of philosophy and reason could not hope to produce.”⁵³

Through their growing volume and their uniformity, the political frame of public beheadings had a profound effect on the polity: the mechanical iterations and infinite iterability not only reinforced the extant juridical norm or celebrated the revolutionary legal will and executive force, but also, paradoxically, re-incorporated the continually mutilated body politic. Capital punishment during the Terror, on the strength of its repetitiveness, could not maintain itself long as an individual, much less an exceptional, event. The homogeneous routine on the scaffold engendered a provisional norm, valid within the exception, and an illusion of normalcy of the state of emergency itself. Almost from the inception of its service in the French judiciary, the decapitating machine was an instrument for the conspicuous removal of political opponents, the “‘apparatus’ of state ceremony.”⁵⁴ In the void of legality, then, the guillotine stood fast, and rather ironically, as a symbol of legal order and judicial authority, and its operation marked the clarity and distinction of the political in the reign of chaos and paranoia.

50. François-René de Chateaubriand, *Notes et pensées*, quoted in Kristeva, *Visions capitales*, p. 106.

51. *Le Grand Larousse du XIXe siècle*, s.v. “guillotine.”

52. Kristeva, *Visions capitales*, p. 111.

53. Chateaubriand, *Mémoires*, bk. 9, chap. 4, sec. 2; Citizen Gateau, quoted in Arasse, *The Guillotine and the Terror*, unpaginated front matter.

54. Arasse, *The Guillotine and the Terror*, p. 49.

It justified the sovereign decision and recapitulated the sovereign power to distinguish friend from enemy by dispatching the latter on the spot in great numbers. (And if the heads rolled more numerous and more often, were then held aloft for assembled multitudes, it was because one head in particular, that of superfluous *Citoyen Louis Capet*, had paved the way as symbolic-physical proof that the despotism, corruption, and monstrosity of the “enemy regime” were no more.) The friend/enemy distinction, it should be noted, is concretely a distinction between groupings of bodies and machines (or as weapons)—not just between mechanized bodies, but between bodies political qua political machines.⁵⁵ The Revolution, thus, represented a fusion of the given (organic/natural) and the constructed (mechanical/artificial) conceptions of society and law.

The unity that resulted from this culling process was altogether different from what preceded it. Robespierre called for “a single, unified will,” be it republican or royalist, despite the obvious divide between the old and new concepts of political representation: incarnation, on the one hand, and election, on the other.⁵⁶ In either case, sovereignty is more than the sum of its parts, its “participating particular wills.”⁵⁷ The French people metamorphosed through representation into the sovereign universal *peuple*, several removes from the reality of commoners, while the successive executive bodies continued their self-effacement as no more than provisional, heuristic assemblages of mediators gathered in the collective faculty of deliberation. Schmitt’s analysis of the state of affairs may be given here:

The famous slogan, “*le tiers État c’est la Nation*,” was more profoundly revolutionary than anyone suspected. When a single estate identifies itself with the nation, it abolishes the very idea of estates, which requires a plurality of estates to constitute a social order. Bourgeois society was thus no longer capable of representation. It succumbed to the fateful dualism of the age.⁵⁸

55. “The state can be viewed as the first product of the technical age, as the first modern mechanism on a large scale . . . the ‘machina machinarum’ . . . the typical or even the prototypical work of the new age. . . . Right became positive law, lawfulness became legality, legality became the positivist mode of operation of the machinery of state.” Schmitt, “The State as Mechanism,” pp. 98–99.

56. Robespierre, quoted by Arasse, *The Guillotine and the Terror*, p. 46, quoting from Albert Mathiez, *La révolution française*, vol. 3 (Paris: Armand Colin, 1927), p. 4.

57. Schmitt, “State as Mechanism,” p. 96.

58. Carl Schmitt, *Roman Catholicism and Political Form*, trans. G. L. Ulmen (Westport, CT: Greenwood, 1996), pp. 44–45.

Revolutionary decisionism—whether it proclaims total popular sovereignty, commands a belief in an abstract, non-consubstantial deity (the radical authority of public reason rather than an emanation of the emergent unity of the people), or reappropriates the flow of time—followed, in its acts of substitution, a strict logic of equivalence. What warranted these and subsequent such incidents, their founding event, if you will, was no mere excision but a substitution of part for whole, recast as a substitution of whole for part: of the vital if headless corpus for a head no longer vital to keeping this body together in the interim, of the indivisible absolute nation for the absolute individual. “When the nation as subject of the constitution-making power opposes the absolute prince and sets aside princely absolutism,” states Schmitt, “the nation puts itself in the prince’s place just as absolutely. The quality of absoluteness remains in place with power that is unchanged or that is perhaps even heightened, because in the state the people now identify with themselves in political terms.”⁵⁹

Viewed today, the ruthless drive toward a new unity, toward internal and external self-definition, is arguably that decade’s most identifiable trademark. Unsurprisingly, Schmitt remained positive in his assessment:

The political greatness of the French Revolution lies in the fact that despite all its liberal and Rechtsstaat principles, the thought of the French people’s political unity did not cease to be the deciding directive even for a moment. It remains indubitable that all separations, divisions, limitations, and means of controlling state power operate only inside the framework of political unity. With this unity, however, even the relative character of all constitutional laws is still indisputable. The constitution was not a contract between the prince and the people or, indeed, between some estate organizations, but rather a political decision affecting the one and indivisible *nation* determining its own destiny.⁶⁰

As far as revolutions go, the French one was no clear exception: motivated by opposing desires—for repetition and exception on the world stage—and satisfying both. Analyzing this set of events through Schmitt’s theories and convictions reveals it as the paradoxical *ne plus ultra* of the political: its highest point, but also the start of its decline. In an existential philosophy of history, which sees history as human-made, as the concrete product of the will, the political is a historical contingency that can be terminated by

59. Schmitt, *Constitutional Theory*, p. 102.

60. *Ibid.*, pp. 102–3.

a certain type of political will, a certain praxis of politics. The possibility that constitutes the political exists as long as there is enough will to foment antagonism, and it is not inconceivable that political engagement in dialectical thinking will die a natural death.⁶¹ This is no doubt a simplistic view of the matter, and its refinement ought to be an occasion for future reflection. For now it is perhaps enough to say that the disappearance of the political would spell the end of political history, the most passionate and intensely serious aspect of human historical existence, with the highest stakes.

The theological foundations of his existentialist *Weltanschauung*⁶² are evident when Schmitt considers the fate of the political—in this case, the fate of sovereignty defined by the exception: “All tendencies of modern constitutional development point toward eliminating the sovereign in this sense.... Whether one has confidence and hope that it can be eliminated depends on philosophical, especially on philosophical-historical or metaphysical, convictions.”⁶³ As Leo Strauss concluded in his reading of *The Concept of the Political*, Schmitt “affirms the political because he sees in the threatened status of the political a threat to the seriousness of human life. The affirmation of the political is ultimately nothing other than the affirmation of the moral.”⁶⁴

The historicity of every event falls along the continuum between exception and repetition, which, for Schmitt, translated into a polarity between seriousness and triviality. Uniqueness alone cannot guarantee importance; a noteworthy event, one which reveals the power of human behavior in its purest form and full moral compass, falls always on the side of the exception. A mere fragment of Schmitt’s great lesson, this statement

61. “The ever present possibility of a friend-and-enemy grouping suffices to forge a decisive entity which transcends mere societal-associational groupings.... Were this [political] entity to disappear, even if only potentially, then the political itself would disappear.” Schmitt, *Concept of the Political*, p. 45.

62. “This is the secret keyword to my entire mental and authorial life: the struggle for the authentically Catholic sharpening...” Carl Schmitt, *Glossarium*, quoted in Michael Hollerich, “Carl Schmitt,” ch. 8, in *The Blackwell Companion to Political Theology*, eds. Peter Scott and William T. Cavanaugh (Oxford: Blackwell, 2004), p. 110, quoting from Bernd Wacker, ed., *Die Eigentlich katholische Verschärfung...: Konfession, Theologie und Politik im Werk Carl Schmitts* (Munich: Wilhelm Kink, 1994), p. 7.

63. Schmitt, *Political Theology*, p. 7.

64. Leo Strauss, “Notes on Carl Schmitt, *The Concept of the Political*,” trans. Harvey Lomax, in Schmitt, *Concept of the Political*, p. 101.

nonetheless communicates the force of this belief, legible in nearly every facet of his theoretical output:

Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree. The exception can be more important to it than the rule, not because of a romantic irony for the paradox, but because the seriousness of an insight goes deeper than the clear generalizations inferred from what ordinarily repeats itself. The exception is more interesting than the rule. The rule proves nothing; the exception proves everything. It confirms not only the rule but also its existence, which derives only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition.⁶⁵

Serious insight thus belongs to the exception as clear generalizations belong to “what ordinarily repeats itself.” Exceptional events “repeat” themselves with variation in intensity. A further analogy obtains: (historical) insight confirms (historical) generalizations, whose existence derives only from exceptions. Historical knowledge, in other words, derives from the exception. The distinction between dynamism and mechanism in the final line conveys most clearly Schmitt’s affirmation of life and its virtual equation with the political as the sphere in which life can be fully valorized only through danger and death.⁶⁶

65. Schmitt, *Political Theology*, p. 15.

66. I would like to thank James Ingram for his comments on an earlier draft of this paper.

What is an Orientation in History? Openness and Subjectivity

Artemy Magun

This essay attempts to formulate an ethical program for today's left by showing that such a program should necessarily involve both the insistence on a subjectivity, in the sense of a revolutionary self-determination that would go beyond the liberal pre-established autonomy *and* an openness to the new and unrecognized that would go beyond all liberal tolerance. I further argue that the only way to understand the co-articulation of subjectivity and openness is to accentuate the *event* as the origin of *open subjectivity*. Moreover, borrowing a motif from Kant,¹ I will speak of the "orientation" in history that an event provides and which serves as the source of a *political* orientation.

The task here is, thus, to explore the role and nature of openness in politics (contesting the usual understanding of openness as a liberal value), the conjunction of openness and an active political subjectivity, as well as the question of *political virtue*, which would constitute subjectivity and resolve the issue of openness. Such a principle can, in my view, be formulated as that of *justice*, reinterpreted in a way that would make it into an orienting principle of left-wing politics—as a virtue of an open and insistent political subject grounded in a revolutionary event.

1. Immanuel Kant, "What does it mean to orient oneself in thinking," in *Religion and Rational Theology*, trans. Allen W. Wood and George Di Giovanni (Cambridge: Cambridge UP, 1996), pp. 7–18. It was Heidegger who first extrapolated Kant's concept of orientation onto the practical experience of the subject in the world (*Sein und Zeit* [Tübingen: Max Niemeyer Verlag, 1993], p. 109), but I suggest (in a way that Heidegger, with his Lukácsian reorientation of history to the future, would perhaps accept) applying it to large-scale historical praxis.

Today's post-Cold War world presents a radically new situation in the definition of ideological positions. On the one hand, the spectrum of socio-political ideas and the "hard" structure of society, as defined by capitalism and modern technology, has not changed dramatically. The classical ideologies (let us call them liberalism, conservatism, and the left, which can be roughly defined as revolutionary democratism) still seem to be relevant, both in terms of their ideas and in terms of their subjective positions. The political spectrum in almost any country can be roughly divided into authoritarian hard-liners, moderate reformers defending human rights, welfare, and a belief in progress, and (less universally) revolutionaries calling for a true democracy.

On the other hand, both the *substantial* content of these ideologies and their mutual relations have changed, so that the ideological situation is characterized by a great deal of disorientation. Conservatism no longer defends a pre-revolutionary society of orderliness but, more often than not, coexists with an aggressive and moralistic liberalism (as in the American "neoconservatives"). Liberalism is hegemonic, and the views associated with the word "liberalism" range from those of the moderate left in the United States to those of the moderate right in Europe. Furthermore, writing this article in Russia, I can cite a case of almost total ideological inversion: since the 1990s, the word "left" has been reserved for the Communist Party, whose program has been conservative in an exemplary way (strong nationalism, calls to order and stability, nostalgia for the Soviet Union as a strong world power), while the word "right-wing" has been commonly associated with the pro-Western liberal party, which defends the free market and human rights. Given this overall lack of clarity, an easy conclusion can be reached that the classical ideologies are exhausted, but this argument is clearly and polemically made against the left and against any revolutionary force. The left, conversely, wants to show that its emancipatory position *is* inherited from the strong social movements of the past and that emancipation has not yet been achieved.

Of course, in addition to the change in the relational structure of ideologies, one ought to note the shift in the *substantiality* of meanings. Thus, after the decay and self-dissolution of Soviet socialism and the deep transformation of the industrial proletariat in the countries of the "North," the left had to drastically reformulate its standpoint. One of the ways in which this was achieved was through the generalization of the left-wing program to mean the insistence on the truly democratic, free, and revolutionary

subject, in opposition to the formal and legalistic understanding of democracy in liberalism, where the “subject” would mean a relative autonomy within the system and, at its worst, a defense of pre-established social positions. Therefore, the new “post-Marxist” left, since the 1980s, logically decided to insist upon the *political* as the irreducible sphere of subjective auto-determination, the sphere of conflict without a higher arbiter. The goal of such theories was, therefore, to understand and to cultivate the very formal subjective structure that, in concrete social circumstances, would nourish this or that emancipatory cause. In other words, in the context of the defeat of left-wing ideas and parties throughout the world, such theories were primarily oriented at the *ideological* struggle, defending the thesis that an emancipatory and/or revolutionary position would still be possible and necessary in a world where both the liberal and the conservative camps had quite successfully appropriated parts of the leftist agenda and proclaimed it finished.

The “political” turn of the left (suffice it to name Alain Badiou, Chantal Mouffe, Jacques Rancière, Slavoj Žižek, among numerous others) returns us, in certain respects, to German thought of the early twentieth century, where the concept of the political was first thematized and elaborated in the sense of a sphere that still allows for a free and unpredictable subjectivity not enslaved to formal morality or economic interest. The name of Carl Schmitt is most significant here, and it is no surprise that Schmitt’s conservative but democratic agenda has become popular among the left since the 1980s. This is precisely why an effort must be made to distinguish the newly affirmed leftist subjectivity from the liberal notion of subjects as fixed players in a preexisting system and from the fascist notion of the subject united in action at any cost and without regard for the content, *both* of which surface in Schmitt’s writings from the 1920s.

I. The Historical Orientation of the Left: From the Future to the Past

The recent turn of left-wing theory to the “political” recalls, on the one hand, the German liberal-conservative defense of politics in the early twentieth century and, on the other hand, a similar movement in the Marxist theory of the same period. As is widely known, the influence of neo-Kantianism led many Marxists at that time (in Austria, Germany, and Russia, in particular) to thematize an *ethics* of a revolutionary, as opposed to the “objective” science that they thought Marxism to be. It is in the resolution of this dilemma that George Lukács advanced, in his *History*

and *Class Consciousness*,² the doctrine that grounded the revolutionary subject historically, in the *future*. In this way, his attachment to revolution was not a blind sort of “ethics,” but a *historical ontology* based on a practical anticipation of the society to come.

However, after the victory of fascism and the authoritarian transformation of the Soviet Union, the cause of the left seemed less triumphant and, like today, was in the need of an ideological legitimation. This is why Walter Benjamin, in his “Theses on the Philosophy of History” (1940),³ inverts Lukács’s argument and “reorients” the Marxist subjective stance toward the past. Benjamin suggests that we understand the “messianic” force of history (i.e., the historical orientation of the subject) as something directed not from the present to the future, and not from future to the present (as it would stand for both of his major opponents, Lukács and Heidegger), but *from the past to the present*. Our present, says Benjamin, carries a “weak messianic force,” on which all the exploited, dominated, unjustly treated people of the past have their “claim.” The impetus for action is a call coming to the subject from its *past*, those past occasions that have been almost forgotten and excluded from the linear movement of “progress,” although never erased entirely. During revolutionary moments, this past “returns” and breaks through the linear movement of history. A revolutionary stops moving forward, allowing the subjects of the past to *manifest* themselves. The subject comes to agency through a receptivity that is heightened at the moment of a break, at a singular moment of encountering the past. In this moment of urgency (*Jetztzeit* or “now-time”), exemplified by a revolutionary *event*, one stops, interrupts history, and opens oneself to the call of past failures.

Nowadays, it is Alain Badiou⁴ who, after an even more terrible collapse of the radical emancipatory position than the one of the 1930s, repeats Benjamin’s gesture of grounding the leftist program in the *past*. However, if Benjamin inverts Lukács’s temporal orientation from the future to the past, then Badiou, agreeing with Benjamin on this point, inverts Benjamin

2. Georg Lukács, *History and Class Consciousness: Studies in Marxist Dialectics*, trans. Rodney Livingstone (Cambridge, MA: MIT Press, 1972). On the right, Heidegger, who was familiar with Lukács’s work, formulated the same argument in a generalized philosophical context.

3. Walter Benjamin, “Theses on the Philosophy of History,” trans. Harry Zohn, in *Illuminations* (New York: Schocken books, 1968), pp. 253–66.

4. Alain Badiou, *Being and Event*, trans. Oliver Feltham (New York: Continuum, 2005).

himself and returns to a more classical temporal scheme, where the event of the past serves as a foundation of the subject. The subject (the agent) comes *after* the event, and the event makes this subject possible, i.e., it allows the subject to subsequently “force” different situations by interpreting them in the light of this event. The subject remains faithful to the past event and moves forward with this “fidelity.” The event is a finite foundation of historical time: the event is what makes *history* possible, providing history with *orientation*.⁵

The event lies at the intersection of its naming (which, in fact, is a subjective act, although Badiou uses the notion of “subject” more narrowly) and of a pre-existing element, which is the “evental site.” In mathematical terms, preferred by Badiou, these are the elements that do not *belong* to a unitary set individually, although they are *included* in it, as a general category, as a “subset.” The event “counts” these uncounted elements and transforms them into a new unity, even if this identification is subjective and always involves a certain risk. Thus, the content of an event is a certain suppressed or excluded truth. The event opens up the situation in the direction of universality, and appeals to the world to recognize it as such. This emphasis on the unfinished actuality of justice defends the subject’s autonomy from a dogmatic party that would dictate to it what the truth is: truth, here, stems from a direct experience of the subject and constitutes a material involvement. At the same time, Badiou does not take the subject as something fixed: the very essence of subjectivity consists in a revolutionary break and transformation. The actual subject is always displaced in relation to this founding break that stays partly in the past, to which one is “faithful.”

Thus, Badiou carries on a thread of Benjamin’s project (without quoting him) in defining the imperative of the leftist politics as a manifestation of the previously suppressed and non-manifest, of a belated justice. Unlike the German thinker, Badiou projects the revolutionary event itself into the past, while, for Benjamin, it is situated in the present. But, for both, the subject does not deal either with the complete void of the unknown future or with an imagined utopia: it deals with a real, actual historical process, to which it must give its due and which it must not betray.

5. See *ibid.*, pp. 209–11. Badiou explicitly refers to Kant’s notion of orientation (without naming Kant), in the context of the indeterminacy of the “size” of a set: the subject as a procedure of “forcing,” in the sense used by Paul J. Cohen, is one of the ways to “orient” the situation and introduce determinacy into the order of the set sizes. See *ibid.*, pp. 281–85.

Badiou's political ethics are largely rationalist. He speaks little about *ethos* in the proper sense of the word, as the character of a person disposed to behave in this or that way. However, in his *Ethics*, Badiou introduces a notion of the "affects of truth," referring to states of "unequalled intensities of existence."⁶ The examples of such affects provided by Badiou are very positive: happiness, joy, enthusiasm, pleasure. However, where do the intensity and its internal tension come from in all these states? Do they not originate in the ambivalence of the subject, who has to be, on the one hand, highly *receptive* to excluded, obliterated claims and, on the other hand, active, assertive, and even intolerant in the pursuit of its cause?

Badiou turns the event into something univocally positive and affirmative, thus ignoring the negative aspect of the event as a *crisis*. In Benjamin, the call of the past was a call of a failed, unfinished project. Similarly, if the subject registers a call of the event, it has to be a call of something incomplete and unfinished. In Badiou, the suppressed and unfinished elements precede the event, but the event fixes and completes them. The foundational event itself is not negative in this sense, although it is indeterminate as to its existence and, as Badiou emphasizes, requires a constant reaffirmation on the part of the subject. In his *Being and Event*, Badiou explicitly claims to have rejected his earlier insistence on the negative thrust of revolutionary subjectivity (in *Theory of the Subject*⁷) and emphasizes the unproductive nature of negation. "Empirically," he says, "novelty (for example, political novelty) is accompanied by destruction. But it must be clear that this accompaniment is not linked to intrinsic novelty; on the contrary, the latter is always a supplementation by a truth."⁸ This positive interpretation of subjectivity, which denies an internal work of the subject upon itself, seems to me politically risky (because totally disconnected from and only externally linked to the preceding order of things) and blind to the reality of the eventful mobilization.

6. Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. Peter Hallward (New York: Verso, 2001), p. 53.

