

# **The Crisis of Political Form**

## **The Question of Space in the Work of Carl Schmitt**

**Rory Henry Rowan**

**Royal Holloway, University of London**

**PhD. Department of Geography**

This thesis is dedicated to Peter and Briad Rowan, who went far beyond the call of duty in support of its completion, and Eva Kenny, who has always reminded me that friendship is infinitely more powerful than enmity.

## **Declaration of Authorship**

I Rory Rowan hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## *Abstract*

This thesis examines the role of space in the work of the German legal and political theorist Carl Schmitt (1888-1983). It has two fundamental aims. Firstly, to identify what role spatial concepts play in Schmitt's work. Second, to examine what relevance Schmitt's spatial thought might have for thinking about the relation between space and politics today. In response to the first question the thesis argues that spatial concepts occupy a structural position throughout Schmitt's work that has thus far been overlooked. The central claim is that Schmitt understands political order, in the absence of necessary foundations, to be fundamentally grounded upon the division of space. The division of space allows political relations to be managed within a formal framework. However, Schmitt understood this relationship between spatial division and political relations to be in crisis in the twentieth century. The thesis traces Schmitt's various attempts to address this crisis first within the horizon of the state and then on the basis of new global spatial divisions beyond the state form. In answering the second question the thesis argues that in order to assess the contemporary relevance of Schmitt's spatial thought it must be contextualized in relation to both the central concerns of his work as a whole and the political contexts within which it emerged. This is of particular importance in judging how Schmitt's involvement with National Socialism bears on the contemporary value of his thought. In conclusion the thesis argues that whilst a critical awareness of his troubling past is necessary in approaching Schmitt's work it none-the-less raises fundamental questions of enduring relevance.

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## *Introduction*

My interest in Carl Schmitt was born of war.

Like many others, I first encountered Carl Schmitt's work in the middle years of the last decade, at the height of the 'war on terror'. It seemed during this period that international order as I understood it was crumbling. What was most disturbing was that liberal states were themselves emerging as the enemies of a peaceful world and the rule of law. The language of democracy and the instruments of international law were precisely the means by which imperial power was unfurling order from within. Blunt contradictions within the situation seemed to exhaust established avenues of protest and warp the old coordinates of critique. Schmitt's thought appeared to cut through this fog. His work seemed to speak directly to the tensions of the moment and hit precisely on the raw mechanisms of power that had suddenly been revealed. He drew stark conceptual distinctions yet remained sensitive to the ultimate contingency of all norms and institutions. His stringent realism seemed to dissolve liberal pieties exposing the perverse logic of state sovereignty and the duplicity of humanitarianism. The promise of enigmatic new paths out of a politically deadlocked present seemed to be held within. Crucially, Schmitt's analysis of political space appeared to offer a key to unlocking the strange fusion of brute material force, ideological spin and technological virtuality that had to come to characterize the reigning global disorder. But Schmitt was an uncertain friend. His sharp insights grew muddy in the light of his past, and slipped through the fingers the harder one tried to grasp them. Concepts that first seemed like incisive critical tools became double-edged swords that conceded too much ground to opponents. But whilst he shifted shape and frequently disappointed, Schmitt raised questions that were neither easy to answer nor dismiss.

I have certainly not been alone in looking to this controversial figure for critical orientation. The last decade has been witness to an explosion of interest in Schmitt's

thought in a variety of Anglophone debates. In Chapter 1, I examine how scholars from a number of disciplines, including Political Theory, International Law, International Relations and, more recently, Geography, have turned to Schmitt in search of insights to help grasp the nature of the contemporary global politics. During the ‘war on terror’ Schmitt’s theorization of the relationship between sovereign power and exceptional governance became a frequent source of reference for those attempting to understand the mechanisms of state power operating in extra-territorial prisons such as Guantanamo Bay. Further, his work was discovered to be the source of startlingly prescient critiques of the interventionist foreign policies of the United States, humanitarian warfare and the changing relationship between space, law and violence since the First World War. These elements of his thought were often read together as part of a broader Schmittian critique of the apparent geopolitical disarray at the start of the new century, of which U.S. foreign policy during the ‘war on terror’ was the most obvious symptom.

However, despite the numerous attempts to employ Schmitt’s work as critical tool for geopolitical critique, a thorough examination of the role of space in his thought has thus far been missing. Indeed, Schmitt’s spatial thought has been identified almost exclusively with his 1950 book *The Nomos of the Earth* that appeared in English translation for the first time in 2003. *The Nomos of the Earth* is undoubtedly the key work in Schmitt’s post-war output and contains the most mature expression of his spatial thought. However, the fact that critical attention focused largely on this text in isolation from the concerns of Schmitt’s work more broadly led many to identify spatial concepts solely with Schmitt’s late work. This has resulted in a degree of disjuncture between the application of Schmitt’s insights to the critique of contemporary geopolitical conditions and an understanding of the role of space within his work. My thesis aims to address this gap in the existing literature by investigating what role spatial concepts play within Schmitt’s work as whole. In answering this question I hope to not only contribute a fuller understanding of Schmitt’s work but further to provide a firmer foundation for assessing its uses and limitations in understanding the relationship between politics and space today.

Schmitt is a divisive figure who remains controversial due to his official involvement with the National Socialist regime and the anti-Semitic content of his work during this period. Given the importance of these issues, I believe it is necessary to contextualize Schmitt's work in relation to his life and political choices. In Chapter 2 I will provide a brief account of Schmitt's biography and career and situate his work within the intellectual context from which it emerged. In light of the bearing Schmitt's Nazism and anti-Semitism had on the development of his work, and specifically his spatial thought, I will devote considerable attention in Chapter 3 to the question of how to approach their relation to his work. This contextual element will be traced through the subsequent chapters as I provide an account of the development of Schmitt's spatial thought.

One of the key contributions of my project is to show that spatial concepts play a key structural role throughout Schmitt's work even before they appear as the *explicit* focus of his late work. In Chapter 4, I highlight the overlooked structural foundation provided by spatial concepts in Schmitt's early work from the Weimar period. I argue that Schmitt understood spatial division as the means by which the key demands of pluralism and political order could be reconciled. Hence, I claim that in his early work Schmitt developed a concept of political order fundamentally grounded in the spatialisation of the political, the core category of Schmitt's thought, which he understood to indicate the necessary antagonistic nature of political relations. Chapter 5 contextualizes these early attempts by Schmitt to theorize the spatial foundations of order within the crisis of the state in the twentieth century. I examine the way in which Schmitt understood the thought and practice of liberalism to be undermining the spatial foundations of state order by dissolving the foundational relationship between space and the political on which it rested.

The attempt to locate the roots of this state crisis and formulate a new concept of political order led Schmitt to explicitly theorize a concept of spatial order in his later work. Chapter 6 examines *The Nomos of the Earth*, Schmitt's most developed work of spatial theory. This was an ambitious book that contained both an explicit theory of the spatial foundations of legal order and a historical account of the rise and fall of the first global

nomos centred upon the European appropriation of the colonial lands in the New World and the world's oceans. The twentieth century crisis of the state emerged against the background of a crisis of this Eurocentric spatial order of the earth and Schmitt examines the causes and symptoms of spatial disorder before suggesting models for reordering the world. In chapter 7, I examine Schmitt's two attempts to identify new subjects capable of founding order on a new spatialisation of the political after the eclipse of the state: a *Großraum* order of international law, and the figure of the partisan. Schmitt's *Großraum* theory was an attempt to conceive of a new pluralist spatial order of the earth, but it was developed to directly legitimize Nazi expansionist policy in Eastern Europe. The figure of the partisan fighter represented his last desperate attempt to conjure up a solution to the spatial crisis of the twentieth century. I conclude by noting that both attempts ultimately failed to produce a new foundation for spatial order and, as the twentieth century wore to a close Schmitt's concepts were increasingly at odds with the emerging realities of a fast globalizing world. Schmitt's hope of a new *nomos* of the earth had been washed away in a tide of historical change.

By tracking the development of Schmitt's spatial thought from its early explicit to its later explicit formulations, I hope to show that spatial concepts play a central structural role in every period of his thought, and that a full understanding of his work must come to terms with Schmitt as a spatial thinker. It is only by understanding the role of spatial concepts in Schmitt's work that its uses and limits for contemporary spatial thinking can be fairly assessed. I hope the following thesis will make a contribution to clarifying these questions.

## ***Chapter 1: The Return of Carl Schmitt***

### **(1) *A Reactionary's Renaissance: Schmitt's Anglophone 'Revival'***

Carl Schmitt has been referred to as “the most controversial German legal and political thinker of the twentieth century” and his name continues to provoke strong reactions wherever it appears.<sup>1</sup> As the Schmitt scholar William Hooker recently noted, “it is hard to think of another intellectual figure who provokes quite such polarized views.”<sup>2</sup> It is not surprising that Schmitt continues to elicit such deeply divided responses, given that he was not only one of twentieth century Germany’s foremost legal and political thinkers, but was deeply complicit with the Nazi state after 1933. Yet, despite this controversial political association, the already sprawling body of secondary literature continues to grow at an alarming rate. The last two years alone have witnessed the publication of six volumes of writings by or dedicated to Schmitt in English.<sup>3</sup> Further, as one of Schmitt’s biographers Jan-Werner Müller argues, “it might not be an overstatement to say that no twentieth-century thinker has had a more diverse range of readers.”<sup>4</sup> His work has attracted comment from a startling range of readers drawn from a number of different national contexts, theoretical perspectives and opposing political positions. Although the startling growth of interest in Schmitt in English language debates in recent years has often been referred to as a ‘revival’ this is something of a misnomer given that by and large Schmitt’s thought was little known to Anglophone audiences before the mid 1980s.

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<sup>1</sup> George Schwab, Introduction to *Political Theology: Four Chapters on the Concept of Sovereignty*. (Chicago: University of Chicago Press, 2006), xxxvii.

<sup>2</sup> William, Hooker. *Carl Schmitt's International Thought: Order and Orientation* (Cambridge: Cambridge University Press, 2009), 2.

<sup>3</sup> See Michael Marder, *Groundless Existence: The Political Ontology of Carl Schmitt* (London: Continuum, 2010); Kam Shapiro, *Carl Schmitt and the Intensification of Politics* (Lanham, MD: Rowman & Littlefield Publishers, 2010); Johan Tralua, *Thomas Hobbes and Carl Schmitt: The Politics of Order and Myth* (London: Routledge, 2010); Carlo Galli, *Political Spaces and Global War* (Minneapolis: University of Minnesota Press, 2010); Stephen Legg, ed., *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos* (London: Routledge, 2011); Carl Schmitt, *Writings on War*, ed. Timothy Nunan (Cambridge: Polity Press, 2011).

<sup>4</sup> Jan-Werner Müller, *A Dangerous Mind: Carl Schmitt in Post-War European Thought* (New Haven: Yale University Press, 2003), 1.

In the context of Schmitt's Anglophone scholarship, the distinction between an initial reception, occurring mostly in the 1980s, and a subsequent 'revival' from the mid 1990s, rest on rather slender ground. Terms such as 'revival' and 'renaissance' are frequently used by more hostile critics to indicate an intellectual and moral distaste for what they consider the resurrection of a corpus better left buried in Nazi disgrace.<sup>5</sup> However, given the fact that Schmitt has made the transformation from a marginal figure in Anglophone debate to the position of a 'classic' in the last twenty years, coupled with the sheer volume of the work accrued on his thought in the same period, it is not unreasonable to consider his Anglophone reception in the last two decades as a 'revival'.

The first of Schmitt's books to appear in English translation was *The Necessity of Politics: An Essay on the Representative Idea of the Church in Modern Europe* (a translation of his 1923 book on political form in the Roman Catholic Church, later published in a new translation as *Roman Catholicism and Political Form* in 1996), published in 1931 as part of a series of books on Catholic thought, *Essays in Order*. There was a long gap before the first critical work on Schmitt's thought, George Schwab's *The Challenge of the Exception*, appeared in 1970. Schwab had a profound impact on the early reception of Schmitt's thought, translating and writing the introductions for *The Concept of the Political* (1976) and *Political Theology* (1985), texts that remain the principal focus of Anglophone debate on Schmitt. *The Concept of the Political* initially received little critical attention but by the time *Political Theology* was published in 1985, interest was clearly growing. The first biography of Schmitt in English, Joseph Bendersky's *Carl Schmitt: Theorist for the Reich*, was published in 1983 and was followed by the translation of two more important Schmitt books, *Political Romanticism* (1986) and *The Crisis of Parliamentary Democracy* (1988).<sup>6</sup> The growth of interest was definitively signalled by the release of two special issues devoted to Schmitt in the New York based journal *Telos* in 1987, a publication that has consistently championed Schmitt's work since. By the early 1990s the American critics Richard

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<sup>5</sup> See for example: Peter Caldwell, "Controversies over Carl Schmitt: A Review of Recent Literature," *The Journal of Modern History* 77 (2005): 357-87.

<sup>6</sup> The English titles of Schmitt's works available in translation will be used throughout. When a work unavailable in English the original German title will be used.

Wolin and William E. Scheuerman offered sharply aimed ripostes to the largely apologetic welcome that Schmitt had received from Schwab, Bendersky and the editors of *Telos*. At the start of the new decade interpretive battle lines were clearly staked, particularly over the relationship between Schmitt's thought and his Nazi involvement. I will discuss these debates in Chapter 3.

It is important to note, however, that some identify Schmitt as shadowy presence in Anglophone scholarship before his 1980s 'arrival'. William Scheuerman has argued that Schmitt exercised a "subterranean influence" on postwar American political thought long before his work was first addressed openly.<sup>7</sup> This influence was carried, it is argued, through a series of 'hidden dialogues' with émigré intellectuals such as Fredric Hayek, Hans Morgenthau and Joseph Schumpeter. Scheuerman argues that through these thinkers Schmitt's work "helped determine the contours of political thinking" in the United States after the war, albeit indirectly.<sup>8</sup> Similarly the German critic Heinrich Meier has argued that Leo Strauss, another German émigré intellectual who became an influential professor of politics at the University of Chicago in the post-war years, conducted his work in a 'hidden dialogue' with Schmitt.<sup>9</sup> Meier contends that beyond the points where Schmitt and Strauss openly acknowledged the influence of the other's work or critique, their thought was characterized by a 'subterranean' dance of influence and antagonism. Whilst Meier clearly makes the case for the relationship between these two giants of twentieth century political thought, the concept of the 'hidden dialogue' has provided a template for what occasionally amounts to an academic witch-hunt that exaggerates Schmitt's influence. For example, some have claimed that Schmitt is the dark magus from which American neo-conservatism emerged by way of Leo Strauss and his American student Alan Bloom.<sup>10</sup> Schmitt's open and transparent influence is already broad and deep enough to be reckoned with, without giving credence to the myth of his arcane hidden influence, a story Schmitt peddled himself long enough.

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<sup>7</sup> William Scheuerman, *Carl Schmitt: The End of Law* (Lanham, MD: Rowman & Littlefield Publishers, 1999), 1.

<sup>8</sup> Scheuerman, *Carl Schmitt*, 12.

<sup>9</sup> Heinrich Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue* (Chicago, IL: University of Chicago Press, 1995).

<sup>10</sup> See for example: Shadia B. Drury, *Leo Strauss and the American Right* (London: Palgrave Macmillan, 1999).

Schmitt is, after all, the thinker in whom “National Socialism attained historical consciousness of itself”<sup>11</sup>; the ‘Crown Jurist of the Third Reich’ who produced a legal defence for the Night of the Long Knives and sought to legitimate the Nazi expansion across Eastern Europe; the Catholic philosopher who argued for the continued relevance of theological categories for politics and defined the latter as the struggle between enemies; the polemical anti-liberal who wanted to replace the ‘endless conversation’ of parliamentary pluralism with a democratic dictatorship yoked to a myth of national homogeneity; the anti-Semitic opportunist whose private diaries are riddled with paranoid diatribes and who pursued his career at the expense of Jewish colleagues. In light of this series of glaring red flags it seems the perennial question that has dogged studies of Schmitt must be asked once again: *Why Schmitt?* Why is it that Schmitt’s work, despite the clearly reactionary intent of his thought and his complicity with the horrors of German fascism, retains such allure today? What is it that makes his thought relevant to contemporary geographic thought? What does a thinker that formulated justifications for a world order based around a series of hermetically sealed continental empires and imagined the history of modern Europe as a mythic battle between geo-elemental forces have to offer an analysis of contemporary problems in the politics of space?

As Jan-Werner Müller, one of Schmitt’s biographer’s, has noted, “the sheer volume of [Schmitt’s] writings and writings about him” can create a “*cauchemar de richesses*” leaving the reader overwhelmed. Providing a comprehensive overview of such a huge body of secondary literature is beyond the scope of this thesis. My analysis will therefore focus on Schmitt’s ‘revival’ or ‘renaissance’ only in the Anglophone scholarship since the 1990s. Delimiting the field of research in this way will provide an identifiable entry point into such an abundant literature and a manageable framework in which to develop discussion. Approaching the literature in this way in part reflects the linguistic limitations of the author but given the abundance and variety of secondary literature I believe that

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<sup>11</sup> Theodor Adorno, *Minima Moralia*, (London: Verso, 2005), 132.

this will not significantly hamper my ability to take firm control of the available materials.<sup>12</sup>

It should be noted that the project is undertaken with a critical awareness of how the Anglophone debates have been shaped by waves of translations, of both Schmitt's work and the critical secondary literature, from a variety of European contexts.<sup>13</sup> Thus, my study is developed keeping in mind the different national and historical contexts from which many of the texts in question originate and the timing of their subsequent translation. Secondly, I focus on debate since the 1990s as it reflects the period of Schmitt's Anglophone 'renaissance' and highlights the extent to which global political developments during this period have influenced the manner of his reception. The growing reputation Schmitt has enjoyed in the Anglophone academy over the last two decades has been powerfully influenced by the apparent topicality of his concerns to historical developments during this period.<sup>14</sup> His work has frequently been heralded as offering prescient insights into the present condition of global politics and indeed this

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<sup>12</sup> Not being able to read German nonetheless places constraints in my engagement with Schmitt's writings not only because a large body of work remains inaccessible but further because I cannot enjoy Schmitt's prose in its original form. This may clearly hamper a deep linguistic analysis of certain of Schmitt's concepts, however, in this project I seek to provide a structural analysis of Schmitt's work more broadly. I believe such a frame can now be reasonably to be developed on the basis of the materials available in English translation although doubtless the understanding may not be as rich as if it were to immersed in Schmitt's original texts. Further, I position myself principally in relation to the Anglophone debate on the nature, uses and limits of Schmitt's thought and hence hope to make a contribution primarily within this context. I believe it is possible to make a deep engagement with these debates despite the the linguistic constraints I work within.

<sup>13</sup> Schmitt's work has been central to crucial debates in German, Italian and French political thought for decades and the Anglophone literature has benefited from a translation of some of these debates although substantial gaps remain, many of which are unlikely ever to be filled. Further, I highlight France, Germany, and Italy because these are the contexts from which critical works have been translated into English hence influencing English language debate. His work has had considerable impact in a wider European context although the subsequent influence of this reception on Anglophone debate has been lesser. Jan-Werner Müller has provided a useful overview of the deep influence Schmitt exerted on Spain and Portugal after the Second World War. See: Müller, *A Dangerous Mind*, 133-144. During the years of the Iberian dictatorships Schmitt's work did not fall into disgrace as it did in Germany and France and hence was the subject of open debate. The British Geographer Alan Ingram has shown how Russian geopolitical thinkers such as Alexander Dugin developing arguments for a Russian-centred Eurasian power block have appropriated geopolitical ideas from Schmitt's work. See: Alan Ingram "Alexander Dugin: Geopolitics and Neo-Fascism in Post-Soviet Russia," *Political Geography* 20 (2001): 1029-1051. A study comparable to Müller's tracing Schmitt's influence beyond Europe and North America would be extremely valuable.

<sup>14</sup> See for example: Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005); Frederic Jameson, "Notes on the *Nomos*," *South Atlantic Quarterly* 104 (2005), 199-204; Chantal Mouffe, *On the Political* (London: Routledge, 2005).

supposed relevance has driven the increasing number of translations of his work over the last decade.<sup>15</sup>

This thesis will approach Schmitt's Anglophone reception over the last twenty years by splitting it into two broad phases, each defined by a set of conceptual concerns loosely corresponding to the political context of the two decades. During the 1990s, work on Schmitt largely focused on the critique of liberalism in his Weimar-era writings, reflecting issues that arose in the initial post-Cold War period: the fate of democracy in an increasingly consensual political world and the unresolved tensions in liberal constitutional thought. In the decade that followed, Schmitt's later work on global order from the 1930s–1960s increasingly became the focus of critical analyses. This shift of emphasis reflected the issues surrounding world ordering, humanitarian warfare and terrorist violence that came to prominence in the wake of the September 11<sup>th</sup>, 2001 attacks and the US-led 'war on terror'.

To some degree the concerns of each of these phases overlap. Analyses of Schmitt's work on international order appeared in the 1990s just as substantial studies on his constitutional theory emerged in the 2000s and of course studies of the latter decade built on those of the former. None-the-less, the arc of Schmitt's Anglophone revival more or less conforms to this change in focus. This framework has the benefit of highlighting how the reception of Schmitt's work has changed according to the political context in which it was received. In identifying the major strands of his work with the periods following the end of the Cold War and the attacks of September 11, 2001, I am not assuming a conception of historical development defined by clean breaks as opposed to conflict and multiple processes. Hence, I do not suppose that the 1990s were entirely determined by the end of the Cold War nor the last decade by the September 11, 2001 attacks. Rather, I highlight these events because they decisively shaped the political and intellectual concerns of the subsequent periods and the dominant discursive frameworks into which Schmitt's thought has been received. By approaching each of these phases in turn we will

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<sup>15</sup> See particularly: Gary Ulmen. Introduction to *The Nomos of the Earth* by Carl Schmitt, 9-36. New York: Telos, 2003; Gary Ulmen, Introduction to *The Theory of the Partisan* by Carl Schmitt, ix-xxi. New York, Telos, 2007.

be provided with a good indication of why Schmitt is considered relevant to contemporary political debates.

## **(2) *A Spectre is Haunting Liberalism***

The fall of the Berlin Wall in 1989 and the collapse of the Soviet Union in 1991 provided a dramatic opening for the new decade. For many these momentous events marked not only the end of the Cold War but signalled the historic triumph of liberal capitalism and a new dawn for world order. The American political scientist Francis Fukuyama famously trumpeted the ‘end of history’, arguing that liberal capitalist democracy had shown itself as the answer to the fundamental questions of human society.<sup>16</sup> The disintegration of the Soviet system was commonly regarded to have shown capitalism to be the superior path to economic prosperity and liberal democracy to be the political system able to satisfy the human desire for individual self-determination. Fukuyama’s claims may have been blatantly hyperbolic but the early post-Cold War years seemed to be vindicating Margaret Thatcher’s dictum: ‘there is no alternative’. By the early 1990s, liberal democratic systems were replicated across Eastern Europe and the former Soviet states, and the so-called ‘Washington Consensus’ embedded market-oriented economic policy in the heart of a newly ‘globalized’ world. Consensus in the economic sphere was to be coupled with a new vision of international order based upon a muscular, global humanitarianism.<sup>17</sup> With the eclipse of the Cold War, the defining political conflicts of the twentieth century could be dispensed with and a ‘new world order’ founded. Peaceful co-existence would be guided by the rational principles and humanitarian ethics enshrined in international institutions and guaranteed by the globe-spanning military might of the United States. Any remaining conflict in the world would now be merely the result of atavistic irrationality or moral failures that could be policed by international forces.

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<sup>16</sup> Francis, Fukuyama. *The End of History and the Last Man* (London; Hamish Hamilton, 1992)

<sup>17</sup> For a more detailed analysis of how the coordinates of the post-Cold War era shaped Schmitt’s reception in Anglophone debate see Jan-Werner Müller, *A Dangerous Mind*; William Rasch, “Introduction: Carl Schmitt and the New World Order,” *South Atlantic Quarterly* 104 (2005), 177-183. For a broader critical account of the liberal consensus of the 1990s see Peter Gowan, *The Global Gamble: Washington’s Faustian Bid for World Dominance* (London: Verso, 1999).

It might appear counter-intuitive that at the moment of liberalism's apparent triumph, one of its fiercest opponents would gain such prominence. However, it was precisely during the 1990s that Carl Schmitt's reception blossomed, if that word can be used. He arguably gained influence in Anglophone debates in the 1990s precisely *because* of liberalism's assuredness rather than despite it, as a diagnostician of the dangers that accompanied a complacent hegemonic liberalism.<sup>18</sup> Thus, two major strands of engagement emerged in the 1990s, both of which drew on Schmitt primarily as a critic of liberalism. On the one hand, those who feared that liberalism would bask in apparent victory, assuming its fundamental questions had been answered, drew on Schmitt as a ferocious anti-liberal opponent, to strengthen liberal thought. On the other hand, those who sensed danger in an increasingly narrow consensus based on liberal hegemony in domestic and international politics drew on Schmitt as a battering ram to escape its restrictions and reaffirm the possibility of an alternative politics beyond its banks.<sup>19</sup> In both instances Schmitt was approached as a perceptive analyst of liberalism's ailments, one whose solutions were, at best, inadequate and, at worst, catastrophic. Hence, he was to be read against the grain, or as Chantal Mouffe put it, "with and against Schmitt."<sup>20</sup> But to what degree these engagements were conducted 'with' and 'against' Schmitt differed considerably between his readers.

### **(i) *Illiberal Insights: Legal Positivism in the United States***

During the course of the 1990s the trenchant critique of liberal constitutionalism found in Schmitt's Weimar-era work became a key reference point for a number of thinkers in the

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<sup>18</sup> This was a point forcefully made by Reinhard Mehring in relation to the German context in the 1990s but arguably stands true more broadly as I will argue below. See Reinhard Mehring, "Liberalism as a 'Metaphysical System': The Methodological Structure of Carl Schmitt's Critique of Political Rationalism" in *Law as Politics: Carl Schmitt's Critique of Liberalism*, edited by David Dyzenhaus, 131-158. Durham, NC: Duke University Press, 1998.