7. Alain Badiou, *Théorie du sujet* (Paris: Seuil, 1982), pp. 129–92.

8. Badiou, *Being and Event*, p. 407. In the same vein, see Badiou's more recent theory of "subtraction" and "destruction," for instance in Alain Badiou, "Destruction, Negation, Subtraction—on Pier Paolo Pasolini" (2007), available online at the Lacan dot com website, <http://www.lacan.com/badpas.htm>. "Destruction" would be, here, the sheer unproductive negativity, "subtraction"—something positive and new which, in a secondary and derivative way, is also negative because subtracted from the general laws of the situation.

Thus, in Badiou's doctrine of "fidelity to the event," there is an obvious element of left-wing *conservatism*, risking to become an obstinate defense of a wrong path once taken. This conservatism is understandable, provided the defensive position of the left in today's world, and the need for a solitary subject to oppose the ruling *doxa*. However, it carries with it all the dangers characteristic of conservatism, for how do we know that, keeping fidelity to a past event, we would not miss or reject a new event that would partly annul the previous one? Badiou rejects all expectations for the future by saying that a new event comes suddenly and self-evidently.⁹ The clash between one constitutive event and the potential of another, new event is a serious problem that leads beyond the confines of Badiou's philosophy. Can the regime of revolutionary or, broadly speaking, democratic subjectivity coexist with the openness to the Other? Does not the passive receptivity of the new contradict the enthusiastic, active revolutionary movement? At this point, yet another major ideology, namely liberalism, enters into the picture. Bluntly speaking, is the contemporary left closer to conservatism or to liberalism?

The problem with Badiou's definition of the event consists in its *positivity*. This positivity further leads Badiou to underestimate the affective component of the event. While Badiou's doctrine of fidelity to the event overcomes the problem inherent in Benjamin's version of orientation to the past, expressed in the occasional, passive character of the revolutionary "caesura," it "loses" Benjamin's understanding of the affective and receptive character of emancipatory subjectivity.

An analysis of any actual event, particularly of a revolution, which is Badiou's privileged example, makes it clear that it has a negative, destructive component, and that revolutionaries (Montagnards, as analyzed by Hegel, with their suicidal terror, being a classical case) run into a self-contradiction existentially experienced as a *crisis*. The absence of a univocal solution to the crisis is precisely what transforms the event into an irreducible founding instance; otherwise, the cause of the event, the affirmative force emerging in it, would suffice for the subject's identification.

And it is also the crisis—the self-negation and the internal rupture of the subject (the Lacanian "crossing out")—that renders the subject open, *receptive* to the new historical forces and to the calls to rectify old injustices. Elsewhere, I have attempted to show that revolutions are primarily

9. See the conclusion of Alain Badiou, *Saint Paul: The Foundation of Universalism*, trans. Ray Brassier (Stanford, CA: Stanford UP, 2003).

negative in their meaning, and that this is what allows us to term them “events.”¹⁰ I pointed out the *melancholic* affective mood that was widespread during the French Revolution of the 1790s and which was even more decisive for the recent revolutions against the Soviet-type socialism in the late 1980s and 1990s. This melancholia, far from being a sign of revolution’s weakness, is in fact a symptom of its intensity, which not only leads the revolutionary subject to deny itself and to reject the political field as such, but is also constitutive of both the event of revolution and the post-revolutionary subject. The revolutionary event, understood as a crisis that explodes the subject and leaves it, so to speak, in collective *solitude*, is precisely the point that synthesizes a paradoxical revolutionary conservatism with a no less paradoxical openness. The revolution, as an ongoing, still incomplete event, thus becomes a point of view of the *totality*, which, in a way functionally analogous to Lukács’s affirmative praxis but ontologically opposed to it, synthesizes the seemingly irreconcilable partial points of view and is capable of subordinating the two other ideologies (conservatism and liberalism) to the hegemony of the revolutionary left.

Indeed, by mobilizing people, by drawing them into a crisis, and by opening up an unpredictable future, a revolution makes them extremely vulnerable, mimetically receptive of all kinds of stimuli.¹¹ (We know of that “irrational” mass phenomena that occur during revolutions, such as the well-known “Great Fear” in the French countryside during the Revolution of 1789.)¹² But precisely because the revolutionary subject becomes so vulnerable, it also becomes extremely *wary*: the more it is “on its guard,” the more it feels that it is open to being mobilized in entirely new directions. Hence, the fierce fratricidal terror, the reign of “suspicion,” the search of foreign agents, and particularly the anti-mimetic struggle of Jacobins against “hypocrisy.”¹³

10. Artemy Magun, *Otrizatel'naya revoliuzia* (St. Petersburg: Izdatel'stvo Evropeyskogo Universiteta v Sankt-Peterburge, 2008); Artemy Magun, “La révolution négative,” *Temps Modernes* 640 (2006): 163–89.

11. Cf. Roger Caillois’s theory of “psychastenia,” a state of weakness that makes a solitary animal mimetically assume the color and shape of its environment. Caillois borrows this concept from the theory of the French psychologist Pierre Janet. Roger Caillois, “Mimicry and Legendary Psychastenia,” *October* 31 (1984): 59–74.

12. See George Lefebvre, *La grande peur de 1789* (Paris: Armand Colin, 1970).

13. See, for instance, Hannah Arendt, *On Revolution* (New York: Penguin, 1990), pp. 97–99.

In a roundtable held in 1988 in Paris on the occasion of the publication of Badiou's *Being and Event*, Jean-François Lyotard addressed to the author the very critique that I have just outlined. Lyotard reproaches Badiou for failing to account for *sensible* phenomena and insists that their synthesis is essentially different from the union of multiples into a set, which Badiou presents as universal. Lyotard further draws political conclusions from this philosophical critique. First, without the sensible capacity, he says, the active subjectivity of Badiou shows traces of decisionism and thus reminds one of Carl Schmitt: "Where fascism truly resides, this is in the arbitrariness of the name that one has to provide to the non-being from which one suffers. There is void in the site, and one is on the edge of the void, thus one has to name. The importance of the name is that it will decide and will involve a fidelity. In this nomination and fidelity there lies the Schmittian theme of authority via decision. . . . That authority consists in deciding on the state of exception and in the state of exception, this is precisely what you describe with regard to the site."¹⁴ Fascism, to Lyotard, emerges out of the incapacity and inadequacy of sensation. In the same vein, he continues,¹⁵ Badiou's repeated privileging of Christianity over Judaism (later developed in the book on Saint Paul) is in fact a rejection of the historical openness that the Judaic expectation of a Messiah implies.

Answering Lyotard, Badiou rightly notes the liberal overtones of his argumentation, such as the openness to the *future*, which, thus understood, risks supplanting action and self-determination. However, his answer to Lyotard's argument concerning the receptivity of the event is rather anecdotal: "Why do the pre-decisional affectivity [*passibilité*] and the pathos of passive sensibility offer us a better guarantee than the decision or voluntarism that one accuses me of? The Petainism after 1940, was not the very 'affectivity' [*passibilité*], that is, the shock of the event of the defeat, which attested itself by a shameful nomination? Who will describe the crimes of sensibility after they have for a long time reproached, with many examples, the (incontestable) crimes of will? The affect and the receptivity constantly produce, in front of us, consent to the most detestable significations."¹⁶ Badiou sees the emphasis on the sensible as inherently defeatist,

14. Jean-François Lyotard, "Sur l'ouvrage d'Alain Badiou *L'être et l'événement*," *Cahiers du Collège International de Philosophie* 8 (1989): 227–45; here, pp. 241–42 (my translation).

15. *Ibid.*, p. 245.

16. Alain Badiou, "Dix-neuf réponses à beaucoup plus d'objections," *Cahiers du Collège International de Philosophie* 8 (1989): 247–68; here, p. 259 (my translation).

thus holding suspect the very passive and passionate component of any knowledge. This argument does not seem to be stronger than Lyotard's unilateral accusations of decisionism.

However, Lyotard's allegation of Badiou's proximity to Schmitt is telling also because it does not do justice to Schmitt himself. In fact, the German legal thinker may be closer to Lyotard than to Badiou in his emphasis on openness and novelty, while he certainly shares with Badiou the value of a free subjectivity dependent on the exception.

A recent article by Colin Wright¹⁷ draws our attention to the possible intersections between Badiou and Schmitt, only to "disentangle" them and to show that the revolutionary Badiou is incompatible with the "Hobbesian" Schmitt, whom he calls an "authoritarian absolutist"(!). Wright correctly notes many similarities between Schmitt and Badiou, most importantly, the insistence upon the *necessary* and *constitutive* role of what Schmitt calls "the exception," and what Badiou terms "the singular," to any rule or law. Yet, he argues that, for Schmitt, the role of the state of exception is to sustain the state, while, for Badiou, it has a revolutionary meaning. Unfortunately, this thesis rests on an erroneous assumption that for Schmitt, "the logic of the exception *consolidates* state power by violently positing not the count per se, but the State's absolute right to count."¹⁸ In truth, although Schmitt, as a legal theorist, is certainly interested in the state as an institution, the *Concept of the Political* is wholly dedicated to the *critique* of Weber's identification of the state and the political, and to the demonstration of the new, revolutionary, radically *democratic* and civil-war-like nature of contemporary politics. The Schmitt of the 1920s is not a monarchist or absolutist, but a conservative democrat. Although, unlike Badiou, Schmitt does not explicitly develop any ethics of "fidelity" to an exception, he nevertheless shows the role and place of the exception in the constitution of the subject. Moreover, to the degree that Wright's (and Agamben's) accusation against Schmitt's usage of exception for the sustenance of law holds, it can also be applied to Badiou, in the sense that for him, as for Schmitt, there is a necessarily dual order of the (orderly)

17. Colin Wright, "Event or Exception? Disentangling Badiou from Schmitt, or, Towards a Politics of the Void," *Theory & Event* 11 (2008).

18. *Ibid.*, p. 9. Apart from this overhasty statement, Wright's article contains a number of factual errors, such as the attribution of "forcing" to the moment of naming the event (p. 8; in truth, this process, in Badiou, characterizes a further stage, that of "fidelity"); or the mistaken attribution of feminine gender to the famous political theorist Tracy Strong (p. 22n3).

“being” and the (rare, perhaps exceptional) “event,” where the latter implies the former, if it does not (and one may find various allusions to that effect) ultimately found the former.¹⁹

II. Carl Schmitt and the Openness of the Political Subject: Schmitt and Plato

To further clarify the leftist conservatism of Badiou, I suggest going back to the conservative democratism of Schmitt—not in order to dissolve the two positions in a formal identity, but to expose the emancipatory potential of Schmitt’s theory. The key moment on which I would like to draw is Schmitt’s implicit construction of the *affective* constitution of the subject. Furthermore, I suggest reading this affective subjectivity through the lens of a historical *event* as the only possible source of this subjectivity.

As I mentioned in the introduction, the current ideological situation is highly indeterminate and disorienting. One symptom of this indeterminacy is the intense equivocity of key theoretical notions. Thus, as we have seen, the notion of the subject, widely used by the liberals who refer to a responsible bourgeois individual and by the leftists who stress a revolutionary newcomer, has, in fact, a hidden conservative potential (the subject is, by definition, an instance in the past to which one returns, a hard core of one’s life). And the same is true for *openness*, a notion that seems essentially liberal but in fact bears a strong activist and emancipatory potential.

The most basic thing everyone knows about Schmitt, is his definition of the political field through the distinction that is made there between friend and enemy.²⁰ Usually, this definition is understood as a kind of “realist” statement, as a call to emancipate politics from morality and to think in terms of political alliances between states or political movements, understood as fixed subjects in the traditional sense of the word. What this common reading gets right is the work that this definition does, for Schmitt, to constitute a political *subject*, one who is polemically positioned with regard to others, defined via relations with them, and itself *decides* on these relations. Such understanding of the subject is entirely

19. For instance, in Meditation 24 of *Being and Event* (pp. 240–54), where Badiou shows the eventful character of mathematical deduction, i.e., of the very procedure that constitutes the ontology. Mathematics has its own eventful history, says Badiou here, and it looks like it must have had it!

20. Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: Univ. of Chicago Press, 1996), p. 26.

formalist, inspired by neo-Kantians, and does not go far beyond the *liberal* worldview.²¹

However, following the reading of Schmitt by Jacques Derrida,²² I maintain that Schmitt's "friend-enemy" distinction is more than a simple neo-Kantian criterion and that it implicitly carries a strong *historical* understanding of politics and answers the question of the subject's *orientation*. The need to distinguish friend from enemy is defined not so much by the geopolitics of the balance of powers, but by the choice of historical orientation in relation to the coming new.²³ Guided by historical orientation, we further need to decide whether to take a "conservative" or "liberal" or even a "revolutionary" position (if we allow the new to partially destroy us). Thus, in the seventh section of *The Concept of the Political*, Schmitt notes, in commenting on a book by Helmuth Plessner, *Power and Human Nature* (1931),²⁴ that the "openness" of man, so highly valued by liberals, entails dangerousness, making him evil rather than good.

This remark appears in the 1932 book edition of *The Concept of the Political*. In fact, Plessner's 1931 book was written after the first edition of Schmitt's book had appeared, and was influenced by it, in its turn. In his book, Plessner takes up Schmitt's definition of politics through the friend-enemy distinction and interprets it in the sense of the historical essence of the human being. For him, the friend-enemy distinction derives from the distinction between the trusted and the alien, which is constitutive of the human situation in the world that is characterized by "open immanence." Humans orient themselves in history by positing a horizon and thus delimiting the sphere of the familiar. The setting of this horizon has "a character of holding to a firm position that had once been taken or by revolting against it; thus [the horizon has] a historically relevant character."²⁵ Because human essence is openness, it is also power, and as such it is

21. On this, see Leo Strauss's review of *The Concept of the Political*, in *ibid.*, pp. 82–107.

22. Jacques Derrida, *Politics of Friendship*, trans. George Collins (New York: Verso, 1997).

23. Schmitt's writings subsequent to *The Concept of the Political* make manifest what he passed over silently in this very elliptical work: namely, that "friend" and "enemy" have strong politico-theological connotations, and that political theology has, for him in particular, a millenarist meaning, making all politics into containment ("kathēchon") of the Antichrist.

24. Helmuth Plessner, *Die Macht und die menschliche Natur* (1931), vol. 5 of *Gesammelte Schriften* (Frankfurt am Main: Suhrkamp, 1981).

25. *Ibid.*, pp. 192–93.

essentially open for contestation between “friends” and “enemies.” We see that Plessner synthesizes motifs stemming from Schmitt and Heidegger. His “historical” interpretation of Schmitt’s “friend-enemy” distinction anticipates that of Derrida (who does not cite Plessner) and stems from the same source, namely, the philosophy of Heidegger.

The fact that a man, for Schmitt as for Plessner, is an open question, that his future is not determinate, raises the probability that he could become an enemy and thus announces the need for vigilance. Further on in the same section, Schmitt discusses the fatal carelessness of certain classes with regard to the future that awaits them. Here, the problematic of the enemy clearly coincides with the theme of the historical future:

[E]verywhere in *political history*, in foreign as well as in domestic politics, the incapacity or the unwillingness to make this distinction [between friend and enemy] is a symptom of the political end. In Russia, before the Revolution, the doomed classes romanticized the Russian peasant as good, brave, and Christian muzhik. . . . The aristocratic society in France before the Revolution of 1789 sentimentalized “man who is by nature good” and the virtue of the masses. Tocqueville recounts this situation in words whose shuddering tension arises in him from a specific political pathos: “nobody scented the *revolution*; it is incredible to see the security and unsuspectingness with which these privileged spoke of the goodness, mildness, and innocence of the people when 1793 was already upon them—*spectacle ridicule et terrible*.”²⁶

Here, the question of qualifying a stranger as a friend or an enemy transforms itself into a historical question of recognizing the future, name the revolutionary event, as friendly or hostile.

Thus, though in his *Crisis of Parliamentary Democracy* (1985)²⁷ Schmitt criticizes the specific “openness” of liberal ideology, he does not reject this principle, but in fact builds his political theory on the wary openness to the stranger, who is essentially open or dangerous. For Schmitt, the formula of openness is a *question*, and the fault of liberalism consists in the fact that it constantly postpones the answer to this question, while he points to the necessity of *risking* an answer, choosing someone as a friend or an enemy, without really knowing if that person is objectively good or evil.

26. Schmitt, *The Concept of the Political*, p. 68 (emphasis added).

27. Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 1985).

After the Second World War, while imprisoned by the Allies, Schmitt wrote a short text entitled “Wisdom of a Prison Cell.”²⁸ In this text, he first considers technical *progress* as a frustrated promise of paradise, and then goes on to discuss the loneliness of a cell, the danger of self-deception, and the messianic figure of an enemy as the only chance of gaining authenticity in loneliness. The historicity of the enemy figure, which was only a secondary motif in *The Concept of the Political*, comes to the foreground here. The essay ends with a quote from Schmitt’s friend, the German poet Theodor Däubler: “The echo grows with each word; as a storm from open places, it hammers through our doors.”²⁹ In the “Wisdom of a Prison Cell,” the enemy is in fact assimilated to the Other as such, and the destruction of it is no longer recommended, as it used to be in the extreme case in *The Concept of the Political*, since it coincides with self-destruction.³⁰ The enemy, says Schmitt, puts the subject into *question*, thus making it interesting. Here, the enemy appears as an epistemological figure, a figure of the question, that is, of the *known unknown*, which anticipates new knowledge. With such an enemy, why would one need friends? The enemy who cannot answer the question of the subject (whether he is friend or enemy) returns this question to the subject itself.

The understanding of politics in terms of friend and enemy is not as universal as Schmitt would like it to seem: as some intellectual historians claim, today, we inherit it from the epoch of the French Revolution with its revival of the Roman cult of political friendship and with its formulae of “friend of the people” and “enemy of the people.”³¹ In the Revolution, the thematization of friendship and enmity coincided with a twofold historical sensibility: the claim to revive antiquity, on the one hand, and the focus on innovation and creativity—new calendar, new utopian festivals, the creation of many entirely new institutions, etc.—on the other.

It is rarely noted that the “friend-enemy” formula of Schmitt almost literally repeats Plato’s definition of guardians, who comprise the leading³²

28. Carl Schmitt, “Weisheit der Zelle,” in *Ex Captivitate Salus* (Berlin: Dunkler and Humblot, 2002), pp. 79–91.

29. *Ibid.*, p. 91 (translation mine).

30. *Ibid.*, p. 89.

31. See Mikhail Iampolskii, *Vozvrastchenie Leviasfana* (Moscow: NLO, 2004), p. 757.

32. It is indeed leading, because the rulers of the city who command the guardians are themselves guardians of a higher order. Compare Plato, *The Republic*, trans. Allan Bloom (New York: Basic Books, 1976), 414b.

“class” of his “*politeia*.”³³ The task of *distinguishing* between friend and enemy appears throughout Plato’s *Republic*. It is already introduced in the first book by Polemarchos, who suggests that one should be just to one’s friends and unjust in relation to one’s enemies, as a definition of *justice*, which is rejected by Socrates for its logical incoherence but is, then, reaffirmed by Socrates himself, as a key *moment* of his own model of justice, i.e., of the project of an ideal city.³⁴ The guardians, in Plato, are those who, like “noble” dogs, not only fulfill a special function of defending the city from its enemies, but also have the intellectual capacity to distinguish friend from enemy and to behave accordingly in relation to them.³⁵

The main quality of a guardian is, according to Plato,³⁶ *thymos*, spirit. But spiritedness requires a special addition: love of wisdom, or *philosophy*, which actually allows a guardian to separate friend from enemy, and

33. Out of the very few mentions of the reliance of Schmitt on Plato in this point, one should note a short piece by Harvey Mansfield, “The Christian Socrates: A Review of *Dissent and Philosophy in the Middle Ages: Dante and His Precursors*, by Ernest L. Fortin,” *Claremont Review of Books* (Fall 2003). Interestingly, Plessner who, as I have mentioned, interprets Schmitt’s distinction between friend and enemy as the one between the familiar and the alien, literally reproduces Plato’s version of this distinction, but, like Schmitt himself, fails to mention it. Schmitt quotes Plato in *The Concept of the Political* (pp. 28–29), but does so exclusively to support his own thesis about the strict distinction between the public and the private enemy (*polemios* and *echthros*, respectively). Interestingly, Plato formulates his “distinction between friend and enemy” first in terms of *echthros* (Polemarchos), and only subsequently in terms of *polemios* (Socrates himself). Note also that the conceptual distinction, emphasized by Schmitt, between *polemios*, public enemy, and *echthros*, private enemy, is violated by Plato himself once, precisely in the key passage where he introduces the notion of guardians (*Republic* 375–376b). There, Plato uses both terms as synonyms.

34. Plato *Republic* 376. Actually, the idea that one has to help friends and harm enemies was a commonplace of the Ancient Greek culture. It can be encountered in Homer, Archilochus, Xenophon, and even Aristotle. See, for instance, Mary W. Blundell, *Helping Friends and Harming Enemies: A Study in Sophocles and Greek Ethics* (Cambridge: Cambridge UP, 1989).