<sup>19</sup> For a brisk example of the former view see: David Dyzenhaus. Introduction to *Law as Politics: Carl Schmitt's Critique of Liberalism*, edited by David Dyzenhaus, 1-20, Durham, NC: Duke University Press, 1998; Chantal Mouffe. Introduction to *The Challenge of Carl Schmitt*, edited by Chantal Mouffe, 1-6. London: Verso, 1999.

<sup>20</sup> Mouffe, Introduction, 6. Thinking 'with and against Schmitt' or pitting 'Schmitt against Schmitt' has been a common rhetorical strategy used by liberals and Leftist thinkers working with Schmitt in order to mark a distance from Schmitt even as they draw on his insights.

United States attempting to strengthen liberal political theory.<sup>21</sup> Schmitt had developed his critique of the Weimar Republic's liberal constitution with the view to replacing it. He believed an authoritarian Presidential regime could provide a decisive source of political stability adequate to cope with the volatile political context of early twentieth century Germany. This authoritarian anti-liberalism eventually led Schmitt to disastrously identify the National Socialist regime as a potential source of legitimate order.<sup>22</sup> Despite Schmitt's political orientation, liberal critics such as David Dyzenhaus, John P. McCormick and William Scheuerman argued that, if selectively engaged, Schmitt's bracing critique of liberalism could be used to strengthen it. Schmitt, it was argued, had posed a series of challenging questions to persistent problems in the liberal rule of law that it would be foolish to disregard on the basis of his complicity with Nazism. Indeed, it was argued that rather than pose a threat to liberalism, as its most intellectually agile opponent, he could provide insights needed to protect its values and institutions. Regarded by some as "an adversary of remarkable intellectual quality," Schmitt was granted the status of a respected devil's advocate against which liberalism could test itself.<sup>23</sup> In a rather perverse twist, the renowned anti-liberal was presented as an almost indispensable foil for honing liberal thought. As William Scheuerman argued, "if we are to preserve and strengthen the rule of law, we are intellectually and politically obliged to provide an answer to Schmitt's attack on it."<sup>24</sup> Thus, even from beyond the grave, Schmitt displayed his remarkable talent for making intellectual champions of his political enemies.

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<sup>21</sup> See: David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Herman Heller in Weimar* (Oxford: Oxford University Press, 1999); Dyzenhaus, ed., *Law as Politics*; John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997); William Scheuerman, *Carl Schmitt*. See also: Chantal Mouffe, *The Return of the Political* (London: Verso, 1993); Mouffe, ed., *The Challenge of Carl Schmitt* (1999). For a much more critical reading see: Peter Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The theory and Practice of Weimar Constitutionalism* (Durham, NC: Duke University Press, 1997).

<sup>22</sup> See: Gopal Balakrishnan *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2002); Joseph Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton, NJ: Princeton University Press, 1992). Bendersky's account is largely apologetic.

<sup>23</sup> Mouffe, *Introduction*, 1. Mouffe warned that, "ignoring his views would deprive us of many insights that can be used to rethink liberal democracy with a view to strengthening its institutions" (Ibid).

<sup>24</sup> Scheuerman, *Carl Schmitt*, 2.

Although Schmitt had developed his critique of liberalism in a very different political and historical context, his work has been considered capable of speaking “directly to some of the great dilemmas of our times.”<sup>25</sup> The problems Schmitt identified in liberal constitutionalism in the Weimar era found an echo in the 1990s. This was in part because Schmitt raised fundamental structural questions concerning liberalism’s ‘first principles.’ Furthermore, a triumphant liberalism reluctant to recognize its own antinomies intensified such historical reverberations. As the American critic Ronald Beiner argued (although no one could say the crises facing liberalism in the United States in the 1990s were as great as those of the Weimar Republic), “neither does it seem that the foundations of liberal politics are so secure, theoretically or politically, that reflection at the level of first principles has been rendered pointless.”<sup>26</sup> Thus, Beiner argued liberal thinkers such as Dyzenhaus turned to Schmitt because they knew that “philosophically, liberal principles have not (yet) established an unchallenged claim to normative authority.”<sup>27</sup>

Two of the most vexing questions that had occupied Schmitt during the Weimar years returned to the heart of debates within liberal legal and political thought in the 1990s. William Scheuerman argued that many of the initial analyses of Schmitt’s work in English had missed the vital question of the role that legal indeterminacy played in his thought.<sup>28</sup> This was an issue that was central, Scheuerman argued, to debates in liberal legal thought between legal positivists and their critics in the 1980s and 1990s, and gave Schmitt a sense of prescience. On the one hand, Scheuerman argued, Schmitt provided the most consistently challenging voice against the belief that a formal system of norms could provide an adequate basis for legal determination. If the problem of legal indeterminacy, or rather the role that personal decision-making played in a liberal constitution, remained, then Schmitt continued to pose problems. His arguments about the personal nature of sovereign power continued to profoundly trouble the rigid

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<sup>25</sup> Scheuerman, *Carl Schmitt*, 254.

<sup>26</sup> Ronald Beiner, Foreword to *Law as Politics: Carl Schmitt’s Critique of Liberalism*, edited by David Dyzenhaus (Durham, NC: Duke University Press, 1998), vii.

<sup>27</sup> *Ibid*, ix.

<sup>28</sup> Scheuerman, *Carl Schmitt*, 254.

formalism of the legal positivism, dominant in constitutional law in the United States.<sup>29</sup> On the other hand, Schmitt's example clearly indicated that anti-formalist critiques of the liberal rule of law from within liberal thought and 'critical legal studies' needed to remember that a greater degree of indeterminacy could also play into more authoritarian, and not only more progressive, solutions to persistent legal problems.

The second question, which David Dyzenhaus's work seized upon, was the problem of neutrality within the liberal rule of law. Schmitt had argued in the 1920s and early 1930s that the Weimar constitution and the parliamentary system failed to address the fundamental question of political legitimacy and instead retreated to the security of a 'neutral' legality. Schmitt, as Dyzenhaus notes, had wanted to highlight "the tension ... between a neutrality so neutral that anything goes and a neutrality which is a sham because in effect it privileges a partial liberal understanding of the good."<sup>30</sup> Such neutrality, on the one hand, left liberalism unable to defend itself against internal or external threats, as it could not define the substantial basis of its own legitimacy, and, on the other, it provided a legal disguise for the pursuit of particular interests. Hence, for Dyzenhaus, Schmitt's critique of legalistic neutrality provided a critical tool for unpacking the political deficit at the heart of legal positivism and the 'political liberalism' of John Rawls.

Both questions concern the political *outside* of law, the analysis of which Schmitt had placed at the centre of his work. By failing to address the political foundations of the system of legal norms, liberalism left itself unable to address external and internal threats that called the system into question. By taking the political outside of law as the starting point for his analysis, Schmitt, as Dyzenhaus noted, "accurately identified some difficulties liberalism encounters in dealing with important aspects of contemporary society."<sup>31</sup> But if some liberals believed that "seeing what our liberal world looks like from an illiberal point of view" might "do liberal politics some good" this was not

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<sup>29</sup> Scheuerman, *Carl Schmitt*, 4-11. The Introduction of Scheuerman's book provides an overview of the debates between the dominant strands of legal positivism and its critics from within the normative tradition, including Ronald Dworkin and John Rawls, and those from the 'critical legal studies' school.

<sup>30</sup> Dyzenhaus, Introduction, 15.

<sup>31</sup> Dyzenhaus, Introduction, 17.

because Schmitt offered answers to the unresolved problems he identified.<sup>32</sup> Dyzenhaus argued that Schmitt's "inability to provide alternatives, testifies to the paucity of his own positive thought, even... to its inherent dangers."<sup>33</sup> Scheuerman likewise agreed that whilst "Schmitt diagnosed serious problems within existing liberal democracy ... at each juncture his own theoretical responses exacerbated the problems at hand."<sup>34</sup> Thus, whilst these liberal thinkers sought to "honestly [acknowledge] the diagnostic merits of [Schmitt's] political and legal theory" he remained an intellectual opponent liberalism had to prove able to think 'against' rather than 'with.'<sup>35</sup>

## **(ii) *Driving Out the Devil with Beelzebub: Left Schmittians in the Post-Political Age***<sup>36</sup>

The first post-Cold War decade was a difficult time for the Left in Europe and North America. It had lost its political bearings in the wake of 'really existing socialism', the steady rise of neo-liberal hegemony since the late 1970s and the gradual erosion of class identities.<sup>37</sup> To some on this intellectually disorientated and politically defeated Left, Schmitt's thought appeared as a potential source of conceptual reinvigoration. It was perhaps a case of desperate times calling for desperate measures but his popularity on the Left is one of the most unusual aspects of his Anglophone reception.<sup>38</sup> This surge of interest was arguably a product of both an internal intellectual crisis of the 'New Left' and the broader crisis of Left politics in a context where the horizons of political possibility had been so thoroughly occupied by liberalism.

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<sup>32</sup> Beiner, Foreword ix.

<sup>33</sup> Ibid. 17. In his *Legality and Legitimacy* (1999) Dyzenhaus argues that other Weimar jurisprudence theorists such as Herman Heller and Hans Kelsen may provide better solutions to Schmittian problems at the core of contemporary legal debates when read alongside him.

<sup>34</sup> Scheuerman, *Carl Schmitt*, 25.

<sup>35</sup> Scheuerman, *Carl Schmitt*, 254.

<sup>36</sup> During the 1980s when Schmitt's critique of liberalism was being revived by German conservative thinkers with a new confidence Jürgen Habermas argued that appealing to Schmitt to strengthen liberalism was like trying to "drive out the devil with Beelzebub" (quoted in Sitze, *Introduction*, xxi). Much could be said of the Left's appeal to Schmitt to address its aporias today.

<sup>37</sup> For example see: Perry Anderson *The New Old World* (London: Verso, 2009); David Harvey *A Brief History of Neoliberalism* (Oxford: Oxford university Press, 2007).

<sup>38</sup> As William Hooker notes the Left's appropriation of Schmitt's work is "both the highest profile and the most counter-intuitive use" of his thought today. See: Hooker, *Carl Schmitt's International Thought*, 209.

The British political philosopher Mark Neocleous argued in 1996 that, “underlying the rehabilitation of Schmitt are ... the tensions within Marxist political thought.”<sup>39</sup> Marxism, Neocleous noted, was allegedly failing to take the political seriously and had hence fallen into crisis. In the context of this supposed political deficit in Marxist theory, Schmitt was offered “as one way of thinking ourselves out of the theoretical crisis.”<sup>40</sup> “The crisis” Neocleous bitterly remarked, had “reached a point where fascists are being used as the basis for a revitalized and rejuvenated socialist political theory.”<sup>41</sup> Thus, the appeal to Schmitt as a source of intellectual renewal always carried with it a hint of desperation given the declining political fortunes of the Left.<sup>42</sup> Reflecting on Schmitt’s influence on the Left during the 1990s, Jan-Werner Müller argued that the appeal to Schmitt “showed to what extent the Left had run out of conceptual resources to rally against an apparently triumphant liberalism.”<sup>43</sup> The Left, Müller argued, “simply lacked the theoretical language for an alternative model of social reality” and retreated to a position of anti-liberal critique.<sup>44</sup>

Despite the criticism of those who argued that the Left should pick its friends more wisely, Schmitt’s popularity rose rapidly over the course of the decade. He became a

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<sup>39</sup> Mark Neocleous, “Friend or Enemy?: Reading Schmitt Politically,” *Radical Philosophy* 176, (1996) 13.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid, Neocleous’ understandable complaint was that those on the Left turning to Schmitt were forgetting his fascism, and indeed often actively repressing it. He argues that those such as Mouffe “who suggest that Schmitt’s approach is useful but his solutions unacceptable fail to realize that Schmitt’s solutions *follow* - logically, theoretically, politically from his premises” (Ibid). Whilst Neocleous’s wariness is certainly justified I think his claim here is debatable. I will return to the question of the relationship between Schmitt’s Nazism and his thought in Chapter 3.

<sup>42</sup> This is especially true when other thinkers more readily associated with the Left who explicitly formulated theories of political action such as Hannah Arendt and Antonio Gramsci did not become such frequent reference points. Although a certain reading of Gramsci lay at the centre of Laclau and Mouffe’s collaborative work in the 1980s his influence was eclipsed almost entirely by Schmitt’s in Mouffe’s writings since the early 1990s. One suspects that the specific appeal of Schmitt’s concept of the political lay partly in the affective charge of his friend-enemy distinction and the transgressive thrill of association with the ‘Crown Jurist’. The powerful ‘aesthetics of anti-liberalism’ that Müller attributes some of Schmitt’s wide appeal to is just as much a feature of the Left as it is of the Right. See: Müller, *A Dangerous Mind*, 249.

<sup>43</sup> Müller, *A Dangerous Mind*, 223.

<sup>44</sup> Ibid. In the 1980s the German social theorist Jürgen Habermas memorably argued that the Left’s appropriation of Schmitt critique of liberalism aimed to “drive out the devil with Beelzebub.” Quoted in Adam Sitze, Introduction to *Political Spaces and Global War* by Carlo Galli (Minneapolis: University of Minnesota Press), xxi. Although this comment was made in the context of Habermas’ conflict with the conservative revisionist historian Ernst Nolte in the 1980s ‘historians debate,’ it still offers a biting critique of Left Schmittians.

“strange substitute for a discredited Marxism of old,” a thinker who could provide a point of specifically *political* orientation in the wake of economic defeat and provide a framework for imagining new forms of Leftist political identity in lieu of class antagonisms.<sup>45</sup> Hence, during the 1990s Schmitt’s thought became strongly identified with so-called ‘post-Marxist’ thinkers, such as Ernesto Laclau, Chantal Mouffe and Slavoj Žižek, who sought to rethink radical Left politics in a world that no longer corresponded to the binaries of Marxist class antagonisms but was defined by a plurality of identities and social forces.<sup>46</sup> Schmitt was thus cast as a thinker who could help the Left maintain *political* struggle after its foundation in class identities had dissolved. In a sense Schmitt’s concept of the political, understood as an antagonistic dynamic, quasi-autonomous of other social spheres, provided the ‘post-Marxist’ Left with a useful tool to rethink the possibilities for political struggle beyond the economic sphere.<sup>47</sup>

Perhaps more than anything else however, Schmitt’s work seemed to establish that there *was* the possibility of an alternative. As the American critic William Rasch argued, in Schmitt the Left found a way of “establishing the logical possibility of legitimate political opposition.”<sup>48</sup> By absorbing a theory of inherently conflictual social relations from Schmitt’s work, the Left confirmed that politics could neither be stably hegemonized nor overcome altogether. He provided a firm rebuttal to liberalism’s most utopian advocates and a sense of comfort to a Left on the back foot in the wake of the Cold War. The American Leftist Gopal Balakrishnan closed his 2000 biography of Schmitt’s with the claim that “lurking behind the contemporary interest in Carl Schmitt is the sense that this present cannot last forever.”<sup>49</sup> But in the world of “diminished expectations, cancelled

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<sup>45</sup> Hooker, *Carl Schmitt’s International Thought*, 211.

<sup>46</sup> See: Ernesto Laclau and Mouffe, *Hegemony and Socialist Strategy* (London, Verso, 1985); and Slavoj Žižek, “Carl Schmitt in the Age of Post-Politics,” in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Verso, 1999), 18-37.

<sup>47</sup> Unmoored from the strictures of class identification, the political could be conceived of as a more dynamic force that could draw on any area of social conflict. This was precisely the appeal to Chantal Mouffe as she tried to reconfigure a theory of hegemonic politics for the new conditions of pluralist liberal democracies. See for example: Mouffe, *On the Political* (2005).

<sup>48</sup> William Rasch, *Sovereignty and Its Discontents: On the Conflict and the Structure of the Political* (London: Birkbeck Law Press, 2004), 13.

<sup>49</sup> Balakrishnan, *The Enemy*, 268.

alternatives, and closed political horizons” that Balakrishnan depicted, this ‘sense’ seemed as much the product of wishful thinking as political analysis.<sup>50</sup>

For liberal thinkers such as Fukuyama, the melting of the Cold War ice caps had revealed a promised land of liberal utopianism. It was to be a peaceful land of economic plenty run on the basis of rational consensus where the aspirations of every individual could be recognized and old conflicts assigned to history. To thinkers on the Left such as Chantal Mouffe and Slavoj Žižek, the belief in this liberal idyll was laying the foundations for what they referred to as an ‘age of post-politics.’<sup>51</sup> According to these thinkers, a hegemonic liberalism had radically repressed the antagonistic dimension of social relations in order to establish a universal consensus on an increasingly narrow set of terms. The concept of the political was understood, by Mouffe, Rasch, Žižek and other Left thinkers, as an ontological category.<sup>52</sup> As such, political antagonism was taken to be a constitutive element of social relations and could neither be eliminated nor overcome. By claiming to represent the final, most rational and ethical form of social organization Schmitt’s ‘post-Marxist’ readers claimed liberalism sought to deny this constitutive antagonism. In this reading, the specificity of liberal hegemony lay in its denial of politics as such, or rather, following Schmitt’s critique, the displacement of politics into the spheres of economics and ethics. Thus, any genuinely *political* difference was excluded and opponents of the universal liberal consensus could thus be branded as irrational or immoral and excluded from the sphere of politics. By examining the post-Cold War world through the lens of the political, it was possible, Mouffe argued, to see “how much the process of neutralization and depoliticization, already noted by Schmitt, has progressed.”<sup>53</sup>

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<sup>50</sup> Ibid.

<sup>51</sup> See: Mouffe, *On the Political* (2005); and Slavoj Žižek, “Carl Schmitt in the Age of Post-Politics” (2009). The concept of post-politics is deeply indebted to the work of French philosopher Jacques Rancière’s book *Disagreement* that originally appeared in French in 1995. In his article on Schmitt and in many other instances since Žižek has acknowledged the influence of Jacques Rancière but he receives only fleeting mention in Mouffe’s work.

<sup>52</sup> See for example; Mouffe, *On the Political*; Rasch, *Sovereignty and Its Discontents*; and Slavoj Žižek, *The Ticklish Subject* (London: Verso, 2000). This ontological reading of the political is typical of the influence of post-foundational thought on the reception of Schmitt in recent Anglophone debates. The significance of this influence will be discussed below.

<sup>53</sup> Mouffe, Introduction, 2.

Hence, for Schmitt's Left readers such as Mouffe and Žižek, the liberal hegemony of the 1990s enforced a repressive 'post-political' consensus that denied political difference and dispensed altogether with the debate over alternative visions of society. In this context, Žižek argued, "*reference to Schmitt is crucial in detecting the deadlocks of post-political liberal tolerance.*"<sup>54</sup> The critics of 'post-politics' thus followed Schmitt's lead in locating the source of liberalism's problems in the repression of the political. First of all, as a constitutive feature of social relations, political difference would not simply vanish because it was denied. "To deny antagonisms in theory ... does not make them disappear" as Mouffe warned.<sup>55</sup> The political would therefore return to haunt liberalism in the form of, potentially very illiberal, antagonisms. It was argued that by denying legitimate channels for the expression of political differences inside the political system, antagonisms were allowed to grow more extreme outside. By excluding "the political proper", 'post-politics' in fact prompted the return of a violent "ultra-politics" based precisely upon absolute categories of Us and Them.<sup>56</sup> For Mouffe and Žižek, this dialectic of exclusion and intensification explained a number of political phenomena that disturbed the supposed liberal utopia of the 1990s. Mouffe argued that the rise of Right wing populist movements in Europe and the United States and the emergence of the global terrorist organizations such as al Qaeda were, at least in part, the product of the depoliticizing liberal consensus that denied legitimate political difference.<sup>57</sup> Directly echoing Schmitt's critiques of international law from the 1930s, Mouffe argued that political difference would "continue to manifest themselves but with the proviso that now they can be perceived only as eruptions of the 'irrational' by those liberals who have denied their existence."<sup>58</sup> Likewise, Žižek argues that 'excessive' ethnic or religious fundamentalist violence was the necessary flipside of "depoliticized 'humanitarian' operations," each resulting from the denial of political difference.<sup>59</sup> Both subscribed to

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<sup>54</sup> Žižek, Carl Schmitt in the Age of Post-Politics, 3.

<sup>55</sup> Mouffe, Introduction, 3.

<sup>56</sup> Žižek, Carl Schmitt in the Age of Post-Politics, 29-31.

<sup>57</sup> See Chapter 4 or Mouffe, *On the Political* (2005). See also: William Rasch, "Human Rights as Geopolitics: Carl Schmitt and the Legal Form of American Supremacy," *Cultural Critique* 54 (2003), 120-147; and Slavoj Žižek, *Welcome to the Desert of the Real* (London: Verso, 2002)

<sup>58</sup> Mouffe, Introduction, 3.

<sup>59</sup> Žižek, Carl Schmitt in the Age of Post-Politics, 31.

the Schmittian line that the dangerous other side of liberal depoliticization was the escalation of conflict.

Thus, Schmitt's 'post-Marxist' readers located the contradictions of the 'post-political' age in liberalism's denial of the constitutive role that political antagonism plays in social relations. But the question remained as to how 'the political' itself was to be dealt with. Žižek and Mouffe both agreed that 'the political proper', and hence political difference, had to be re-asserted but they parted ways on precisely how. Mouffe, always the more Schmittian of the two, used Schmitt's distinction between liberalism and democracy as a way to develop a more plural understanding of democracy.<sup>60</sup> She argued that, by denying any real substantive difference of opinion on the nature of social order, 'post-political' liberal democracy denied the essential role that difference and antagonism play within a pluralist democratic politics. Hence, for Mouffe, the remedy was to introduce a greater degree of political difference, and hence antagonism, back into democratic politics. However, this would not be a violent clash between those who shared no common ground. Rather, Mouffe argued that the 'shared symbolic space' of democracy would allow 'antagonistic' differences to be transformed into 'agonistic' differences between respected adversaries.<sup>61</sup> "By creating the conditions for possible conflicts to take the form of confrontations among adversaries (agonism)", she argued that 'agonistic democracy' "attempts to avoid a frontal struggle between enemies (antagonism)."<sup>62</sup> Hence, Mouffe's 'agonistic' democracy provided a democratic answer to the limits of 'post-political' liberalism and yet domesticated the Schmittian political. However, the problem remained of precisely how to constitute a 'shared symbolic space' where 'antagonism' could find 'agonistic' expression. Was the nature of this 'shared symbolic space' itself a matter of democratic dispute or was it rather beyond question? In other words, what were the limits of the political? The lack of an answer to this left Mouffe's work suspended between an

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<sup>60</sup> Mouffe's attempt to use Schmitt to develop a more plural understanding of democracy in contrast to a consensual liberalism stands at odds with Schmitt's own analysis that contrasted democratic homogeneity with liberal pluralism. Mouffe in other words, carries out a switch of Schmitt's categories.

<sup>61</sup> The task for democratic theory in Mouffe's view must be to devise "ways that *antagonism* can be transformed into *agonism*." See: Mouffe, Introduction, 5.

<sup>62</sup> Ibid, 4.

attempt to push a radicalized understanding of democracy and a slightly widened understanding of the liberal system she critiques for being depoliticized.

If Mouffe was committed to introducing a greater degree of difference into the political sphere, she remained deeply wedded to a Schmittian conception of difference as the horizon of politics. Žižek, by contrast, had a more ambivalent relationship to political difference and hence to Schmitt's concept of the political. From his perspective, Schmitt was the high priest of 'ultra-politics'; "the attempt to depoliticize [social] conflict by bringing it to its extreme, via the direct militarization of politics."<sup>63</sup> In the eyes of the Slovenian philosopher this was the "most cunning and radical version" of an anti-politics as it sought to disavow the conflicts internal to the social body by externalizing them in the form of war with enemies.<sup>64</sup> Thus, rather than seek a return of this Schmittian ultra-politics, which is "the form in which the foreclosed political returns in the post-political universe," or somehow attempt to domesticate it à la Mouffe, Žižek argues that it should be opposed with a different understanding of the political. The dimension of antagonism returns to the social body in the form of a conflict between the "structured social body, where each part has its place, and the 'part of no-part' which unsettles this order" in the name of All.<sup>65</sup> "Politics proper", he writes, "always involves a kind of short circuit between the Universal and the Particular: it involves the paradox of a singular which appears as the stand-in for the Universal, destabilizing the 'natural' functional order of relations in the social body."<sup>66</sup> Thus, although Žižek had found Schmitt a useful tool for critiquing the 'deadlocks of the post-political' he develops an understanding of the political in direct opposition to his 'Us against Them' conception. Rather than stay within the horizon of political difference and affirm the difference between particular identities,

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<sup>63</sup> Žižek, Carl Schmitt in the Age of Post-Politics, 29.

<sup>64</sup> In a comment which showed his excellent understanding of Schmitt's work and a path to an adequate Leftist response to it Žižek argued as follows: "The clearest indication of [the] Schmittian disavowal of the political is the primacy of external politics (relations between sovereign states) over internal politics (inner social antagonisms) on which he insists: is not the relationship to an external Other as the enemy a way of disavowing the *internal* struggle which traverses the social body? In contrast to Schmitt, a leftist position should insist on the unconditional primacy of the inherent antagonism as constitutive of the political." (Ibid, 29)

<sup>65</sup> Ibid, 27-28. This is a conception of politics much indebted to the work of the French philosophers Jacques Ranciere and Alain Badiou, two thinkers associated with post-foundational political thought.

<sup>66</sup> Ibid, 28.

Žižek argues that the reintroduction of political difference is paradoxically a way to affirm political universality. This universalization set Žižek's account at odds with Mouffe's who, having "taken Schmitt to head and to heart", often seems content to read 'with' Schmitt rather than 'against' him.

### **(iii) *Different Differences: the Post-Foundational Left & the New Right***

Despite their distinct approaches to Schmitt's concept of the political, Mouffe and Žižek both locate its importance in the relationship between politics and difference. It is this concern that allows their work to be identified with the broader trajectory of Schmitt's reception in 'post-foundational' political thought in Europe.<sup>67</sup> The manner in which Schmitt's work has been taken up by post-foundational political thinkers has had a profound impact on Schmitt's recent Anglophone reception. This influence has been exercised not only through the direct engagements with Schmitt's thought made by a number of post-foundational thinkers (including Mouffe and Žižek), but also indirectly through the role Schmitt's concept of the political has played in shaping post-foundational political thought more widely. This is not the place to provide a genealogy of post-foundational thought or of Schmitt's influence within it, although this would certainly make a welcome study. It is nonetheless important to note the basic contours of this relationship given the influence post-foundational thought has had on the Anglophone reception of Schmitt's thought.<sup>68</sup>

Post-foundational political thought as it has developed in France since the 1960s has been shaped by the convergence of two factors. On the one hand the attempt to rethink the possibilities for emancipatory politics in the wake of the radical Left's defeat in 1968 and

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<sup>67</sup> I take the term 'post-foundational' from Oliver Marchart's *Post-Foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau*, (Edinburgh: Edinburgh University Press, 2007). I follow Marchart in using the term 'post-foundational' as opposed to the more common post-structuralist as the latter term remains tethered too closely to an opposition to structuralist tradition. As Marchart argues the common basis shared by post-foundational thinkers is a critical focus on the 'conditions of possibility' for the foundations of a system of identity rather than the foundations themselves.

<sup>68</sup> Both ventures would make useful additions to the assessment of Schmitt's impact on post-war French political thought and specifically the New Left after 1968 but this work is still awaited. Oliver Marchart provides some framing remarks concerning the relationship between Schmitt's work and post-foundationalism but these are not developed extensively.

French philosophy's ongoing struggle with the legacy of Heideggerian phenomenology. A post-foundational thought can be understood to have extended Heidegger's critique of metaphysics to the field of political thought in order to rethink the ontological presuppositions of traditional political concepts.<sup>69</sup> The result has been an approach that examines political questions as ontological and a thoroughgoing critique of all concepts of political foundations. The reception of Schmitt's thought within the French 'Left Heideggerians' should be understood against the backdrop of this intellectual and political context.<sup>70</sup>

The key concept that post-foundational thought has drawn from Schmitt's thought is the distinction between politics and the political. This distinction was introduced to French Left as early as 1957 by Paul Ricoeur in his article *The Political Paradox* but was later developed by Claude Lefort in his influential 1988 book *Democracy and Political Theory*.<sup>71</sup> The key innovation made by post-foundational thought was to render this distinction between politics and the political in ontological terms. Mapped against Heidegger's so-called 'ontological difference', the difference between *beings* and *Being*, the political was understood to refer to the ontological level of the conditions of possibility for politics, while politics refers to the specific contingent instantiations of the political. This distinction has been crucial to Schmitt's recent Anglophone reception on the Left, in particular, in the work of Mouffe, Rasch and Žižek.<sup>72</sup> The appeal of the political has been to reveal the contingency of any particular political order and thus the possibility for the rearticulation of new, albeit contingent, political foundations. Hence, the post-'68 liberal order was not only historically, but also ontologically contingent and a Left alternative thought possible. Perversely then, Schmitt is something of a founding father of post-foundational thought.

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<sup>69</sup> See: Marchart, *Post-Foundational Political Thought*. Particularly Chapter 1.

<sup>70</sup> Ibid, 11.

<sup>71</sup> Paul Ricoeur, "The Political Paradox" in *History and Truth* (Evanston, IL: Northwestern University Press, 1992), 247-270.

<sup>72</sup> See Mouffe (2005) and Žižek (2000). Numerous prominent thinkers working in the tradition of post-foundational thought have engaged seriously with Schmitt's thought, including Etienne Balibar (2004), Judith Butler (2004) and Phillipe Lacoue-Labarthe and Jean-Luc Nancy (1997) amongst others.

It is also important here to acknowledge the influence of the engagement with Schmitt in a number of works by the late French philosopher Jacques Derrida. Derrida was the towering figure of late twentieth century philosophy and his thought has had a deep impact on Anglophone social sciences and humanities since the 1980s. His engagement with Schmitt was thus a significant step in the reappraisal of the latter's work in the Anglophone academy, particularly in the United States. Derrida's late work from the 1990s until his death in 2004 was characterized by a much remarked-upon 'turn' to ethical and political themes.<sup>73</sup> Direct and indirect engagement with Schmitt's concepts of the political and sovereignty became central to this last phase of his work.<sup>74</sup> The most explicit engagement came in *The Force of Law* (1990) and *The Politics of Friendship* (1995) two texts that have served to significantly shape the reception of Schmitt's work in the Anglophone academy over the last two decades.<sup>75</sup> Derrida's rather respectfully depicted Schmitt as a "besieged watchman ... more attuned than many others to the fragility and 'deconstructible' precariousness of structures, borders, axioms that he wished to protect, restore and 'conserve' at all costs."<sup>76</sup> This fearful sensitivity to the tenuous nature of political order made Schmitt, in Derrida's eyes, a uniquely lucid critic of political foundations. This identification of Schmitt as something like a post-foundational thinker *avant la lettre* is not unique to Derrida but the intellectual high regard and the relatively wide readership Derrida enjoyed in many European languages arguably helped win Schmitt a new audience if not quite a newfound respectability.<sup>77</sup>

If rendering Schmitt's distinction between politics and the political in ontological terms has made him a key reference point for post-foundational thinkers of the French Left, a very different reading of the relationship between difference and politics in his thought

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<sup>73</sup> See: W.T.J. Mitchell and Arnold. Davidson, ed., *Late Derrida* (Chicago, IL: University of Chicago Press, 2007)

<sup>74</sup> This influence is apparent from his seminal 1990 essay "The Force of Law" up until his last major work. See: Jacques Derrida, "The Force of Law: the Mystical Foundations of Authority" in *Acts of Religion* (London: Routledge, 2001), 228-298; Jacques Derrida, *Rogues* (Stanford, CA: Stanford University Press, 2004).

<sup>75</sup> Derrida's deepest engagement with Schmitt was found in *The Politics of Friendship* (London: Verso, 2005), where he probed Schmitt's famous definition of the political as the relations between friend and enemy in relation to the possibility of a politics whose horizon would be friendship rather than enmity.

<sup>76</sup> Derrida, *The Politics of Friendship*, 107 n4.

<sup>77</sup> Mouffe also claims that Schmitt's thought displays a character that will later be associated with 'post-structuralism'. See: Mouffe, *On the Political*, 14.

has made him an intellectual hero of the European New Right. This chain of influence has been less remarked upon within English language debates likely because the thinkers of the European New Right tend to have less impact on the Anglophone academy than those of the European New Left. Whilst thinkers such as Jacques Derrida, Giorgio Agamben and Slavoj Žižek have enjoyed public prominence in Anglophone intellectual circles, the names of Schmitt-inspired scholars of the European New Right such as the late Italian political philosopher Gianfranco Miglio and Alain de Benoist remain relatively obscure. This should not however be taken as a sign of their relative importance within the public discourses of their different national contexts. For example, Miglio was not only instrumental in re-introducing Schmitt's thought to Italian audiences in the 1970s but he was also elected to the Italian Senate as an independent for Umberto Bossi's Northern League, a party whose anti-immigrant and federalist ideology he helped to shape.<sup>78</sup> Schmitt's thought has mostly been of interest to the New Right as an intellectual resource for asserting the importance of particular cultural identities in underpinning political order in contrast to a supposedly 'weak' liberal multicultural pluralism. This has taken different forms in the different national and historical contexts, from the Italian federalism of Miglio to the assertion of European cultural superiority by the don of the French *Nouvelle Droit*, Alain de Benoist.<sup>79</sup>

This appropriation of Schmitt's work seems to be markedly at odds with his recent reception on the Left, but there have none-the-less been some strange convergences. The New York-based journal *Telos*, instrumental in crafting Schmitt's Anglophone reception since the 1980s, has steadily moved to the Right since its inception as a vehicle for New Left thought in the United States. The journal has made a virtue of introducing taboo figures from the European Right to its pages, not only Schmitt and Ernst Jünger but also those associated with the contemporary European New Right such as Miglio and de Benoist.<sup>80</sup> This has been reflected by the change of orientation of the editorial board. The

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<sup>78</sup> For more on Miglio's relationship to Schmitt see Müller, *A Dangerous Mind*, 207-219.

<sup>79</sup> For more on de Benoist's relationship to Schmitt see Müller, *A Dangerous Mind*, 207-219.

<sup>80</sup> *Telos* have been constant champions of de Benoist's work, frequently including articles on his thought, reviews of his work and original contributions as recently as 2011. See for example: Alain de Benoist, "The Current Crisis of Democracy." *Telos* 156 (2011), 7-23. Its pages have also played host to Miglio's work. See: Gianfranco Miglio, "The Cultural Roots of the Federalist Revolution". *Telos* 97 (1997). 33-40.

late Paul Piccone, Paul Gottfried and Gary Ulmen, all major proponents of Schmitt's thought, have all moved towards a strange ideological position characterized by a mix of populism, communitarianism and federalism that seeks to assert 'organic' communities against a 'technocratic' and 'managerial' liberal state.<sup>81</sup> More recently de Benoist has appeared in the edited volume of articles dedicated to Schmitt's *The Nomos of the Earth* alongside thinkers associated with Left-leaning International Relations and political theory scholars, including Chantal Mouffe.<sup>82</sup> Indeed, the similarity of the positions held by figures from opposite ends of the political spectrum, such as de Benoist and Mouffe, should be a cause of some concern for those seeking to make use of Schmitt's work in a radical Left politics. Both fundamentally appeal to the powerful constitutive conception of political difference in Schmitt's work. There is a very little separating the Right and Left appropriation of Schmitt's understanding of the relationship between difference and politics even if Mouffe's understanding is relatively 'anti-essentialist' in contrast to that of de Benoist. Jan-Werner Müller has argued that the peculiar intellectual bedfellows that have been made through a shared interest in Carl Schmitt's work is one of the striking aspects of his reception in post-war Europe, and this has been no less the case in his Anglophone reception since the early 1990s.

### ***(3) The Exception as Norm: Carl Schmitt in the Post-911 World***

If the initial phase of Schmitt's Anglophone reception in the 1990s focused on the critique of liberal constitutionalism found in his Weimar writings, a whole new crop of concerns drawn from a different set of texts emerged during the next decade. During the 2000s a set of debates emerged around Schmitt that drew on his later work on international law, geopolitical order and the changing nature of warfare and imperialism in the twentieth century. This shift of focus breathed new life into Schmitt's Anglophone reception and signalled a second phase of his 'renaissance'. A new image of Schmitt as a powerful critic of the hypocrisies of liberal international law and humanitarian warfare

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<sup>81</sup> See for example: Paul Gottfried, *After Liberalism: Mass Democracy in the Managerial State* (Princeton, NJ: Princeton University Press, 1999).

<sup>82</sup> See: Alain de Benoist, "Global Terrorism and the State of Permanent Exception: The Significance of Carl Schmitt's Thought Today" *The International Political Thought of Carl Schmitt* edited by Odysseos and Petiti, 73-96. Oxford: Routledge Press, 2007.

appeared; one that appealed to critics of US foreign policy and the ‘liberal way of war’ from across the political spectrum. There had been very little engagement with his work on international law and geopolitical order in Anglophone debates during the 1990s, although isolated examples had appeared.<sup>83</sup> This is perhaps surprising given the widespread Anglophone debate on military interventionism during the 1990s. Schmitt’s work did not appear to be a reference point in the English language debates around the US intervention in Somali in 1993 or the NATO campaigns in Bosnia and Herzegovina in the mid-1990s nor Kosovo in 1998-1999.<sup>84</sup> However, by the late-2000s it had become *de rigueur* to approach Schmitt as a thinker who could offer insights into the nature of warfare and international law at the start of the new century. A second factor to note about the second phase of Schmitt’s Anglophone ‘revival’ during the last ten years was the massive, exponential growth of interest in his work. If the 1990s witnessed a ‘revival’ of interest in Schmitt, the following decade experienced a veritable boom in Schmitt studies. Indeed, as the American legal theorist Adam Sitze recently remarked, it appeared in the middle years of the last decade that Schmitt was “well on the way to being the theorist *du jour*.”<sup>85</sup> Thus, in the 2000s Schmitt’s work was not only considered to have a new relevance previously obscured, but also won a considerable new audience and gained wider influence.

This rapid growth of interest in Schmitt’s work and the shift in focus in his reception can be accounted for by the interaction of three principal factors. The first is the political context of his Anglophone reception: If the first phase of Schmitt’s ‘revival’ had been shaped by the concerns of the first post-Cold War decade, the second was forged in the wake of the attacks of September 11 2001 and the US led ‘war on terror’ that followed. The post-911 moment raised a series of issues around sovereignty, warfare and

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<sup>83</sup> See for example: Wolfgang Palaver, “Carl Schmitt on *Nomos* and Space,” *Telos* 106 (1996), 105-127; Jean-François Kervégan, “Carl Schmitt on World Unity” in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe. (London: Verso, 1999), 54-74; Anthony Carty, “Carl Schmitt’s Critique of Liberal International Legal Order Between 1933 and 1945,” *Leiden Journal of International Law* 14 (2001), 25-76.

<sup>84</sup> There were some exceptions although most came after the fact. See for example: Grigoris Ananiadis, “Carl Schmitt on Kosovo, or, Taking War Seriously,” in *Balkan as Metaphor: Between Globalization and Fragmentation*, edited by Dusan I. Bjelic’ and Obrad Savic’. 117-160. Cambridge, MA: MIT Press, 2002; Danilo Zolo, *Invoking Humanity: war, law and global order* (London: Verso, 2002).

<sup>85</sup> Adam Sitze, introduction, lxii.

geopolitical ordering to which Schmitt's work on international order was considered germane. However, the manner in which his work was read in relation to the context was shaped by two further textual factors: the influence of the Italian philosopher Giorgio Agamben and the translation of previously unavailable texts of Schmitt's into English. Agamben's work exercised an enormous influence on the Anglophone reception of Schmitt during the last decade. Not only did the Italian thinker introduce Schmitt's concepts of sovereignty and the state of exception to new, and perhaps wider, audiences, but he set them in productive dialogue with the concept of biopolitics drawn from the work of the French philosopher Michel Foucault. Reading Schmitt in relation to biopolitics has become one of the dominant approaches to his work, and has done much to influence the sense of topicality his work has been considered to have in the 'post-911' world. Thirdly, the translation of key Schmitt texts dealing with international law and geopolitical order has made work available for the first time for Anglophone audiences. The most significant book to appear has been Schmitt's 1950 masterwork, *The Nomos of the Earth*, published in English by Telos Press in 2003. This was followed in 2007 by Schmitt's short 1962 text *The Theory of the Partisan*, also published by Telos Press. These texts have stirred debate in a number of disciplines including Political Theory and, most recently, Geography, but their deepest impact thus far has been felt in International Relations. In what follows I will examine how the interaction of these factors contributed to the massive surge of interest in Schmitt as an 'international' thinker that has defined the second phase of his 'revival' during the 2000s.

### **(i) *New World (Dis)Order***

The attacks of September 11 2001 in New York and Washington seemed to puncture the utopian dreams of liberalism in the 1990s. If the end of the Cold War had for some signalled the imminent 'end of history', then these horrific attacks saw history return dramatically. The attacks were squarely aimed at the political and financial hearts of U.S. power and since they were carried out by al-Qaeda, a non-state group who few had ever heard of, they appeared to scramble the co-ordinates of world order and question the self-evidence of America's global supremacy. The sense of collective shock was felt far

beyond the United States and there was a worldwide outpouring of sympathy. If this initial sense of shared resolve in the face of global terrorism smoothed the way for the U.S. led NATO war in Afghanistan in October 2001, it had dissolved by the time that U.S. and U.K. forces invaded Iraq in March 2003. The response of President George W. Bush's administration to the September 11 attacks led to a highly partisan politicized context both within the United States and globally. The wars in Afghanistan and Iraq were to be just the first strikes in a so-called global 'war on terror' characterized by an ongoing campaign to eradicate any 'terrorist' threat to U.S. interests anywhere in the world; a war unlimited in spatial or temporal scope that encompassed the entire population of the earth.<sup>86</sup> President Bush highlighted the significance of these operations in an address to a joint session of Congress on September 20 2001 when he famously warned that, "either you are with us, or you are with the terrorists."<sup>87</sup> This highly provocative and divisive response to the attacks of September 11 was replicated on the domestic front. The exceptional threat of future terror attacks was used to justify the introduction of controversial legislation curbing civil liberties and permitting widespread surveillance, such as the USA PATRIOT Act first passed by Congress a month after the attacks.

While exceptional legal measures were rolled out to respond to domestic terror threats, military operations aimed at policing global terror networks were launched in Afghanistan and Iraq, and the line between domestic and international was blurred by the emergence of new subjects and new spaces with a liminal relationship to both the domestic laws of the United States and International Law. As part of the global 'war on terror', a program of extraordinary rendition was introduced whereby the United States Central Intelligence Agency (C.I.A.) abducted those suspected of links to terrorist organizations and transported them to secret prisons for internment and interrogation. Likewise, those detained during combat operations in Afghanistan, including U.S.

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<sup>86</sup> See for example President Bush Releases National Strategy for Combating Terrorism, February 14, 2003: <http://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030214-7.html>

'Operation Enduring Freedom', the official name for the Afghanistan mission also provided an umbrella for military operations in the Philippines, the Horn of Africa and the Sahara/Sahel regions of Africa.

<sup>87</sup> See President George W. Bush 'Address to a Joint Session of Congress and the American People', September 20, 2001: <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>

citizens, were deemed ‘illegal enemy combatants’ or ‘unlawful combatants’ and transported to detention camps at the U.S. military base at Guantanamo Bay in Cuba. Neither group were formally charged with any crime and faced indefinite detention without trial in detention centres, deemed to be outside the jurisdiction of United States courts and denied the protection of International Law. Many were subject to the ‘enhanced interrogation techniques’ introduced to C.I.A and Department of Defence (DoD) operations as part of the effort to combat ‘terror’, which, many critics claimed, amounted to torture. These measures were widely criticized for ignoring the legal protections afforded to suspects in legal cases, the rights granted to prisoners both under U.S. and International Law and disrespecting the sovereignty of states from whose jurisdiction suspects were abducted.

Whilst some of the neoconservatives occupying powerful positions in the Bush administration saw the post-911 moment as a chance to shape a ‘New World Order’ around American interests, it appeared that the ‘war on terror’ was contributing rather to the rapid spread of a dangerous global disorder.<sup>88</sup> Whatever degree of stability and accountability existing institutions of international law had been providing seemed to be crumbling under the force of an American administration committed to a seemingly limitless conflict against an amorphous and ill-defined global enemy—a process that had already led to the invasion and occupation of two states and the dismantling of the domestic and international statute books. It was precisely within this context that Carl Schmitt’s work on international law and geopolitical order emerged as a source of seemingly apt insights into the changing nature of international law, global ordering and modern warfare.

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<sup>88</sup> There has been an abundance of commentary on the neoconservative influence on the Presidency of George W. Bush and do I not wish to add to this here. Several commentators have linked the neoconservatives in the Bush administration to Carl Schmitt’s work, usually through rather spurious and unsubstantiated links to Leo Strauss’s students but often through mere innuendo. For a recent example, typically lacking any supporting evidence, see for example, Benno Teschke’s claim that the foreign policy of the Bush Presidency “actualized” Schmitt’s thought. See: Benno Teschke, “Decisions and Indecisions,” *New Left Review* 68 (2011), 61-95. Chantal Mouffe has rightly corrected this view by pointing out that the Bush Presidency’s foreign policy was typical of the universalistic dissolution of international order that Schmitt critiqued in U.S. foreign policy since Woodrow Wilson. See: Chantal Mouffe, “Schmitt’s Vision of a Multipolar World Order,” *South Atlantic Quarterly* 104 (2005), 245.

Schmitt had largely crafted this work on international law between the early 1930s and the early 1950s as a series of polemics against the crisis of state sovereignty he located in the creeping moralization of warfare following the Versailles Treaty and the expanding global reach of U.S. interventionism. His aim had been to hail the great success of the European state system in limiting war and assert the sovereign power of Germany at a time when the reigns of global power were shifting across the Atlantic. Despite these differences in historical and political context, many found in Schmitt's work a conceptual framework within which to understand post-911 global politics. Part of the reason lay in the fact that the collapse of international order in the early decades of the last century continued to cast a shadow at the dawn of the new century. Jan-Werner Müller has argued that Schmitt was "a thinker during a time of transition – and a thinker *of* the transition,"<sup>89</sup> a transition the International Relations scholars Louiza Odysseos and Fabio Petito note, "in which we are still, arguably, living."<sup>90</sup> But the burgeoning literature that employed insights from Schmitt work to understand the extension of U.S. power under the rubric of the 'war on terror' related principally to two specific elements of his critique: the operation of U.S. imperialism via interventionism and the duplicities and dangers of humanitarian warfare.

At the centre of Schmitt's work on international law and geopolitical order lay a powerful critique of U.S. interventionism. In his 1950 book *The Nomos of the Earth*, he argued that the specific means of U.S imperialism was intervention rather than direct occupation.<sup>91</sup> The United States intervened in other states to protect its interests when it felt it necessary but did not take these other states under direct administration nor disturb their territorial integrity. Rather than establish direct control over another state's territory, the U.S. maintained an ambiguous 'absent-presence,' legitimizing its intervention in some

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<sup>89</sup> Müller, *A Dangerous Mind*, 245.

<sup>90</sup> Louiza Odysseos and Fabio Petito, "Vagaries of Interpretation: A Rejoinder to David Chandler's Reductionist Reading of Carl Schmitt," *Millennium* 37 (2008), 475. This paper was a response to David Chandler's polemical attack on the Schmitt 'revival' in International Relations. See: David, Chandler. "The Revival of Carl Schmitt in International Relations: The Last. Refuge of Critical Theorists?" *Millennium* 37 (2008): 27-48.

<sup>91</sup> This built on arguments Schmitt had already advanced in 1933 in "Forms of Modern Imperialism in International Law." See: Carl Schmitt, "Forms of Modern Imperialism in International Law" in *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos*, edited by Stephen Legg, 29-45, London: Routledge, 2010.

states but banning other states from intervening where its interests might be threatened. Whilst this interventionism was at first limited to the ‘Western Hemisphere’ in the Monroe Doctrine of 1823, Schmitt traced how it was expanded into a global ‘pan-interventionism’ over the course of the nineteenth and twentieth Centuries. In Schmitt’s view this ‘pan-interventionism’ effectually established a hierarchy of sovereign power between states.<sup>92</sup> The United States reserved for itself a greater degree of sovereignty, unilaterally legitimizing its own interventions and banning that of other states. For many authors, this interventionist model of imperialism outlined by Schmitt perfectly described the exercise of U.S. power in the ‘war on terror.’<sup>93</sup> Not only had the United States unilaterally invaded Iraq without the sanction of the United Nations, hence showing that the U.S. followed its own prerogative, but it had maintained the territorial integrity of both Iraq and Afghanistan whilst propping up new governments with engaged military presence specifically not defined as ‘occupation’. Further, the program of ‘extraordinary rendition’ saw this ‘pan-interventionism’ extended to the abduction of individual terror suspects from different jurisdictions.

An analysis of the antinomies of ‘humanitarian war’ was the second major aspect of Schmitt’s work on international law seized upon in the critique of the ‘war on terror.’ Schmitt closed *The Concept of the Political*, his best-known book in English, with a scathing attack on the hypocrisies and dangers of framing war in a humanitarian discourse.<sup>94</sup> For Schmitt the introduction of universal categories such as ‘humanity’ into the discourse of war allowed one side to occupy the position of ‘humanity’ and hence define their opponent as the ‘enemy of humanity’. This displaced war into a moral framework that, on the one hand, depoliticized the enemy, rendering him a mere criminal

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<sup>92</sup> The manner in which the concept of an ‘unequal sovereignty’ has been employed in order to legitimate military intervention in so called ‘failed’ states but to ensure that their territorial integrity is maintained has been discussed by the British geographer Stuart Elden in his recent *Terror and Territory*. See: Stuart Elden, *Terror and Territory: The Spatial Extent of Sovereignty* (Minneapolis, MN: University of Minnesota Press, 2009).

<sup>93</sup> See for example: Roland Axtmann, “Humanity or Enmity? Carl Schmitt on International Politics,” *International Politics* 44 (2007), 531-551; Julien Freund, “Schmitt’s Political Thought,” *Telos* 105 (1995), 11-42; William Rasch, “Human Rights as Geopolitics” (2003).

<sup>94</sup> This vitriolic attack on humanitarian warfare was replicated in a 1930 essay. See: Carl Schmitt, “Ethic of State and Pluralistic State” in *The Challenge of Carl Schmitt*, edited by Chantal Mouffe, 195-208. London: Verso, 1999.

to be policed whilst, on the other, intensifying the degree of enmity precisely by making the enemy an inhuman outcast of humanity. This had two profound effects. In the first instance, war was rhetorically intensified, since an ‘inhuman’ enemy did not deserve respect and could thus be exposed to the most extreme forms of violence. Secondly, the distinction between war and peace was dissolved as war became indistinguishable from policing criminals and peace could never be established with an ‘inhuman’ criminal outcast. Thus humanitarian war was especially barbaric and knew no limits in its intensity or its duration: a permanent, total war. By conducting war in the name of a moral universality, the boundaries between war and peace, enemy and criminal, combatant and civilian and inside and outside on which international order had rested were eroded, and a horrific indeterminacy entered all political categories.

For many authors, Schmitt’s critique perfectly described the ‘war on terror’. The United States had declared itself to be engaged in an endless global war against the enemies of humanity. The enemy, ‘terror’, was, on the one hand, so ill-defined and flexible that it could never be definitively beaten whilst, on the other, it had no place in the legal norms governing the rules of warfare and could thus be legitimately exposed to the most terrible violence beyond the protection of the law. Through a Schmittian lens the inhumane conditions faced by the prisoners at Guantanamo Bay was the perverse underside of a war fought in the name of ‘humanity.’<sup>95</sup>

In so far as the ‘war on terror’ saw the extension of U.S. power beyond the norms of international law in a series of military interventions, it had provided a fertile ground for a second phase of Schmitt’s Anglophone ‘renaissance’ that drew on his critiques of U.S. imperialism and humanitarian war. However, to fully grasp the nature of Schmitt’s reception during the ‘post-911’ years, it is necessary to understand the impact that Giorgio Agamben’s work and the emergence of new Schmitt translations had on his ‘revival’ during the 2000s. In a sense two new Schmitts emerged for Anglophone audiences in the last decade significantly influencing how his work has been received

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<sup>95</sup> See for example: William Rasch, “Human Rights as Geopolitics” (2003).

since: the ‘late’ Schmitt whose work focused on international law and global order and the ‘biopolitical’ Schmitt that emerged from Agamben’s work.