35. Of course, Plato cannot understand the friend-enemy distinction in the sense of a historical, even messianic openness to the future; to think so would be an anachronism. However, he does not view this distinction in terms of the identity of the subject, as opposed to its enemy either. Rather, the issue lies in the paradoxical nature of knowledge, which, to develop, constantly has to operate with the *unknown* and the *alien*. In political terms, as Derrida suggests, the issue is that of *hospitality*, the universal and archaic political institution preceding not only the modern idea of history but also the political order of Greek *polis*.

36. Or, strictly speaking, according to Socrates as depicted by Plato. Here and below I will, for simplicity’s sake, attribute to Plato the doctrine of his character. What is important

the known from the unknown. The specific virtue of the guardians, *courage*, is built upon *thymos*, thus informed by the right opinion “about that which is terrible and that which is not.”³⁷ Since it is oriented outward, courage is, therefore, the virtue of *preservation*.³⁸ The spiritedness of the guardian is susceptible to formation by means of music (divided into *rhythm* and *harmony*) and gymnastics, which need to be rightly balanced against each other so as not to make one too soft or too ill-tempered.³⁹ Moreover, music, as a mimetic art, is actually only an image of virtue, of courage in particular.⁴⁰ From this, one can deduce that, like all other ethical virtues, courage based on spiritedness itself has a rhythmic and harmonious nature. *Thymos*, in its ambivalence toward the other, puts one into an aroused, rhythmical, and thus plastic condition (rhythm having to do with the constitutive ambivalence of *thymos* with regard to strangers), which is then modulated and shaped through the two aforementioned forms of education.⁴¹ *Thymos* is, simply speaking, an affective state that consists in a heightened attention to everything alien and new, and this attention is, a priori, aggressive and wary. As in actual barking dogs, aggressiveness (or “anger”) seems to prevail over friendliness and makes up an a priori base, so to speak, on which attention is possible at all.

In the city, *thymos* is the function of “foreign affairs,” keeping the friends in and the enemies out. But after having considered the city, Plato turns, by analogy, to the analysis of the human soul. Here, things change: *thymos* preserves its aggressive vigor and guarding function, but it is no longer directed outward; rather, it now plays the role of an internal mediator and “policeman.” In the soul, *thymos* is a mediator between “reason”

for me in this paper is less Plato’s ideological position and more the actual logical construction made in *The Republic*. This construction certainly belongs to Plato.

37. Plato *Republic* 429c, 442c.

38. *Ibid.* 429c.

39. *Ibid.* 410–11.

40. *Ibid.* 402c.

41. Alexei Losev, in his *Istoria Antichnoy Estetiki*, vol. 2 (Moscow: Iskusstvo, 1969), pt. 2, sect. 2, “Modifikazii esteticheskogo prinzipa,” par. 4, rightly notes the particularly “unstable” and “sensible” nature of *thymos*, which, etymologically, is associated with rage, tempest. Thus, he concludes that *thymos* is a specifically aesthetic area of soul. Both Plato, with his theory of *thymos*, and Schmitt, with his faculty of distinction, belong to the tradition of political aesthetics developed particularly by Schiller, Hölderlin, Schelling, and other German authors of the turn of the eighteenth century. It is not a totalizing aestheticism of the Wagnerian type, but rather the derivation of politics from mimesis, that is from an unstable equilibrium of an intermediate historical condition (“aesthetical state” in Schiller, “caesura” in Hölderlin). On this point, see various works by Philippe Lacoue-Labarthe.

or “calculation” (*logismos*) and “desire” (*epithymia*), which allows the former to tame the latter, even if it is itself a passion akin to desire. It is a contradictory passion, which makes a man redouble and enter an argument with himself.⁴² No longer an externally oriented political faculty, it now becomes the most intimate part of the soul. Everything looks as though the outward ambiguity of *thymos* (gentleness and anger), unable to accomplish the task of drawing distinctions entrusted to it, loses its object altogether, becomes interiorized and translates into the internal discord of a man with himself or herself.⁴³ In its subjectivating function, *thymos* becomes even more conservative than it used to be in the city. The only actual example of its function in the soul that Plato gives is a man named Leontios, who has forbidden himself even to *look* at an obscene spectacle, such as the bodies exposed after an execution.⁴⁴ Oriented toward the outside, *thymos* was attentive but aggressive; oriented inward, it becomes so hyper-cautious and so unsure of its capacity to discriminate that it blocks attention itself. Since the specific desire blocked by *thymos* is the desire for knowledge, one can say that, in spite of Plato’s “partition” of the soul, we are dealing with a pure reflexive self-contradiction of *thymos*. The cautious dog meets a curious dog; aggressiveness meets attention. In this passage, Plato particularly emphasizes the *hesitation* of Leontios, who fights with himself: “[h]e desired to look, but at the same time he was disgusted and made himself turn away; and for a while he struggled and covered his face.”⁴⁵ Thus, the internalization of *thymos* introduces a certain arrhythmia into this rhythmic faculty. *Thymos* becomes the temporal and spatial middle, the moment of indecision, of dialectics at a standstill, a caesura of politics.

Thymos unites in itself the relationship to the Other—wariness—and the relation to oneself, which dynamically forms, anachronistically speaking, the reflexive subjectivity.⁴⁶ For Schmitt, subjectivity and receptivity

42. See Hannah Arendt, *Origins of Totalitarianism* (New York: Harcourt Brace, 1973), p. 477. Arendt relies on Nietzsche in exposing the structure of solitude as leading from the state of loss and confusion toward the reflexive redoubling of the subject: “then one became two.” Importantly, Badiou repeats the same thought, though now with reliance on Mao, in “Un se divise en deux,” *Siniy Divan* 5 (2004).

43. In Kant’s philosophy, *imagination* fulfills a similar function: this faculty, which usually is responsible for anticipating external experience, becomes a purely internal faculty of mediation between reason and senses. Like *thymos*, imagination, in Kant, is spontaneous and receptive at the same time.

44. Plato *Republic* 439e.

45. *Ibid.* 440a.

46. Francis Fukuyama, who recently drew renewed attention to the notion of *thymos* (see *The End of History and the Last Man* [New York: Penguin, 1992]), understood it

are also tightly linked: it is the enemy, with his point of view, that allows the political subject to obtain its identity. This does not have to be understood simply as the logic of identification through binary opposition but should be taken in the sense that the very same affect is responsible for the wariness toward the other and for the reflexive self-relation that constitutes the subject.

Nevertheless, for Plato, *thymos* is also responsible for the love of victory and honor. Thus, it designates both the faculty of receptivity (or non-receptivity) to manifestation, and the faculty of manifestation itself. Both the subject and the object of reception or recognition have to possess *thymos*. The plastic and receptive subject is also the subject of an outwardly oriented praxis; it does not only decide whether or not to receive another self-manifesting subject, but also seeks to impose itself upon the latter. *Thymos* is *mimetic*, both in the sense of reacting to the Other, and in the sense of showing and presenting itself. But the meaning of *thymos* as love of honor, which is most common in the Greek language, appears only very late in *The Republic*, in the eighth and ninth books.⁴⁷ Here, someone imbued with *thymos* is not compared to a dog but to a lion. *Taking* another shape mimetically, *thymos* opens itself up for *giving* an impression about

unilaterally, as desire for being recognized, which of course it is. Yet at the same time, *thymos* is also the faculty of *recognizing* and anticipating. Fukuyama only considers *thymos* from the point of the view of the self-affirming subject, thus in the sense that appears only in the last books of *The Republic*. He does not see the indeterminate openness inherent in this quality. It is not surprising then that his reflections on *thymos* lead Fukuyama to envision a historical closure, an end of history. Fukuyama insists that the liberal-democratic society satisfies everyone's *thymos* through universal recognition. But *thymos* does not just recognize, but recognizes someone as a friend or an enemy. Interestingly, today, the liberal state often fails to recognize its *enemies* (instead, it prefers to speak of terrorists, bandits, human rights violators, et al.). Terrorism functions, in part, as a sheer reminder that there are enemies, and that they are enemies. It took September 11 for the United States to change the language of police operations into the language of "war," but this war, again, does not and cannot have a clearly defined enemy, apart from "terrorism," or the demonized "bin Laden." For a good discussion of the relationship between Schmitt's theory of recognizing the enemy and Hegel's theory of recognition, see Jean-François Kervégan, *Hegel, Carl Schmitt, le politique entre spéculation et positivité* (Paris: Presses Universitaires de France, 1992), pp. 332–33. Schmitt, in "The Wisdom of the Prison Cell," says that relationship with the enemy is *bilateral* recognition: my "having to recognize" the one who recognizes me (p. 89). Like justice (which, as we will see, is both the virtue of a justice-seeker and of a judge, a desire for fame and the consideration for the other), *thymos* is a "transitive" virtue, which has both its active and passive form. In Plato's case, we have the uneasy "marriage" of the two forms in one subject.

47. Plato *Republic* 548c, 581a.

itself, for serving as a model. It seems as though this aspect of *thymos* surfaces only in the third “movement” of Plato’s argument: after the faculty of receptivity has passed through the stage of interior control, it “returns” to the outside world, now as a self-manifestation. In *The Concept of the Political*, Schmitt, like Plato, is not only interested in definitions (the political in Schmitt; justice in Plato) but also asks a question about the specific political *ethos*, the *ethos* that allows the distinction of friends from enemies. The entire seventh section of the work is dedicated to an elaboration of “political anthropology.” While for most part, Schmitt enquires there whether man is by nature good or evil, he also puts the question of an ethical, affective disposition that makes the distinction between friends and enemies possible. I have already quoted the passage where he evokes the “specific political pathos” of Tocqueville. A little before this passage, he writes: “Political thought and political instinct prove themselves theoretically and practically in the ability to distinguish friend and enemy.”⁴⁸ Now this sounds like a direct citation from Plato, for whom this distinction was an affair both of *thymos*, or political affect, and of *philosophy*, or political intelligence.

One other important notion in Schmitt points us in the direction of the Platonic *thymos*. He insistently emphasizes the fact that the friend-enemy distinction is distinguished from all others by its *intensity*.⁴⁹ This means that Schmitt notes the *affective*, or even *tonic*, nature of the political, replete with the kind of tension that, while it is oriented toward the outside, remains an *in-tensity*, and thus arouses, energizes the subject, and constitutes its *interiority*. The relationship to the enemy is intense for the same reason as the relationship of a dog to a stranger is “spirited”: the dog barks, but does not actually kill the stranger. Similarly, the complete annihilation of the enemy, says Schmitt in the “Wisdom of the Prison Cell,” would be a catastrophe.⁵⁰ Furthermore, the very aggressiveness of Plato’s dogs, the intense hostility of Schmitt’s politicians, and the reluctance of both to annihilate the enemy is caused by the fact that they *cannot* really and objectively distinguish the known from the unknown, and friend from enemy, and are thus hostile a priori. I will return to this problem below.

48. Schmitt, *The Concept of the Political*, p. 67.

49. “The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation” (Schmitt, *The Concept of the Political*, p. 26); “The political is the most intense and extreme antagonism” (Schmitt, *The Concept of the Political*, p. 29 and passim).

50. Schmitt, “Weisheit der Zelle,” p. 89.

The paradoxical function of *thymos* is analogous to the engagement in a revolutionary event. The revolutionary society is, so to speak, in “solitude,” left to its own devices as a result of the fall of external authority, but at the same time, like anyone in solitude, it is highly vulnerable even to the weakest and most distant influences. Elsewhere, I have tried to demonstrate, based on the experience of post-Communist Russia and late eighteenth-century France, that any revolution is an interiorization of negativity, where the transcendent instance of power suddenly falls and ceases to exist, and the society is left alone with its own conflicts, left to its own negativity.⁵¹ Such a state may be called “collective solitude,” which does not know any Other, not because it would have included the others in itself, but because there are no longer any determinate borders demarcating others. From this state follows, for instance, the peculiar ego-centric universalism of the French Revolution and its expansion. It is also from this indeterminate universalism that follows the heightened mimetic receptivity of the revolution, which is ready to imitate any model that it finds available. In the state of suspension of all borders, the next, imperialist step brings about the revolutionary society that imposes itself upon others as a model (the third aspect of *thymos*).

The spirited, plastic revolutionary subject is highly receptive, but it is even more ready to fight against everything it sees: its subjectivation is accompanied by a hyper-reaction against the elusive alien, by the manic search for external enemies. The alien can become an enemy precisely because the seduction to accept him or her in a friendly manner is too high. By the same token, before he is recognized as one, the enemy is noticed and thus accepted in the internal tension (intensity) of attention. Thus, in spite of what appears upon the first reading of Plato and Schmitt, it is impossible to decide on the relative priority of friendship or enmity, since both act through each other. Just as aggression arouses one and makes one highly attentive to the Other, indeed, friendly to the Other through his or her anxious testing, so the enemy only becomes an enemy by having been already accepted and recognized, in the mood of passive receptivity. The aporia of friendship and enmity consists in the two-step structure of the recognition of the new: before we decide whether we are dealing with a friend or an enemy, we must have already noticed him. Hence, the very categories of friend and enemy, implying that we do not decide each time whether someone is friend or enemy but that we actually *presuppose*

51. Magun, *Otrizatelnaya revoliuzia* and “La révolution négative.”

this about someone, decide this once and for a while (relatively a priori), though not forever.⁵² The temporal structure of this decision makes itself evident, for example, during the French Revolution, when Robespierre suggests executing the king as an external enemy, an outlaw, rather than as a criminal, which would imply that we have either recognized his legitimacy as king, or did not recognize the matter at all, trying to prosecute him as a citizen.⁵³ Revolutionary justice tries to act in the very site of detecting the Other, not in the site of a balancing decision.

The interpretation of friendship-enmity that is developed here brings it close to the other important concept of Schmitt—the state of exception (*Ausnahmestand*).⁵⁴ In this concept, the central issue is the ability to recognize the new, or to put it even more precisely in Platonic terms, to separate the known from the unknown, which is the virtue of the guardians-dogs from *The Republic*. Both in Plato and in Schmitt, this problematic capacity belongs, in the final analysis, to a *one*. In Plato, it is the philosopher-king who comes to distinguish the two through revelation; and, in Schmitt, it is the sovereign, who acts by making a decision.

This is true of the early Schmitt. And as far as it is true, we cannot attribute to Schmitt the real awareness of the *event* as a site of historicity. His is, rather, a general, formal theory of an open subjectivity, reminiscent of the early Heidegger. However, like Heidegger, after his Nazi episode Schmitt reconsiders his philosophy and moves from the exclusive emphasis on the human subject toward a more ontological doctrine. In *The Nomos of the Earth*,⁵⁵ his true *opus magnum*, Schmitt presents the simple friend-enemy relation not as a formal criterion, but as a historically concrete phenomenon, which implies the existence of a third term, a zone where the mutual recognition of friends and enemies is impossible, the zone of a permanent exception to law. The “lines of amity,” writes Schmitt, set in the sixteenth century, separated the space where one recognized and respected one’s enemies from the one where the division friend-enemy was blurred and the warfare could only be total.

52. See Schmitt, *The Concept of the Political*, p. 34.

53. Maximilien Robespierre, “Sur le procès du roi, 3.12.1792,” in *Pour le bonheur et la liberté* (Paris: La Fabrique, 2000), pp. 191–205.

54. Developed especially in Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985).

55. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003).

It is no longer the subject itself who founds, or decides upon, a specific regime of friendship and enmity, but what Schmitt calls the “land-taking” or “land-division” (*Landnahme*), which he names with the help of the Greek word *nomos* (law as *division*)—the historical moment when the lines between law and lawlessness, as well as between friends and enemies, are first set. For all our technical purposes, the establishment of this *nomos* is a historical *event*, and Schmitt himself associates it with the event (*Ereignis*): “As long as world history remains open and fluid, as long as conditions are not fixed and ossified; in other words, as long as human beings and peoples have not only a past but also a future, a new *nomos* will arise in the perpetually new manifestations of world-historical events [*Ereignisse*].”⁵⁶ An “event” is, thus, a superficial form of the more fundamental *nomos*, land-division. In spite of his emphasis on the future, the meaning of Schmitt’s *nomos* is precisely to lead us toward the exceptional moment in the past, which still continues and which delineates and spatializes its temporal exceptionality through its “lines of friendship.”

The attentive wariness that comes from the recognition of the exceptionality of an event and the recognition of the enemy as a question, analogous to the Platonic *thymos*, is an affect that synthesizes in itself the revolutionary pathos, on the one hand, and liberalism and conservatism, on the other. The formation and the guarding of a political identity are articulated with the openness to the new. If the fidelity to a revolutionary event and to its emancipatory *cause*, which is not external to the event but emerges out of its very form, builds on a true engagement, it does not confine the subject to a dogmatic mania but, on the contrary, renders it *more* open and attentive. Perhaps the best conceptualization of this phenomenon belongs to a Russian philosopher and physiologist, Alexei Ukhtomsky. Ukhtomsky suggested the concept of the “dominant”: an imperative of action that becomes so strong that it is reinforced by *any* incoming stimuli, even the irrelevant or opposing ones. Ukhtomsky, writing in the revolutionary time of Russia (the concept was first put forth in 1911 and developed until his death during the siege of Leningrad in 1942), proved that the dominant actually determines activity physiologically, but he also understood this concept in the broadest philosophical sense.⁵⁷ The

56. *Ibid.*, p. 78.

57. Alexei Ukhtomsky, *Dominanta* (St. Petersburg: Piter, 2002). Ukhtomsky was a remarkable figure: a prince, member of the highest Russian aristocracy, he was interested in the orthodox religious philosophy, but made his academic career in physiology, remained in Russia after the revolution, and played a major role in the development of the Soviet

indebtedness of the concept to the great metaphysical tradition, starting at least with Kant, whom Ukhtomsky quotes, as well as its affinity to the political doctrines and events of the time, are beyond doubt.

To conclude, the true event as a revolutionary crisis sensitizes the subject and combines subjectivation with open universality. As long as it lasts, it is this same event that is the common source of the democratic ideology, emphasizing collective subjectivity, and its liberal counterpart, emphasizing openness. Conservatism, which had earlier opposed the event, comes into play as far as the event starts to fade, and its repercussions become weaker and weaker.

III. Justice as an Orienting Principle

Now that I have presented a case for the ethical and historical disposition of the friend-enemy distinction, the next step will be to formulate a general historical principle, which could serve as a criterion for finding an orientation in history. Since Plato, this main principle of political ethics, the constitutive political virtue, has had the name of *justice*. *Thymos* itself is one of the affects that sustains it. Justice, however, is not a concept that can stand alone. “Justice” can have many meanings, and it is also, interestingly, a rare kind of ethical principle that is often rejected as such.⁵⁸

Most often, from Aristotle to Rawls, we think of justice as a virtue of distribution. This understanding does not give this concept a very radically emancipatory meaning; indeed, it implies a fixed authority that would decide on the criteria of distribution. Thus, the liberals often reproach the socialists for preferring “justice to freedom,” that is, for pretending to control and distribute resources from above. Justice is also commonly understood in the historical sense as a kind of revenge, discharging the debt of the present to the past.

The famous fragment of Anaximander, according to which “things give justice and pay penalty to one another for their injustice, according to the ordinance of time,” is read by many, including Nietzsche, in this sense of

physiological science and practice. Ukhtomsky says he borrowed the term from Richard Avenarius, for whom it had played only a marginal role. The principal philosophical conclusions he draws are, first, the ability to comprehend the “face of the Other” with the help of the dominant, and, second (in the spirit of time, the 1920s and 1930s, in the Soviet Union), the need to *educate* and *form* people by setting their dominants.

58. For abundant arguments against justice, see Cicero citing Carneades, in Cicero, *De Re Publica*, in *Works*, vol. 16, trans. Clinton Walker Keyes (Cambridge, MA: Harvard UP, 1927), bk. 3, pp. 192–93.

the indebtedness of things for their being. Heidegger, however, emphasizes in his reading the sense of a “pure gift,” beyond all revenge and exchange, that things give to other things, by joining and disjoining with them.⁵⁹ To him, the things in Anaximander’s fragment “let order [*Fug*] and thereby also reck [*Ruch*, a kind of universalized attention] belong to one another.” For Emmanuel Levinas, justice consists in the unconditional attention to and ethical priority of the Other. Derrida interprets Heidegger’s reading of Anaximander in the direction of Levinas and develops the themes of the gift beyond exchange and the absolute anteriority of the Other. Derrida shares with Heidegger his ethical, political, and ontological orientation to the *future* (*à-venir*), which is the source of all “giving.”

These thematizations of justice are as suggestive as they are strange in the context of the common usage of the term. They seem to make sense within the history of metaphysics but not in the sense of political history. Also, both in Derrida and Levinas, justice appears as an unconditional ethical imperative with no immediate practico-political implications. In this remaining section, I will try to find, within the political-philosophical tradition, an equally “strong” definition of justice that would have direct political and, moreover, revolutionary meaning.