## **(ii) *The Post-Agamben Schmitt***

It is hard to overstate the influence that Giorgio Agamben’s works, particularly *Homo Sacer: Sovereign Power and Bare Life* (1998) and *State of Exception* (2005), have had on the reception of Schmitt’s thought in the 2000s.<sup>96</sup> These books introduced Schmitt’s work to new audiences, specifically in the context of the ‘war on terror’. Indeed, it is not an exaggeration to say that the ‘post-Agamben’ Schmitt is the one most frequently encountered in Anglophone discussions in recent years.

The key innovation of Agamben’s *Homo Sacer* was to read Schmitt’s account of sovereignty in relation to the critique of biopolitics found in the work of Michel Foucault. Foucault conceived biopolitics as the exertion of political power over the biological life of the population through modern technologies of discipline and control that he described as ‘governmentality’.<sup>97</sup> This understanding of biopolitics has been frequently contrasted to a model of political power focused on state sovereignty. As Foucault famously stated “we need to cut off the king's head: in political theory that has still to be done”.<sup>98</sup> Agamben sought to examine sovereignty and biopolitics as complementary, not contrasting, models of power. In Agamben’s reading, modern state sovereignty produces the population as an object of its rule. In *Homo Sacer* he argued that the key to understanding the nature of contemporary politics was to align the theory of sovereignty

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<sup>96</sup> See: Stephen Legg and Alexander Vasudevan, “Introduction: Geographies of the Nomos,” in *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos*, ed. Stephen Legg (London: Routledge, 2011), 10.

<sup>97</sup> For more on Foucault and biopolitics see: Michel Foucault, *The History of Sexuality Vol.1: The Will to Knowledge* (London: Penguin, 1976); Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-1978* (London: Picador, 2007); Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979*: (London: Palgrave Macmillan, 2010)

<sup>98</sup> Michel Foucault, “Truth and Power” in *Power/Knowledge: Selected interviews and Other Writings 1972-1977* (New York: Pantheon Books, 1977), 121.

found in Schmitt's work with the critique of governmental control drawn from the Foucault's analysis of biopolitics.<sup>99</sup>

Agamben's reading of Schmitt was a novel addition to Anglophone debates but drew on a broader tradition of engagement that the German thinker's work had with the Italian Left. From the early 1970s, thinkers associated with the Italian radical Left have been drawn to Schmitt's work earning the label '*Marxisti Schmittiani*'.<sup>100</sup> In the early 1970s, thinkers associated with the *Autonomia* movement drew on Schmitt's work as a way to rethink class struggle by asserting the radical autonomy of the factory workers from the institutional structures of the traditional Left at a time when the Italian Communist Party (PCI) had accepted the consensus of parliamentary politics.<sup>101</sup> As early as 1972 Mario Tronti, the editor of the journal *Quaderni rossa*, appealed to Schmitt's concept of the 'autonomy of the political' in formulating a theoretical basis for the workers' movement beyond the strictures of the PCI and the parliamentary.<sup>102</sup> The legacy of this engagement with Schmitt's thought runs through the Italian radical Left and his work remains a major point of reference in the work of thinkers such as Massimo Cacciari, Roberto Esposito, Antonio Negri and Paolo Virno, amongst others.<sup>103</sup> A major feature of this trajectory of Italian political thought has been the use of Schmittian categories within a broader conceptual framework defined by the critique of biopolitics. Although substantial

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<sup>99</sup> There have been a significant number of studies aimed at elaborating the potential connection between Schmitt and Foucault during the last decade. Many bear the stamp of Agamben's influence. See for example: Judith Butler, *Precarious Life* (2004); and Andrew Neal, *Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security, and the War on Terror* (London: Routledge, 2010). Many others however have attempted to push the relationship between the two thinkers further in novel ways. See for example: Matthew Coleman and Kevin Grove, "Biopolitics, Biopower, and the Return of Sovereignty," *Environment and Planning D: Society and Space* 27:3 (2009), 489-507; Matthew Hannah, "Pastoral Power," in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 227-233, London: Routledge, 2011; Sergei Prozorov, *Foucault, Freedom and Sovereignty* (London: Ashgate, 2007).

<sup>100</sup> For an introductory account of the reception of Schmitt on the radical Italian Left since the 1970s see Müller, *A Dangerous Mind*, 177-180.

<sup>101</sup> For more on the 'autonomous' movement see the collection of articles edited by Sylvère Lotringer and Christian Marazzi originally published in 1980. See: Sylvère Lotringer and Christian Marazzi, eds. *Autonomia: Post-Political Politics* (New York: Semiotexte, 2007).

<sup>102</sup> Müller, *A Dangerous Mind*, 178.

<sup>103</sup> See for example: Massimo Cacciari, *The Unpolitical: On the Radical Critique of Political Reason* (NY: Fordham University Press, 2009); Roberto Esposito, *Immunitas: The Protection and Negation of Life* (Cambridge: Polity Press, 2010); Antonio Negri and Michael Hardt, *Empire* (Cambridge, MA: Harvard University Press, 2000); Paolo Virno, *Multitude Between Innovation and Negation* (New York: Semiotexte, 2008).

differences exist in a manner in which Agamben, Esposito, Negri and Virno conceive of biopolitics and the role that Schmittian concepts play in their philosophical edifice, all share in an approach that fuses critiques of sovereign power and biopolitical governmentality. Whilst the reception of Schmitt's thought on the Italian Left can therefore not be reduced to Agamben's reading of the relationship between Schmittian sovereignty and Foucauldian biopolitics, *Homo Sacer* and *State of Exception* introduced an important element of the Italian debate around Schmitt's work into the second phase of his Anglophone 'revival.'

Two conceptual components of Agamben's *Homo Sacer* shaped the second phase of Schmitt's Anglophone reception, each of which was taken to have particular bearing in the context of post-911 global politics. The first element was the claim, advanced in *Homo Sacer*, that sovereign power was necessarily bound up with the biopolitical production of what Agamben called 'bare life'. 'Bare life' in Agamben's view is "human life...included in the juridical order solely in the form of its exclusion (that is, of its capacity to be killed)".<sup>104</sup> Agamben argued that the law gained its power over the population by enacting a separation between qualified political life (*bios*) and biological life (*zoe*). Thus, even those consigned to mere biological life remained under the power of the law even as they were excluded from the political life of the citizen. Those who were only granted 'bare life' were excluded from the law's protections but still exposed to its force. This paradoxical position of 'bare life' both inside and outside the law was, Agamben argued, the exact mirror image of Schmitt's Sovereign. The Sovereign, for Schmitt, was defined by the ability to decide on the state of exception and suspend the law in order to protect it in moments of extreme crisis. It was precisely in this suspension of the law that 'bare life' was produced. Sovereign power fundamentally relied therefore, in Agamben's view, on the state of exception whereby 'bare life' could be encompassed in the law through its very suspension.

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<sup>104</sup> Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998), 99.

For many readers, the production of ‘bare life,’ paradoxically included in the law through its exclusion, described precisely the new categories of extra-legal subjects generated by the ‘war on terror’ such as the inmates of Guantanamo Bay. Agamben himself pointed to this reading in his 2005 book *State of Exception*. There he argued that “the immediately biopolitical significance of the state of exception as the original structure in which law encompasses living beings by means of its own suspension emerges clearly” in the ‘military order’ issued by President Bush in November 2001 which allowed non-citizens to be held ‘indefinitely’ and tried in ‘military commissions’.<sup>105</sup> Legislation such as the USA PATRIOT Act seemed to indicate the growing normalization of the state of exception that Agamben had warned against in *Homo Sacer*, a point he directly made in *State of Exception*.<sup>106</sup> Many of the key features of the ‘war on terror’ seemed to be illustrating Agamben’s thesis that sovereign power operated precisely through the state of exception and that the U.S. seemed to be placing itself in the position of a global sovereign police producing a new form of biopolitical order. It was in this highly charged political context that Agamben’s biopolitical reading of Schmitt’s concept of sovereignty became widespread.<sup>107</sup> As the rule of exception appeared to take an ever greater role in the operations of global power, so too did Schmitt become an increasingly frequent reference point, even if the extent of that reference was often limited to the relationship between sovereignty and exception in his thought.

The second element of Agamben’s analysis in *Homo Sacer* that had a profound impact on the reception of Schmitt’s work in the 2000s was his introduction of the concept of *nomos*. For Schmitt *nomos* indicated the *spatial nature of every political and legal order*; the foundational relationship between ‘ordering’ and ‘localization’. Although this was a key concept in Schmitt’s thought, it appeared in later works that were not available in English until 2003, and had therefore not received significant attention before Agamben made use of it. The appearance of *Homo Sacer* thus marked the first time in Anglophone

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<sup>105</sup> Agamben, *State of Exception*, (Chicago, IL: University of Chicago Press, 2004), 3.

<sup>106</sup> Ibid.

<sup>107</sup> See for example: Jef Huysmans, “The Jargon of Exception – On Schmitt, Agamben and the Absence of Political Society,” *International Political Sociology* 2 (2008), 165-183; Andrew Norris, “The Exemplary Exception: Philosophical and Political Decisions in Giorgio Agamben’s *Homo Sacer*,” in *Politics, Metaphysics, and Death: Essays on Giorgio Agamben’s Homo Sacer*, edited by Andrew Norris, 262-282. Durham, NC: Duke university Press, 2005.

debate that Schmitt had been approached as an *eminently spatial thinker*, and for this reason Agamben's work is particularly significant for me. Agamben's key move was to relate the concept of the 'nomos of the earth', or a global spatial order found in Schmitt's late work, to his concept of the state of exception. Schmitt's work showed, Agamben argued, "how the link between localization and ordering constitutive of the *nomos* of the earth always implies a zone that is excluded from law and that takes the shapes of a 'free and juridically empty space'."<sup>108</sup> In Agamben's reading, the state of exception always operated within and through a certain *space* of exception. Importantly, however, the 'juridically empty space' of the state of exception "is not external to the *nomos* but rather, even in its clear delimitation, included in the *nomos* as a moment that is in every sense fundamental."<sup>109</sup> Thus, Agamben argued, for Schmitt the space of exception was structurally foundational to the *nomos* of the earth. But the fact that the state of exception relied on the sovereign and 'bare life' being paradoxically both inside and outside the law meant that it was 'essentially unlocalizable' and always required an ordering of space to establish the 'juridically empty space' around which the *nomos* of the earth was structured. However, Agamben noted that when "our age tried to grant the unlocalizable a permanent and visible localization, the result was the concentration camp."<sup>110</sup> The camp was, Agamben declared, the "*nomos* of the modern".<sup>111</sup> Although *Homo Sacer*'s publication pre-dated the 'war on terror' by several years, a number of thinkers drew on this concept of the camp as the definitive localization of the exception to describe the detention camps at Guantanamo Bay.<sup>112</sup> Those detained were declared to be in a space literally 'beyond the law', excluded from its protections but exposed to its force: *homo sacri*.

Although the U.S. detention centres at Guantanamo Bay seemed to illustrate Agamben's thesis that the space of the camp was the 'nomos of the modern', *Homo Sacer* had in fact

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<sup>108</sup> Agamben, *Homo Sacer*, 38.

<sup>109</sup> *Ibid*, 36-37

<sup>110</sup> *Ibid*, pp 20

<sup>111</sup> *Ibid*, 166

<sup>112</sup> See for example: Richard Ek, "Giorgio Agamben and the Spatialities of the Camp: an Introduction," *Geografiska Annaler Series B: Human Geography* 88 (2006), 363-386; Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (Hoboken, NJ: Wiley-Blackwell, 2004); Nasser Hussain, "Beyond Norm and Exception: Guantanamo," *Critical Inquiry* 33 (2007), 734-753.

presented an argument for the emergence of a *new nomos* of the earth. Agamben argued that the state of exception was becoming “more and more to the foreground as the fundamental political structure [of the age] and ultimately becomes the rule.”<sup>113</sup> This marked the beginnings of a new *nomos* that was not characterized by clear lines of distinction between order and disorder, inside and outside, as Schmitt’s old *nomos* of the earth had been, but rather by ‘zones of indistinction’. The “constitutive link between localization and ordering of the old *nomos* was broken”, he argued, and “the ‘juridically empty’ space of the state of exception ... has transgressed its boundaries and now, overflowing outside them, is starting to coincide with the normal order.”<sup>114</sup> This new *nomos*, Agamben argued, “no longer orders forms of life and juridical rules in a determinate place, but instead, contains at its very centre ... a ‘dislocating localization’” into which any forms of life can be virtually absorbed.<sup>115</sup> Agamben’s work suggested that the new *nomos* of the earth was a “*nomos* of exception,” as Francois Debrix argued; a “virtual *nomos*” where everyone becomes a potential *homo sacri*.<sup>116</sup> In such a ‘virtual *nomos*’, everyone is potentially exposed to the state of exception at any moment. Rather than rely upon clearly delineated spaces of order and disorder, norm and exception, this new *nomos* could at once suspend everyone in a virtual state of exception and, in an instant, localize it in the bodies of those declared outside the law. This global state of exception seemed to represent a dangerous fusion of geopolitics and biopolitics, a “biopolitical *nomos*”, as the Italian geographer Claudio Minca argues.<sup>117</sup> This new (dis)order did not seek to establish a new stable order, Minca argues, but rather sought to keep “open the possibility of playing at the threshold of indistinction between a norm and its (dis)application.”<sup>118</sup> The global state of exception seemed to represent a dangerous

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<sup>113</sup> Agamben, *Homo Sacer*, 20.

<sup>114</sup> *Ibid*, 38

<sup>115</sup> *Ibid*, 175

<sup>116</sup> Francois Debrix, unpublished paper quoted in Stephen Legg and Alexander Vasudevan, Introduction, 14. See also: Francois Debrix “The Virtual Nomos?,” In *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 284-290. London: Routledge, 2010; and Nick Vaughan-Williams, “The UK Border Security Continuum: Virtual Biopolitics and the Simulation of the Sovereign Ban,” *Environment and Planning D: Society and Space*, 28 (2010), 1071-1083.

<sup>117</sup> Claudio Minca, “Giorgio Agamben and the New Biopolitical *Nomos*,” *Geografiska Annaler: Series B, Human Geography*, 88 (2006). 387.

<sup>118</sup> *Ibid*, 401.

fusion of geopolitics and biopolitics that left everyone virtually exposed. It was a situation, as Agamben warned, “in which everything again becomes possible.”

Once again, Agamben’s theoretical innovations seemed to find brutal reflection in the emerging geopolitical realities of the ‘post-911’ era. From the US’s ‘extraordinary rendition’ program to the shooting of Jean Charles de Menezes in the London Underground by anti-terror officers in 2005 and the increasing use of biometric controls in border controls, the concept of a virtual biopolitical *nomos* of exception seemed to be taking concrete shape in the ‘war on terror’.<sup>119</sup> In the terms of Agamben’s analysis it could be argued that the ‘war on terror’ indicated that an old *nomos* was collapsing and a new *nomos* was emerging but has not yet fully developed. On the one hand, the United States was attempting to produce a localization of the exception in sites such as the detention camps in Guantanamo Bay where enemies could be removed from the law. On the other hand, it was dissolving the very possibility of marking a distinction between inside and outside, order and disorder, norm and exception, by rendering the entire globe the potential site for the ‘dislocating localization’ of a virtual biopolitical state of exception. It was into this intellectual and political context where Agamben’s ideas on the state of exception were being applied to the analysis of the ‘war on terror’ that *The Nomos of the Earth*, Schmitt’s masterwork of international thought, emerged in English translation for the first time in 2003.

### **(iii) *The ‘Missing Classic’ of IR***

The publication of Schmitt’s *The Nomos of the Earth* in English in 2003 opened an entirely new area of Schmitt’s corpus to the Anglophone debate. Frederic Jameson quickly declared *Nomos* to be a work of “astonishing contemporaneity” and it soon received a wave of critical attention in a series of special issues and essay collections in

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<sup>119</sup> Of particular note were those authors who drew on Agamben’s work in the study of immigration controls and the changing nature of bordering practices and border paces in the ‘post-911’ era. See for example: Louise Amoore, “Biometric Borders: Governing Mobilities in the War on Terror,” *Political Geography* 25 (2006), 336-351; and Nick Vaughan-Williams, *Border Politics: The Limits of Sovereign Power* (Edinburgh: Edinburgh University Press, 2009).

the first years after its publication.<sup>120</sup> The surge of interest in Schmitt's late work sparked by the publication of *The Nomos of the Earth* was fuelled further by the publication of his short 1962 book *The Theory of the Partisan* in 2007.<sup>121</sup> These new translations made it possible for Anglophone readers to engage with Schmitt's work on international law and geopolitical order for the first time, signalling a major shift in his reception.<sup>122</sup>

It is perhaps no surprise that the reception of Schmitt's work grew rapidly in International Relations, [henceforth IR] where *The Nomos of the Earth* was heralded by Louiza Odysseos and Fabio Petito as a "missing classic" of the discipline.<sup>123</sup> Schmitt's whole oeuvre, Odysseos and Petito argued, deserved reconsideration "not as marginal to International Relations, but as central to its key concerns."<sup>124</sup> Likewise William Hooker, the author of the most extensive work on Schmitt within IR thus far, noted in 2009 that Schmitt's "arrival as a serious object of debate in international political theory is overdue."<sup>125</sup> Indeed, a number of authors have read *The Nomos of the Earth* as offering an alternative history of the rise and fall of the modern European state system opposed to the standard accounts of 'Westphalia' within the discipline.<sup>126</sup> Further, some argued that

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<sup>120</sup> Frederic Jameson, 'Notes on the *Nomos*,' 199. See the special issues; *Constellations* 11:4 (2004) edited by Andreas Kalyvas and William Scheuerman; *South Atlantic Quarterly* 104:2 (2005) edited by William Rasch; *The Leiden Journal of International Law*, 19:1 (2006) edited by Louiza Odysseos and Fabio Petito. There have also been two collections of essays dedicated to the book published already, *The international Political Thought of Carl Schmitt* (2007), edited by Louiza Odysseos and Fabio Petito, which collected perspectives from International Relations and more recently *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos* (2011), edited by Stephen Legg, which collected perspectives from the discipline of Geography.

<sup>121</sup> *The Theory of the Partisan* had already received considerable critical attention in a special edition of the journal *CR: The New Centennial Review* 4:3 (2004) edited by Scott Michaelsen and David E. Johnson that included a translation of Schmitt's text.

<sup>122</sup> Also significant to note here is the new edition of George Schwab's translation of *The Leviathan in the State Theory of Thomas Hobbes*, Schmitt's important 1938 book. See: Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes* (Chicago: The University of Chicago Press, 2008). It had originally been published in 1996 by Greenwood Press but alongside *The Nomos of the Earth* (2003) and *The Theory of the Partisan* (2007) it took on much greater significance in so far as it showed the trajectory of Schmitt's thought.

<sup>123</sup> Louiza Odysseos and Fabio Petito, Introduction to *The international Political Thought of Carl Schmitt*, ed., Odysseos and Petito, (London: Routledge, 2007), 2.

<sup>124</sup> *Ibid.*

<sup>125</sup> Hooker, *Carl Schmitt's International Thought*, 3.

<sup>126</sup> See: Gopal Balakrishnan, "The Geopolitics of Separation," *New Left Review* 68 (2011), 57-72; Hooker, *The International Political thought of Carl Schmitt* (2009); Mitchell Dean, "A Political Mythology of World Order: Carl Schmitt's *Nomos*," *Theory Culture Society* 23 (2008), 1-22; Louiza Odysseos and Fabio Petito, "Introduction: The International Political Thought of Carl Schmitt" (2007); William Scheuerman, "International Law as Historical Myth," *Constellations* 11 (2004), 537-550. The European state system is

it was precisely by following Schmitt's account of the collapsing 'Westphalian' state system that the nature of the contemporary international crisis signalled by the 'war on terror' could better be grasped. Gary Ulmen, the translator of *The Nomos of the Earth* and *The Theory of the Partisan*, argued that the 'war on terror' was a symptom of the breakdown of normative order in international relations and that global terrorism marked the emergence of the 'global civil war' Schmitt had feared.<sup>127</sup> Several thinkers such as Alain de Benoist, Linda S. Bishai, Andreas Behnke and Louiza Odysseos followed Schmitt in locating the emergence of this global (dis)order in the failure of liberal cosmopolitanism to address the antagonistic dimensions of political relations and the need for a restraining power capable of limiting war on the one side and the unchecked hegemony of the United States on the other.<sup>128</sup> Hence, it was argued that from within the *longue durée* perspective afforded by *The Nomos of the Earth*, the 'war on terror' could be seen not so much as an anomaly of 'current affairs' but the culmination of several longer term tendencies in modern European and world history.

Perhaps the most important and certainly the most curious, if not disturbing, aspect of Schmitt's recent 'renaissance' has been the way in which a number of thinkers have turned to his thought in the search for a model for alternative world order. Schmitt's notion of a global order based around a number of Continental *Großräume* (large spaces) has found enthusiastic support from some quarters. Schmitt's proposal for a new *nomos* based upon a division of the earth into a number of *Großräume* is found in the third of the three 'corollaries' that accompany *The Nomos of the Earth*. However, the version that appears there is ideologically 'cleansed' of the work Schmitt carried out in the late 1930s and early 1940s during the expansion of the Nazi Reich. The context in which Schmitt developed his theory of *Großraum* is often ignored by those calling for a new, multipolar

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commonly referred to as 'Westphalia' in International Relations after the Treaty of Westphalia signed in 1648 that brought the European wars of religion to a close.

<sup>127</sup> Gary Ulmen, "Partisan Warfare, Terrorism and the Problem of a New *Nomos* of the Earth" in *The international Political Thought of Carl Schmitt*, ed. Louiza Odysseos and Fabio Petito, 97-106. London: Routledge, 2007.

<sup>128</sup> See: Alain de Benoist, "Global Terrorism and the State of Permanent Exception: The Significance of Carl Schmitt Today" *The international Political Thought of Carl Schmitt*, edited by Louiza Odysseos and Fabio Petito, 97-106. London: Routledge, 2007; and Linda S. Bishai and Andreas Behnke, "War, Violence and the Displacement of the Political" in *The international Political Thought of Carl Schmitt*, edited by Louiza Odysseos and Fabio Petito, 107-123. London: Routledge, 2007.

world order based on Schmitt's concept of *Großraum*.<sup>129</sup> In their appeal to a Schmittian model of multipolarity, thinkers on the Left, such as Chantal Mouffe, Fabio Petito, William Rasch and Danilo Zolo, have made strange bedfellows of European New Right intellectuals such as Alain de Benoist and Russian 'neo-fascist' proponents of a 'Eurasian' great space such as Alexander Dugin.<sup>130</sup> The argument these authors make is that a multipolar world order would protect political pluralism and fend against the dangers of unipolar U.S. domination. For these multipolar Schmittians, the emergence of global terror networks is symptomatic of the exclusion of genuine political pluralism under the conditions of unipolar U.S. domination.<sup>131</sup> Likewise the US-led 'war on terror' illustrates that a single hegemonic world power can neither bring stability nor limit conflict.<sup>132</sup> The only solution, it is argued, is a multipolar world order organized around distinct geographic power blocks.<sup>133</sup>

#### **(iv) Schmitt's Geographers**

It was also during the second phase of Schmitt's Anglophone 'revival' that his reception grew within the discipline of Geography. Although engagement with Schmitt's work within geography remains limited, it is growing. The 2011 volume of essays, short thematic responses and fresh translations edited by Stephen Legg, *Spatiality, Sovereignty and Carl Schmitt*, marked something of a milestone. Before the publication of this collection however, the response to his work within Anglophone geography was slim and

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<sup>129</sup> See: Peter Burgess, "The New Nomos of Europe," *Geopolitics* 14 (2009), 135-160; Chantal Mouffe, "Schmitt's Vision of a Multipolar World Order" (2005); Fabio Petito, "Against World Unity: Carl Schmitt and the Western-Centric and Liberal Global Order," in *The international Political Thought of Carl Schmitt*, edited by Louiza Odyssesos and Fabio Petito, 166-185 London: Routledge, 2007; William Rasch, "Lines in the Sand: Enmity as a Structuring Principle," *South Atlantic Quarterly* 104 (2005), 253-262; Danilo Zolo, "The Re-emerging Notion of Empire and the Influence of Carl Schmitt's Thought," edited by Louiza Odyssesos and Fabio Petito, 154-165. London: Routledge, 2007.

<sup>130</sup> See: Alain de Benoist, "Global Terrorism and the State of Permanent Exception" (2007); Alan Ingram, "Alexander Dugin: Geopolitics and Neo-Fascism in Post-Soviet Russia" (2001).

<sup>131</sup> See: Alain de Benoist, "Global Terrorism and the State of Permanent Exception" (2007); Chantal Mouffe, *On the Political* (2005).

<sup>132</sup> This is an argument made most extensively by Chantal Mouffe in Chapter 5 of her most recent book. See: Mouffe, *On the Political* (2005).

<sup>133</sup> For a critique of this multipolar argument that draws on the internal tensions of Schmitt's thought see: Rory Rowan, 'A New Nomos of Post-Nomos?: Multipolarity, Space and Constituent Power' in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 143-162. London: Routledge, 2011.

scattered.<sup>134</sup> It had been well known in Anglophone geographic debates since the 1940s that Schmitt had developed a controversial theory of geopolitical order based on the idea of *Großraum* at a time when the Nazi Reich was pursuing an aggressive policy of expansion. The complicated relationship between the German geopolitical tradition and Nazism had left a difficult legacy within the discipline of geography and there was understandable reluctance to making a fresh engagement with a thinker marred by an association with Nazi spatial theory.<sup>135</sup>

It cannot be predicted so soon after its publication whether or not Stephen Legg's edited collection will spark a wider re-evaluation with Schmitt's work in Anglophone Geography, but it marks a significant contribution to the debate in its own right. Although largely focused on a response to *The Nomos of the Earth* it is a wide-ranging collection that addressed Schmitt's work from a variety of perspectives within the discipline. In longer articles, Gerry Kearns and Timothy W. Luke examine the relevance of Schmitt's text to understanding contemporary political geographies of American power.<sup>136</sup> Stephen Legg, by contrast, draws out the relationship between Schmitt's work and the analysis of the imperial geographies of the interwar period.<sup>137</sup> My own contribution alongside that of Claudio Minca examines Schmitt's thought in relation to the question of spatial ontology and how it has been approached in recent multipolar readings of Schmitt and those in Italian political thought respectively.<sup>138</sup> Matthew Coleman and Peter Rogers both find in *The Nomos of the Earth* analytical tools through which to examine colonial war and everyday life respectively, Coleman sketching the relationship between Schmitt and Hans

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<sup>134</sup> See: Stuart Elden, "Reading Schmitt Geopolitically" (2010); and Claudio Minca, "Agamben's Geographies of Modernity," *Political Geography* 26 (2006), 78-97.

<sup>135</sup> Reminding readers of this connection between Nazi geopolitics and Schmitt's spatial thought was the principal aim of Stuart Elden's contribution to the 2010 article on Schmitt in *Radical Philosophy*. The same piece was included in the collection edited by Legg the following year but it seems likely that the 2010 publication was a pre-emptive strike against Schmitt's reception in Geography.

<sup>136</sup> See: Gerry Kearns, "Echoes of Carl Schmitt Among the Ideologists of the New American Century" in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 74-90. London: Routledge, 2011; and Timothy W. Luke, "Appropriating, Distributing, and Producing Space after 9/11: The Newest *Nomos* of the Earth?" in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 57-73. London: Routledge, 2011.

<sup>137</sup> Stephen Legg, "Interwar Spatial Chaos?: Imperialism, Internationalism and the League of Nations," in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 106-124. London: Routledge, 2011.

<sup>138</sup> Claudio Minca, "Carl Schmitt and the Question of Spatial Ontology" in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 163-182. London: Routledge, 2011. Rory Rowan, "The New *Nomos* or Post-*Nomos*? Multipolarity, Space and Constituent Power" (2011).

Morgenthau and Rogers the relationship between Schmitt and Foucault.<sup>139</sup> These engagements show a depth and breadth to the potential engagements with Schmitt's spatial thought within geography, and the relationship between his compromised political choices and his spatial thought.

The most significant contribution the collection makes to the debates around Schmitt's work, however, is in including two short texts by Schmitt, newly translated by the American geographer Matthew Hannah. The appearance of 'Forms of modern imperialism in international law' (1933) and '*Großraum* versus Universalism: the International Legal Struggle over the Monroe Doctrine' (1939) in English for the first time mark a significant development in the reception of Schmitt's later work and his spatial thought in particular. These texts represent an important point of conceptual development between the critique of humanitarian warfare and the Post-Versailles settlement found in *The Concept of The Political*, and the more fully developed account of global spatial order in *The Nomos of the Earth*. Further, the latter article allows Schmitt's theory of *Großraum* to be located within the context of its original publication for the first time in English. Alongside the three important articles from the 1930s and 1940s included in the 2011 collection *Writings on War*, the appearance of these works in translation allows a more thorough and critical assessment of Schmitt's spatial thought and its relationship to Nazism than was previously possible in Anglophone debate.<sup>140</sup>

There are two further recent works within Anglophone Geography that deserve mention here. The first is that of Claudio Minca. Although Minca's work focuses on the complex spatialities of Giorgio Agamben's conception of the state of exception, it represents one of the principal engagements with Schmitt's spatial thought in Anglophone debate.<sup>141</sup> Minca's work perhaps offers the deepest articulation of the how the relationship Agamben charts between biopolitics and geopolitics is indebted to the spatial foundations

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<sup>139</sup> Matthew Coleman, "Colonial War: Carl Schmitt's Deterritorialization of Enmity," in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 127-142. London: Routledge, 2011; Peter Rogers, "Between *Nomos* and Everyday Life: Securing the Spatial Order of Foucault and Schmitt," in *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 182-197. London: Routledge, 2011.

<sup>140</sup> Schmitt, *Writings on War*, (2011)

<sup>141</sup> See: Claudio Minca "Agamben's Geographies of Modernity" (2007).

of Schmitt's thought.<sup>142</sup> Further, Minca traces this relationship from Agamben, via Schmitt, to the contested legacy of Friedrich Ratzel within the German geographic tradition. Minca's work makes a considerable contribution to understanding Schmitt as a spatial thinker within the debates that emerged around Agamben's theory of exception and the 'war on terror'. The second, a different approach to understanding the relevance of Schmitt's thought to geography, comes in a recent article by the German geographers Robert Meyer, Conrad Schetter and Janosch Prinz.<sup>143</sup> This trio of authors argued that existing accounts of Schmitt's thought had failed to account for the "complex theological-political-spatial triangle" that lay at the centre of his thought.<sup>144</sup> In a deeply engaging analysis they argue that Schmitt's spatial thought must be understood in relation to his Catholic faith and particularly the figure of the *Katechon*. In a second move, Meyer, Prinz and Schetter examine the potential relevance of Schmitt's thought for debates on spatial contestation in contemporary Geography. On the one hand they argue that Schmitt's thought offers powerful insights into the nature of the relationship between space and politics typical of a clearly defined nation-state. On the other, they argue that the disjuncture between Schmitt's theoretical framework and that of recent Geographic theory leaves his thought of little use to thinking the nature of spatial contestation in the field of contemporary spatio-political relations.

Outside geography, one of the most important Schmitt scholars, Carlo Galli, is relatively unknown in the Anglophone academy. As Professor in the Department of Historical Disciplines at the University of Bologna and co-editor, alongside Roberto Esposito, of the *Encyclopedia of Political Thought: Authors, Concepts, Doctrines* (first published in

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<sup>142</sup> See: Claudio Minca, "Giorgio Agamben and the New Biopolitical *Nomos*" (2006). Minca effectively taps in to a rich seam of Italian thought that has read Schmitt as a spatial thinker for a much longer period than in English drawing on the Italian geographer Franco Farinelli and the urban theorists Andrea Cavalletti.

<sup>143</sup> Meyer, Robert, Schetter, Conrad, & Prinz, Janosch. "Spatial Contestation?: The theological foundations of Carl Schmitt's spatial thought," *Geoforum*, 43 (2012), 687-696.

<sup>144</sup> *Ibid*, 687.

2000), he is one of the most renowned political thinkers in Italy today.<sup>145</sup> Galli's career has been devoted to the rigorous examination and explication of Schmitt's work.<sup>146</sup>

In Galli's reading Schmitt's thought provides a genealogical account of the development and dissolution of modern politics as a specifically spatial form of ordering. Hence, for Galli, Schmitt is the paradigmatic thinker of modern 'political space', whose work contains the clearest distillation of the relationship between politics and space that has defined modernity. However, by accepting the terms of Schmitt's conceptual framework Galli argues it is possible to understand the incapacity of Schmittian categories to deal with the transformations in spatio-political relations that took place in the late twentieth century. The 'modern age' has definitively passed, in Galli's view, along with the 'political space' Schmitt had defined, both of which have been replaced with a paradigm he refers to as the 'global age'. The 'global age' requires, Galli argues, altogether new spatial and political categories that go beyond the terms of Schmitt's thought, although he offers little indication of what these terms might be. While Galli's account of the 'global age' is unconvincing and unsophisticated by the standards of contemporary Anglophone Geography, his account of modern 'political space' remains a *tour de force* of spatio-political thought. By locating the production of modern 'political space' at the heart of Schmitt's thought, Galli produces perhaps the strongest case for considering Schmitt as a 'spatial thinker', whose concerns map against those of geographic thought. Indeed, Galli's unconvincing account of the transition from the 'modern age' to the 'global age' means that Schmittian categories arguably remain *more* useful than Galli himself contends.

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<sup>145</sup> For a brief account of Galli's career and an extensive examination of his thought, particularly his relationship to Carl Schmitt, see: Sitze, Introduction (2010).

<sup>146</sup> In 1996 Galli published his magnum opus - a monumental 936-page tome devoted to Schmitt, *Genealogia della politica*. See: Carlo Galli, *Genealogia della Politica*. (Bologna: il Mulino, 2010). Galli's first book to be published in English is a double volume whose original elements were published in Italian in 2001 and 2002 respectively. See: Carlo Galli, *Political Spaces and Global War* (Minneapolis, MN: University of Minnesota Press, 2010). Anglophone debate thus comes late to Galli's work and much of it still remains untranslated. See also: Carlo Galli, "The Critic of Liberalism: Schmitt's Critique of Liberalism Its Theoretical and Historical Sources and its Philosophical and Political Meaning." *Cardozo Law Review*, 21 (2000), 1597-1619.

No consensus on the value or limitation of Schmitt's thought, nor even on its nature, emerges from his recent reception in Geography. However, it seems clear from the variety of Geographic texts engaging with Schmitt, slim as it may be, that his thought bears on some of the key concerns of the discipline and opens up various avenues of investigation for geographic thought. The engagements made by a range of authors such as Kearns, Legg, Luke, and Vaughan-Williams indicate the potential application of Schmittian thought in the analysis of historical and contemporary political geographies. Further, the possibilities for productive dialogue between Schmitt's work and that of other thinkers, such as Giorgio Agamben and Michel Foucault, in relation to geographic concerns, is visible in the work of Hannah, Minca and Rogers. Conversely, the need for contemporary Anglophone debate on Schmitt's work, and particularly on his spatial thought, to engage with his difficult relationship to Nazi spatial theory and the German geopolitical tradition more broadly is underlined by Atkinson and Elden. Indeed, Galli, Mendieta, Meyer et al., Minca, and Zarmanian all emphasize the fact that any critical and productive engagement with Schmitt's thought depends upon developing a better understanding of the spatial aspects of his work.<sup>147</sup> Despite the divergence of their methods and perspectives, the latter group of authors approach Schmitt's work as a source of insights into the potentially ontological relationship between space and politics on the one hand and the historical specificity of modern spatio-political relations on the other. Of course, before the use and limitation of Schmitt's work for geographic thought can be fully assessed, it is important to examine more closely the role that spatial concepts play in his thought. This is the task to which the current thesis seeks to contribute.

#### **(4) *An Open Space: Methodology and Contribution***

Despite the extent of the work on Carl Schmitt sketched above, gaps nonetheless remain in the secondary literature and many areas for further investigation suggest themselves. One such gap is a sustained analysis of the role of space in Schmitt's thought. This may

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<sup>147</sup> See: Eduardo Mendieta, *Land and Sea*. In *Spatiality, Sovereignty and Carl Schmitt*, edited by Stephen Legg, 260-267 (London: Routledge, 2011).

seem counter-intuitive given that much of the second phase of Schmitt's Anglophone reception has focused on his work on international order helping Schmitt to emerge as a 'spatial thinker'. However, despite this surge of interest in Schmitt's spatial thought, there has as yet been no significant attempt in the Anglophone literature to systematically analyse the role of spatial concepts in his work. This thesis aims to address this empty space in the existing literature.

What has been lacking thus far is not an analysis of Schmitt's spatial thought but, rather, a single study dedicated to examining the role of space in his thought as a whole. Existing engagements with Schmitt's spatial thought have advanced through partial readings rather than attempting to trace the relationship of spatial concepts to his overall oeuvre. These readings have fallen broadly into one of two frameworks.

Firstly, during the second phase of Schmitt's recent 'revival', a relatively slender set of insights and concepts were appropriated from his thought in order to illuminate certain aspects of the contemporary political and historical context. For example, many recent readers plucked concepts such as 'the political', 'state of exception' and '*nomos*' from Schmitt whilst paying relatively little attention to their structural importance within his work as a whole or their position within the trajectory of his thought. By reading Schmitt's spatial thought through the concepts of the 'state of exception' or '*nomos*' in isolation, often exclusively through the lens of Agamben's work, or by confining his work to the critique of the 'war on terror', there has been a persistent danger that a partial reading of Schmitt's work will become popularized, obscuring the wider relevance of his work and his spatial thought in particular. Although these concepts were often employed productively in the diagnosis and critique of the 'post-911' era, there was a risk that the structural integrity of spatial concepts in his thought as a whole will be overlooked or under-examined.

Secondly, the recent reception has tended to periodise his work into early and late phases, with spatial concerns located solely in the latter. Thus, a picture emerges of a late, 'spatial' Schmitt clearly distinct from an early, 'pre-spatial' Schmitt. There is certainly

some justification for marking this division in Schmitt's oeuvre: in *On the Three Types of Juristic Thought* (1934) Schmitt himself located a shift in the conceptual framework of his work in the early 1930s from 'decisionism' to 'concrete order thinking', where the former emphasised the foundations of order in a groundless sovereign decision and the latter, the deeper socio-historical and spatial foundations of ordering institutions. Further, from the late 1930s, Schmitt increasingly turned his attention from the critique of constitutional law to the analysis of international law and geopolitical order. Taking into account this shift in the conceptual framework and the focus of Schmitt's thought around the mid-1930s, it is understandable that his work is divided into 'early' and 'late' phases. However, this development in Schmitt's theoretical trajectory is too easily identified with a supposed 'spatial turn' in his work. Such an interpretation has been particularly marked within Schmitt's Anglophone reception where his early work has largely been received through *The Concept of the Political* (1927) and *Political Theology* (1922), in which spatial themes seem marginal, and through his late work, in particular, *The Nomos of the Earth* (1950) where they clearly predominate. However, the almost exclusive identification of Schmitt's spatial thought with his late work has served to distract from the structural importance spatial concepts have in his earlier work and the conceptual continuities between the different periods of his work.

The current investigation seeks to avoid such partial readings by focusing squarely and comprehensively on Schmitt's work, in contrast to those readings which approach Schmitt by way of another thinker's work or as a source of ideas for application in historical or political critique. I will seek, therefore, to engage with his thought on its own terms in order to reconstruct its central conceptual frameworks and track its development. Likewise, in probing the role of spatial concepts in Schmitt's thought, I will not focus solely on his later works on international law and geopolitical order but examine the broad sweep of his corpus.

In this way I hope to show that spatial concepts are not simply an object of concern during a particular period of Schmitt's work, but rather play a conceptually structural role in his thought as a whole. These aims are nonetheless limited. I do not claim that spatial

concepts represent the hermeneutical key that unlocks the *Arcanum* of Schmitt's thought, somehow revealing its otherwise hidden conceptual core. Neither do I claim to offer a definitive account of spatiality in Schmitt's work. Rather, I seek to highlight the fact that spatial concepts play a structural role in Schmitt's thought that has been under-examined in the existing Anglophone literature. Schmitt's engagement with spatial concepts is rich and heterodox and I argue that the shift in his work is better understood as one between *implicit* and *explicit* engagements with spatial concepts.

In doing so I hope to contribute to the existing literature in three ways. Firstly, I seek to show the importance of grasping the role of space in Schmitt's work in order to understand the broader contours of his thought and, in particular, the conceptual continuities between the early and late phases of his work. By demonstrating the structural importance of spatial concepts within Schmitt's work I hope to contribute to the debate on the fundamental nature of his thought that should interest Schmitt scholars across disciplinary boundaries. Secondly, by outlining Schmitt's understanding of the necessarily spatial nature of politics, I hope to show that Schmitt's work bears on some of the central concerns of political geography. Thirdly, I hope that by understanding the role of spatiality in Schmitt's thought more clearly, the uses and limitations of his thought for geographic thought can be assessed more fully. More specifically, I hope that my analysis will provide a framework for critically evaluating the recent Anglophone reception of Schmitt's spatial thought, particularly within the debates in International Relations and Geography.

The methodology adopted is that of an intellectual biography that seeks to weave together a textual analysis of Schmitt's work and a biographical and historical contextualisation of its development. Such an approach is more typical of work carried out within Political Theory or the history of ideas than Geography but I believe it is the correct path for a project that seeks principally to provide a comprehensive account of the role of spatial concepts in Schmitt's work. There are several reasons why I choose to approach Schmitt's work using this method. Firstly, given Schmitt's broad and persistent influence on political thought on both the Right and the Left in Europe and the United States in the

post war era, as detailed above, it is important to clearly identify the nature of his thought and chart its relation to his political choices. In other words, before his concepts can be appropriated and applied to contemporary concerns it is crucial that the content of his work and the context from which it emerged have been correctly understood. This is as true of his spatial concepts as any other aspect of his work and the rather superficial and uncritical manner in which they have been engaged in recent years suggests the need for a deeper appreciation of the relationship between the content and context of Schmitt's ideas. In order to address these concerns it was necessary to provide a detailed description and analysis of Schmitt's spatial thought and further, to relate his work to the context in which it was forged. An intellectual biography that focused on the spatial aspects of Schmitt's thought presented itself as the most suitable method available for such a task.

The scant knowledge of Schmitt's work within Anglophone Geography and the relative lack of engagement with his spatial thought within other disciplines meant that a project, such as this one, that hopes to provide a detailed account of Schmitt's spatial thought necessarily requires an intensive focus on his body of work. However, due to Schmitt's complicated and controversial political involvement with National Socialism I believe that such a sustained examination of his work calls for a diachronic approach that examines his thought in relation the biographical and historical context from which it emerged. When studying any political thinker deeply complicit with institutional power, it is important to probe the relationship between their thought and their political involvements. When that complicity involved, as in Schmitt's case, having held institutional positions in, and actively tried to legitimate the policies of, a regime as odious as the Nazi state, then the imperative to examine the relationship between text and context becomes even more pressing. This is especially true for a study focusing on Schmitt's spatial thought given his controversial attempts to formulate a grand spatial theory in support of Nazi imperial expansion. A project trying to account for Schmitt's spatial thought without examining its relationship to his political entanglements would thus not only be methodologically suspect but also fail to grasp the profoundly polemical, and at times activist, nature of his work.

However, such a methodological approach that reads Schmitt's thought in relation to the his biographical and historical context is not simply required in order to understand the development of his work or to answer the demands of controversy. It also offers an opportunity to use Schmitt's life and work as a lens through which to examine the spatial underpinnings of modern European political thought more broadly and specifically its relationship to Nazi spatial thought. Thus, whilst the methods of intellectual biography are relatively unusual in Geography, especially when applied to a thinker outside the canon of the discipline, Schmitt's position as a key figure in both twentieth century political thought and Nazi spatial theory make him, perhaps uniquely, suited to highlight the relationships between the often unarticulated spatial imaginaries underpinning modern political thought and some of the darkest periods of the last century in which he was deeply implicated. More broadly however, I believe that this project offers an example of the fruitful engagements that can be made with individual thinkers and their work within Geography: work that on the one hand, enriches the discipline, its relation to its own history and that of other fields, and on the other, makes a valuable addition to debates in other disciplines by bringing a geographic perspective to bear on their concerns.

A variety of other methodological approaches that could be taken to Schmitt's spatial thought of course presented themselves. For example, I did not employ a genealogical approach to examine Schmitt's work in relation to certain German traditions of understanding the relationship between space and politics, whether in the work of geopolitical thinkers such as Ratzel and Haushofer (both of whom Schmitt references), or prominent philosophers such as Emmanuel Kant and G.F.W. Hegel. Nor did I focus on tracing Schmitt's influence on contemporary spatial thinking in Europe or the United States, or more broadly upon the discipline of International Relations in the post war era, for example. Although Schmitt's relation to both lines of thought is touched upon in this thesis these areas of investigation are nonetheless not the focus of the project and remain undeveloped. This is by no means to say that interesting work could not be done following these paths of inquiry. On the contrary, both would offer extremely valuable

additions to the understanding not only of Schmitt's work but the development and intersection of modern lineages of modern political thought. Indeed, teasing out the conflicted relationship between Schmitt's work and the tradition of German geopolitics and tracking his influence on post war conceptions of world order, particularly in International Relations, are two projects I hope to pursue in the future but both lie beyond the scope of this project.

Neither did I approach Schmitt as a thinker from whose work I could draw insights in order to critically engage with a particular area or aspect of contemporary, or even historical, spatio-political relations. I did not, for example, use Schmitt's conception of the sovereign exception and his critique of liberal humanitarianism to critique recent United States foreign policy nor his conception of a multipolar global order to frame an analysis of emerging patterns of regionalism in global affairs. There is much fruitful work to be done using such an approach, especially when selective insights are employed from Schmitt's work alongside those from other thinkers such as Giorgio Agamben and Michel Foucault. Indeed, as noted above, many productive engagements have already been made with Schmitt's work using such an approach. However, in my view it is also important to understand the content and context of Schmitt's spatial thought more fully in order to gain a deeper insight into the uses and limits of his concepts' application today. This project is thus focused towards these ends and questions of applicability remained limited to the conclusions. I hope that by providing a fuller sense of the nature and trajectory of Schmitt's spatial thinking than has hitherto been available in Anglophone scholarship this thesis will aid future studies that seek to engage with his work from a variety of approaches, such as those indicated above, both within Geography and beyond.

## ***Chapter 2: Locating Schmitt***

If the last chapter made clear the context for the recent reception of Schmitt's work it is likewise important to understand the context of its emergence before moving on to a deeper textual engagement. Such a contextualization is especially important given the controversial nature of Schmitt's political affiliations and the deep differences of opinion that characterize the secondary literature. In this chapter I therefore provide a brief account of Schmitt's life and career and an analysis of the intellectual currents from which his thought emerged. It is hoped that by situating Schmitt within his biographical, historical and intellectual context, the analysis of the nature and trajectory of his thought provided in later chapters can be better grasped.<sup>148</sup>

### **(1) *The Intellectual Adventurer: Biography and Career***

#### **(i) *An Obscure Young Man of Modest Origins: Early Life***

“[A]n obscure young man of modest origins” was how Schmitt neatly described himself in later life.<sup>149</sup> He was born in 1888 in the provincial town of Plettenberg, the same year the young Wilhelm II ascended the throne, to a family on the lowest levels of the petty

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<sup>148</sup> This chapter is deeply indebted to the work of other scholars. I make no great claim to originality here beyond synthesizing insights from the work of others. Rather than provide an exhaustive or original account of Schmitt's life and intellectual lineage the chapter aims to offer sufficient biographical and intellectual background within which to frame the analysis provided in subsequent chapters. I owe particular debt to the work of Balakrishnan's *The Enemy* (2000) and Jan-Werner Müller's *A Dangerous Mind* (2003), two works of enormous scholarly rigor. Balakrishnan's 'intellectual portrait' weaves a seamless account of the development of Schmitt's thought in relation to his personal history from his early years until 1950. Balakrishnan considers “much of late came after” as “footnotes to earlier works” and of less intellectual interest (Balakrishnan, *The Enemy*, 260). Müller's study by contrast seeks to dredge Schmitt's influence on post-war European thought and hence focuses on the area that Balakrishnan's study leaves out. Although his book lacks something of the biographical detail of Balakrishnan's, Müller excels at providing an extraordinarily rich inventory of Schmitt's shadowy presence in the recesses of the debates shaping post-war European thought. The two books thus provide good companion pieces, one passing the baton of analysis to the other around the pivot of the 1940s. I have also relied heavily on Raphael Gross's immensely rich study of Schmitt's thought. See: Raphael Gross, *Carl Schmitt and the Jews: The 'Jewish Question,' The Holocaust ad German Legal Theory* (Madison, WI: University of Wisconsin Press, 2007).

<sup>149</sup> Müller, *A Dangerous Mind*, 19.

bourgeoisie. Plettenberg is located in the Sauerland region, at that time an evangelical Protestant area marginalized within the largely Roman Catholic Rhineland, a region itself on the margins of a German Empire dominated by the Protestant state of Prussia. Schmitt's family background was professional but modest - his father worked at a local railway station - and intensely Catholic. The family's Catholic identity may have been strengthened by their double alienation from the largely Protestant Sauerland and the official Prussian Protestantism of the German Empire, and many of Schmitt's relatives were prominent local members of the Catholic Centre Party. Schmitt was born some years after the *Kulturkampf*, the battle between Bismarck and the Catholic Church that dominated the 1870s, but it cast a long shadow across relations between the Rhineland and Prussia and the Empire and its Catholic population. The legacy of the *Kulturkampf* was a deeply politicized Catholicism and a sense of provincial distance from the imperial metropole of Berlin that had a profound effect on the young Carl Schmitt. Schmitt later recounted that during his early years of university education in Berlin he felt a deep sense of alienation within the Prussian and imperial capital and remembered himself as if "standing wholly in the dark ... [looking] from the darkness into a brightly lit room."<sup>150</sup>

This early sense of alienation from the German capital and its elites was never to wholly leave Schmitt, and appears to have filled him with a desire to be close to the political elite he felt shut out from by faith and family, and a thirsty ambition for 'power over history'.<sup>151</sup> It also allowed him a cold detachment from the pieties of Wilhelmine *Kultur* and the orthodoxies of Prussian liberalism. This latter point is significant in so far as Schmitt regarded those who wished to turn the clock back to the ancient regime of late nineteenth century Germany as hopelessly romantic reactionaries, unable to think clearly within the new categories of twentieth century politics. As Gopal Balakrishnan notes, "Carl Schmitt was an outsider in the Wilhelmine social world, and readily turned his back on the 'good old days' of prewar Germany."<sup>152</sup> This affective distance from the 'good old

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<sup>150</sup> Müller *A Dangerous Mind*, 18.

<sup>151</sup> Ibid, 12. Müller notes that Schmitt makes frequent use of the term *Geschichtsmächtigkeit*, which can be roughly rendered as 'power to shape history'. Schmitt's much remarked upon ambition and political opportunism certainly seems to betray a deep desire to be at the epicentre of historical developments and political events. See: Müller *A Dangerous Mind*, 253 n37.

<sup>152</sup> Balakrishnan, *The Enemy*, 5.

days' of imperial Germany that grew from Schmitt's Catholic, provincial and petty bourgeois background allowed him to propose radical solutions to the crisis of the state in the Weimar era that looked beyond the crumbling edifice of the old order.