One of the best, if little-known, treatments of justice belongs to Jules Michelet, the famous French historian of the nineteenth century.⁶⁰ Michelet sees justice as the key to the meaning of the French Revolution. Revolution, with its *justice*, comes to replace the event and the reign of Christianity, with its *grace*. Both Christian grace and revolutionary justice form a historical subject. But the problem of grace lies in the arbitrary, capricious judgment to which it leads in earthly matters. Thus, for revolutionaries, the arbitrary became a synonym of injustice. Restoring justice in the site of grace (and here one could rephrase the Freudian formula: “where grace was, there justice shall be”), the Revolution continued the unfinished project of the late medieval monarchy, which also embraced the principle of justice, primarily but not exclusively in the judicial sense, as its main goal. But the monarchy could not accomplish the cause of justice because it still depended on the theological association of power with

59. Martin Heidegger, “The Anaximander Fragment,” in *Early Greek Thinking: The Dawn of Western Philosophy*, trans. David Farrell Krell and Frank A. Capuzzi (New York: Harper & Row, 1975).

60. Jules Michelet, *Histoire de la Révolution Française* (Paris: Robert Laffont, 1979), pp. 51–94.

grace. Thus, kings often put people in the Bastille out of sheer mercy to their relatives who asked them to do so. According to Michelet, true justice is not an objective judgment passed in court, but the belated redemption of the offenses that have been accumulated over the ages, giving expression to the voice of those who had to be silent for “millenia.” The Revolution, this “belated advent of eternal justice,” as Michelet calls it, in a brilliant oxymoron, comes to redeem the suffering of the victims of the medieval arbitrary rule, including the victims of the Inquisition, the witch hunts, and the prisoners of Bastille, who have been frozen “between life and death,” doomed for eternal oblivion, but who survive in their very silence because, says Michelet, “what has once been, cannot be destroyed in this way [i.e., through oblivion].” Michelet tells a touching story of a woman who, having found the letter of a stranger who was unjustly put into the Bastille, spent most of her life in trying to get him out of prison and who succeeded in the end. This allegory of the Revolution, which Badiou would probably appreciate, shows the link between extreme sensitivity, or even sentimentality, and firm assertiveness. This text of Michelet is, among other things, an important and as yet unnoticed subtext of Benjamin’s “Theses on the Philosophy of History,” with its doctrine of the revolution resurrecting the past once buried alive.

Thus, justice is a deeply historical virtue. Of course, its content may be political equality, or the distribution of economic goods, but its form is the revolutionary, constituent subjectivity, which overturns hierarchies and sheds light on those truths that are suspended between two births or two deaths. As it has been stated above, the revolution is first of all *wary* and hypersensitive to what is coming, to what is alien. Thus, like Plato’s guardians, it constantly distinguishes and judges. The thing is not so much in the judgment (*crisis*, in Greek) but in the turn of attention toward the Other, the turn that constitutes justice. It is not by chance, Michelet says,⁶¹ in a manner resonating with Benjamin, that justice is the virtue of a hunter and a player, the two activities requiring *thymos*, demanding extreme attention to the unpredictable and, at the same time, allowing the actor to manifest himself or herself in excellence. Justice does not only open up to the Other, but, from another point of view, it also draws the subject outside of itself, toward manifestation. It gives not only attention to Others but also extends attention to oneself, being, as any virtue—in the Machiavellian sense of this word, understood as “the shining glory”—tightly linked

61. Ibid., p. 91.

to excellence and manifestation. Thus, Cicero says in *De Re Publica*, as quoted by Nonius, “justice looks out of doors and is completely prominent and conspicuous [being] a virtue which, beyond all others, is entirely devoted and applied to the advantage of others.”⁶² This unity of receptivity and self-manifestation is also characteristic, as we saw, of Plato’s *thymos*.

Justice, understood in Michelet’s terms, bears in itself all the paradoxes of *thymos*. Indeed, the friend-enemy distinction only arises after we have actually noticed something interesting or new. Therefore, justice is characterized by a peculiar temporality, which Michelet expresses with his aforementioned formula “the belated advent of eternal justice.” The Platonic enemy, before he is rejected and located outside of the city, must have been already noticed. Thus, he cannot be fully rejected, since “what has once been, cannot be rejected in this way.” It is this paradox that gives rise to the unconscious, unredeemed layer of history described both by Benjamin and Michelet. The conscious distinction always comes too late, after the main solution has already been implemented. The attempted return of the latecomers to the moment of attention, their vigilance in hindsight: *this* is what Michelet calls justice and from what he derives the revolutionary subjectivity, which refers to the return of the subject to itself and to its enemy. “Oh enemies, there are no more enemies”: this formula, paraphrasing the dictum attributed to Aristotle, which Michelet puts into the mouth of the Revolution personified, expresses the paradox of the Platonic and Schmittian *thymos* very well. Indeed, what kind of enemies are those, if we have already recognized them, if they have recognized us and if, moreover, we have defined ourselves with regard to them?

We have seen that Plato, in his *Republic*, defines one crucial moment of justice as the ability to distinguish between friend and enemy, or between the known and the unknown. But this, of course, is anything but an easy task. First, Plato seems to suggest that this philosophical capacity is a natural continuation of *thymos* and an organic quality of noble dogs or guardians. Subsequently, however, he has to separate from the guardians a new class of philosophers proper. The task of differentiating the known from the unknown is unsolvable for the guardians and for *thymos* because, before rejecting the unknown, one has somehow to have known it, and to accept the known, one needs a previous experience, an anticipation of true knowledge. Speaking through Socrates, Plato notes that people usually deal with opinions, in which the known and the unknown, as well

62. Cicero *De Re Publica* 3.193.

as, by deduction, the friendly and the hostile, are *mixed*. To reach pure knowledge and, thus, to be able to distinguish it from the unknown or imperfectly known, the philosopher has to make a radical exit from the world previously familiar to him, to “estrangle” the world by looking at it from an external position. The usual world “as we know it” is in fact the world of opinion, *doxa*, where knowledge and non-knowledge are fatally mixed. Only by “exiting” this world and taking an external point of view can we actually solve the problem of the guardians, which is to differentiate the known from the unknown.

This revolutionary, “Copernican” “exit” out of the cave is achieved, first, through the “liberation,” *lysis*,⁶³ of the philosopher from his “bonds,” or his habits of perception and, second, through what Plato call *periagoge*, a “turning around” and from the deceptive “shadows,” back to things themselves, but also moving back inside, into one’s soul.⁶⁴ In this turn, one discovers, finally, a way to distinguish the known from the unknown in advance, by accessing *ideas* that have been hidden in one’s soul and that knowledge preceding any experience.⁶⁵ Thus, in the relationship to the Other, justice cannot be a matter of routine: to be renewed, it always requires a theoretical (“Copernican”) and a practical revolution, which takes into account what had not been included in the current frame of reference. The fully developed philosophical *thymos* would require a permanent revolution, not only reliance upon a revolution of the past.

The non-simultaneity of the political self-determination can also be compensated otherwise, in the direction of the future, not of the past. If we cannot reject an enemy, without having recognized him or her in advance, we cannot, on the other hand, reject or recognize a stranger whom we do not *yet* know. Often, political problems arise not out of excessive but out of insufficient vigilance, and the attempts to solve them from inside the system, based on specific moral criteria, precede the subsequent recognition of the exceptionality or hostility of the subject in question. We often judge, “a priori,” someone we do not yet know. In this case, the correct strategy is

63. Note this (unlikely!) association of liberty with justice (the aim of philosopher’s knowledge), already in Plato.

64. Plato *Republic* 515c, 518d.

65. The doctrine of *anamnesis*, from *Meno*, reappears in *Republic* 518b–c. It is not by chance, as we mentioned, that late Schmitt makes the enemy into the figure of question, of anticipated knowledge, and not of an actual distinction, while the question is posed by the enemy to the subject itself, just as in Plato. At the moment when the distinction between friend and enemy becomes problematic, politics and justice become an interior matter that demands a deep reflection into oneself.

not the “coming to terms with the past” but an instantaneous action, *praxis* that transforms the situation, within which the issue has been irresolvable. This action is also a realization of justice. It is not by chance that justice is often associated with *invention* (for instance, in Luther’s treatise “On Secular Authority”⁶⁶), that is, with a bold, unexpected decision that rejects a binary choice between right and wrong. Thus, in the final analysis, the orientation to the future and the past do not exclude, but presuppose each other: the important thing is the fact of the internal non-correspondence of the subject, from which follows the imperative of transcending any closed system of meanings. The revolutionary event realizes both forms of justice at once, both its retrospective and prospective aspect, which is why the French Revolution framed its utopian leap forward in the form of a return to the Romans. This is why, likewise, *revolutions* combine the claim to reaction and re-storation with the accelerated thrust toward utopias, which often involves high-risk innovations.

Now, to return to the issue at hand, justice *can*, of course, be understood in a rationalist, statist way, as a simple principle of distribution. It can also be understood, in the liberal way, as the balancing power of the market. It can be regarded, by conservatives, as a force of tradition and habit. More fundamentally, however, justice means attention to the Other, and the drive that pushes this Other to manifest itself. These two points of view, of the will to manifestation and of the attention to the Other, are logically different, but in effect they coalesce, so that this combination produces the synthesis of openness and subjectivity that characterizes the contemporary position of the left.

I have attempted to show here a way in which the disorienting openness of today’s world makes possible and even requires the constitution of an active and self-sustaining, albeit unstable, subjectivity. The reliance of this political subject on the past revolutionary event puts it into an intense and strained affective state of what Plato called *thymos*, making it fit to orient itself in relation to the flow of historical and spatial innovation and constituting its ethical guideline in the principle of justice.

66. Martin Luther, “On Secular Authority,” in *Luther and Calvin on Secular Authority*, ed. and trans. Harro Höpfl (Cambridge: Cambridge UP, 1991), p. 42.

Thomas Hobbes, Carl Schmitt, and the Event of Conscription

Gabriella Slomp

Is Carl Schmitt the Thomas Hobbes of the twentieth century? Or is he the man who turned Hobbes's theory on its head? From Leo Strauss to Tracy Strong, a vast array of distinguished interpreters have addressed the above questions but have failed to reach any sort of consensus as to how they ought to be answered. The aim of this essay is to contribute to the debate by drawing attention to a single concept—conscription—that is addressed in the writings of both thinkers. I propose that by examining Hobbes's and Schmitt's differing stands on conscription one comes to see that the two writers are separated by an unbridgeable theoretical gap.

The argument proceeds as follows. First, I sketch Hobbes's theory of political obligation (I) and examine his claim that self-preservation can impose limits on civil obedience (II). I also look at Hobbes's qualified endorsement of the claim that salvation, too, can restrict a citizen's obligation (III). I, then, consider Hobbes's arguments against the doctrines of resistance prevalent in his time (IV) and recount Schmitt's critique of Hobbes's position on civil disobedience. Finally, I put it to the reader that Schmitt and Hobbes significantly disagree on conscription and that this disagreement results from a subtle yet crucial underlying difference in their thinking (V and VI).

I. Hobbes's Theory of Political Obligation Revisited

Hobbes's theory of political obligation is grounded on two main assumptions: that one ought to take a negative view of human nature and that security is of paramount importance. Since humans are, by nature, capable

of evil, it is inevitable that violence and hostility should be a part of the fabric of human existence; hence, security is always at stake. Moreover, since self-preservation is the *summum bonum* of Hobbesian men and is constantly endangered in the state of nature, it follows that protection from “violent death at the hand of others” is the fundamental objective that drives man’s creation of the political state and that the provision of this protection is the primary task of the Leviathan. The protection/obedience principle captures the core of Hobbes’s theory of obligation: we obey the Leviathan in exchange for protection; civil obedience to a political entity is conditional on its ability to provide security. The protection/obedience principle, likewise, forms the cornerstone of Hobbes’s concept of sovereignty. In chapter 20 of *Leviathan*, Hobbes explains that the sovereign power must be absolute, unlimited, irrevocable, and indivisible because such unmitigated power would provide the greatest level of security.

In his writings, Schmitt wholeheartedly endorses all of the above ingredients of Hobbes’s theory of political obligation: the negative view of human nature, the importance of security, the protection/obedience principle, and the notion of absolute sovereignty. Indeed, in the *Concept of the Political*, Schmitt claims that adopting a negative view of human nature is a necessary condition for engaging in serious political thought: “all genuine political theories presuppose man to be evil, i.e., by no means an unproblematic but a dangerous and dynamic being.”¹ He points out that this negative view of human nature has little to do with pessimism.² In response to those who focus on human goodness, Schmitt suggests that such qualities are specious and do not explain the need for political order. After all, “in a good world among good people only peace, security and harmony prevail.”³ So, if we accept that there is violence and that there are wars, it follows that people are capable of not being good, and that this consideration must be the starting point of all political theorizing: “Political conceptions and ideas cannot very well start with an anthropological optimism.”⁴

Like Hobbes, Schmitt firmly endorses the claim that security is of fundamental importance. He approvingly mentions Hobbes’s protection/

1. Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: Univ. of Chicago Press, 1996), p. 61.

2. *Ibid.*, p. 63.

3. *Ibid.*, p. 65.

4. *Ibid.*, p. 64.

obedience principle in virtually all of his political writings and describes it as “the cardinal point of Hobbes’s construction of state.”⁵ He writes:

On this principle rests the feudal order and the relation of lord and vassal, leader and led. . . . No form of order, no reasonable legitimacy or legality can exist without protection and obedience. The *protego ergo obligo* is the *cogito ergo sum* of the state. A political theory which does not systematically become aware of this sentence remains an inadequate fragment. Hobbes designated this . . . as the true purpose of his Leviathan, to instill in man once again “the mutual relation between Protection and Obedience.”⁶

Indeed, for Schmitt, the protection/obedience principle sheds light on the ultimate source of the crisis of the twentieth-century liberal state:

If within the state there are organized parties, capable of according their members more protection than the state, then the latter becomes at best an annex of such parties, and the individual citizen knows whom he has to obey.⁷

Schmitt unreservedly endorses the central assumptions that ground Hobbes’s theory of political obligation and absolute sovereignty. Indeed, one could even say that Hobbes’s theory underlies Schmitt’s friend/enemy distinction. In one important respect—namely, in so far as Schmitt’s principle explains the *function* of the political⁸—the friend/enemy distinction simply makes explicit an implicit assumption of Hobbes’s theory: as security is a major concern, a political entity must be able to distinguish between its friends and enemies. An entity that is incapable of making such a distinction cannot provide protection, cannot expect obedience, and thus inevitably loses its political status.⁹

5. *Ibid.*, p. 72.

6. *Ibid.*, p. 52.

7. *Ibid.*

8. Of course, the friend/enemy principle is meant to capture not only the function of the political but also its essence. For more on this see, for example, Gary L. Ulmen, “Return of the Foe,” *Telos* 72 (Summer 1987): 187–93. See also George Schwab, “Enemy or Foe: A Conflict of Modern Politics,” *Telos* 72 (Summer 1987): 195–201; Sergei Prozorov, “Liberal Enmity: the Figure of the Foe in the Political Ontology of Liberalism,” *Millennium: Journal of International Studies* 35 (2006): 75–99.

9. For an interesting discussion of this topic, see Benjamin Arditi, “On the Political: Schmitt contra Schmitt,” *Telos* 142 (Spring 2008): 7–28.

II. Hobbes on the Limits on Civil Obedience set by Self-preservation

The protection/obedience principle captures the thrust of both Hobbes's theory of political obligation and his theory of civil disobedience. Just as a citizen has the duty to obey the state in exchange for protection, so his¹⁰ duty of obedience ends when the state is unable or unwilling to provide security. Although in the next section we shall see that Hobbes actually offers a theory of civil disobedience that is more substantial than his theory of political obligation would require, here I will concentrate simply on that part of his theory of disobedience that is the mirror image of his theory of political obligation.

The word that Hobbes uses to describe a rightful or reasonable refusal to obey the civil laws is not, of course, "disobedience." The word "disobedience" itself occurs about fourteen times in *Leviathan*, and always with Hobbes's disapproval. For example, in chapter 20, he says:

The condition of man in this life shall never be without inconveniences; but there happeneth in no Commonwealth any great inconvenience but what proceeds from the subjects' disobedience and breach of those covenants from which the Commonwealth hath its being.¹¹

Not unlike "resistance," Hobbes always associates disobedience with "rebellion" and civil war. Furthermore, he uses the word "liberty" to describe cases in which a man can refuse to obey. In chapter 14 of *Leviathan* Hobbes points out that "a covenant not to defend myself from force by force is always void. For . . . no man can transfer or lay down his right to save himself from death, wounds, and imprisonment."¹²

In chapter 21, Hobbes reiterates the point that covenants not to defend a man's own body are void. He stresses:

If the sovereign command a man (though justly condemned) to kill, wound, or maim himself, or not to resist that assault him, or to abstain from the use of food, air, medicine, or any other thing without which

10. Whereas the Schmittian citizen, as discussed by Jacques Derrida in his *Politics of Friendship*, trans. George Collins (London: Verso, 1997), pp. 11–16, is singularly male, it can be argued that the Hobbesian citizen is potentially gender-neutral. I argued this view in Gabriella Slomp, "Hobbes and the Equality of Women," *Political Studies* 42 (1994): 441–52.

11. Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis, IN: Hackett, 1994), p. 135.

12. *Ibid.*, p. 87.

he cannot live, yet hath that man the liberty to disobey. If a man be interrogated by the sovereign, or his authority, concerning a crime done by himself, he is not bound (without assurance of pardon) to confess it... because no man can be obliged by covenant to accuse himself.¹³

Concern for one's own life and not concern for friends or for the innocent is the only Hobbesian justification for disobedience (as we understand the word).¹⁴ As Hobbesian men give up their natural unlimited freedom and undertake political obligation for the sake of self-preservation, "Hobbes must finally question every obligation which causes a man to risk his life."¹⁵

As a result, and in keeping with his position on self-preservation, Hobbes makes the following statement about conscription that is worth quoting in full:

Upon this ground a man that is commanded as a soldier to fight against the enemy, though his sovereign have right enough to punish his refusal with death, may nevertheless in many cases refuse, without injustice; as when he substituteth a sufficient soldier in his place: for in this case he deserteth not the service of the Commonwealth. And there is allowance to be made for natural timorousness, not only to women (of whom no such dangerous duty is expected), but also to men of feminine courage. When armies fight, there is on one side, or both, a running away; yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoid battle is not injustice, but cowardice. But he that enrolleth himself a soldier, or taketh impressed money, taketh away the excuse of a timorous nature, and is obliged, not only to go to the battle, but also not to run from it without his captain's leave. And when the defence of the Commonwealth requireth at once the help of all that are able to bear arms, every one is obliged; because otherwise the institution of the Commonwealth, which they have not the purpose or courage to preserve, was in vain.¹⁶

For Hobbes, when one's physical integrity is under threat, and when the state is the source of that threat, one is entitled to withdraw obedience. Regarding conscription, Hobbes cites fear as a legitimate motive

13. *Ibid.*, p. 142.

14. *Ibid.*, p. 143.

15. Leo Strauss, *The Political Philosophy of Hobbes* (Chicago: Univ. of Chicago Press, 1952), p. 114.

16. Hobbes, *Leviathan*, p. 143.

for resistance, but he also stipulates that the refusal to be conscripted is justifiable only if two provisos are satisfied: one finds a substitute and the circumstances are such that “the help of all that are able to bear arms” is not necessary to attain victory over the enemy. I will return to these two provisos later in this essay.

Hobbes’s own words afford us perhaps the neatest summary of his theory of civil disobedience:

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished. . . . The end of obedience is protection; which, wheresoever a man seeth it, either in his own or in another’s sword, nature applieth his obedience to it, and his endeavour to maintain it.¹⁷

III. Hobbes on the Limits on Civil Obedience set by Salvation

Hobbes’s writings are generously sprinkled with maxims similar to the following:

When therefore our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse; otherwise, there is.¹⁸

Since Hobbes never tires to remind us that sovereignty was ordained for the sake of security, it seems to follow that concerns for self-preservation, and only such concerns, can justify the refusal to obey. But this is not so.

Even though Hobbesian citizens do not enter the political state for the sake of salvation and even though salvation is not one of the “ends” of sovereignty, Hobbes, nonetheless, plainly states that one need not obey the state if the state requires one to endanger one’s salvation: “Subjects owe to sovereigns simple obedience in all things wherein their obedience is not repugnant to the laws of God.”¹⁹

On the one hand, Hobbes’s concession to arguments regarding salvation is historically unsurprising. Whereas logic would have required

17. *Ibid.*, pp. 144–45.

18. *Ibid.*, p. 142.

19. *Ibid.*, p. 234.

Hobbes to put forward a theory of civil disobedience that was merely the mirror image of his theory of political obligation and to claim that one can disobey the state if and only if one believes that one's self-preservation is in danger, historical circumstances required him to consider an argument that, in his day, was often invoked in order to justify civil disobedience, namely, salvation. To ignore such an argument would have meant to reinforce his adversaries' claim that he was an atheist and to provide his critics with a major weapon to attack and reject his theory of political obligation.