The conservative American commentator Paul Gottfried has suggested that Schmitt's experience of growing up in a marginalized Catholic Rhineland may have instilled in Schmitt the conviction that the state should stand firmly above civil society in order to neutralize conflicts.<sup>153</sup> The need for the state to stand above society was one of the guiding assumptions of Schmitt's work and he squarely identified religion as a concern of the latter. Whilst Müller argues that this separation has "since Hegel, in one way or another ... been a kind of theoretical axis on which much German political thought has turned," Schmitt's theoretical commitment to an understanding of the state as transcendent to civil society was perhaps shaped by his early experience within a region and a community on the fringes of an empire itself cut of partisan cloth.<sup>154</sup> This may seem at odds with Schmitt's frequent recourse to Roman Catholic and Christian categories in his theoretical work, but he always stood at a remove from the tradition of 'political Catholicism' in Germany and the Catholic Centre Party. This gap widened after Schmitt's failed attempts to get his first marriage to a woman who had pretended to be a Serbian aristocrat annulled. After divorcing her, he was excommunicated in 1924. Schmitt had argued in his 1923 book *Roman Catholicism and Political Form* that the Medieval Catholic Church could serve an ailing Weimar state with a model of a higher power standing above a complex of social oppositions. However, he was not in favour of faith-based political parties such as the Catholic Centre Party asserting religious authority as political force in Germany or beyond. The state was to stand above the conflicts generated by a pluralist society, rather than to take sides within those conflicts. The politics of modern European statehood had been shaped by an irreversible secularization, in his eyes, and any attempt to politicize religion would only serve to undermine the

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<sup>153</sup> See: Paul Gottfried, *Carl Schmitt: Politics and Theory*, (Westport, CT: Greenwood Press, 1990).

<sup>154</sup> Müller, *A Dangerous Mind*, p 5. Balakrishnan makes similar speculations and it certainly seems that they are confirmed by Schmitt's own later autobiographical reflections, although these need to be held at a critical distance given Schmitt's self-mythologizing and his post-war desire to 'cleanse' his record.

ability of the state to stand above the increasingly conflict-ridden civil society and risk dragging state institutions into a partisan fray, as had been the case in the *Kulturkampf*.<sup>155</sup>

Schmitt was not especially concerned with political affairs during the swansong of the Wilhelmine Empire, and even the First World War was not initially enough to politicize the young legal scholar. Rather, he spent the war in Munich living the life of a semi-bohemian romantic adventurer in the city's coffee houses, moving amongst the intellectual literati, penning "Dada *avante-la-lettre*" under a pseudonym and writing appraisals of the minor expressionist poet Theodor Däubler, whilst serving in the Bavarian Ministry of War as a propaganda censor (reading Ernst Bloch's *Spirit of Utopia* in his official capacity). During this period he seemed largely politically indifferent and was more concerned with exercising his profound distaste for the official *Kultur* of the Wilhelmine Reich, openly satirizing the heroes of the bourgeoisie such as Friedrich Nietzsche, Thomas Mann and Walter Rathenau and flirting with the anti-war sentiments circulating the cafes he frequented, apparently immune to the ultra-patriotism sweeping the country. As Gopal Balakrishnan has argued in his excellent biography of Schmitt's early life and work, Schmitt remained curiously aloof from any sweeping sense of German nationalism during the war, and unaffected by the collapse of the German Empire into a state of civil war in the wake of his country's defeat.

But if his politicization was unusually slow in developing, it was all the more sharp in its appearance. In 1919 Schmitt published his first major book, *Political Romanticism*, a work of intellectual history indebted to Max Weber, whose lectures Schmitt was attending in Munich at the time. *Political Romanticism* was a cultural critique of bourgeois civilization and particularly of the failure of German conservatives to grapple with the wreckage wrought on the political landscape by the First World War. In it Schmitt mercilessly attacked the romanticism that he understood to dominate both liberal and conservative political thought in Germany at the start of an unpredictable new era.

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<sup>155</sup> This is a point Schmitt made forcefully in his 1930 article *Ethics of State and Pluralist Ethic* when he pointed to the structural similarities in the arguments made for autonomy by German Catholic's during the *Kulturkampf* and theorists of pluralism at the start of the twentieth century such as G.D.H. Cole and Harold Laski. See: Schmitt, "Ethic of State and Pluralistic State", 197.

He argued that the prevailing tendency of the day was to view politics through the prism of a 'cult of self,' leaving political thought to the shifting whimsy of subjective bourgeois occasionalism. This left the political romantic in the position of a voyeur, seeing the conflicts shaping German history but lacking the intellectual discipline to act within them. It was in a sense a public disavowal of his now former semi-bohemian existence, but it was also a polemical rejection of much of what typified German, and especially Catholic, conservatism in the early years of the twentieth century: a romantic sense of German nationalism typically emphasized through the idea of a high German *Kultur* standing above and apart from Europe; the celebration of the restless, impressionable and often irrational will of the individual; the deferral of decisive action in an 'endless conversation.'<sup>156</sup> It marked Schmitt's apparently sudden politicization but indicated his lurch to the Right.

This abrupt political awakening emerged from his shock at the civil war that had broken out in Munich the same year. Anarchists had declared a council republic in April of 1919 and communist revolutionaries had broken into Schmitt's office at the Bavarian Ministry of War, shooting an officer at the table next to him. This sudden immersion in the disintegration of the old Wilhelmine order brought home to Schmitt not only how radically destabilized the political grounds had become, but how unfit the conceptual framework of romantic nationalism was to deal with the advent of mass politics that had exploded in Europe after 1848, finally surfacing in Germany in the wake of the First World War. Schmitt's diaries of the time indicate the great anxiety with which he viewed the wreckage of the old world and the apprehension with which he looked towards what might arise from it.<sup>157</sup> As he sought to exorcize the remnants of his semi-bohemian life in Political Romanticism and reckon with the challenges the changed realities of the post-war world posed to political thought, he tacked towards the state, against the revolutionary masses.

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<sup>156</sup> Balakrishnan, *The Enemy*, 22

<sup>157</sup> See: Bendersky's review of Schmitt's wartime diaries recently published in Germany. Joseph Bendersky, "Love, Law, and War: Carl Schmitt's Angst," *Telos* 147 (2009), 171-191.

In the early years of the Weimar Republic, Schmitt seemed to opt for a path of caution that at once accepted the revolutionary upheaval through which the new Republic was born *and* attempted to steer the state down a conservative path, by strengthening its executive arm. He tried to recognize that an age of mass politics in which the revolutionary masses were agents was an inescapable new reality and that the mechanisms of state had to be reconciled with this in order to guarantee stability. The result was that Schmitt both defended the new Republic, and tried to formulate a variety of ways in which the state might contain the plurality of social and political forces that threatened to undermine it. He would spend the Weimar years embroiled in various attempts, both within the lecture hall and the courtroom, to assert state power over a volcanic political climate and to maintain the separation between a civil society riven by fractures and a state struggling to maintain its grip on order.

**(ii) *Outside the Brightly Lit Room: Academic Career***

Schmitt had written his first and second academic theses on the question of indeterminacy in jurisprudence, a concern that was soon to lie not only at the heart of his intellectual pursuit but the political fate of the Weimar Republic. He held ambitions early on for both his thought and for his career but it was not until the ferment of the Weimar years provided the opportunity that he moved into the halls of power. Initially Schmitt's career was slow to build momentum and in 1921, the same year he published his study on dictatorship in European political and legal thought, *The Dictator*, he received his first academic post in the provincial backwater of the University of Greifswald, an institution lacking prestige and access to political influence in a small Protestant town on the Baltic Sea. Although Schmitt found the isolation of Greifswald difficult he produced two important books there, *Roman Catholicism and Political Form* and *Political Theology*, that would have a significant impact on both his reputation and the development of his thought (although they were published in 1923 and 1922 respectively). As soon as the opportunity arose, he escaped this intellectual quarantine and took a teaching post in the sleepy but more congenial environs of the largely Catholic Bonn where he was to stay until 1928. During the years in Bonn, from 1921 to 1928, he was remarkably prolific,

writing important works of legal and political thought (most notably *The Crisis of Parliamentary Democracy*,<sup>158</sup> *The Concept of the Political* and *Constitutional Theory* published first in 1927 and 1928 respectively) and issuing a steady stream of interventionist articles commenting on topical affairs. These appeared in a variety of publications and ranged across a broad set of themes from intellectual histories of modern political thought and treaties on the antinomies of liberalism, to fiery critiques of the new international order emerging from the Versailles Treaty and the League of Nations. These works were shaped both by the political instability and the sense of historical flux of the early Weimar period and Schmitt's own attempt to feel his way around the issues it raised, through an array of engagements with European political thought, both ancient and modern, Latin and German.

Schmitt was at once trying ideas out, testing some against the call of the moment and saving others in a growing armoury of concepts for later use, as much defining his own method of conceptual development as trying to negotiate the Weimar state's passage through the trials ranged against it. He deployed a magpie technique of conceptual appropriation from across a wide and often contradictory cluster of inspirations including nineteenth century Catholic counter-revolutionaries, Max Weber's sociology and thinkers of the Left such as György Lukács and Georges Sorel. Casting around for models of political order he looked not only to the medieval Catholic Church and the absolutist princes of the seventeenth century, but also to Mussolini's fascism, which he always held in the highest regard, and even begrudgingly to the Soviet Union. The shadow of the revolutionary state to the east was always preferable to Schmitt than the invisible influence the United States exercised through the League of Nations and the world markets. His reading in a number of major European languages, (German, French, Spanish, Italian and English) as well as the classical languages, opened him to debates both historical and ongoing to which his contemporaries in Germany were shut out. This often positioned him at the cutting edge of theoretical developments and he was the first

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<sup>158</sup> Although this is the English title in Ellen Kennedy's translation, Balakrishnan notes that the more precise translation would render it '*The Intellectual and Historical Condition of Contemporary Parliamentarism*' (Balakrishnan, *The Enemy*, 278 n2).

to offer classes in the newly founded discipline of Political Science at the University of Bonn.

Schmitt's position as a scholar at the forefront of political thought was soon consolidated, and he emerged as a leading figure in the intensely political and very public debates around the Weimar constitution. Although by the early 1920s the Weimar Republic had solidified into a more stable form of order, the new Germany was still fraught with tensions. Debate concentrated on the constitution and its many areas of ambiguity that now became the focus of serious political contestation. This thrust Schmitt into public attention as both a potent advocate of a strong state executive and a virulent critic of the division of powers inherited from the nineteenth century's liberal *Reichstaat*. Schmitt's argument, that this division of powers threatened to allow the state's dissolution, found fond support amongst the conservative elite and beyond. The newly formed state was caught in the midst of increasingly partisan constituencies vying for power, an already fragile corporatist compromise between labour and industry was being tested by the economic fallout of Germany's reparations under the terms of the Versailles Treaty, and the masses remained politically restive. Schmitt's call to strengthen the hand of the state executive so that it might ensure order was, therefore, by no means a fringe view. Although Schmitt was staking a position firmly on the Right and making enemies on the Left, it should be remembered that he was still defending the Weimar Republic, albeit trying to fashion it into a more authoritarian form to neutralize the influence of what he considered an outmoded and destructive liberalism. Not only was the liberal state unable to ensure order in an age of mass politics and deep social fractures but was, in Schmitt's eyes, actively pulling the rug from under it.

By the spring of 1928, when he arrived in Berlin to take up a professorship at Berlin's *Handelshochschule* (School of Business Administration), the battle lines between Schmitt and the constitution's liberal defenders were clearly drawn. The *Handelshochschule* was a newly established and less prestigious institution than the University of Bonn and it is likely that Schmitt's move was part of a concerted effort to position himself closer to political influence. Despite his earlier reticence regarding the capital, Schmitt was glad to

return to Berlin's political and intellectual melee and settled easily into the more metropolitan milieu it offered to an ambitious young professor. Although he envied the prestige and proximity to power of his counterparts in the University of Berlin, Schmitt began to develop a wide set of contacts within Berlin's elite society. Even if he remained something of an outsider, he began to cultivate relationships with business leaders, the city's cultural salons and the governing elite. He positioned himself amidst a network of social and professional contacts that latticed academia, the business community he encountered in the *Handelshochschule*, the intellectual clubhouses of the capital, the governing elite and the world of the salons. His fashionable Serbian second wife, Duška Todorović, ensured that their home played host to a mix of the political and cultural elite, where Schmitt was given ample opportunity to bind himself closer to power and exercise his intelligence, impressing those he encountered with his learning.

Even before the move to Berlin, Schmitt had been involved with the pro-Republic *Hochschule für Politik*, an academic institution outside the established university system, where he first delivered the lectures in 1927 that would become *The Concept of the Political*. Here Schmitt mixed with thinkers of liberal and even Marxist persuasion and built contacts that allowed him to gain membership in 1928 of the German Sociological Association. Balakrishnan speculates that Schmitt may have encountered the early work of the Frankfurt School here, such as that by his former pupil at Bonn, Otto Kirchheimer.<sup>159</sup> Indeed it is here that he had made contacts with Waldemar Gurion, a former friend on the left, who popularized the term “Crown Jurist of the Third Reich” in a series of polemical articles written while in Swiss exile in the 1930s.<sup>160</sup> On his move to Berlin, Schmitt's acquaintance with Johannes Popitz, the permanent state secretary of the Reich Finance Ministry, perpetuated a shift to more right-leaning circles. He first encountered Popitz through the *Handelshochschule* and they soon became close friends. Popitz was a powerful figure in the Prussian government close to the conservative circles, and he acted as a gateway for Schmitt to enter into association with Berlin's elite society

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<sup>159</sup> Balakrishnan, *The Enemy*, 102. Indeed, Balakrishnan goes so far as to make the rather implausible claim that Schmitt's publishing history and close personal contacts amongst the Left accounts for some of the reason why he was later singled out so dramatically as a figure of hatred when he joined the Nazi regime in 1933 (Balakrishnan, *Enemy*, 280 n3).

<sup>160</sup> The term was not Gurion's originally: he adapted it from a Nazi paper (Balakrishnan, *The Enemy*, 182).

and the governing classes. Schmitt, an outsider by social class and confession, entered into the “brightly lit room” of the conservative elite, attending meetings of the exclusive conservative Gentleman’s Club and publishing in its house journal *Ring*. The association with Popitz brought Schmitt simultaneously closer to the intellectual circuitry of the German far Right and the halls of government power. This furnished him with the opportunity to shape the political hermeneutics of the constitution not only amongst legal scholars but also amongst those *holding* and *angling* for state power.

### **(iii) *State Oracle: Weimar Politics***

Schmitt’s political involvement in Weimar had two high, or rather, low points that accompanied the renewed state of crisis the young Republic found itself in, as the Great Depression wreaked havoc on the country. Schmitt was well known for his call to strengthen Article 48 of the Weimar Constitution, which granted the President wide executive power to intervene in a state of emergency. Against legal positivists such as Hans Kelsen, he argued that the exertion of presidential power was required to act as a guardian of the constitution in an unstable political situation that threatened to sink into civil war. The weakness Schmitt perceived in the constitution created the opportunity for partisan forces to test the coherence of the state, but this structural tendency was beginning to bear fruit as the nascent Republic was torn between the Nazis and Communists, two revolutionary parties set against the constitution and backed by substantial paramilitary forces and opposed ideologies. The Weimar state was already losing its monopoly on violence and if the President could not stabilise the situation, he risked losing even his capacity to decide on the state of exception. It was around the role of presidential power within the Constitution, and particularly by the use of Article 48, that Schmitt directly entered politics as the Weimar Republic staggered through its final death throes.

The circle of arch-conservatives around President Hindenburg were well aware of Schmitt and Hindenburg’s Chief of Staff, Otto Meissner, had already drawn on his work on Article 48 to quash a Reichstag bill attempting to limit the emergency powers of the

newly elected General in the early days of his presidency in 1926. Schmitt was brought into the inner sanctum of Reich power in order to help provide legal defence of presidential power in a conflict between the governments of the left-leaning federal state of Prussia and the Reich government, which had placed Prussia under martial law in July 1932. The Prussian government was deadlocked and had provided an opportunity for the Reich government to exert its power over fiscal readjustment but Prussia sought an injunction against commissarial rule. Schmitt was chosen to defend the Reich government in the October trial providing him with the chance to establish himself as Germany's premier scholar of constitutional law. Schmitt considered the trial a failure as the Leipzig Reich Court had not unambiguously recognized the power of the Reich government over that of Prussia (ruling that the Prussian government was unlawfully suspended but the Reich had the right to appoint a commissar). Those around the President, notably the arch-fixer General Kurt von Schleicher, the Reichswehr minister, were none-the-less impressed and continued to hold Schmitt in close council. Schleicher's plan, inspired in part by Schmitt and following his advice, was to have the existing Chancellor, Franz von Papen, expelled and Hindenburg appoint him. In office Schleicher sought to radically reshape the Weimar Republic along lines that solidified a broad-based populism under the Presidency. His plan, the so-called *Querverbindung*, was strongly influenced by the national revolutionary circle to stabilize the nation around Presidential rule, social reform and public works. The aim, which Schmitt wholeheartedly supported during the final years of the Weimar Republic, was to hold the Nazis at bay. The party had been strengthened by the Papen government's shift to the Right, and Schleicher's reformist state was unable to resist the tide of events. It lasted only a matter of months and by January 30, 1933 Hitler had been appointed Chancellor, signaling the end of Weimar. The proximity to power Schmitt had briefly acquired under Papen and Schleicher quickly evaporated and he warily looked on, from the safe distance of a new professorship in Cologne, as the National Socialist Party concentrated state power in its hands.

#### ***(iv) Howling with the Wolves: National Socialism***

In *Legality and Legitimacy*, a book Schmitt published in 1932 to support the shoring up of the Weimar Republic around presidential power in order to resist the squeeze exerted on the political situation by the poles of far Right and Left, he indicated his desire not to “howl with the wolves”<sup>161</sup> of National Socialism and his continued commitment to the constitution. But on learning of Hitler’s appointment as Chancellor, his diaries record that although irritated, he was relieved in a way: “at least a decision.”<sup>162</sup> This decision for decision’s sake seemed to dictate Schmitt’s own response to Nazi power. After a period of initial wariness he was soon ‘howling with the wolves,’ throwing his intellectual support and public reputation behind the Enabling laws, allowing the government, as well as the Reichstag, to pass laws (effectively dissolving the division of powers and the distinction between laws and measures). He joined the party on the first of May 1933, the same day as Martin Heidegger.<sup>163</sup> Schmitt no doubt felt that a National Socialist government would provide decisive solutions to the problem of founding order in mass politics and might offer some semblance of Mussolini’s Italy, which he admired greatly. He was doubtless also driven by opportunism and a desire to be at the centre of world-historical ruptures, as many have contended. Popitz had asked Schmitt to participate in a committee overturning the Reich Court’s ruling of the previous October and he was happy to see his position vindicated and the pass opened for the Reich to control federal states and appoint commissars from the Interior Ministry. Schmitt was appointed a position, by Popitz again, on an advisory council for the state of Prussia, the *Staatsrat*. This was a largely powerless upper house for which Hitler clearly indicated his disregard, but which Schmitt even in his later life considered his greatest honour. As these advisory roles wound Schmitt into the apparatus of the Nazi state his appointment to a position in the law faculty of the University of Berlin, a position made available by the forced retirement of his rival Herman Heller, ensconced him in a powerful position at

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<sup>161</sup> Quoted in Balakrishnan, *The Enemy*, 168.

<sup>162</sup> Ibid, 176.

<sup>163</sup> Heidegger, then rector of the Freiberg University, wrote to Schmitt on August 22, 1933, thanking him for the copy of *The Concept of the Political* Schmitt had sent him. Heidegger commended Schmitt’s book, particularly his reading of Heraclitus and signed the letter off with “Heil Hitler.” See: Martin Heidegger, “Heidegger and Schmitt: The Bottom Line” *Telos* 172 (1987), 132.

Germany's most prestigious academic institution. Schmitt returned the favour to his new masters by penning a set of screeds laced with virulent anti-Semitism, even going so low as to refer to Albert Einstein as a "poison-filled German hater" in which he sought to provide theoretical legitimation for what was in effect now a case of almost complete legal indeterminacy.<sup>164</sup>

At a conference of legal scholars in Weimar of March of 1933, Schmitt had declared that the Enabling Act had killed off the Weimar constitution and laid the basis for a new German state. In October the man now dubbed the 'Crown Jurist of the Third Reich,' by detractors produced *State, Movement, People*, a text widely read as the "official" legal theory of the new Nazi Reich. Schmitt heralded the realisation of a 'qualitative total state' that yoked the administration apparatus of the State to the *Volk* who lived in the shadow of the movement leading them and acting in their name. Now on the governing board of the BNSDJ, the foremost association of Nazi lawyers, Schmitt helped to provide a scaffold of jurisprudence legitimacy for the rule of law to become interpretable through the lens of political expediency, as the party saw fit. "Today," Schmitt wrote, "there are only indeterminate legal concepts."<sup>165</sup> In this context, where decisionism had reached its logical conclusion in its opposite, Schmitt attempted to formulate a widened conception of meta-legal legitimacy that would go beyond his dreaded positivism and the 'decisionism' he had long espoused during the crisis years of the Weimar constitution. In *The Three Types of Juristic Thought* (1934) he proposed the idea of a 'concrete order' that went beyond the state and relied on a historic 'common law' grounding the 'way of life' of a 'people. Schmitt was bending his long held conceptual frameworks out of shape to fit the demands of a legal (dis)order, based on the ad hoc suspension and supplementation of a legal system rendered increasingly redundant by ideological overdetermination.<sup>166</sup>

Despite his slavish attempt to follow in the footsteps of National Socialism, legitimating its path towards barbarity, Schmitt's questionable allegiance to the party's ideology left

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<sup>164</sup> Ibid, 183.

<sup>165</sup> Ibid, 191.

<sup>166</sup> See: Carl Schmitt, *The Three Types of Juristic Thought*, (Madison, WI: Greenwood Press, 2004).

him exposed to rivals, and he soon fell from grace. The consolidation of Nazi power made Schmitt's learned legitimation less necessary, and those envious of his positions, who harbored doubts about his ideological commitment, such as Otto Koelreuter, a rival professor; Reinhard Höhn, a colleague, and the Party ideologue Alfred Rosenberg seized this as an opportunity to topple the Crown Jurist. The SS newspaper *Das Schwarzes Korps* attacked Schmitt in a series of articles in which he was accused of being a Hegelian Catholic, insufficiently committed to the party, who put the state first and feigned anti-Semitism opportunistically. These allegations severely damaged Schmitt, who was forced to resign his official positions by the end of 1936. The favour of Herman Goering, an admirer of Schmitt since his appointment to the *Staatsrat*, protected Schmitt's university position and his title. It seems unlikely, as some of Schmitt's more apologist readers suggest, that he was in danger because of this SS denunciation but the memory of the 'Night of the Long Knives' (June 30, 1934) in which Schmitt's former advisee General Schleicher was brutally murdered lay fresh in memory (although he shamelessly celebrated this extra-legal purge in a text bearing the title *The Leader Protects the Law*). Schmitt initially tried to prove his allegiance by escalating the anti-Semitism now coursing through his work. He set up a conference aimed at eliminating the influence of Jews on German jurisprudence. He opened the conference quoting Hitler's *Mein Kampf*: "I defend myself against the Jews, I struggle to do the work of the Lord."<sup>167</sup> The conference claimed that "rootless" Jews posed a political threat to European people and tried to infiltrate in any number of disguises. It called for clarity on "who was a Jew and who was not," for the removal of Jewish scholars, who were to be placed in a special section marked 'Judaica' and any reference prefaced with an explanation of the author's origins (a practice Schmitt already followed, often adding "the Jew" before Stahl, Spinoza, etc).<sup>168</sup> Although many of these measures were soon adopted, meaning that Schmitt helped draft the persecution of Germany's Jewish population, the event itself was ill attended and did nothing to stop his 'encirclement.'

Schmitt's response was to retreat from his justifications of the internal mutations of the

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<sup>167</sup> Balakrishnan, *The Enemy*, 206.

<sup>168</sup> *Ibid*, 207.

Nazi state where his pen was “scratching in vain,” as one party ideologue put it, and focus on the less controversial issues of international legal order. This built on his Weimar writings on international law and warfare. Whilst these earlier texts had been precisely targeted polemics highlighting the hypocrisies and uncertainties of the emerging international legal order and bemoaned the perilous state of German sovereignty under the Versailles Treaty, his new international political thought took on a more politically activist and policy-ambitious tone. In a series of short books and articles Schmitt authored his theory of *Großraum*, which would reshape international legal order around a number of continental power blocks, autonomous from one another, that would not interfere in each other’s spaces. Schmitt consciously shaped his arguments in appealing legalese, drawing his example from the Monroe Doctrine, whereby the U.S. claimed a hemispheric sphere of influence, and aimed these texts at an international audience. It was clear however that these texts amounted to a legitimation for the expansion of Nazi Germany eastwards, and a polemical rejection of the right of other powers, principally of course the U.S. and Britain, to interfere in a German-dominated European space. It was also clearly an attempt to ingratiate himself with the Nazi regime by playing his role as Crown Jurist, whilst staying out of the controversies and rivalries internal to the “movement.” Schmitt’s *Großräume* were characterized by a hierarchy where one hegemonic state would dominate the others and relate to other *Großräume* in a kind of pumped-up Westphalian order. It indicated, however, Schmitt’s decisive break with the state, a move echoed in his 1938 book *The Leviathan in the State Theory of Thomas Hobbes*. He later claimed that this was a veiled critique of the Nazi state but the vulgar anti-Semitism scattered throughout it makes this defense unconvincing. It still seemed that Schmitt wanted to please, even if there was clearly a gap between Schmitt, as a still somewhat free thinker, and the increasingly blinkered mania of Nazi ideology.

#### **(v) *The Experience of the Cell: Arrest and Interrogation***

The theory of *Grossraum* might have represented Schmitt’s attempt to formulate a new Europe-wide German Reich in order to keep pace with Nazi expansion, but this expansion made his formulations increasingly unlikely as Germany drew inexorably

towards total war. During the war, Schmitt began to drift from the Nazi state as it became increasingly clear that victory would elude Germany and Hitler was leading the country into ruin. He played his part in its propaganda machine, travelling to Spain, Portugal, Romania and Hungary as a “cultural ambassador,” lecturing to jurists and dignitaries. He lectured on the importance of jurists as the guardians of the law and the long influence of Roman law in Europe that bound it together.<sup>169</sup> Strongly at odds with the official celebration of German law in Nazi ideology and the miserable deterioration of the country’s juridical system, some have seen it as a tactic to distance himself from the regime as its enemies closed in.

At the end of the war, Schmitt was drafted as an air raid warden as Berlin fell – an ironic role for the thinker for whom air war signalled the final cataclysmic erasure of European order. In early 1945 his friend Popitz was executed for his role in a plot to kill Hitler, and this might have signalled the final death knell for Schmitt’s hopes of reconstituting political form around the German state. Not only had Popitz been his friend, and more recently host, but also in a way Schmitt’s political mentor, an example of the classical politics of Prussia. As he watched his dreams of a European *Grossraum* collapse in the rubble of Berlin, Schmitt saw also the death pangs of the old European certainties and the possibilities of the new politics he had hoped to salvage from the cauldron of interwar frictions. His writings from this period increasingly looked beyond the war and beyond the horizon of the state but were ever more strongly framed by myth and eschatological theology. *Land and Sea*, published in 1942, and originally written as a geopolitical fairy tale for his daughter Anima, was characterised by a flight away from the destruction being wrought around him into a mix of world-historical musing and geo-elemental mythology that signalled his growing separation from the realities of the war.

In the months after the end of the war Schmitt was drafting a defence of a friend, a businessman named Friedrich Flick, who was to go on trial at Nuremberg.<sup>170</sup> But he was

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<sup>169</sup> Balakrishnan, *The Enemy*, 246- 248.

<sup>170</sup> This text has recently appeared in English, translated by Timothy Nunan. See: “The International Crime of War of Aggression and the Principle “*Nullum crimen, nulla poena sine lege*,”” in Carl Schmitt, *Writings on War*, edited by Timothy Nunan, 125-196. Cambridge: Polity Press, 2011.

soon to be interned as a possible defendant himself. He was first arrested in the autumn of 1945 when US forces held him as a ‘security threat’. He was released the following year but in March 1947 was re-arrested and taken to Nuremberg for interrogation by the US lawyers Robert Kempner and Ossip K. Flechtheim. Both lawyers were German-Jewish émigrés. His library was taken from him and he spent a year under interrogation, defending himself as a scholar innocent of the charges being levelled against him – that he had provided the legal legitimation for Nazi expansion in Europe. He was released in May 1947 without charge and returned to Plettenberg as a ‘freelance scholar.’ The “experience of the cell” was very difficult for Schmitt and he recorded his experience of an identity crisis bordering on a psychic breakdown in *Ex Captivitate Salus*, published in 1950, his only autobiographical book. The period of detention was a time of delirious self-questioning when Schmitt faced his own moral failures and complicity in the catastrophic ruin of all he valued. He came to find the answer to the question ‘Who was Carl Schmitt?’ “Murky and unclear.”<sup>171</sup>

It seems that the chill of imprisonment and the difficulty of facing both his own past and Europe’s future drove Schmitt back to religion.<sup>172</sup> The religious charge that entered Schmitt’s work did not seem to be confined to the rhetorical flourish of biblical references he was growing fond of, or indeed the conceptual frame of political theology used to structure arguments, but the product of genuine renewal of faith born of despair.

#### **(vi) The Retreat into Silence: Post-War ‘Exile’**

“What are you going to do now?” Robert Kempner had asked Schmitt as he was released from interrogation. “Retreat into the security of silence” Schmitt replied.<sup>173</sup> In truth, however, this silence was only a lowering of voice. Schmitt was excluded from holding an academic post in the new Federal Republic because he refused to sign the certificate of de-Nazification, fearing it would admit that his life’s work was ideologically tainted. He

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<sup>171</sup> Balakrishnan, *The Enemy*, 236.

<sup>172</sup> Balakrishnan, *The Enemy*, 255.

<sup>173</sup> Quoted in Hoelzl, Michael and Ward, Graham, Introduction to *Political Theology II: The Myth of the Closure of any Political Theology*, by Carl Schmitt (Cambridge: Polity Press, 2008), 1.

clung to the image that he had always been conceptually aloof and apart from the regime. He depicted forced retirement in Plettenberg as a form of ‘inner exile’ and referred to his house as ‘San Casciano,’ Machiavelli’s house in exile, and signed his letters ‘Benito Cereno,’ after the captain of the mutinous slave ship in Melville’s story of the same name.<sup>174</sup> But Schmitt’s ‘retreat’ was far from complete and he was desperate to maintain both relevance and influence even as he became increasingly concerned with his own self-image and reception. As Jan-Werner Müller argues, he remained an *éminence grise* in his internal exile “paradoxically both absent and present in the public intellectual life of the Federal Republic.”<sup>175</sup> If his exclusion from academic posts left him outside the official channels of intellectual influence he sought to build an “epistolary empire”<sup>176</sup> placing him at the centre of an “intellectual freemasonry” that stretched across Europe and taking in many of the conservative scholars of the new Republic and the major thinkers of post-war Europe.<sup>177</sup> Like a spider at the centre of its web, Schmitt would issue polemical bursts, in print, first under pseudonyms and then again in his own name, engaging with issues of the day and exercising his “anxiety to influence” via his chain of interlocutors.<sup>178</sup>

Schmitt kept up lively correspondences with figures as diverse as Raymond Aron, Alexandre Kojève, Emile Cioran, Julien Freund and his old “hostile brother” Ernst Junger, and San Casciano became a place of pilgrimage for the Jewish scholar Jacob Taubes, the Maoist Joachim Schickel and various members of the West German Right including Ernst Forsthoff, a former student of Schmitt’s who sat on the supreme court and shaped the constitutional decisions of the new Republic.<sup>179</sup> Through a string of former students, old acquaintances and new apprentices, Schmitt constructed a group of advocates for his cause who would resuscitate his reputation and maintain not only his work’s continued relevance but his status as a ‘classic’ of modern political thought.<sup>180</sup>

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<sup>174</sup> See Part 1 of Müller *A Dangerous Mind*.

<sup>175</sup> Müller, *A Dangerous Mind*, 3.

<sup>176</sup> *Ibid*, 59.

<sup>177</sup> Balakrishnan, *The Enemy*, 260

<sup>178</sup> Müller, *A Dangerous Mind*, 60.

<sup>179</sup> *Ibid*, 97.

<sup>180</sup> This case for Schmitt as a ‘classic’ was most forcefully defended in West Germany by conservatives such as Bernhard Willms and Günther Maschke, but also inadvertently by his critic Heinrich Meier.

Throughout the post war period Schmitt, perhaps in keeping with this semi-public “taboo,”<sup>181</sup> began to fall deeper into a literary style laced with allusion, mysterious suggestion and a tone suggestive of a world-weary sensitivity to the apocalyptic horizon of modern technological civilization. In part, this was the result of Schmitt’s increasing immersion in the language of eschatological theology, a tendency that betrayed a strengthening of faith after the death of his second wife in 1950. His last major book, *Political Theology II*, published in 1970, bore witness to the shift in Schmitt’s views on the political relevance of theology, bearing a position closer to politicized theology if still remaining far remote from Christian holy practice as it took increasingly eschatological views of history, where party politics was accelerating history towards an end. On the other hand it was a symptom of his frequent recourse to self-mythologisation and the construction of an ‘Arcanum’ of which he, in a position of unique world-historical perception, held the key and which the “initiate” could hope to benefit.<sup>182</sup> Living on a pension secured by business friends and cementing the fame he had built before the war in Italy and Spain through new translations, new advocates (notably his daughter, Anima, in Spain, who had married the conservative judge Alfonso Otero Valera) and occasional lecturing engagements there and at home, Schmitt’s influence began to creep back. Gopal Balakrishnan argues that after the war Schmitt became a “living period piece, to all appearances an intellectual invalid from an antediluvian world.”<sup>183</sup> But as Jan Werner Müller painstakingly shows, tracing Schmitt’s post-war influence in European thought, this is far off the mark.

As Müller argues, Schmitt maintained a close commentary on the day-to-day politics of the Federal Republic and won new disciples precisely because his often “deeply antimodern assumptions” seemed to be “far ahead of [their] time,” placing Schmitt at

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<sup>181</sup> Indeed it is tempting to read Schmitt’s reflections on the historically ‘concrete’ ‘taboo’ in *Hamlet and Hecuba* as a reflection on his own post-war status. See: Carl Schmitt, *Hamlet and Hecuba* (New York: Telos Press, 2009).

<sup>182</sup> The manner in which Schmitt sought to weave influence over the post-war landscape of European thought is the subject of Müller’s book and he carries out a rigorous labour of excavating the often concealed webs of influence Schmitt constructed. See: Müller, *A Dangerous Mind* (2003), particularly *Introduction* and Part 2.

<sup>183</sup> Balakrishnan, *The Enemy*, 261.

once in the role of a world-historical clairvoyant and a representative of timeless classical categories, out of joint with the nihilism of mass consumer society and the blunt ideological forcefields in which Europe was tied.<sup>184</sup> Schmitt died in 1985 at the age of 96, when Europe was still in the Cold War, but his reputation was rising with a tide of conservatism in West Germany. His death came at a moment when the legacy of Nazism was a hotly contested issue in German intellectual life, with Jürgen Habermas and the revisionist historian Ernst Nolte battling publicly in the pages of *Die Zeit* the following year, in what is known as the *Historikerstreit* or ‘Historians’ Quarrel.’<sup>185</sup> The context was set in West Germany for a full reappraisal of Schmitt’s work, and shortly after his death, in 1986, Helmut Quaritsch, a former pupil of Schmitt’s, gathered friends and scholarly disciples for the first conference dedicated to Schmitt in Speyer. The conference opened the floodgates to Schmitt’s academic respectability in Germany and the subsequent spread of his reception in Anglophone scholarship. Schmitt, the great opportunist who yearned for ‘power over history’ would no doubt have been pleased that his work had found a new audience in the heart of enemy territory where it became one of the major intellectual sticks with which to beat his old enemies – liberalism and the United States – precisely at the moment of their supposed historical triumph.

## **(2) *The Bricoleur: Intellectual Context***

### **(i) *The Sphinx***

The German legal thinker Erich Schwinge declared in 1930 that Carl Schmitt was “the sphinx of German public law, because from the first moment he avoids precise classification.”<sup>186</sup> This ambiguity is not only the product of Schmitt’s prose style, his promethean conceptual output and the debate over the relationship of his thought to his political choice, but also because of the difficulty in situating him in the intellectual lineages of German political thought and specifically that of the early twentieth century milieu from which he emerged; more broadly, in modern European thought and

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<sup>184</sup> Müller, *A Dangerous Mind*, 4.

<sup>185</sup> *Ibid*, 194-207.

<sup>186</sup> Agostino Carrino, ‘Carl Schmitt and European Juridical Science,’ in *The Challenge of Carl Schmitt*, edited by Chantal Mouffe (London: Verso, 1999), 191 n5.

conservative philosophy. This was in part because Schmitt was decisively shaped by his Catholic provincial and petty-bourgeois background insofar as he was “without conventional allegiances or sentiments,” he was able to readily [turn] his back on the good old days of pre-war Germany.”<sup>187</sup> Thus he was freed from many of the usual associations of the German political thought, both liberal and conservative, that one might expect of a man of his time and in hindsight of his later politics. It was also because he had an “extraordinarily diversified endowment of cultural capital” that let him read across many European languages and opened up horizons of debate, both historic and contemporary, that he could freely draw upon to enrich his analysis of the problems facing twentieth century politics and occasionally to lead it down esoteric blind alleys or to catastrophic dead ends.<sup>188</sup> Thirdly, Schmitt kept a great variety of intellectual company across his life, from the Dadaist artist Hugo Ball in his early Munich days, the French Catholic *Renouveau* context of Bonn, to his friends on the left in the German Sociological Association such as Otto Kirchheimer and Karl Mannheim and Wilhelm Stapel, A.E. Günther and Prince Karl Anton von Rohan associated with the “conservative revolution” of the 1930s – and of course his Nazi protector Göring, his fascist hero Mussolini and the broad spectrum of post-war correspondents and disciplines that shaped his late “revival” in Germany and beyond. These three elements: his lack of intellectual and affective investment in the “old order;” his intimate knowledge of sprawling multilingual mass of readings and the breadth of his social and professional acquaintances make Schmitt’s intellectual cartography “difficult to map.”<sup>189</sup> As Balakrishnan argues, it often appeared as if Schmitt sought to keep his intellectual distance from those he engaged with even as he was reckless in his headlong rush to serve the forces of reaction in Weimar and Nazi regimes.<sup>190</sup> Even as Schmitt is hard to situate within the typical intellectual lineage of the German conservatism of his day he can nonetheless clearly be classified as a Conservative. But the question of what type of

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<sup>187</sup> Balakrishnan, *The Enemy*, 5.

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> Indeed one could argue it was this intellectual distance that made him enemies in the Nazi hierarchy. Although he was no doubt overstating the case his friend Paul Adams wrote in 1934: “Politically he will never be accepted by the National Socialists. His style, his genius, his fundamentally solitary existence will always cause offence. It would have been better if he had gone to Munich and existed on the periphery.” Balakrishnan, *The Enemy*, 204.

conservative is harder to answer.

## **(ii) *A Conservative Revolutionary?***

Jan-Werner Müller has argued that Schmitt “embodies a European political sensibility which is rather inadequately described with the concept, conservatism – ‘radical conservative’ or ‘reactionary modernist’ come closer to the mark, but they still miss it.”<sup>191</sup> What we encounter in Schmitt, Müller continues, “is a mindset that could best be described with the term philosophical or anthropological conservatism – which might or might not be realized in particularly conservative positions centered on gradual change in actual politics.”<sup>192</sup> Although Müller’s attempt to define the nature of Schmitt’s conservatism perhaps settles on a too broad a terminology, it nevertheless has much to recommend it. Müller’s identification of Schmitt’s thought with a European, rather than a strictly German perspective, on the one hand and a ‘sensibility’ open to positions not so typically identified as conservative on the other opens the possibility of a more nuanced approach to understanding Schmitt’s relationship to the broader trajectory of modern European conservative thought than those that too easily capture him under labels such as ‘reactionary modernist’ or ‘conservative revolutionary.’<sup>193</sup>

In Herf’s account, ‘reactionary modernists’ were those in the Weimar Republic who, like Schmitt, were caught in the tension between reactionary stances on the location and distribution of political and economic power and a willingness to embrace the transformative powers of technology and mass politics after the experience of the First World War and the revolutionary transition from Reich to Republic.<sup>194</sup> Schmitt noted he was one of those “impressed with the speed of historical change” but he remained cautious of untrammelled historical acceleration that would deliver Europe from meaningful order into the hands of technologically-induced nihilism. Thus, the ambiguity

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<sup>191</sup> Müller, *A Dangerous Mind*, 11.

<sup>192</sup> Ibid.

<sup>193</sup> See: Jeffrey Herf, *Reactionary Modernism* (Cambridge: Cambridge University Press, 1994); and Richard Wolin, “Carl Schmitt: The Conservative Revolutionary Habitus and the Aesthetics of Horror,” *Political Theory* 20 (1992), 424-447.

<sup>194</sup> See: Herf, *Reactionary Modernism* (2004). Particularly Chapter 1 on the ‘paradox of reactionary modernism’ and Chapter 5 on Schmitt.

of Schmitt's relationship to technology sets him at a considerable distance from thinkers such as Ernst Jünger, with whom Herf too easily conflates him.

Jünger's one time secretary, the Swiss conservative Armin Mohler, coined the term 'conservative revolution' after the Second World War in an attempt to distinguish various thinkers of the Weimar Far Right from National Socialism. Mohler listed Jünger, Schmitt, Spengler and the early Thomas Mann among others as 'conservative revolutionaries' who stood in relation to Hitler as Trotsky had to Stalin.<sup>195</sup> His aim was to rehabilitate these taboo figures in order to develop an anti-liberal and anti-socialist conservatism that could escape the taint of Nazism whilst providing a Rightist alternative to the new post-war Federal Republic.<sup>196</sup> The tensions within the concept of a 'conservative revolution' certainly pointed to the structural contradictions between the reactionary ends and the revolutionary means that frequently defined Schmitt's political positions. However, Schmitt sat uneasily amongst Mohler's ragbag of Weimar reactionaries due to his deep institutional complicity with the Nazi regime. Although Mohler was keen to highlight Schmitt's distance from Nazism, there was a clear contrast to figures such as Jünger and Spengler whose relationship to the regime always remained more critical.<sup>197</sup>

Although neither 'reactionary modernist' nor 'conservative revolutionary' quite meet the mark of defining Schmitt's conservatism, both help to identify something of the paradoxical tendencies operating in his work. Indeed, one of the most characteristic, if unusual, aspects of Schmitt's thought was the ambiguous tension between seemingly antimodern categories such as theology and myth, with a sharp analysis of the effects of technology and mass society on twentieth century politics. As Müller notes, "Schmitt had no illusions about re-enchanting the world or returning to an ideal past. But neither was he prepared simply to accept certain elements of modernity such as unrestrained

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<sup>195</sup> Müller, *A Dangerous Mind*, 104-116.

<sup>196</sup> Although Mohler's characterization was originally deigned to be exculpatory it was later employed polemically against Schmitt by the American critic Richard Wolin in his 1992 article. See: Wolin, *Carl Schmitt* (1992),

<sup>197</sup> Jünger never in fact joined the Nazi Party and was under suspicion of the Gestapo from the early 1930s and was banned from writing after 1938. Spengler was openly critical of the Nazi's biological ideology and quarrelled publicly with Alfred Rosenberg.

development of technology and the supposed rise of mass society.”<sup>198</sup> Müller perhaps overstates Schmitt’s opposition to mass society, for although he remained ambivalent about an unconstrained rise of mass politics he acknowledged that it was an irreversible presence in the twentieth century, even if its energies had to be channelled. Hence, in works such as *The Crisis of Parliamentary Democracy* (1923), *Constitutional Theory* (1928), *Legality and Legitimacy* (1932) and his ‘high’ Nazi treatise *State, Movement, People* (1933) Schmitt does not oppose the power of the masses but rather evokes them as a source of legitimacy for the state. Nonetheless, it was precisely Schmitt’s simultaneous rejection of a return to a lost political past and his acceptance of the post-revolutionary realities of mass politics that made him hard to locate within the intellectual bloodlines of German conservatism.

What Schmitt shared most ardently with the traditions of German conservatism that had gained intellectual and political traction since the late nineteenth century was the desire for political renewal. Like many conservatives in Germany, shocked by the political suicide of the old Prussian order in the First World War and the burst of revolutionary energy it unleashed, Schmitt wanted to see a renewal of politics in a state form that would provide authority and stability. Where he differed strongly was that he did not conceive of this renewal as a ‘restoration’ that would somehow turn the clock back to some idyll of traditional authority. Schmitt’s recognition that the pre-revolutionary Germany was buried and traditional authority decentered by the tumultuous shake up of the early century left Schmitt with little time for the leitmotif of restoration. Balakrishnan notes that restoration was for Schmitt “the always farcical agenda of reactionary Don Quixotes.”<sup>199</sup> Rather, the renewal Schmitt envisaged was one that would recognize the irreparable historical losses from which a new Germany had been born and draw on the revolutionary energy of the masses to build new forms of legitimate authority. The attempt to conceive of new forms of authority on the shifting bedrock of the revolutionary masses often opened a profound conceptual gulf between Schmitt’s thought and some of the key traditions of German conservatism. Indeed, Schmitt remained distant

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<sup>198</sup> Müller, *A Dangerous Mind*, 11.

<sup>199</sup> Balakrishnan, *The Enemy*, 121.

from three pillars of German conservative thought that one might expect him to identify with: Nationalism, romanticism and Catholicism.

Gopal Balakrishnan compares Schmitt to a bricoleur who, unencumbered by the conventional investments of German conservatism, “could pick up selected pieces, innovate, improvise and recombine.”<sup>200</sup> This magpie-like intellectual tendency allowed Schmitt to slip between the cracks of German conservatism. This practice of conceptual collage makes it hard to locate Schmitt’s thought within the intellectual currents of the time and gives his writing the ambivalence of precisely aimed polemics that seem nonetheless strangely out of time. A brief overview of some of these eclectic influences not only provides a contextual frame in which to situate Schmitt’s thought but also helps to account for the scope and endurance of his influence.

### **(iii) *The German View of the State***

Although never a prisoner to its confines Schmitt remained focused on what the German political scientist Wilhelm Hennis called the “problem of the German view of the state.”<sup>201</sup> As Müller notes, this ‘German view of the state’ was oriented towards the distinction between state and society, investing the former with metaphysical foundations and operating from the perspective of the executive.<sup>202</sup> Schmitt was clearly a man of this tradition of state thinking but he had a difficult relationship with its philosophical founding father, Georg Wilhelm Friedrich Hegel (1770–1831). References to this towering figure in modern German philosophy and political thought are rare in Schmitt’s work but he nonetheless casts his shadow over Schmitt’s work. There are three principle elements of Hegel’s thought that Schmitt draws on or tackles although often obliquely: the separation of state and society; the state as a totality; and the concept of historical dialectics.

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<sup>200</sup> Balakrishnan, *The Enemy*, 5.

<sup>201</sup> Quoted in Müller, *A Dangerous Mind*, 5.

<sup>202</sup> Ibid.

The concept of state separated from and standing above civil society is perhaps the key aspect of Hegel's thought that Schmitt adopted. Although in developing a concept of a state transcendent of society Schmitt draws on the seventeenth century English philosopher Thomas Hobbes and the thinker of nineteenth century Catholic Counter-Revolution such as de Maistre and Donoso Cortes rather than Hegel, his influence is discernible. Much of Schmitt's Weimar work was dedicated to a polemical diagnosis of the collapse of the nineteenth century liberal state under twentieth century political conditions. The liberal state of the nineteenth century was fundamentally grounded on the Hegelian distinction between state and society and this was being eroded in the early years of the new century. In his attempts to formulate a concept of state adequate to weather the winds of twentieth century politics Schmitt would return repeatedly to the necessity of a firm distinction between state and society.

In a sense however there were two Hegels that emerged in Schmitt's early thought each of which had a relationship to this distinction. On the one hand, Schmitt identified the bureaucratic 'clerks' of the nineteenth century liberal state to represent the Hegelian 'spirit of history' in the nineteenth century. But by the twentieth century the 'spirit of history' had moved on and these bureaucrats became representatives of an outmoded politics. In Schmitt's view the old Hegelian separation of state and society that taken shape in the liberal state was being undermined by liberal pluralism on the one hand and eclipsed by the rise of the politicized masses on the other. In his first text published after joining the Nazis, 1933's *State, Movement, People*, Schmitt declared the day Hitler was elected Chancellor was the day "Hegel died."<sup>203</sup> But the funeral of the clerks' Hegel strangely marked the birth of a new Hegel in Schmitt's thought: the Hegel of the total state. Indeed, in his writings from the early Nazi years Hegel became for Schmitt a source of intellectual renewal with a powerful vision of political totality in which new forms of legitimacy could be conceived. Schmitt argued that Hegel's concept of the state as a 'political totality' could provide a framework for thinking of the new German state form as a "concrete order or orders, the institution of institutions."<sup>204</sup> Hence, his concept of a

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<sup>203</sup> Balakrishnan, *The Enemy*, 187.

<sup>204</sup> Balakrishnan, *The Enemy*, 197.

‘qualitative total state’ that could reassert the distinction between state and society against its erosion by twentieth century liberalism drew directly on Hegel’s thought. Although Schmitt developed this ‘totalitarian’ reading of Hegel in aid of the Nazi regime he saw the true “world-historical residence of Hegel’s spirit” in Fascist Italy.<sup>205</sup> As Schmitt definitively moved away from the state in the late 1930s, so these references to Hegel dropped from his work.<sup>206</sup>

Schmitt had an ambivalent relationship to the Hegelian conception of dialectics as the immanent motor of historical change. On the one hand, Schmitt repeatedly critiqued the progressive or teleological reading of Hegelian dialectics in both liberal and Marxist thought. In his 1922 *Roman Catholicism and Political Form* Schmitt criticized the liberal idea, influenced by Hegel, that structural antitheses within society could be resolved in a dialectic synthesis in a ‘higher third’.<sup>207</sup> For Schmitt this represented a typical liberal attempt to avoid the inherently conflicting nature of politics cast in the terms of Hegelian philosophy.<sup>208</sup> Likewise Schmitt critiqued the Marxist rendering of Hegel’s philosophy of history in historical materialism. In *The Critique of Parliamentary Democracy* Schmitt mounted a critique of the Marxist concept of ‘the dictatorship of the proletariat,’ arguing that it was based on a conception of history determined by an ideological metaphysics.<sup>209</sup>

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<sup>205</sup> Balakrishnan, *The Enemy*, 188. Schmitt recounted that in an 1936 interview with his political hero Mussolini the *Duce* declared that “the state is eternal, the party transitory; I am Hegelian.” (Ibid) Schmitt’s praise for this prioritization of the state over the party perhaps indicated something of his unease with the party rule of the Nazi regime. Indeed, one of the accusations made against Schmitt by his opponents in the Nazi regime was that he was too Hegelian, i.e. committed to the state above the party.

<sup>206</sup> Hegel does make fleeting return in *The Nomos of the Earth* as the one author who had come close the “*arcanum*” of the relationship between a maritime existence and the industrial revolution. See: Carl Schmitt, *The Nomos of the Earth: In the International Law of the Jus Publicum Europaeum* New York: Telos Press, 2003), 49 (Hereafter *The Nomos*).

<sup>207</sup> See Carl Schmitt, *Roman Catholicism and Political Form* (Madison, WI: Greenwood Press, 1996). This built on Schmitt’s critique of political romanticism advanced in his earlier work bearing that title but directly linked the ‘higher third’ to Hegelian dialectics.

<sup>208</sup> Hegel’s conception of historical dialectics lay at the basis of Schmitt’s post-war correspondences with Raymond Aron and Alexandre Kojève. For a detailed discussion of these correspondences and their stakes for the thought of the respective thinkers see Müller, *A Dangerous Mind*, 87-103. For more on Kojève’s interpretation of Schmitt see: Robert Howse, ‘Europe and the New World Order: Lessons from Alexandre Kojève’s Engagement with Schmitt’s ‘Nomos der Erde’ *Leiden Journal of International Law*, 19 (2006), 93-103.

<sup>209</sup> See: Carl Schmitt, *The Crisis of Parliamentary Democracy* (Cambridge, MA: MIT Press, 1988), Chapter 3. Schmitt built here on the arguments he had earlier developed in his 1921 book *Dictatorship* elaborated a critique of the Marxist concept of dictatorship within a longer trajectory of the concept in western political thought since the Roman era.