On the other hand, one wonders if such concessions jeopardize the consistency and rigor of the whole argument on political obligation. *Prima facie*, they do. Clarendon, quoted by Edwin Curley, commented that the passage quoted above seems to undermine "many of the obligations [Hobbes] hath imposed on his subject." Clarendon, however, goes on to observe:

But if the reader will suspend his judgment till he hath read a few leaves more, he will find that Mr. Hobbes hath been wary enough to do himself no harm by his specious divinity, but hath a salvo to set all straight again.²⁰

Indeed Clarendon cites section 1 and Curley cites section 24 of chapter 33 of *Leviathan* to illustrate how Hobbes manages to transform the original, possibly "dangerous," statement into an innocent and innocuous remark. Hobbes writes:

Seeing therefore I have already proved that sovereigns in their own dominions are the sole legislators; those books only are canonical, that is, law, in every nation, which are established for such by the sovereign authority.²¹

Hobbes devotes a sizable portion of *Leviathan* to demonstrating that salvation is guaranteed by the possession of "two virtues, faith in Christ, and obedience to laws." He goes on to claim that the latter virtue implies the former: "The latter of these, if it were perfect, were enough to us."²² As far as the former virtue is concerned, Hobbes goes to great lengths to show

20. Quoted by Curley in *ibid.*, p. 234n1.

21. *Ibid.*, p. 250.

22. *Ibid.*, p. 398.

that the belief that Jesus is Christ “is all the faith required to salvation.”²³ He takes inspiration from St. John and says that “the scope of the whole Gospel was the establishing of only one article, namely that Jesus is the Christ, the Son of the living God.”²⁴ Leo Strauss, in turn, points out that “Hobbes declares that unconditional obedience to the secular power is the bounding duty of every Christian, in so far as that power does not forbid belief in Jesus as Christ.”²⁵

In his conclusion to part 3 of *Leviathan*, Hobbes summarizes his views on salvation and civil obedience. He tells us that civil obedience cannot be withdrawn. Indeed, obedience cannot be withdrawn even in the event that the Leviathan is an infidel:

Now that I have shown that . . . all the faith required [to salvation] is comprehended in the belief of this article, *Jesus is the Christ* . . . it is not hard to reconcile our obedience to God with our obedience to the civil sovereign, who is either Christian or infidel. If he be a Christian, he alloweth the belief of this article, that *Jesus is the Christ* . . . and when the civil sovereign is an infidel, every one of his own subjects that resisteth him sinneth against the laws of God (for such are the laws of nature) and rejecteth the counsel of the apostles, that admonisheth all Christians to obey their princes.²⁶

Thus, on the one hand, Hobbes makes a concession to his contemporaries²⁷ and puts forward a theory of civil disobedience that deems arguments regarding salvation to be legal tender in the currency of civil disobedience. As mentioned above, such a theory is, on the surface, much more than the complement of his theory of political obligation. On the other hand, however, Hobbes puts forward a theory of salvation that offers no real grounds for civil resistance. One can never appeal to salvation as a justification for disobedience as long as one is allowed to believe that Jesus is the Christ. The specific meaning of this belief, moreover, is up to the Leviathan to decide and therefore, in practice, one could not even disobey an infidel Leviathan.

23. *Ibid.*, p. 402.

24. *Ibid.*

25. Strauss, *The Political Philosophy of Hobbes*, p. 72.

26. Hobbes, *Leviathan*, pp. 407–10.

27. Hobbes writes: “For it is not the bare words but the scope of the writer that giveth the true light, by which any writing is to be interpreted; and they that insist upon single texts, without considering the main design, can derive nothing from them clearly” (*ibid.*, p. 410).

IV. Hobbes's Critique of Theories of Civil Disobedience

Hobbes believed that the English Civil War had largely been due to inadequate understanding of the reasons why people need law and government. In *Behemoth*, Hobbes discusses the specific beliefs that induced common people to disobey the king. In particular, we are told how different leaders and preachers managed to foment the rebellion by spreading wrong ideas about taxation, about the sources of private property and justice, about the function of sovereignty, about the requirements of salvation, and so on.²⁸ In *Behemoth* we find Hobbes's historical account of the misguided opinions and misconceived doctrines that prompted the civil war; relatedly, in chapter 29 of *Leviathan*, entitled "Of Those Things that Weaken or Tend to the Dissolution of a Commonwealth," we find the theoretical account of these opinions and doctrines. Hobbes claims that "though nothing can be immortal which mortals make; yet, if men had the use of reason they pretend to, their Commonwealths might be secured, at least, from perishing by internal diseases."²⁹ A precondition for protecting ourselves from civil wars, Hobbes maintains, is to dispel wrong opinions about resistance. In this chapter of *Leviathan*, Hobbes is particularly keen to expose "the poison of seditious doctrines" that brings about discord, seditions, and civil wars. He singles out the most common and dangerous, and among these he lists the doctrine according to which "every private man is judge of good and evil actions." He explains that "This is true in the condition of mere nature, where there are no civil laws; and also under civil government in such cases as are not determined by the law. But otherwise, it is manifest that the measure of good and evil actions is the civil law."³⁰ Hobbes also criticizes other opinions that he considers to be "repugnant to the nature of a Commonwealth": the view that "he that hath the sovereign power is subject to the civil laws," the belief that "every private man has an absolute propriety in his goods, such as excludeth the right of the sovereign," the conviction that the "power of levying money" depends on consent, the theory that the sovereign power can be divided or limited, the idea that a monarchic government has more power than a democratic one, and the conclusion that "tyrannicide, that is, killing of a tyrant, is lawful," all come

28. See Thomas Hobbes, *Behemoth* (Chicago: Univ. of Chicago Press, 1990). I discuss the ultimate motivations of civil disobedience in Gabriella Slomp, "Hobbes on Glory and Civil Strife," in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg (Cambridge: Cambridge UP, 2007), pp. 181–98.

29. Hobbes, *Leviathan*, p. 210.

30. *Ibid.*, p. 212.

under fire. For Hobbes, nothing can be “more prejudicial” to law and order than the allowing of the spreading of such doctrines and views by means of books and teachers. He compares the venom of such theories to “the biting of a mad dog.”

For our purposes it is relevant to highlight two aspects of Hobbes’s critique of theories of civil disobedience. First, he is keen to emphasize that “[a]nother doctrine repugnant to civil society is that whatsoever a man does against his conscience is sin.”³¹ In this respect, Hobbes notices that this view assumes that a man can make himself judge of good and evil, and comments:

For a man’s conscience and his judgement is the same thing; and as the judgement, so also the conscience may be erroneous. Therefore, though he that is subject to no civil law sinneth in all he does against his conscience, because he has no other rule to follow but his own reason, yet it is not so with him that lives in a Commonwealth, because the law is the public conscience by which he hath already undertaken to be guided. Otherwise in such diversity as there is of private consciences, which are but private opinions, the Commonwealth must needs be distracted, and no man dare to obey the sovereign power farther than it shall seem good in his own eyes.³²

Second, Hobbes is also eager to dispel the doctrine of the independence of the ecclesiastical powers. In keeping with this, he points out that a subject cannot obey two masters and that when the civil and ecclesiastical powers “oppose one another, the Commonwealth cannot but be in great danger of civil war and dissolution.” He compares the illness caused to the commonwealth by the doctrine of the independence of ecclesiastical powers to “epilepsy, or falling sickness.”³³

V. Schmitt on Hobbes³⁴

Having reminded ourselves of Hobbes’s theory of political obligation, and of the limits imposed on civil obedience by self-preservation and salvation, respectively, the next step is to consider Schmitt’s take on these views.

31. Ibid.

32. Ibid.

33. Ibid., p. 216.

34. In this and in the next section, I draw on Gabriella Slomp, *Carl Schmitt and the Politics of Hostility, Violence and Terror* (Houndsmills: Palgrave, 2009), ch. 3.

To undertake a comprehensive investigation of the differences between Hobbes and Schmitt would be a prodigious task beyond the scope of the present paper;³⁵ moreover, any comparisons between Hobbes and Schmitt are complicated by the fact that over time many of Schmitt's opinions on Hobbes changed and were modified. For example, in the various modifications that Schmitt introduced in successive editions of the *Concept of the Political*, Gopal Balakrishnan detects a gradual distancing of Schmitt from Hobbes and suggests that over time Schmitt came to feel that Hobbes's classical state-centred political theory did not have the interpretative power that he had once thought it to have.³⁶ Tracy Strong also emphasizes the existence of "several Hobbeses" in Schmitt, and argues that Schmitt's work of 1938 entitled *The Leviathan in the State Theory of Thomas Hobbes* "marks an evolution in Schmitt's thought."³⁷ According to Strong, Leo Strauss's 1936 book on Hobbes greatly influenced Schmitt's thought and "it is most likely in response to the force of Strauss's critique [of Hobbes] that Schmitt altered his understanding of Hobbes."³⁸

Although it is undeniable that Schmitt's position on Hobbes shifted over time, he did not vacillate in his unconditional approval for Hobbes's protection/obedience principle: for Schmitt just as for Hobbes, an entity that is unable to provide protection to a grouping's way of life cannot command its obedience.³⁹ In *Leviathan in the State Theory of Thomas Hobbes*, Schmitt reiterates his approval of the protection/obedience principle.

35. Interesting discussions on Hobbes and Schmitt can be found, for example, in Richard Wolin, "Carl Schmitt, The Conservative Revolutionary: Habitus and the Aesthetics of Horror," *Political Theory* 20 (1992): 424–47; John McCormick, "Fear, Technology, and the State," *Political Theory* 22 (1994): 619–52; Horst Bredekamp, "From Walter Benjamin to Carl Schmitt, via Thomas Hobbes," *Critical Inquiry* 25 (1999): 247–59; Jan-Werner Müller, *A Dangerous Mind* (New Haven, CT: Yale UP, 2003); John McCormick, *Carl Schmitt's Critique of Liberalism* (Cambridge: Cambridge UP, 1997); and Stephen Holmes, *The Anatomy of Anti-Liberalism* (Cambridge, MA: Harvard UP, 1994).

36. Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000), p. 208.

37. Tracy Strong, foreword to Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of A Political Symbol*, trans. George Schwab (Chicago: Univ. of Chicago Press, 2008), pp. vii–liii, ix.

38. *Ibid.*, p. x.

39. In many of his writings, Schmitt considers the protection/obedience principle to be the foundation of the state's legitimacy. See, for example, Carl Schmitt, *The Concept of the Political*, pp. 43–44; Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 1988), ch. 2; Carl Schmitt, *Political Theology*, trans. George Schwab (Cambridge, MA: MIT Press, 1985), especially ch. 1; and Carl

However, he also advances the claim that Hobbes's concessions to arguments on salvation, private conscience, and faith ultimately undermine Hobbes's whole political enterprise. This critique of Hobbes proceeds in two stages: first, there is a textual analysis of Hobbes's argument, and then an interpretation of that analysis.

The textual analysis of Hobbes's discourse on miracles is discussed in chapter 5 of *Leviathan in the State Theory of Thomas Hobbes*. Here, Schmitt points out that in Hobbes's argument "there exists no right of resistance...by invoking religious reasons and arguments."⁴⁰ Perhaps influenced by Strauss, Schmitt considers the context of Hobbes's writings and says that "[i]n judging Hobbes's theory of miracles, one should not forget that at that time that question had a concrete direct political meaning."⁴¹ Schmitt goes on to summarize his textual analysis as follows:

The sovereign state power alone, on the basis of its sovereignty, determines what subjects of the state have to believe to be a miracle.⁴²

A miracle is what the sovereign state authority commands its subjects to believe to be a miracle; but also...the reverse: miracles cease when the state forbids them.... Sovereign power has thus achieved its zenith.⁴³

Schmitt, however, draws the reader's attention to the distinction made by Hobbes between "inner faith" and "outer confession":

Hobbes declares the question of wonder and miracle to be a matter of "public" in contrast to "private reason"; but on the basis of universal freedom of thought...he leaves to the individual's private reason whether to believe or not to believe.... But as soon as it comes to public confession of faith, private judgment ceases and the sovereign decides about the true and the false.⁴⁴

On the grounds of the above textual analysis, Schmitt puts forward his central objections to Hobbes's theory. He claims that by allowing the

Schmitt, *Theory of the Partisan*, trans. G. L. Ulmen (New York: Telos Press Publishing, 2007).

40. Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 53.

41. *Ibid.*, p. 54.

42. *Ibid.*, p. 53.

43. *Ibid.*, p. 55.

44. *Ibid.*, p. 56.

separation between inner faith and outer confession, between internal and external, between private and public, Hobbes provides the sort of environment in which liberal thought can develop and, in turn, undermine the unity of politics and religion and compromise domestic peace. He writes:

At the zenith of the sovereign power that brings about the unity of religion and politics, occurs the rupture of the otherwise so complete, so overpowering unity. . . . Only a few years after the appearance of the *Leviathan*, a liberal Jew noticed *the barely visible crack* in the theoretical justification of the sovereign state. In it he immediately recognized the telling inroad of modern liberalism.⁴⁵

Schmitt contends that in his *Tractatus Theologico-Politicus*, Spinoza exploits this “barely visible crack” and, in so doing, turns Hobbes’s theory on its head: on the one hand, Spinoza follows Hobbes in maintaining that “in the interest of external peace and external order, the sovereign power can regulate the public religious cult,” while, on the other hand, Spinoza also argues that inner conviction, internal worship, and piety belong to the inviolable private sphere of man, using this claim as the platform for “a universal principle of freedom of thought, perception, and expression.”⁴⁶

To summarize, in the *Leviathan in the State Theory of Thomas Hobbes*, Schmitt does not contest the fact that Hobbes’s theory of salvation does not in any way restrict the Leviathan’s power. Indeed, he accepts that Hobbes lists among seditious doctrines the idea that private conscience can be used as an argument for civil disobedience. Moreover, Schmitt does not deny that Hobbes anticipates a critique of Spinoza’s *libertas philosophandi* when he claims that “disobedience may lawfully be punished in them that against the laws teach even true philosophy.”⁴⁷ Even so, Schmitt claims that the separation between private and public domain exposes Hobbes’s individualism and ultimately undermines his theory of absolute state sovereignty and opens the door to liberal constitutionalism.

VI. Hobbes and Schmitt on Conscription and Emergency

There are no friends in the Hobbesian state of nature. One expects only bad things from others and enmity is existential. When entering the political state, Hobbesian individuals not only give up their right to fight the

45. *Ibid.*, pp. 55–57 (emphasis added).

46. *Ibid.*, p. 57.

47. Hobbes, *Leviathan*, p. 468.

enemy, but they also lose their right to name the enemy. This right rests solely with the Leviathan. In *De Cive*, Hobbes writes:

No citizen may privately determine who is an ally or public enemy of the commonwealth, nor when to make war or alliance, peace or truce. . . . All this kind of thing is to be learned, as needed, from the commonwealth, i.e., from the sovereign rulers.⁴⁸

In chapter 17 of *Leviathan*, Hobbes adds:

Nor is it enough for the security, which men desire should last all the time of their life, that they be governed and directed by one judgement for a limited time; as in one battle, or one war. For though they obtain a victory by their unanimous endeavour against a foreign enemy, yet afterwards, when either they have no common enemy, or he that by one part is held for an enemy is by another part held for a friend, they must needs by the difference of their interests dissolve, and fall again into a war amongst themselves.⁴⁹

Quotations such as the above confirm that after the creation of the state the Leviathan alone can name the enemy. However, as the Hobbesian individual enters the political state in order to have his life protected from violent death at the hands of others, it follows that if the state does not provide such protection—if, for instance, the state rightly or wrongly condemns a citizen to death or to severe corporal punishment, or if it sends a man to war—then the state may be regarded as the enemy by that person and may be resisted.

In the case of conscription, Hobbes, as mentioned in a previous section, points out that a man can refuse to go to war provided that he finds a substitute and that the situation is such that “the help of all that are able to bear arms” is not required. Such provisos, however, impose no real limits on individual freedom in so far as Hobbes leaves the final decision of whether or not security requires universal conscription with the individual and not with the Leviathan.

By studying the case of conscription, one can see that Hobbes makes more concessions to individual freedom and to personal choice than are

48. Thomas Hobbes, *On the Citizen*, ed. Richard Tuck (Cambridge: Cambridge UP, 1998), p. 214.

49. Hobbes, *Leviathan*, pp. 107–8.

usually acknowledged. When discussing this issue, Hobbes says clearly that we do not know in advance who is timorous enough to refuse to go to war, and suggests that individual behavior on conscription is not predictable. Whereas we can expect a man condemned to death to resist his captors, Hobbes suggests that no such firm prediction can be made in the case of conscription. On this topic at least, Hobbes acknowledges each man as having the possibility to make a genuine choice based on a process of deliberation and an evaluation of the pros and cons. This sphere of true deliberation seals the separateness of the Hobbesian individual vis-à-vis other members of the political state and is indeed a proto-liberal aspect of Hobbes's construction.

Building upon the above observations, and noting all the while that there is ample scope for debate, it can be argued that in Hobbes's construction there are two notions of emergency that are highlighted by the event of conscription. On the one hand, for the sake of public safety, the Leviathan may institute a state of public emergency and call all adult men to arms; on the other hand, worrying about private safety, a weak and timorous man may think that such a ruling raises for him a case of private emergency. He may, thus, refuse to go to war on the grounds that his only chance of protecting personal integrity lies in staying away from the battlefield. In other words, in Hobbes's discourse a state of personal emergency can materialize when the state requires individual sacrifices to be made in order to face the public emergency. Although the state is, according to Hobbes, entitled to make such requests, Hobbes also allows the individual to deliberate privately on whether or not obedience ought to be withdrawn. If an emergency decision made by the Leviathan can in principle be overruled by an emergency decision made by the individual, it follows that in Hobbes's theory the individual and not the Leviathan is sovereign because "Sovereign is he who decides on the exception."⁵⁰

By concentrating our attention on the event of conscription, it emerges that the distance between Hobbes and Schmitt could not be wider. To begin with, Schmitt does not allow for the notion of private emergency in his concept of the political: all emergencies are public. Moreover, Schmitt does not merely acknowledge (as Hobbes does⁵¹) that the state has the "right" to send its citizens to war, but he also denies that the individual

50. Schmitt, *Political Theology*, p. 5.

51. Hobbes, *Leviathan*, p. 142.

can challenge the state's "right to demand from its members the readiness to die."⁵²

Put simply, whereas the basic building block of Hobbes's construction is the individual, in Schmitt's theory this role is filled by the group.⁵³ If ordered to go to war, the Schmittian agent will obey because his ultimate aim is the preservation of the political entity to which he belongs.⁵⁴ While Schmitt agrees with Hobbes that the founding principle of a political entity is the protection/obedience principle, he reckons that obedience is due by individual members of a group in exchange for the protection of their whole people from its external as well as internal enemies. When Schmitt states that "genuine protection is what the state is all about," he has in mind the protection of the whole people, not the protection of individual members of such a grouping.⁵⁵

VII. In the Way of a Conclusion

It is time to tie together the threads of the argument of this essay and to summarize its claims. On the one hand, it has been argued that in his political writings Carl Schmitt endorses the main ingredients of Hobbes's theory of political obligation, including a negative view of human nature, the paramount importance of security, the protection/obedience principle, and the notion of absolute sovereignty. On the other hand, it has been pointed out that Schmitt claimed that Hobbes's theory contains the seeds of liberal constitutionalism.

This paper has argued that "the event of conscription" illuminates Schmitt's claim. An analysis of this concept exposes the ideological distance between Hobbes and Schmitt by bringing to the fore Hobbes's commitment to the individual vis-a-vis Schmitt's commitment to the group. By concentrating our attention on the event of conscription, we noticed that Hobbes makes more concessions to individual freedom than are usually admitted. On conscription at least, each man is acknowledged by Hobbes as having the chance of making a genuine choice based on a process of evaluation of different alternatives. We suggested that this sphere of true deliberation is indeed a proto-liberal aspect of Hobbes's discourse.

52. Schmitt, *Concept of the Political*, p. 46.

53. *Ibid.*, p. 38.

54. *Ibid.*, p. 49.

55. *Ibid.*, p. 34.

We claimed that whereas, for Schmitt, the concept of emergency refers to a public event, for Hobbes, instead this is not always the case. We suggested that in Hobbes's argument there are two notions of emergency that are brought to light by the event of conscription. On the one hand, for the sake of public safety, the Leviathan may institute a state of *public emergency* and call all adult men to arms; on the other hand, thinking about private safety, a timorous man may think that such a ruling raises for him a case of *private emergency*. He may even refuse to go to war on the grounds that his only chance of protecting personal integrity lies in staying away from the battlefield. We suggested that if an emergency decision made by the Leviathan can in principle be overruled by an emergency decision made by a private individual, it follows that in Hobbes's theory the individual and not the Leviathan is sovereign: the ideological gap between Hobbes and Schmitt could not be wider.

*Three Possibilities for a Christian
Conception of History**

Carl Schmitt

Today, every attempt at a self-understanding ultimately proves to be a situating oneself by means of the philosophy of history or a utopian self-dislocation. Today, all human beings who plan and attempt to unite the masses behind their plans engage in some form of philosophy of history. They accept the existence of the means of extermination, which modern science provides to every person in power. But the question as to what kind of people these means are to be reasonably applied to is obviously no natural scientific question. For a long time now, it is also no longer a moral or juridical question. Today, it is posed and answered only by means of the philosophy of history. Marxism in particular is a philosophy of history to such an intensive degree that every contact with it becomes a historico-philosophical contestation. The planning and steering elites design themselves and the masses they direct with the help of historico-philosophical constructs of meaning [*Sinngebungen*]. Any mass propaganda searches for its justification in proving that it is on the side of the things to come. Any faith of the masses is only the faith to be on the right, while the opponent errs, because time, and the future, and progress work against him. And even despair screams for the last time only through threatening that world history has lost its meaning.

There is no author who instructs us about this matter of fact with more historico-philosophical clarity and knowledge of the history of ideas than Karl Löwith in his book *Meaning in History* (1949). He provides a critical analysis that truly deserves this name. Starting with the present, i.e., with Burckhardt, Marx, and Hegel, and continuing with the positivists and Enlightenment thinkers, he turns to Bossuet, Vico, Joachim de Fiori, and to Augustine, Orosius, and the Bible. This is a path leading from the philosophy of history to the theology of history, and finally to eschatology. However, for Löwith, this is not a path of leveling history to the standard of today. Beyond all scholarly knowledge, it is a path of

* Translated by Mario Wenning. The German version, “Drei Möglichkeiten eines christlichen Geschichtsbildes,” was originally published under the changed title of “Drei Stufen historischer Sinngebung” (“Three Stages of Historical Justification”) in *Universitas* 5 (1950): 927–31.

initiation. On this path, the author gains the deep historico-philosophical consciousness, which substantiates the fact that he is superior to modern historians and philosophers of history, especially to Arnold Toynbee.

In light of this important work we may conscientiously leave aside the desert of traditional questions of method, on whose sands the conversations on time and history usually get stranded. Thus, our remarks can immediately start from the results and conclusions of the book. Following Karl Löwith, we are convinced that paganism is not at all capable of any form of historical thought because it is cyclical. The historical loses its specific meaning within the cycles of an eternal recurrence. We know that the Enlightenment and the positivist belief in progress was only secularized Judaism and Christianity, and that it obtained its “*eschata*” from these sources. We also see what we are dealing with in reality today: neither the one, nor the other; neither cyclical, nor eschatological convictions, but rather motivations or, even more fitting: constructed justifications [*Sinn-Setzungen*] for large acts of planning, which are imposed by human beings on other human beings, constructed justifications, which consequently become yet again a component of major acts of planning [*Groß-planungen*]. This is how we interpret the infinitely meaningful proposition by Löwith: the further we go back from today into the history of human historical thinking, the more the conception of an act of planning ceases to exist. Divine providence, which the human being can recalculate or even predict, is after all also just a human act of planning.

The first remark, which comes to mind after reading this unusual book, concerns the great historical parallel, which is manifested in the historical self-understanding of the last century. By way of creating a historical parallel between its own time and the time of the Roman civil wars as well as early Christianity, this century engaged in the peculiar attempt to understand itself historically through comparing itself with a wholly other time that dates back two thousand years. In spite of the entire Hegelian-Marxist-Stalinist dialectics of history, we, indeed, do not possess any other means of historical self-understanding. It is important to understand why it is especially this time of early Christianity that seems so plausible to us, considering the infinite quantity of historical events and ages. It is also crucial to consider with what kind of resoluteness this parallel is used, since the French Revolution, by opposing authors holding contradictory conclusions, while the historical parallel as such always remains self-evident. And it is especially noteworthy that a phenomenon in the history of spirit with such a level of obviousness and timeliness as this great parallel has so far not been addressed in the form of an independent monograph, be it from the domain of education or that of independent scholarship. Socialism starts with the “New Christianity” of Saint-Simon, i.e., with the appeal to the great parallel. In this sense, Jakob Burckhardt was already strongly influenced by Ernst of Lasaulx. Cyclical as well as eschatological thinking can draw on the great parallel. Both identify this parallel as the

proof of the end of an eon, the certainty of an exhausted age, of a *tempo esaurito*. Cyclical thinking draws from it the conclusion of a new world year; progressivist thinking infers the spiral-like augmentation of an ever more perfect time; eschatological thinking, however, infers from it the expectation of the immediate end. Christians have to elevate the parallel to the level of identity, because for them the essential events of the Christian eon, i.e., the Advent, Crucifixion, and Resurrection of the Son of Man, remain alive in immutable presence.

The other remark touches upon the question of whether eschatological faith and historical consciousness can coexist. The answer to this question is almost always negative. Both seem even less reconcilable than cyclical and historical thought. The vivid expectation of an imminent end seems to take away the meaning from all of history, and it causes an eschatological paralysis for which there are many historical examples. And yet there is the possibility of a bridge. For this we have astonishing examples in the history of the medieval empire. The bridge consists in the conception of a force, which defers the end and suppresses the evil one. This is the *kat-echon* of the mysterious passage of Paul's second letter to the Thessalonians. The medieval empire of the German rulers understood itself historically as the *kat-echon*. Luther still understood it in these terms, whereas Calvin takes a significant turn by no longer taking the empire but rather the preaching of God's words as the *kat-echon*. The conception of restraining [*haltender*] and deferring [*aufhaltender*] forces and powers can in some form probably be demonstrated to be active for every great historian. Nietzsche furiously identified Hegel and the sixth sense of the Germans, i.e., the historical sense, as the great deferrer on the way to expressed atheism. In Hans Freyer's recently published *World History of Europe* (II, 616, 915), restraining forces appear as *katechontic* forces. Of course we have to be careful not to transform this term into a generalized designation of simply conservative or reactionary tendencies. We must not use it to add, along with the concept of restrainer and deferrer, a couple of exemplars to Dilthey's typological collection of historicism. The original historical force of the figure of a *kat-echon*, however, remains and is capable of overcoming the otherwise occurring eschatological paralysis.

Our third remark aims at the infinite singularity of historical reality. Let us take as our departure a passage (p. 196) of Löwith's book, where he writes that the message of the *New Testament* does not consist in a call to a historical deed but in a call to repentance. It is, to be sure, in general the case that history does not consist in calls to historical deeds. Rather, it is like a passage through lack, hunger, and invigorating impotence. However, in order to clarify our thought, let us juxtapose Löwith's proposition with a different one, which is supposed to keep us from any philosophical, ethical, and other acts of leveling, and let us dare to suggest: Christianity is in its essence no morality and no doctrine. It is no penitential sermon, and no religion in the sense of comparative religious studies, but a

historical event of infinite, non-appropriable, non-occupiable singularity. It is the incarnation in the Virgin Mary. The Christian Credo speaks of historical events. Pontius Pilate belongs there essentially. He is not just a pitiful creature who oddly ended up there. Christians look back on completed events and find a basic reason [*Ingrund*] and an archetype [*Inbild*]. Through the active contemplation of them, the dark meaning of our history continues to grow. The Marian image of history of a great German poet, the Christian Epimetheus by Konrad Weiss, emerged from it. In the Vienna journal *Wort und Wahrheit* [*Word and Truth*, April 1949], Friedhelm Kemp published an essay, which provides an excellent introduction in this respect. For Konrad Weiss, the merely restraining forces are not sufficient. He claims that historical circumstances are more often to be seized rather than to be restrained. One may dismiss his Marian image of history as mere historical mysticism. However, its dark truth is thereby not disconfirmed, and neither is its significance as a historical counterforce against the leveling of history to the status of universal humanity, to the museum of the past, and an exchangeable costume to conceal the bluntness of activist attempts to give meaning to the meaningless.

All of this—the great parallel, the *kat-echon*, and the Christian Epimetheus—becomes for us an ardent theme because of Karl Löwith's *Meaning in History*. By way of expressing this, we distinguish his book from a variety of other publications that address issues from history and the philosophy of history. We draw concrete consequences from the great impression of his critical analysis and dare to once again speak of a history that is not merely an archive of what has been, but also not a humanistic self-mirroring or a mere piece of nature circling around itself. Rather, history blows like a storm in great testimonies. It grows through strong creations, which insert the eternal into the course of time. It is a striking of roots in the space of meaning of the earth. Through scarcity and impotence, this history is the hope and honor of our existence.

*Love, Law, and War:
Carl Schmitt's Angst*

Joseph W. Bendersky

Ernst Hüsmert, ed., *Carl Schmitt Tagebücher, Oktober 1912 bis Februar 1915*. Berlin: Akademie Verlag, 2003. Pp. v + 431.

Ernst Hüsmert and Gerd Giesler, eds. *Carl Schmitt: Die Militärzeit 1915 bis 1919*. Berlin: Akademie Verlag, 2005. Pp. v + 587.

Dorothee Mussgnug, Reinhard Mussgnug, and Angela Reinthal, eds. *Briefwechsel Ernst Forsthoff-Carl Schmitt, 1926–1974*. Berlin: Akademie Verlag, 2007. Pp. vii + 592.

For decades an array of scholars read Carl Schmitt's publications not only to understand his concepts and arguments but also to extrapolate from them the essence of his character and motivation. What was thereby surmised about the man was then, in turn, utilized in interpreting those very works. The result has been a half-century of diametrically opposed perspectives and claims whose contradictory nature greatly exceeded anything found among the scholarship of comparable controversial figures, such as Ernst Jünger and Martin Heidegger. The gradual availability of parts of Schmitt's papers over the past decade definitely widened the evidentiary basis for such discourses. However, some of the most potentially revelatory documents remained inaccessible even to those privately controlling his *Nachlass*. These were the copious diaries Schmitt kept almost daily throughout significant segments of his life. Although long known to exist by a close circle of friends and a handful of scholars, the diaries protected their secrets through the impenetrable Gabelsberger stenography in which Schmitt had written them. As this nineteenth-century form of shorthand is slowly and tediously transcribed and published, his troubled personal and academic life, intellectual endeavors, and eventually political engagements are being, and will continue to be, revealed with remarkable candor. Those who thought they had learned all they needed to know about the inner essence of the man merely from a reading, too often superficially, of his immediate post–World War II private notations, *Glossarium*, are in for a true surprise.¹ Likewise, neither the publication of his letters to his sister (1905–13)

1. Eberhard Freiherr von Medem, ed., *Glossarium: Aufzeichnungen der Jahre 1947–1951* (Berlin: Duncker & Humblot, 1991).

nor his very important correspondence with Ernst Jünger had adequately prepared us for what his diaries and other correspondence would ultimately reveal.²

Few so greatly anticipated sources have lived up to the highest expectations as the newly published diaries from Schmitt's early life and career have done. They are both a biographer's dream and a windfall for scholars grappling with the origin, nature, and intent of his prolific contributions to political and legal theory. Seldom have historical figures, particularly those of Schmitt's intellectual stature, revealed themselves so nakedly—emotionally and intellectually. The persistent self-reflection is in itself extraordinary. Equally rare are diaries kept with such detail over such long periods of time that are so substantive in their observations on so many subjects and events, ranging from God and religion to the existential crisis of modern values, and the individual trapped within the constraints of modern institutions and civilization. And especially relevant to understanding the man and his work are the diary entries (and auxiliary material) on both law and war.

Moreover, the appearance of the two recent volumes of diaries, covering 1912–19, have been followed by publication of the extensive correspondence between Schmitt and his student Ernst Forsthoff, a conservative legal thinker mired in his own controversies. Since the Forsthoff-Schmitt letters are mostly from 1948 to 1974, the juxtaposition of this volume with the diaries creates a very interesting perspective on two ends of Schmitt's life—youth and old age. And though, for the most part, these sources do not involve the periods of his major scholarship and political engagements (Weimar and the Third Reich), their value is by no means thereby diminished. If anything, this gap serves as a tease, heightening our expectations of forthcoming diaries and letters from these crucial years. Meanwhile, we are confronted with an illuminating glimpse into conservative thoughts, values, and pursuits during two truly different worlds: that of Schmitt's youth and the last years of Imperial Germany, contrasted with the aging historical figure and the youthful decades of the Federal Republic. One world is about to be destroyed by Europe's first total war, and the other is about to emerge from defeat and collapse in its second. One would usher in a failed attempt at a democratic republic, while the other would gradually engender one of the most successful progressive democracies in history. In the first phase, the young Schmitt would be on the path toward intellectual renown; in the final phase, the aging pariah would live in isolation, chastised for the very ideas, as well as personal and political choices, on which that reputation (and ill-repute) rested.

Ernst Hüsmert, editor of the first volume (1912–15), poignantly captured the true essence and tone of these early diaries in the observation of Hugo am Zehnhoff, the jurist for whom Schmitt worked in Düsseldorf:

2. Ernst Hüsmert, ed., *Jugendbriefe-Briefschaften an seine Schwester Auguste 1905–1913* (Berlin: Akademie Verlag, 2000); Helmuth Kiesel, ed., *Ernst Jünger-Carl Schmitt Briefe, 1930–1983* (Stuttgart: Klett-Cotta, 1999).

“In my long life as a jurist, I have never encountered any man who is more systematic in his thoughts and concepts than you, but also no one who had had more disorganization and confusion in his private life.”³

And Zehnhoff had merely detected the tip of deep-seated problems. Indeed, during these years Schmitt not only fulfilled his probationary period as a law clerk, passed his law exams, and became an assistant professor at the University of Strassburg, but, among other scholarship, he published three significant books in legal theory. The breadth of his intellectual knowledge and reading beyond jurisprudence, from philosophy and literature to psychology and theology, was truly exceptional even for the *Bildungsbürgertum* of that era. Yet beneath this surface rational life of a talented and ambitious youth's career and work there churned a daily emotional cauldron of obsessive passion, personal and intellectual doubt, relentless insecurity and fear, and even occasional serious suicidal thoughts, all of which was aggravated by his chronic financial distress. Often a sadness pervades these pages. He would awaken with a “horrible *Angst* of men and the world.” His was a kind of existential Catholicism in which he vacillated between assertions of belief (“thanks be to God”) and loneliness and longing for meaning and answers. He sought guidance and solace in Dostoevski and Kierkegaard, retaining a copy of the latter's “Concept of *Angst*.” Still, for the most part, he endured in a state in which in his “horrible torment and mental anguish there is no one with whom [he] can talk.” He remained “only a poor, helpless, despondent good-for-nothing,” who at night cries out to Jesus, the Blessed Virgin, and even unknown gods, for help and guidance to no avail. Occasionally, he burst out in legitimate as well as irrational rage against individuals, institutions, and predicaments; no one was immune from the wrath of his private pen. Despite brief periods of satisfaction, even elation, the underlying constant “self-destructive *Angst*” prevailed.⁴

Significantly, he experienced this personal, intellectual, and spiritual insecurity during the height of *fin-de-siècle* security characterizing the very age of liberal bourgeois predominance before the catastrophe of 1914. Thus, the insecurity long recognized as a key to his future political and legal thought must be recognized as an integral part of his personality and mental framework and not merely a reaction to the half century of turmoil and upheavals following Europe's “Great War.” Here, too, we can now consider how ill-conceived are certain parallels drawn between Schmitt and Jünger, whose intellectual and personal biographies would eventually become intertwined. Though both are conservative critics of

3. Ernst Hüsmert, ed., *Carl Schmitt Tagebücher, Oktober 1912 bis Februar 1915* (Berlin: Akademie Verlag, 2003), p. 1.

4. *Ibid.*, pp. 43, 96, 145, 150, 157–58, 185; Ernst Hüsmert and Gerd Giesler, eds. *Carl Schmitt: Die Militärzeit 1915 bis 1919* (Berlin: Akademie Verlag, 2005), pp. 43, 57, 102, 152.

the modern age, the diaries disclose such a stark contrast between their character, thoughts, and behavior that serious caution is warranted when interpreting these figures together. Unlike Jünger, Schmitt is far from displaying any of the heroic features of a man seeking danger and conflict. Where the confident, often arrogant Jünger tests life through an existential confrontation with death in battle, standing strong in the face of danger, Schmitt is overwhelmed by the world from which he recoils and escapes. Even if meaning and purpose elude him, Schmitt desperately seeks security and order from the dangers and vicissitudes of life, particularly those arising from the political sphere. Rather than confirming the Schmitt-Jünger ideological identity, the diaries instead provide strong insight into at least one source of the close personal and intellectual identification of Schmitt with Thomas Hobbes beginning in the 1920s. Both approached the world with a sense of anxiety and doubt, perhaps fear, which left little room for confidence or optimism in their political thought.⁵

Schmitt's *Angst* stretched beyond self-doubt to a much broader type of intellectual cultural despair as he experienced and observed the modern western world. The diaries clearly reveal that the disillusionment with the era reflected in his wartime book *Theodor Däublers "Nordlicht"* was no lapse into wartime despondency. His attraction to the philosophical poetry of the expressionist Däubler was the culmination of emotions, philosophical musing, and societal dissatisfaction that had been churning in the young Schmitt for years. Schmitt's interpretation of the poems that constituted *Nordlicht* was that of a struggle of the relativistic, materialistic, mechanistic world of science, technology, and capitalism against a spiritual dimension of eternal values, inherently valuable human beings, and enduring meaning.⁶ The feelings reflected in Schmitt's diary notations were often much more visceral but no less intellectually insightful. "The age is ripe for dictatorship," as the people merely want to amuse themselves in order to kill time through frivolity and idleness. "We make out of the equality of all men a foul vitality and demand equality among nations instead of the equality of rights. We see in the *Rechtsstaat* a means to undisturbed feeding and prostitutes." The domination of capitalism will collapse upon itself because we lack a purpose: "Acquiring money for the sake of money is senseless." Moreover, "renouncement of anthropomorphism is a renunciation of human nature; the very age of humanity prides itself on destroying everything anthropomorphic in every human form." Therefore, when mathematics becomes the ideal form of human thought "the result is the machine,

5. The diaries contain no mention of Hobbes. And the only time where Schmitt interjects the Hobbesian phrase *homo homini lupus* (that would be commonplace in his later writings and commentaries) is in his criticism of Thomas and Heinrich Mann. *Tagebücher*, pp. 61–62.

6. Carl Schmitt, *Theodor Däublers "Nordlicht": Drei Studien über die Elemente, die Geist, und die Aktualität des Werkes* (Munich, 1916).

which destroys the human countenance. . . . In the name of humanity one destroys the very image of the human being.”⁷ As a kind of Christian humanist, Schmitt asserted the necessity of Catholic spirituality as a counterweight to most modern cultural trends: “Only a religious people is a free people. A non-pious people will quickly lapse into slavery. . . . Don’t complain about the horrible oppression under which you live, but rather know that the responsibility lies with your godlessness, your Protestantism, your racial mysticism, your relativism, your godless logical swindles such as Kantianism, Wagnerism, and other major frauds.”⁸

Yet the young Schmitt, though mentally, emotionally, and intellectually still mired in the Catholic traditions and beliefs, was clearly escaping from its dogma, institutional submission, and political partisanship. It was a struggle. But his Catholic identity was becoming one defined culturally and intellectually by him and not the church. “There is no imitation of Christ in the juristic sense.” And “isn’t it outrageous” that the papacy legalized its own claim to such. Reminiscent of Erasmus, Schmitt wrote that “if men had a trace of spirituality and saw the palaces of bishops and comfortable homes of priests, they would roar with laughter or rage” when these well-nourished inhabitants preached poverty and designated themselves the councilors of Christ.⁹ Likewise, there is no sign of engagement for political Catholicism, even though his superior Zehnhoff was active in the movement and the Catholic Center Party. Those questionable interpretations depicting Schmitt as a *Reichstheologe* promoting a Christian political framework during the early stages of the Third Reich will find no antecedents here.¹⁰ Quite the contrary: “This morning we went to church where a dreadful Catholic cleric preached politics from the pulpit, so that we left the church full of indignation. Cari said: he had a profane attitude.”¹¹ And the diaries present a challenge to those insisting, in Schmitt’s defense or condemnation, on defining the essence of his political and legal thought in terms of a Christian eschatology in which the search for a *Katechon* is a central element.¹² There is no trace of any such eschatological thought or proclivity, in what is one of the more spiritual periods in his life, a spirituality that at the time clearly affected his thoughts on history, society, and politics. It is a spirituality and existential quest to hold onto belief that is severely tested in the midst of the endless slaughter of war. He ponders Augustine and flirts with

7. *Tagebücher*, pp. 64, 91.

8. *Militärzeit*, pp. 95, 152, 176.

9. *Tagebücher*, p. 267.

10. For the argument of Schmitt as a *Reichstheologe*, see Andreas Koenen, *Der Fall Carl Schmitt: Sein Aufstieg zum “Kronjuristen des Dritten Reiches”* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1995).

11. *Tagebücher*, p. 104.

12. See Mark Lilla, *The Reckless Mind: Intellectuals in Politics* (New York: New York Review of Books, 2001); Heinrich Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, trans. J. Harvey Lomax (Chicago: Univ. of Chicago Press, 1995).

Gnosticism. He desperately wants to believe in the God of justice and love, but still that God remains silent. The mystery of a God of good and a world of evil and injustice defies answers.¹³

All of this bears an uncanny resemblance to Erik Erikson's *Young Man Luther*, where the young, erudite, but fanatically devout, monk exhausts himself physically through mortification and psychologically by relentlessly beseeching God for answers.¹⁴ The maturing Luther ultimately resolves the agonizing mystery of the silent God by redefining him from a righteous, demanding, stern God (authoritarian father-figure) into the merciful and loving God whom the humble, wretched human can neither know nor please but only be redeemed through a faith selectively granted to those very beings unworthy of it. However, given the irredeemably flawed methodology and unfruitful results of the once popular psychohistory, whether based upon traditional Freudian psychoanalysis, dynamic psychoanalysis, or variants thereof, it is hoped that Schmitt will be spared such a fate at the hands of scholars. This is not to say that the diaries do not legitimately lend themselves to the application of various types of psychological probing or analysis to derive insights into what the young Schmitt had so starkly and startlingly revealed about himself page after page, year after year. But regarding the specific religious agony under discussion, it must be kept in mind that Schmitt's silent God is not that of the young Luther. Schmitt's God is already just and loving in his very essence. And one can note or infer from certain allusions or statements that, in Schmitt's mind, the real distinction is between this Christian God and the vengeful, judging Jewish God of the Old Testament.

The belief in a righteous and eternal spiritual order of values had its counterpart in the anti-positivist neo-idealism underlying his early legal writings. Legal positivists had abandoned eternal universal norms, such as those embodied in natural law theory. To them, law was the creation of the sovereign state, which recognized no higher authority or norm. It was an implicit affirmation of law as an extension of state power or of those who controlled it, even within a democratic system of self-government. Neo-idealist jurists argued for "right law" or "higher law" (*Recht*) whose authority and legitimacy existed prior to the state and independent of its power. The incontestable value of the state, Schmitt had argued in his 1914 book *Der Wert des Staates und die Bedeutung der Einzelnen*, did not rest upon its sovereign authority or de facto power. The authority of the state over the individual derived its legitimacy from its purpose of transforming this

13. *Militärzeit*, pp. 28–29, 34–35. See also Carl Schmitt, "Die Sichtbarkeit der Kirche: Eine scholastische Erwägung," *Summa: Eine Vierteljahresschrift, Zweites Viertel* (1917), pp. 71–80, in *Militärzeit*, pp. 445–52.

14. Erik Erikson, *Young Man Luther: A Study in Psychoanalysis and History* (New York: Norton, 1962).

universal “higher law” into worldly phenomenon.¹⁵ And despite all his questioning about the evils of the world and frustrations with the injustices of the behavior of states, particularly during war, his Catholic neo-idealism endured. As late as 1917, his article “Recht und Macht” challenged the notion that *Recht* derived from power relationships. The realistic necessity of reconciling the two elements must be accomplished, he affirmed, while preserving the “primacy of *Recht* over *Macht*.”¹⁶

However, the neo-idealism embodied in the diaries and appended publications leaves open the long-standing and pivotal question of Schmitt’s subsequent transition from Catholic neo-idealism to the hard realism characteristic of his postwar thinking. Higher law gives way to the “concrete situation,” “friend-enemy relationships,” and a growing lifelong affinity for Hobbes. But on these crucial points the diaries are silent. Stopping in July 1916, the diaries leave a frustrating gap. Thereafter the volumes rely upon documents from Schmitt’s service in Military Intelligence in Munich (1915–19) and those related to his early academic career, supplemented with a few letters and publications. The wished for personal notations and reflections, particularly of 1919 (the year of his transitional *Politische Romantik*¹⁷ and the political upheavals in Munich), unfortunately apparently did not survive or were never written.

Throughout these early years in Düsseldorf, Munich, and Strassburg, Schmitt sought solace in friendship and love. His intense personal involvements and passionate commitments equaled the fervor of his religious quest. They ended just as tragically. “Without love, nothing can be accomplished in this world,” he wrote; “...almost all people have more goodness and love than all of these itinerant preachers whose requisite solitude is only a guilty conscience.” From his mid-twenties to early thirties, three personal relationships dominated his private life as reflected through these diaries. At the center stood his obsessive, ultimately unrequited love for his fiancé and later wife Pawla (Pauline) Dorotić, his adored “Cari.” Revolving around this center was his intimate friendship with two German Jews: first with Fritz Eisler and then with his brother George.

The diaries finally elucidate in surprising sincerity and honesty what has long been merely gossip and speculation about Schmitt’s first marriage. “I am compelled to love you, Cari... I can’t do anything, or feel anything without you,”

15. Carl Schmitt, *Der Wert des Staates und die Bedeutung der Einzelnen* (Tübingen, 1914).

16. Carl Schmitt, “Recht und Macht,” *Summa, Eine Vierteljahresheft, Erstes Viertel* (1917), pp. 37–52, in *Militärzeit*, pp. 432–44.

17. Carl Schmitt, *Politische Romantik* (Munich, 1919). However, there is one diary passage that, as early as 1915, does foreshadow Schmitt’s later thesis of the romantics as “subjective occasionalists.” In that entry he notes, for example: “Characteristic of the specifically romantic: The incapacity to objectivity...” *Tagebücher*, p. 298.

wrote the twenty-four year old Schmitt. And such daily notations of adulation of Cari have a compulsion about them. They take on a cadence of longing and love that even nineteenth-century romantic writers might consider exaggerated literary style if his sentiments were not so true and sincere. It was an attraction as much physical as emotional: "Hunger is the voice of the physiological conscience, sexual love of the biological conscience."¹⁸ To understand women, particularly the impulsive and capricious Cari, he read Freud and Otto Weininger. He found Freud "immoral and unproductive." He vacillated over Weininger, whose suicide he pondered in light of his own recurring inclinations. And he needed guidance in such matters.¹⁹ For the naïve, emotionally blinded young Schmitt's idolized love was, in fact, an over-thirty Viennese-born Serbian dancer of dubious "old noble Croatian" lineage who hid her true age. Certainly, there were brief episodes of fulfillment and happiness, even elation. But his daily longing for her culminated in a disastrous marriage, which he vividly depicted as a miserable "hell." At times she treated him like a "lapdog"; at other times, her hysterics became personally and professionally embarrassing. His desire to escape was suppressed by his sense of responsibility and worry about his "dear little child." Although Schmitt's "hell" would legally end with a 1924 state annulment, the once all-encompassing meaning to his life had abandoned him years before. Amazingly, the very intellectual achievements that scholars still admire today he had actually produced during these years of "unbearable turmoil, physically and psychologically."²⁰ Two of his pioneering books had actually appeared under the name Schmitt-Dorotić.²¹

While this marital fiasco enhances our understanding of Schmitt's personality and early biography, his friendship with the Eislers has recently taken on immense importance in interpreting the very essence and significance of his political and legal theory. A highly influential recent interpretation of Schmitt has asserted that the very core of Schmitt's thinking was antisemitic. That from his earliest pre-World War I works through the Nazi era, Schmitt consistently attempted to develop a purely German type of legal theory to counteract a perceived threat from Jewish thinking and forces in the modern world. Allegedly, Schmitt's critiques of liberalism, normativism, positivism, Marxism, etc., all emanated from this Jewish *Feindbild*. Completely untenable in light of its own internal analytical and methodological flaws, this thesis also neglects crucial available evidence to the contrary. And it fails to adequately examine the close personal, intellectual, and political/ideological associations that Schmitt had with Jews over seventy years. That Schmitt had dedicated his classic *Constitutional Theory* to Fritz Eisler

18. *Tagebücher*, p. 37.

19. *Ibid.*, pp. 38, 58, 169.

20. *Militärzeit*, pp. 85, 90, 120, 165–66.

21. See Carl Schmitt-Dorotić, *Politische Romantik*, and *Die Diktatur: Von den Anfängen des Souveränitätsgedanken bis zum proletarischen Klassenkampf* (Munich, 1921).

was basically eschewed. Doubt was even cast upon whether Eisler had actually co-authored with Schmitt *Schattenrisse*, a parody of German intellectuals and the *gebildete* bourgeoisie; instead, the work itself was actually cited as evidence of Schmitt's antisemitism.²² However, Schmitt's letters and diaries now confirm that Schmitt-Eisler co-authorship. Most significantly, they disclose with categorical clarity not only their close personal and intellectual relationship, but the emotional depth of Schmitt's affection for Eisler.²³

Schmitt and Eisler, oldest son of a Hungarian-born Jewish publisher in Hamburg, shared the same *Doktorvater* at Strassburg. Thereafter, the two young men corresponded continuously (sometimes daily), as well as visited and traveled, where they occasionally roomed together. They walked and talked for hours. And Schmitt truly cherished these meetings for which he often anxiously waited and then exclaimed his joy. Schmitt depicted Eisler as "a wonderful guy," a very decent and principled person. Here was a clear, stark contrast with the criticism and sarcasm Schmitt directed at so many others. Amidst all his anxiety and alienation, Schmitt found in Eisler a kind of comfortable, often delightful, interaction and true friendship. Into old age he dreamt about "Eisler." After Eisler volunteered for active duty at the outbreak of war, he visited Schmitt in Düsseldorf during his September leave. And Schmitt worried, lest this "dear, wonderful guy" would be killed in action.²⁴

Within a few weeks Schmitt was emotionally shattered by the news that a grenade had killed his "dear friend." His diary entries captured the anguish of the moment: "It is outrageous. I cry, I scream, I no longer see or hear. It is inconceivable. Oh God, it cannot be. . . . *Der liebe Eisler; er ist tot.* A corpse. . . . It is maddening. I can no longer live. Life is so absurd. . . . What does it all mean? Am I going mad? . . . Eisler had sat there . . . making notes in his diary, cut his nails, combed and cut his hair; and now he is dead. . . . Why am I still living? . . . And a damned goat like [Fräulein] Zillinger had no other sentiment but to call him a weak-kneed fellow; while the *liebe* Eisler died in the war, such riffraff are still chattering about how the French should be annihilated . . . and 1 million vigorous soldiers fight so that such scum can continue to play the piano at home." The sadness lingered for a long time, as Schmitt with his "Cari" withdrew from others and life's "superficialities." He cried himself to sleep.²⁵

22. See Raphael Gross, *Carl Schmitt und die Juden: Eine deutsche Rechtslehre* (Frankfurt am Main: Suhrkamp Verlag, 2000). For a critique of Gross's interpretations, see Joseph W. Bendersky, "New Evidence, Old Contradictions: Carl Schmitt and the Jewish Question," *Telos* 132 (Fall 2005): 64–82.

23. *Tagebücher*, p. 221.

24. *Ibid.*, pp. 62, 105, 111–13, 171, 178, 196–97.

25. *Ibid.*, pp. 220–23.

Out of this tragedy grew Schmitt's close longtime friendship with Eisler's younger brother Georg, for whom he quickly developed a personal and intellectual attraction. Georg was *großartig*: "good-hearted and noble," "intelligent and critical." With him Schmitt gradually again found both emotional comfort and a stimulating intellectual discussion partner. After Schmitt spent Christmas 1914 with the Eisler family in Hamburg, Georg made several visits to Düsseldorf and then Munich to see Schmitt. Through constant correspondence and occasional trips with each other, they sustained these early bonds. Letters and visits delighted Schmitt, who was saddened when Georg left.²⁶ Though perhaps never reflecting the depth of attachment to Fritz, the recurrent fond diary entries to Georg show a distinct preference for his company surpassed only by Cari. And even she could not compete for attention when it came to serious discussions about literature, the state, or war. To a large degree, Georg served as a refuge—emotional and cerebral—from the mundane iron cage of bureaucratic wartime service crushing Schmitt's spirit. The friendship continued through Weimar, which then included Schmitt's second wife, who tried to comfort the Eislers after the Nazi seizure of power. In 1934, the very point Schmitt when was collaborating with the Third Reich, he assisted the Eislers in emigrating. They last spoke by telephone in 1982 on the anniversary of Fritz's death.²⁷

The Eislers were Schmitt's entry into the world of assimilated European Jews, with which he remained associated professionally and personally until his death. One could even argue that, in so many ways, Schmitt crossed the German-Jewish cultural divide more often, intimately, and extensively than most professionals and intellectuals. But he was neither culturally blind nor neutral in his attitudes toward Jews. He brought with him into adulthood the biases of his social background and Catholic cultural milieu, often projected through his own personality quirks as they affected his attitude toward people in general. The few diary references to Jews, made over a period of years, involve for the most part brief comments on the behavior of individuals or groups specifically identified as "Jews"—respectable and detestable. To him, "Georg is a wonderful guy, a gifted, intelligent, respectable Jew"; but Schmitt was enraged by "those Jews" who "falsify" artistic currents and "distort the concept of man." He resented the complaints of "this Jew" who, Schmitt believed, actually had a better military situation than he did.²⁸ In the debate over whether Schmitt's views on Jews could be interpreted as antisemitism or anti-Judaism, such expressions strongly suggest the former.²⁹ Nonetheless, his attitudes do not constitute an ideological antisemitism.

26. *Ibid.*, passim; *Militärzeit*, passim.

27. *Tagebücher*, pp. 402–3.

28. *Ibid.*, pp. 245, 250, 304; *Militärzeit*, p. 141.

29. For a discussion on whether Schmitt's attitudes toward Jews constituted antisemitism or anti-Judaism, and the distinction between these concepts, see Koenen, *Der Fall*

Nor can one detect any resonance of antisemitism in his theoretical frameworks or publications of this period. Jews were a non-issue in his legal and philosophical works. He discussed his ideas and books with both Fritz and Georg, who found them inspiring. Jewish editors published, and later solicited, his works. Both the men and women in the Eisler family greatly impressed Schmitt, who noted, "I began to respect the Jews." Schmitt readily acknowledged the "Jewish-complex" others attributed to him. He sought discussion with Jews because "there are more educated men among the Jews than among the Christians."³⁰

While disclosing this tension between bias (in a few instances, crudely expressed) and intellectual respect and even understanding, the diaries are nonetheless frustrating for those scholars trying to grasp and explain Schmitt and the Jewish Question. This is especially crucial in relationship to the antisemitism of his Nazi years and the statements about Jews in his post-World War II *Glossarium*. Yet these early entries do not reveal where the young Schmitt stood on the general Jewish Question. We learn only that he did discuss the subject with Fritz and Georg, and occasionally with others. And it was only one issue among the various topics they discussed, from current problems to modern literature, Dostoevski, or the French. At one point Schmitt did read an unidentified book about Jews that he and Fritz had bought together.³¹ Nevertheless, in the end, we are merely left with a few intriguing and enticing references, raising more new questions than they answer old ones: "after breakfast we both went to the library, Georg worked diligently on an article about Judaism. He is a thorough, scholarly, talented man. . . . He read 'psychology' [word garbled in original]. Astounded and shocked about the power of Jews. Psychoanalysis is the purest expression of Judaism."³² Among his very last diary references (July 1916) is the ambiguous statement: "One attempts to imagine an intellectual Germany without Jews; the publisher Lehmann, a few major generals and university professors, mining directors as prophets of the intellectual Germany."³³

The diaries contain no such vagueness or doubt concerning the Prussian-dominated German state, military service, and war, which affected Schmitt's life, feelings, and thinking more immediately and certainly more significantly than did any concerns he might have had about Jews. His most caustic remarks were, in fact, cast at Prussians. The Germans had absorbed the "Prussian spirit; this creaking, dashing, and completely intellectualless and heartless machine," which then transforms men into machines.³⁴ Particularly noteworthy, he showed absolutely

Carl Schmitt, pp. 313–28.

30. *Tagebücher*, pp. 226, 282.

31. *Ibid.*, pp. 113, 302, 314; *Militärzeit*, pp. 169–70.

32. *Tagebücher*, p. 314.

33. *Militärzeit*, p. 178.

34. *Tagebücher*, p. 173; *Militärzeit*, p. 56.

no signs of the chauvinistic nationalist euphoria displayed across Europe at the outbreak of war. Quite the contrary, his first and lasting reaction was fear for himself and his foreign wife, especially since she was a Slav. Rather than rallying to the nationalist call, he remained the individualist struggling against larger historical, institutional, and societal forces: "I was crazy with rage about the Prussians, militarism. . . . How horrible it is for an individual to sit within such a prison."³⁵ And even though medical reasons kept him from the front, he still described his office duty in Munich as "dreadful slavery" and a "living hell," causing him as much "insanity" as his home life with Cari. As he more than once sarcastically remarked, "Military and marriage; two splendid institutions."³⁶

From the beginning, Schmitt, a theorist whose very name has been inextricably identified with conflict and war, took a strong, deeply emotional and intellectual anti-war stand. "Better to lose this war than to win it."³⁷ Here was not the cold detached theorist of friends and enemies, but the very humane, sentimental cosmopolitan. During these early years of the war, he expressed not the slightest patriotic sentiment. "The barbarism of the Prussians and law clerks, of the moneyed *Mittelstand* with its artistic interests and its windbags, is much more vulgar than the naïve barbarism of the lowliest Slav."³⁸ He could take pity on the French, Slavs, Czechs, and Italians, because they had a kind of tearfulness and innocence, but he could have none for the English and Germans. As militarism perpetuated the war, he felt like going to "Spain or Russia!"³⁹ He remained completely unaffected by the various security, geopolitical, or even idealistic justifications for the war touted then by so many German intellectuals, including Thomas Mann. His original cynicism only strengthened with the soaring casualties. This war essentially amounted to "those over fifty allowing those under thirty to be slaughtered."⁴⁰ But "for what reason are the soldiers at the front? . . . Week after week they lay in the trenches, thousands of decent men are dying in action" so that others can "continue playing the piano. . . or speculating in cotton." It was a "loathsome war," a "frightful nightmare," which men had to be "crazy" to fight. "For what? For *Vaterland*." It would be better to sacrifice one's life in the state-of-nature as a "free man and from a free decision" than as a "sheep or lamb."⁴¹ Schmitt's categorical rejection of various justifications and rationalizations for war, like the images and language conveying his compassion for the misery, suffering, and unjustified sacrifice of life, offer a compelling refutation of those who

35. *Militärzeit*, p. 67.

36. *Ibid.*, pp. 23, 90, 120.

37. *Tagebücher*, p. 175.

38. *Ibid.*

39. *Ibid.*, p. 285; *Militärzeit*, p. 94.

40. *Militärzeit*, p. 178.

41. *Tagebücher*, p. 243; *Militärzeit*, pp. 70, 89, 91, 105–6.

continue to characterize him as the unprincipled advocate of the lust for power, domination, and war.⁴² Indeed, there is remarkable continuity and consistency from these early sentiments about what would justify war to the too-often-ignored or arrogantly, incredulously dismissed stand he took on war in *The Concept of the Political*:

There exists no rational purpose, no norm no matter how true, no program, no matter how exemplary, no social ideal no matter how beautiful, no legitimacy nor legality which could justify men in killing each other for this reason. If such physical destruction of human life is not motivated by an existential threat to one's own way of life, then it cannot be justified.⁴³

The future great theorist of the crucial role of the state spared nothing in chastising that very state for the “cynical,” “utilitarian” way it crushes individuals for “miserable and indifferent purposes.” “When I think about the war, about the thousands of soldiers who have fallen, about my helplessness against this power apparatus, which if necessary will devour me like a cow a blade of grass, then the state appears to me as a terrifying, grizzly monster.” There is “no salvation from militarism.” And the outcome of the war will be worse: the “destruction of the individual” by the German state, for “the individual is nothing; ghastly.” Overcome with emotions as he watched soldiers return to the field and women crying, he again felt the power of this “Moloch.” He wished he could allow himself to be killed as a “demonstration against this awful nonsense.”⁴⁴ Since he cited such observations of the state as a vindication of the position he took in *Der Wert des Staates und die Bedeutung des Einzelnen*, that treatise warrants a rereading in light of these diaries.

Yet, agonizingly, Schmitt felt trapped working for a regime and war effort in which he did not believe. In military intelligence headquarters, his fellow officers laughed at letters to the pope from poor farmers inquiring about peace. Even more ironic, his primary duties in military intelligence involved surveillance and analysis of pacifists and left radicals, especially as these forces worked through neutral Switzerland. He felt privately indignant but nonetheless helpless when he had to designate rumors of peace in a German newspaper as “dangerous to the security of the Reich.” Or when his office had to back the military authorities in

42. For examples of such interpretations of Schmitt, see William E. Scheuerman, *Carl Schmitt: The End of Law* (Lanham, MD: Rowman and Littlefield, 1999), especially pp. 246–55. See also Shadia D. Drury, *Leo Strauss and the Right* (New York: St. Martin's Press, 1997), pp. 95–96, and *Alexandre Kojève: The Roots of Postmodern Politics* (New York: St. Martin's Press, 1994), pp. 63–69.

43. Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: Univ. of Chicago Press, 2007), pp. 48–49.

44. *Tagebücher*, pp. 209–10, 320; *Militärzeit*, pp. 24, 99, 106, 130.

their political intrigues with the chancellor over annexationist policies.⁴⁵ Unfortunately, this significant aspect of Schmitt's life, with all kinds of implications for the transition from Catholic neo-idealism to postwar realism, is documented not from diary entries but records reconstructed from military archives. And despite their general importance, these documents are quite disappointing as they lack the revelatory candor of his private diaries. Similarly, we do not learn anything new about his legal analyses of dictatorial powers in wartime that he subsequently would expand into his classic *Die Diktatur* and latitudinarian interpretations of presidential powers during the Weimar Republic.⁴⁶

What we do encounter for the first time is the expansion of his intellectual engagement from law, philosophy, and literature to the realities of political ideology and movements. He continued to publish privately on religious and philosophical themes, insisting on the centrality of *Recht* for the execution of *Macht*. But his daily military duties thrust him into the very serious cynical and duplicitous sphere of international and party politics. It was a world where well-meaning idealism, some with which he personally empathized, became disingenuously exploited for wartime advantage or concealed revolutionary causes. He was saddened to watch how the work of outstanding men in the German pacifist movement was unwittingly manipulated for the purposes of Entente propaganda against Germany. Sincere desires for peace became weapons of psychological warfare to demoralize the Germans or to weaken the home front by intensifying internal political divisions along religious and party lines. The Entente sought not peace but victory over Germany. Likewise, the German radical left pursued the pacifist cause not only to end the war but to advance its objective of overthrowing the monarchy in favor of a socialist revolution.⁴⁷

Schmitt's wartime antagonism toward the Prussian state and military, which lingered into at least the early 1920s, is yet another ironic unexplained twist in his biography as well as in the broader context of his theories and subsequent political activities. As Weimar neared its collapse after 1930, some of the greatest admirers and promoters of his theories of presidential power were Prussian officers serving under General (later Chancellor) Kurt von Schleicher. By that time, Schmitt worked as a confidential adviser on constitutional matters to these

45. *Militärzeit*, pp. 99, 138–39.

46. Carl Schmitt, *Die Diktatur*. The 1928 edition also has as an appendix the corollary Carl Schmitt and Erwin Jacobi, "Die Diktatur des Reichspräsidenten nach Art. 48 der Reichsverfassung." See also Carl Schmitt, *Der Hüter der Verfassung* (Tübingen, 1930).

47. Schmitt's activities in Military Intelligence in Munich (1915–19) are contained in the very long appendix in *Militärzeit*, pp. 183–399; 539–62. Another appendix also includes a selection of the newspaper reports he wrote for *Die Hamburger Woche* under the title "Aus dem Lager unserer Feinde," which invoked humor and irony to expose the hypocrisy and false caricatures that typified Allied propaganda about Germans.

politically active officers in Schleicher's strategy to preclude a Nazi or Communist seizure of power.⁴⁸ Having established intimate personal relationships with Majors Erich Marcks and Eugen Ott in particular, Schmitt looked to the Prussian army as a counterweight to Nazism in the early stages of the Third Reich. In this regard, the diaries might provide a fruitful avenue of approach for rereading, perhaps significantly reinterpreting, Schmitt's *Staatsgefüge und Zusammenbruch des Zweiten Reiches: Der Sieg des Bürgers über den Soldaten*.⁴⁹

By the time Schmitt is released from military service in July 1919, he had experienced the military defeat and political collapse of the Wilhelmian order, the triumph of a democratic republic, and the radicalism of the Red Republic of the Worker and Soldiers Councils in Munich. Among his first lectures at the Handelshochschule in Munich in late 1919 was that on Jean Bodin and the "Idea of the Centralized State." Far less idealistic in tone and subject matter than his writings to date, it involved themes that would henceforth characterize his thinking, historical allusions, and arguments. Though Hobbes receives but a brief reference, an intrinsic Hobbesian spirit pervades the lecture. The pessimistic assessment of human nature as evil demands establishment of the state to overcome the misery of the "state of nature." And Schmitt highlights the significance of the concept of "sovereignty" and the absolutist state in ending the brutal violence and instability of the religious wars of the sixteenth and seventeenth centuries. It was a historical period that appeared paradigmatically in his future work. While the legitimacy and power of the newly emerging Weimar Republic was already displaying that of a weak state undermined by a vast array of contending political, social, and economic forces, he harkened his listeners back to the Thirty Years War, which cast Germany "politically and intellectually into the greatest poverty and powerlessness." Germany was thereafter for a long time dwarfed by neighboring unified centralized states.⁵⁰ There is no resonance of Schmitt's wartime lamentations of the individual crushed by the cold calculating, soulless state machine. Is this the analytical Schmitt delivering public lectures, whose private diaries might have disclosed a different personal sentiment, one that perhaps might contain at least some lingering ambivalence regarding the state? Or had the experiences of total

48. See Wolfram Pyta and Gabriel Seiberth, "Die Staatskrise der Weimarer Republik im Spiegel des Tagesbuchs von Carl Schmitt," *Der Staat* 39, no. 3 (1999), pp. 423–48, vol. 3, pp. 594–610; Lutz Berthold, *Carl Schmitt und der Notstandsplan am Ende der Weimarer Republik* (Berlin: Duncker & Humblot, 1999). See also Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton, NJ: Princeton UP, 1983); and Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham, NC: Duke UP, 2004).

49. Carl Schmitt, *Staatsgefüge und Zusammenbruch des Zweiten Reiches: Der Sieg des Bürgers über den Soldaten* (Hamburg, 1934).

50. Carl Schmitt "Vorlesung 1919, Handelshochschule München," *Militärzeit*, pp. 476–85.

war and revolution drastically changed the psyche and thought of the maturing Schmitt? Without diaries or correspondence from this period we are left to merely speculate about this dramatic transformation still in progress that would culminate in the spirit of his Weimar works.

Among the conservative intellectuals significantly influenced by Schmitt personally and through his Weimar writings was Ernst Forsthoff, who studied law with Schmitt at Bonn until 1928. But unlike his statist mentor's emphasis upon order and stability, the young Forsthoff's sentiments led to radical political engagement as a part of the intellectual Conservative Revolution seeking to replace the republic with an authoritarian "New State." While part of his thinking remained a variant of Schmitt's, his political call to action came much more from Jünger's concepts, especially that of total mobilization.⁵¹ *Der totale Staat*, a short book Forsthoff wrote in 1933, applauded the demise of the liberal state and the triumph of a new *völkisch*-based state and society.⁵² Although condemned by the Nazis as insufficiently in tune with their ideology and notion of the emerging *Führerstaat*, the book's explicit antisemitism haunted Forsthoff for the rest of his life. And like many new law professors of his generation, Forsthoff benefited from the purge of Jews from German universities. Yet his relationship with National Socialism remained a contentious one, leading to clashes particularly over Nazi anti-Christianity. Eventually, he had to move from university to university before establishing himself at Heidelberg in 1943. By the late 1930s, a disillusioned Protestant conservative Forsthoff began to repudiate his earlier total state philosophy and implicitly the Third Reich. Nazi party leaders condemned him for belonging to the Schmitt school of thought and for lacking a sincere appreciation of the racial foundations of National Socialism.⁵³ Unfortunately, there are only a handful of letters from the Weimar and Nazi years, almost all from Forsthoff and thus revealing little about Schmitt. Even the nature of, and reasons for, the abrupt break between Schmitt and Forsthoff in 1934 remains a mystery.

What follows in the rest of the volume, however, are five hundred pages of illuminating, often long letters, whose value is greatly enhanced by substantive editorial annotations and commentaries. These sections offer nothing less than a unique insider's look into the candid perspectives and feelings of conservative intellectuals during the first twenty-five years of the Federal Republic. When Forsthoff reestablished his contact with Schmitt in July 1948, their future and that of Germany remained in serious doubt. That uncertainty would last another decade. Both men had lost their university positions and struggled with denunciation,

51. Dorothee Mussgnug, Reinhard Mussgnug, and Angela Reinthal, eds. *Briefwechsel Ernst Forsthoff-Carl Schmitt, 1926-1974* (Berlin: Akademie Verlag, 2007), pp. 33-45.

52. Ernst Forsthoff, *Der totale Staat* (Hamburg: Hanseatische Verlagsanstalt, 1933).

53. *Briefwechsel*, pp. 5-6, 9-18.

denazification, and potentially permanent intellectual isolation and/or irrelevance. While in *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47*, Schmitt would grapple with the questions of his responsibility for the success of Nazism, its justification thereafter, and his lack of resistance, Forsthoff struggled for years to clear his name through legal processes.⁵⁴ Although none of the correspondence ever reached the bitterness of Schmitt's *Glossarium*, both men implicitly depicted themselves as dual victims. In their minds, having been rebuked by the Nazis for not being true National Socialists they were now chastised and ruined for the accommodations they had made with that regime. It was a circumstance and mind-set aggravated by Schmitt's wife's fight with cancer until her death in 1950, followed ten years later by the death of Forsthoff's spouse.

To them, their plight reflected the broader suffering of their time and country. "I will save myself a single word about the situation in which you lately pass the time," Forsthoff wrote to Schmitt. "It is an unequivocal symbolism for the situation in which we find *Geist* itself today." As for his own predicament, Forsthoff refused to retreat into the "academic graveyard," even though the current state governments were unprepared for the "return of a former party member." Those governments, he asserted, had practically sentenced the universities "to intellectual death."⁵⁵ Schmitt was more politically blunt: "It is sad to see the zeal with which German university professors implement the Morgenthau Plan in the intellectual and scholarly field whereas one did not have the capacity to fulfill it in the industrial-economic area."⁵⁶ When in 1949 Schmitt was vehemently condemned upon his publication of an article on the international law thinker Francisco de Vitoria, he was seriously shaken that such an assault had taken place with the "consent or indifference" of former colleagues: "Never in the 12 years of the Hitler era had a Jewish colleague been subjected to such vile depravity." Such assaults must, he claimed, involve much more than the struggle with Nazism. It was really an attempt to "drive out the productive intellect and what remained of scholarly freedom."⁵⁷ Occasionally, Schmitt referred to intellectual "terrorism."

The assaults continued into subsequent decades by old enemies and former friends. In an open letter to Forsthoff, Schmitt's long-standing opponent Erich Kaufmann had condemned "Carl Schmitt and His School." Schmitt's thinking, Kaufmann chided, was as "enlightening as a jack-o'-lantern," but dangerous nonetheless because it led into the "swamp of nihilism" and National Socialism.⁵⁸ Among those repudiating Schmitt was his former student Ernst Friesenhahn, who

54. *Ibid.*, pp. 19–30. Carl Schmitt, *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950).

55. *Briefwechsel*, pp. 47–48.

56. *Ibid.*, p. 52.

57. *Ibid.*, p. 59.

58. *Ibid.*, pp. 73, 94, 140–43, 424–25.

later served on the constitutional court.⁵⁹ And the especially harsh reaction elicited by the two Schmitt *Festschriften* (1959, 1968) caused equal but not unexpected consternation. Quite interesting within these perennial disputes, however, are the letters regarding the complex ambiguous, as well as ambivalent, relationship of the renowned jurist Rudolf Smend with them.⁶⁰ Not surprisingly, one constant theme in the Forsthoff-Schmitt correspondence is their dismay over the formalization and institutionalization of the hostile narrative pervading the early postwar scholarship on them as not just collaborators but destroyers of democracy and prophets of the *Führerstaat*.⁶¹

Both men remained within what Schmitt had earlier referred to as the “security of silence” rather than engage in open confrontation with their critics and accusers. And despite all their complaints about the lack of free thought and expression through publication, they succeeded in their intellectual endeavors and relished each other’s writings. Already in 1950, Forsthoff had published a book on administrative law that became the standard work in that field, and Schmitt released *The Nomos of the Earth*.⁶² Acquiring a professorship at Heidelberg in the early 1950s, Forsthoff repudiated his earlier radical conservative thinking, activity, and works.⁶³ Yet, he retained his admiration not only for Schmitt’s Weimar legal works but for his political treatises, particularly *The Concept of the Political* and its postwar counterpart, *Theory of the Partisan*, which he deemed a “classic.”⁶⁴

There slowly emerged certain hopeful signs of continued relevance, even recognition and importance. Schmitt was elated by news that the justice minister of Israel was consulting his *Constitutional Theory*.⁶⁵ The same was true of the serious interest French scholars (Raymond Aron, Julien Freund, Francis Rosenstiel)

59. *Ibid.*, pp. 84, 162–63.

60. *Ibid.*, pp. 163–64, 180–83.

61. *Ibid.*, pp. 156, 326, 431. Noted in particular were the dissertation and subsequent book by Jürgen Fijalkowski, *Die Wendung zum Führerstaat: Ideologische Komponenten in der politischen Philosophie Carl Schmitts* (Cologne, 1958); and Leon Poliakov and Josef Wulff, *Das Dritte Reich und seine Denker, Dokumente* (Berlin, 1959).

62. Ernst Forsthoff, *Lehrbuch des Verwaltungsrecht* (Munich, 1950). Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003).

63. *Briefwechsel*, pp. 19–39. Jerry Z. Muller, *The Other God that Failed: Hans Freyer and the Deradicalization of German Conservatism* (Princeton, NJ: Princeton UP, 1987), pp. 211–12, 391–95.

64. *Briefwechsel*, p. 193. Carl Schmitt, *Theory of the Partisan*, trans. G. L. Ulmen (New York: Telos Press, 2007).

65. *Briefwechsel*, pp. 86–89. The first English translation of Schmitt’s *Verfassungslehre*, with an outstanding introduction by Jeffrey Seitzer and Christopher Thornhill, has just appeared. See Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC: Duke UP, 2007).

took in his work.⁶⁶ And Hasso Hofmann's uncharacteristically balanced treatment of Schmitt in his 1964 *Legitimität gegen Legalität* held out similar promise for future trends.⁶⁷ The two men certainly rejoiced at Forsthoff's call to sit on the supreme constitutional court of the Republic of Cyprus in 1960. Wrote an elated Forsthoff to Schmitt: "The fact that not one of the Federal Republic's protégés but rather one of your students had received this admittedly unique appointment has, I believe, created a new situation."⁶⁸

They expressed particular hope in the younger generation of scholars in their thirties, as they appeared "immune and courageous against stale prejudices." And this encouragement stemmed as well from young scholars outside of Schmittian circles, such as Reinhart Koselleck.⁶⁹ But for the most part they followed, and where possible advanced, the work and careers of aspiring academicians who would eventually take their place among the distinguished conservative legal scholars and practitioners of the Federal Republic (e.g., Ernst-Wolfgang Böckenförder, Helmut Quaritsch, Hans Schneider, Roman Schnur). Though, here too, Forsthoff and Schmitt were disheartened at the travails of these young scholars in establishing themselves within the universities. And their pessimism peaked when the 68'er student revolutionaries signaled them out for ridicule, disruption, and physical assaults in the lecture hall. "The university can no longer be saved," lamented Forsthoff; "What National Socialism had not been able to finish off—is occurring under the Federal Republic—the ultimate annihilation."⁷⁰ As the editorial commentary points out, it was a situation in which Quaritsch in particular displayed notable determination and courage in defense of academic order and freedom.⁷¹ By the time the university upheavals tapered off, Forsthoff had died in 1974. Schmitt followed ten years later at the age of ninety five. Although always confident in the enduring importance of Schmitt's work, they could not have imagined the Schmitt renaissance of recent decades.

Undoubtedly this correspondence provides a wealth of documentation for various scholarly uses. However, there are two interpretive schools of thought noted previously—which have received widespread, yet unjustified, attention—that will find no substantiation in these sources. These intimate, detailed correspondences give no inkling of Schmitt as primarily a theological thinker searching for the Katechon in the eschatological course of history, as argued by the proponents of

66. *Briefwechsel*, pp. 156, 200–3, 233. See also Julien Freund, *L'essence du politique* (Paris, 1965).

67. *Briefwechsel*, pp. 206–7. Hasso Hofmann, *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts* (Berlin, 1964).

68. *Briefwechsel*, pp. 162–63.

69. *Ibid.*

70. *Ibid.*, pp. 282, 286–89.

71. *Ibid.*, pp. 500–4.

the “theological twist” in Schmitt historiography. Neither will one find any support for interpreting Schmitt as someone whose legal and political thought was an attempt to defend German culture from the destructive modernizing Jewish influences and currents. Such omissions of what has been inferred to be of such centrality to his thought, particularly in light of what the correspondence does reveal in abundance about what did preoccupy Schmitt during these years, cast further serious doubt upon such untenable claims.

Nonetheless, among the various Forsthoff-Schmitt discussions of society, law, politics, and ultimately economics in the Federal Republic, we do find highly suggestive statements and positions relevant to other significant debates. Although Schmitt had long and widely been identified with Weimar’s Conservative Revolution, the association of him with this movement had not withstood close critical analysis.⁷² Now we encounter Schmitt’s explicit dissociation: Mohler “knows that I cannot share the Nietzscheanism and enthusiasm for the precept of eternal recurrence, which Mohler declares as the foundation and core of his ‘Conservative Revolution.’”⁷³ We discover a similar insight regarding the “continuity” versus postwar “deradicalization” arguments about conservative thought from Weimar through the Third Reich and into the Federal Republic.⁷⁴ Unequivocally, the correspondence supports the “deradicalization” thesis. For example, Kurt Sontheimer had criticized Forsthoff’s 1971 *Der Staat der Industrialgesellschaft* as proof of the “continuity of an authoritarian-type state thinking within the political

72. On Schmitt and the Conservative Revolution, see, among others, Armin Mohler, *Die Konservative Revolution in Deutschland: Ein Handbuch* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1972); George L. Mosse, *The Crisis of German Ideology: Intellectual Origins of the Third Reich* (New York: Grossert & Dunlap, 1964), and *Germans and Jews: The Right, the Left, and the Search for a ‘Third Force’ in Pre-Nazi Germany* (New York: Howard Fertig, 1970); Kurt Sontheimer, *Antidemokratisches Denken in der Weimarer Republik: Die politischen Ideen des deutschen Nationalismus zwischen 1918 und 1933* (Munich: Nymphenburger Verlagshandlung, 1962); Martin Greiffenhagen, *Das Dilemma des Konservatismus in Deutschland* (Munich: R. Piper Verlag, 1971); and Jeffrey Herf, *Reactionary Modernism: Technology, Culture, and Politics in Weimar and the Third Reich* (New York: Cambridge UP, 1984). For a detailed critique of the identification of Schmitt with this intellectual movement, see Joseph W. Bendersky, “Carl Schmitt and the Conservative Revolution,” *Telos* 72 (Summer 1987): 27–42.

73. *Briefwechsel*, p. 310.

74. For the continuity thesis regarding Forsthoff, see Peter Caldwell, “Ernst Forsthoff and the Legacy of Radical Conservative State Theory in the Federal Republic of Germany,” *History of Political Thought* 15, no. 4 (Winter 1994): 615–41, whose arguments follow the interpretive pattern set down by the various works of the Marxist Ingeborg Maus, beginning with *Bürgerliche Rechtstheorie und Faschismus: Zur sozialen Funktion und aktuellen Wirkung der Theorie Carl Schmitts* (Munich, 1976). A key advocate of the deradicalization position is Muller, *The Other God that Failed*.

consciousness of the Federal Republic.”⁷⁵ However, in response, Forsthoff decried as “truly absurd” Sontheimer’s allegation that Forsthoff’s publications were intended “to promote Neo-Conservatism.”⁷⁶ Moreover, in their private discussions over the role of the state in industrial society, Forsthoff and Schmitt showed an explicit affinity for the works of the American liberal John Kenneth Gailbraith, particularly *The New Industrial State*.⁷⁷

The private sentiments Schmitt shared with Forsthoff about his perceived unjust chastisement and intellectual exile could not always remain suppressed in conversations with visitors outside these close conservative circles. Now and then, Schmitt’s feelings surfaced in pithy declarations. He was particularly fond of taking poetic license with Henry Adams: “If Carl Schmitt is not what they say he is—what are they?” Schmitt’s early diaries and letters to Forsthoff, like those to Jünger, now provide a fuller picture of who he was. Yet, as impressive and immensely significant as these diaries and letters are, they fall far short of a complete picture of such a long life and complicated thinker. An adequate comprehension, no doubt also in the form of contested interpretations, will only be possible when these newly published sources are critically analyzed in conjunction with the yet unavailable voluminous correspondence (and other material) still closed in the Schmitt *Nachlass*. And, of course, quite possibly the most crucial documents might be his remaining diaries, especially those from late Weimar and the Third Reich. If such diaries prove as revelatory as his youthful ones have been, they will certainly perpetuate the intensive study of this contentious figure and his ideas far beyond the next scholarly generation.

75. *Briefwechsel*, p. 521.

76. *Ibid.*, pp. 321–23.

77. *Ibid.*, pp. 248–50, 272, 493.