Although Schmitt lauded Marxism for the powerfully motivating myth of the proletarian dictatorship, it ultimately reduced history to a number of necessary subjects that could not account for the persistent presence of the political.<sup>210</sup>

On the other hand however, Schmitt located struggle at the very foundations of his conception of historical change. Not only did Schmitt argue that politics was founded on the relationship between friend and enemy, but in his attempts to explicitly develop a philosophy of history he evokes the dialectical tensions driving epochal changes. For example, in *The Age of Neutralizations and Depoliticizations* (1929) Schmitt argues that modern European history has been driven by a dialectical tension arising from successive attempts to neutralize political conflict and the new conflicts this has generated. In his 1942 book *Land and Sea* he likewise located a dialectical tension at the heart of historical change although in this instance he pointed to the changing relationship of technology and ‘spatial consciousness’ to the geo-elemental forces of land and sea. Further, at the core of Schmitt’s critique of liberalism is the idea that the liberal attempt to remove the friend-enemy distinction from politics by appealing to universal categories results in its dialectical escalation into absolute enmity. Although Schmitt makes no direct reference to Hegelian dialectics in these works it seems unlikely that a German thinker of his generation who is obviously aware of Hegel’s work and preoccupied with issues of state legitimacy would not bear the influence of Hegel.<sup>211</sup>

Schmitt’s conception of historical change thus wore traces of Hegelian dialectical philosophy, but his avowed influence was rather the sociological methods of Max Weber. Schmitt attended Weber’s lectures during his time in Munich and was greatly impressed, and his imprint is clear on Schmitt’s work from the early 1920s. Schmitt’s attempts to

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<sup>210</sup> For a detailed analysis of Schmitt’s critique of Marxism that highlights the influence of Hegelian dialectics see: Jorge E. Dotti, “Schmitt as a reader of Marx,” in *The Challenge of Carl Schmitt*, edited by Chantal Mouffe, 75-91. London: Verso, 1999.

<sup>211</sup> In *Carl Schmitt and the Jews* (2007) Raphael Gross argues that the ‘young Hegelians’ such as Max Stirner and Bruno Bauer exerted a strong influence on Schmitt’s thought. Gross argues that Bauer’s understanding of secularization played a key role in shaping Schmitt’s specific anti-Semitic understanding of European modernity. Marx of course also numbered amongst the ‘young Hegelians’ but Schmitt always appeared to favour the work of the more conservative Bauer who no doubt came closer to his political inclinations. See: Gross, *Carl Schmitt and the Jews*, 3-17.

grapple with the relationship between secularization and state legitimacy were in part prompted by Weber's work and placed squarely in his lineage. Although Schmitt developed his thought in a direction strikingly at odds with the normativism of the older scholar, his work was squarely in Weber's lineage.<sup>212</sup> Indeed, the first three chapters of Schmitt's *Political Theology* were originally published in 1923 as part of a *Festschrift* to the recently deceased Weber.<sup>213</sup> Although marking his respect for Weber, the book also staked Schmitt's differences. Schmitt departed from Weber in understanding secularization not as a process of progressive rationalization but as one that left intact a structural role for theological concepts within the modern secular state, its leading concepts being shadowed by theological predecessors. Although Schmitt was keen to distinguish the methodology he introduced in *Political Theology* from Weber's, his "sociology of concepts" remained deeply indebted to the late master of German sociology in its emphasis on the role of concepts in shaping historical developments.<sup>214</sup>

#### **(iv) Latin Reaction**

If Schmitt's thought was shaped by the 'German problem of the state' and the question of historical legitimacy plaited from strands of Hegelian philosophy and the Weberian sociology Schmitt's conceptual armoury was drawn from beyond these German traditions. During his years in Bonn Schmitt turned to the traditions of Catholic thought in search of a source of stability amidst the ferment of early Weimar. As noted above Schmitt was not principally drawn to the medieval revivalism of his conservative Catholic peers but rather to the rabid anti-utopianism of the French and Spanish counter-revolutionaries of the nineteenth Century. In the early nineteenth century French reactionary, Joseph de Maistre, and the former Spanish ambassador to Berlin, Juan

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<sup>212</sup> See for example the discussion of the relationship between Schmitt's *Political Theology* and Weber's *Economy and Society* in Balakrishnan (Balakrishnan, *The Enemy*, 44-48). In the early 1960s Jürgen Habermas caused controversy by claiming Schmitt was the "legitimate son of Max Weber" (Müller, *A Dangerous Mind*, 7).

<sup>213</sup> Catherine Colliot-Thélène, "Carl Schmitt versus Max Weber: Juridical Rationality and Economic Rationality," in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Routledge, 1999), 141-143. For a study of the possible adaptation of insights from Weber and Schmitt for thinking radical democracy see: Andreas Kalyvas, *The Politics of the Extraordinary* (Cambridge: Cambridge University Press, 1999).

<sup>214</sup> See: Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago, IL: University of Chicago Press, 1996). Particularly Chapter 3.

Donoso Cortes, he found orientation for his attempt to cement the authority of the state against the revolutionary masses. The staunch conception of sovereignty and the cataclysmic vision of civil war that these arch-conservatives of the nineteenth century provided the young jurist with conceptual weapons to do battle with his own post-revolutionary tumult in Weimar Germany. Schmitt understood the revolution that these Catholic reactionaries had chiselled their positions against to now be catching up to Germany. The German state had managed, in Schmitt's view, to keep at bay the legacy of 1848 with incremental shifting of power within a parliamentary system overseen by Prussian militarism.

Balakrishnan notes that although Schmitt found historical relevance in the nineteenth century counter-revolution, these 'Latin' sources stood beyond the canon of early twentieth century German conservatism.<sup>215</sup> They had a profound affect in shaping the strong pulse of anti-universalism that runs through Schmitt's work. Rather than oppose universalism with a typically *Volkish* emphasis on German cultural superiority, these thinkers allowed Schmitt to emphasize the personal nature of all authority and the necessity of a strong unified locus of decision-making to assert itself against and nihilistic charge of the revolutionary masses. Schmitt parted ways with these reactionaries however insofar as they, like the German romantics he lambasted, remained fixated on restoration of lost privilege. Although Schmitt found a supplement, indeed an antidote, to German state theory in these 'Latin' reactionaries, and he employed them as a battering ram against a supposedly impotent German liberalism, they nonetheless failed to provide him with a point of orientation within an age of mass politics. Although Schmitt drew extensively on these thinkers in *Political Theology* he soon moved on to try to accommodate his understanding of state authority with new forms of political community in light of mass politics. Donoso Cortes' claim that at the core of modern politics lay a stark choice between "the dictatorship from above and the dictatorship from below... the dictatorship of the dagger and that of the sabre" soon appeared inadequate to account for

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<sup>215</sup> Balakrishnan, *The Enemy*, 48-49.

the realities of twentieth century mass politics in Schmitt's view.<sup>216</sup> Nonetheless Schmitt's attraction to the 'classical' perspective of 'Latin' political thought never left him and accounts indeed for his consistent admiration of Mussolini's Italy.<sup>217</sup>

#### **(v) *The Hobbes of the Twentieth Century***

From his school days Schmitt had been adept at languages and just as his knowledge of French, Spanish and Italian had opened up vistas of 'Latin' reaction closed to many German conservatives, his acquaintance with English allowed him to keep abreast of intellectual developments in the Anglophone world. His writing shows his familiarity with contemporary debates in English across a number of disciplines and at the edges of political and legal theory. This was of particular importance in shaping his analysis of international law and the way in which the United States discursively shaped the legitimacy of its interventionist foreign policy. However, Schmitt's analysis of nineteenth and twentieth century Anglophone political thought is overshadowed by the influence of one towering figure: the seventeenth century philosopher Thomas Hobbes.

Hobbes was arguably the thinker to whom Schmitt's struggle to salvage the state form in the twentieth century was most indebted. Indeed, so profound is Schmitt's debt to the English philosopher that he has been referred to as the "Hobbes of the Twentieth Century."<sup>218</sup> In *The Concept of the Political* Schmitt argued that Hobbes's had correctly identified the core of the state in the relationship between protection and obedience.<sup>219</sup> For Schmitt, Hobbes had correctly identified the state's ability to provide security and protection against enemies, both internal and external, as the lynchpin of the state as it

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<sup>216</sup>Balakrishnan, *The Enemy*, 49. The fourth and last chapter of *Political Theology* is devoted to the exploration of sovereignty made by these Catholic thinkers of the French and Spanish counter-revolution in the nineteenth century.

<sup>217</sup> Schmitt's long running engagement with 'Latin' political thought also accounts in part for his appeal to Maurice Hauriou's 'institutionalism', the governing concept in Schmitt's turn to 'concrete order thinking' in the early 1930s. See; Balakrishnan, *The Enemy*, 197-199.

<sup>218</sup> The moniker was originally used by the German political theorist Helmut Rumpf but was popularized in English by George Schwab. See: George Schwab, Introduction to *Political Theology: Four Chapters on the Concept of Sovereignty*, by Carl Schmitt (Chicago University of Chicago Press, 1996), xl.

<sup>219</sup> In *The Concept of the Political*, Schmitt memorably argued that "*protego ergo obligo* is the *cogito ergo sum* of the state." See: Carl Schmitt, *The Concept of the Political* (Chicago, IL: University of Chicago Press, 2007), 52.

guaranteed the obedience of the people and hence the stability of political order. Thus, Weber's claim that the state was defined by the monopoly on the legitimate use of violence and Hegel's insistence on the state's separation above society both rested in Schmitt's eyes on the fundamental relation between protection and obedience. Hobbes had highlighted in his 1651 book *Leviathan*. Schmitt credited Hobbes with a particularly clear understanding of the state as his work was born of the English civil war of the seventeenth century. This period of heightened political tension had allowed Hobbes to perceive the core of the state in the nexus of protection and obedience, a relationship again being thrown into relief by the collapse of state order at the beginning of the twentieth century and the tensions within the Weimar Republic more specifically.

Schmitt afforded Hobbes the honour of dedicating one of his most important books to his work, *The Leviathan in the State Theory of Thomas Hobbes* published in 1938.<sup>220</sup> This text marks a re-evaluation of Hobbes' thought within Schmitt's work and is of crucial importance to the trajectory of his thought. In a sense this book acts as the pivot around which Schmitt's thought turns away from the state as the bearer of modern political form. Here Schmitt argued that the origins of the crisis of the twentieth century state were embedded in the very foundations of the modern European state as theorized by Hobbes in *Leviathan*. The subtitle of the book 'The Meaning and Failure of a Political Symbol' indicated that Schmitt now regarded the Hobbesian state of modern Europe to have failed in its attempt to guarantee the relationship between protection and obedience. Schmitt returned to Hobbes's work to locate the fundamental cleavage in the foundations of the state opened by his distinction between private religious belief and outward public obedience. For Schmitt, his intellectual hero had missed a fatal flaw in the conception of the state that ultimately led to its historical redundancy as the modern bearer of political form.<sup>221</sup> Thus, Schmitt's attempt to save the state and his eventual move beyond it in

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<sup>220</sup> The other political thinker to whom Schmitt dedicated an entire, albeit slim, book was Donoso Cortes. See: Carl Schmitt, "Donoso Cortes in Berlin" *Telos* 125 (2002), 87-99. Schmitt did however, dedicate two books of literary criticism to single authors the first a more marginal book from 1916 dedicated to the work of his friend, the expressionist poet Theodor Däubler, and the second a book on Shakespeare's Hamlet from 1956. See: Carl Schmitt, *Theodor Däublers 'Nordlicht' - Drei Studien über die Elemente, den Geist und die Aktualität des Werkes*. (Berlin: Duncker & Humblot, 1991); and Carl Schmitt, *Hamlet and Hecuba* (2009).

<sup>221</sup> This is one of Schmitt's most openly anti-Semitic works and he adopted the discursive style of Nazi regime. He argued that 'Jewish' thinkers such as Baruch Spinoza, Friederich Stahl (a Protestant of Jewish

search of alternative political forms can be tracked through his relationship to the great English philosopher of state.

**(vi) *Partisan Brothers***

The German state tradition of Hegel and Weber, the ‘Latin’ thinkers of the nineteenth century Catholic counter-revolution and Hobbes’s English *Leviathan* provided three legs of Schmitt’s particular authoritarian concept of the state.<sup>222</sup> However, Schmitt’s work was not confined to conservative thinkers or those associated with state theory as he was just as well acquainted with radical thinkers of the Left. Schmitt was a thinker squarely on the Right who favoured strong forms of centralized authority and theorized forms of executive-led order and popular sovereignty against the claims of individual freedom or class revolt. However, as Balakrishnan notes, one of Schmitt’s “intellectual virtues was a willingness to read and engage seriously with the arguments of people at the other end of the political spectrum.”<sup>223</sup> This was a tendency that characterized the self-styled “intellectual adventurer”<sup>224</sup> from his early student days when he was reading the anarchist ‘young Hegelian’ Max Stirner, through to his late 1963 book *The Theory of the Partisan* which he peppered with references to Che Guevara, Mao and Lenin.<sup>225</sup> Although, these engagements were often polemical Schmitt nonetheless shared intellectual affinities with certain of his “partisan doubles.”<sup>226</sup> The points of convergence coalesced around two points in particular; the deterioration of political unity in the liberal world of pluralist self-interest and a critique of the totalitarian potential of modern technologies of state shaped by Enlightenment reason.

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descent), and Moses Mendelssohn were guilty of exploiting the gap between private belief and public obedience for their private ends and hence of undermining the state. Schmitt claimed after the war that the book contained a veiled critique of the Nazi regime and whilst there are certainly elements that might be construed as critical of the state, any critique was heavily veiled in an anti-Semitic discourse obviously meant to appeal to a Nazi readership.

<sup>222</sup> This is an oddly distorted reactionary alternative of the claim that Marx’s thought was based on three sources; German philosophical idealism; French socialist thought; and British political economy.

<sup>223</sup> Balakrishnan, *The Enemy*, 9.

<sup>224</sup> This was how Schmitt defended his thought himself whilst under in interrogation at Nuremberg by Robert Kempner. “I am an intellectual adventurer ...and so thoughts and ideas emerge. I take the risk.” Quoted in Balakrishnan, *The Enemy*, 255.

<sup>225</sup> Carl Schmitt, *The Theory of the Partisan: An Intermediary Commentary on the Concept of the Political*, (New York: Telos Press, 2007).

<sup>226</sup> Balakrishnan, “The Age of Identity?,” *New Left Review*, 16 (2002), 133.

In his ferocious 1926 attack on liberal democracy, *The Critique of Parliamentary Democracy*, Schmitt drew on the work of French revolutionary syndicalist George Sorel. Schmitt followed Sorel's claim that a political myth was needed around which the revolutionary masses could unify and awaken from the slumber of particular self-interest. Although for Sorel the great political myth of the age was that of the revolutionary 'general strike' Schmitt saw in his work an understanding of the conceptual glue needed to join political community to authority. To Schmitt's mind this powerful understanding of the 'political idea' was missing not only in liberalism but also in a German conservatism still fixated on elite opinion makers and the return to old privileges. For Schmitt, Sorel had tapped into a basic truth about how to orient conservative politics in an age of mass politics even if his political orientation was the opposite of his own. Further evidence of Schmitt's, perhaps grudging, respect for the revolutionary Left's understanding of the 'mythic' element of politics can be found in his discussion of the Hungarian Marxist György Lukács's *History and Class Consciousness*<sup>227</sup> and his appraisal of the powerful motivating enmities of Leninist thought.<sup>228</sup> To Schmitt's mind the Left had understood the importance of myth as a means for asserting political unity against the pluralist dissolution of bourgeois society.<sup>229</sup>

Schmitt's critique of the excesses of political 'reason' drew him intellectually close to the Left of German sociology and the Frankfurt School in particular.<sup>230</sup> Although Adorno and

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<sup>227</sup> Lukács receives a brief mention in *The Critique of Parliamentary Democracy* but as Balakrishnan notes Schmitt returned to commend Lukács's work in his post-war notebooks. Balakrishnan, *The Enemy*, 73.

<sup>228</sup> Schmitt discussed the powerful motivating force of class enmity in early work such as *Dictatorship* (1921) and *The Critique of Parliamentary Democracy* (1923; 1926) but returned to discuss Leninist enmity with a mix of reverence and fear in *The Theory of the Partisan* in 1963.

<sup>229</sup> It was also on this point that Schmitt's awareness of the tradition of Left messianism in Germany in the early twentieth century become crucially important. Schmitt was familiar with Ernst Bloch's seminal 1918 book *The Spirit of Utopia* from his time as a wartime sensor in Munich (Balakrishnan, *The Enemy*, 277 n17). He was also acquainted with the work of Walter Benjamin, in particular *The Origin of German Tragic Drama* (1925), Benjamin's Habilitation thesis which he had sent Schmitt in 1930 in manuscript form with a letter noting his intellectual debt. The utopian impulse found in Bloch and Benjamin stands in blatant contrast to Schmitt's supremely anti-utopian thought, which at times indeed had a specifically antisemitic flavour.

<sup>230</sup> The English scholar Ellen Kennedy caused a minor academic scandal when she suggested that Habermas and other Frankfurt School thinkers had drawn on Schmitt's arguments against liberal democracy. See: Ellen Kennedy, "Carl Schmitt and the Frankfurt School," *Telos* 71 (1987), 37-66. However, it is clear that in his early work, such as 1962's *The Structural Transformation of the Public*

others were keen to whitewash the Frankfurt School of any association with Schmitt in the postwar years he nonetheless had relationships with several members during the Weimar Years.<sup>231</sup> The Frankfurt School legal scholar Otto Kirchheimer had been Schmitt's most brilliant student at Bonn and they remained in correspondence for some years, and he had made an acquaintance of Karl Mannheim through the German Sociological Association in Berlin, where Balakrishnan speculates he may have encountered the early projects of the School.<sup>232</sup> Schmitt rarely mentions his associations with the Frankfurt School directly and it is hard to know if they exerted any strong influence on his thought. There are certain similarities between the critique of Enlightenment rationalism's legacy in modern technologies of state found in Schmitt's work and that of Adorno and Horkheimer although it seems likely these resulted from a common attempt to investigate the antinomies of liberal society in the age of mass politics rather than any direct chain of influence.<sup>233</sup>

Schmitt, sometimes known as “the Lenin of the bourgeoisie”, was above all an astute reader of twentieth century Marxism.<sup>234</sup> Schmitt largely ignored the economic categories of Marxist thinking and approached it as a political phenomenon.<sup>235</sup> Indeed, in 1979, towards the end of his life, Schmitt was to claim “I am a Marxist *in so far* as I have traced the economic concepts of Marxism to their political end; I am *not* a Marxist, because I have recognized the economic surplus as a purely political surplus on the proletarian side

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*Sphere*, Habermas had drawn on Schmitt whom he referred to as the “most intelligent and significant German theoretician of the state.” Quoted in Müller, *A Dangerous Mind*, 1. The foremost champion of the Frankfurt School's second generation was soon to rapidly distance himself from Schmitt however and in more recent years has cast himself as the chief exorcist of Schmitt's ghost within German intellectual life.

<sup>231</sup> Adorno famously edited out any reference to Schmitt from collections of Benjamin's writings, as did Hannah Arendt in the first collection of his work to be published in English, 1968's *Illuminations*. See: Walter Benjamin, *Illuminations* (New York: Schocken Books, 1969).

<sup>232</sup> Balakrishnan, *The Enemy*, 102.

<sup>233</sup> See: Theodor Adorno and Max Horkheimer, *The Dialectic of Enlightenment* (London: Verso, 1997); Schmitt, “Ethic of State and Pluralistic Ethic” (1930); Carl Schmitt, “The Way to the Total State” (1931) in *Four Articles, 1931–1938*, edited by Simona Dragachi (Washington DC: Plutarch Press)

<sup>234</sup> Ulrich Preuss, “Political Order and Democracy: Carl Schmitt and his Influence.” in *The Challenge of Carl Schmitt*, ed., Chantal Mouffe, (London: Verso, 1999), 159.

<sup>235</sup> As Jorge E. Dotti notes, Schmitt's interpretation “focuses on the political side of Marxism and puts the strictly economic details of Marx's system to one side, without becoming aware of its complications, and even accepting the validity of its explanation of surplus value.” See: Dotti, “From Karl to Carl: Schmitt as a Reader of Marx”, 93.

as well.”<sup>236</sup> Indeed, if we understand Schmitt’s reading of Marxism as political, in Schmitt’s sense of the relation between friends and enemies, then it was the tightly wound sense of enmity at the heart of proletarian class struggle that Schmitt admired. However, Schmitt saw contradictory tendencies in Marxism. On the one hand, Schmitt found in the Marxist concept of class struggle a powerful expression of the foundational role of enmity in politics. On the other hand, he located in it a dangerous impulse towards a form of universalism that would respect no boundaries, and thus undermine the distinction upon which the modern political order of the state rested. Hence, those texts where Schmitt approaches Marxism are always laced with an ambivalent mix of grudging respect and polemical hostility.<sup>237</sup>

His second major work *Die Diktatur*, published in 1921, carried the subtitle “From the Beginning of the Modern Conception of Sovereignty to the Proletarian Class Struggle.”<sup>238</sup> The Preface was dedicated to the debate on the dictatorship of the proletariat between Karl Kautsky and Lenin and Trotsky. Schmitt was particularly interested in the legitimation of dictatorship on the basis of class enmity and returned to the theme in 1923’s *The Critique of Parliamentary Democracy* as noted above. Despite being critical of what he regarded as Marxism’s adherence to a metaphysics of historical progress, Schmitt admired the political power of the proletarian class struggle and indeed understood it to have necessitated the politics of state aligning itself with the new realities of mass politics. As Balakrishnan notes, Schmitt “recognized the European Right would now be forced to operate on a political terrain historically occupied by the Left.”<sup>239</sup> Thus, Schmitt’s thought not only found a social spur in the tradition of revolutionary Marxism but a conceptual catalyst for the development of his own thought. Schmitt believed that the future of the twentieth Century was likely to be Bolshevik unless the forces of state

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<sup>236</sup> Müller, *A Dangerous Mind*, 169. A source is not provided.

<sup>237</sup> For example, Schmitt’s analysis of proletarian dictatorship in chapter 4 of *The Critique of Parliamentary Democracy* points to the presence of both tendencies within Marxist thought. As noted above this is a text that displays at once a respect for the Left’s capacity to produce unity and generate political ideas and a fear of its capacity to collapse the political differences on which state order rests. See; Schmitt, *The Critique of Parliamentary Democracy* (1988).

<sup>238</sup> This is Balakrishnan’s translation (Balakrishnan, *The Enemy*, 39) but it is also the subtitle the English translation due for publication with Polity Press in late 2012 will carry.

<sup>239</sup> Balakrishnan, *The Enemy*, 38

authority could provide an alternative motivating myth to the proletarian class struggle.<sup>240</sup> The challenge for conservative politics at the start of the twentieth century, as Schmitt saw it, was to harness the force of the revolutionary masses to renew state power with the use of a powerful new political myth. Italian fascism had been successful in doing so in the 1920s as it had opposed the myth of class struggle with the more powerful myth of the nation.<sup>241</sup> Indeed, Schmitt briefly put his belief in the idea that the Nazi state could do this within Germany.

However, in the wake of the Second World War it appeared to Schmitt that the European state had been eclipsed and emptied out in Europe by the competing technologically driven universalisms of liberalism and Marxism, represented by the imperial force of the United States on one side and the Soviet Union on the other. None of the notes of admiration for the political ‘totality’ of the Soviet Union found in his Weimar work appear in his post-war writings, although his critique was largely reserved for the United States and the new Federal Republic of Germany. By the time he came to write *The Theory of the Partisan* in 1963 Schmitt largely equated the Soviet state with a dangerous universalisation of enmity he identified with Lenin’s understanding of international class struggle. Rather than provide a sense of difference on which order could be built, Leninist thought dissolved the possibility of order by making class enmity absolute and hence, for Schmitt, dissolving all boundaries and limits on conflict. This reflected the distinction he introduced in to his work between ‘real’ and ‘absolute’ enemies, the former providing the framework for order but the latter destroying it. Whilst in his work from the early 1920s Schmitt identified the Marxist concept of class struggle with a powerful sense of enmity, by 1963 he argued that class struggle was inherently based upon universal categories of the proletariat and the bourgeoisie and hence the conflicts that emerged between them

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<sup>240</sup> Schmitt’s 1929 text “The Age of Neutralizations and Depoliticizations” opened by claiming twentieth Century Europe lived in the “eye of the more radical brother,” the Soviet state which had taken the vitality of European nineteenth century to its technological conclusion beyond a spiritually sagging Europe. See Carl Schmitt, “The Age of Neutralizations and Depoliticizations,” in *The Concept of the Political* by Carl Schmitt (Chicago, IL: University of Chicago Press, 2007), 80-81.

<sup>241</sup> Schmitt closed *The Critique of Parliamentary Democracy* by reflecting on the power of Mussolini’s national myth that he argued had channelled the energies of the masses into forms of political unity and enmity even more powerful than that of proletarian class struggle but crucially remained within the bounds of the state. See: Schmitt, *The Critique of Parliamentary Democracy* (1988), 65-76.

would be inherently unlimited. Thus, whilst Schmitt still insisted that Marxist class struggle contained a powerful sense of enmity it was destructive of order, as it provided no grounds for limiting conflict, the true aim of political order in Schmitt's mind. However, Schmitt argued that Mao's revolution in China represented a form of class enmity that restrained the dangerous universalism of Leninist thought by limiting itself to the national frame. Hence, Maoist China represented an autochthonous antidote to the boundary-defying sweep of Leninist class enmity. The antinomies of Marxist thought perhaps most clearly revealed to Schmitt the janus-faced power of the political, at once able to provide the starkest of distinctions on which order could be built and simultaneously burst the walls of civility and exceed all limits.

One group of political and legal thinkers who exerted a profound influence on Schmitt's work that I have not examined here are the German legal positivists of the early twentieth century. Considerable length will be devoted to an analysis of Schmitt's polemical engagement with liberalism in later chapters. In so far as Schmitt developed some of his principle works from the Weimar era, such as *Political Theology* (1922), *Constitutional Theory* (1928) and *Legality and Legitimacy* (1931) as polemics against legal positivism, and particularly Hans Kelsen, these thinkers played a crucial *negative* role in shaping his work.

Schmitt's work not only drew on these diverse strands of political and legal thought. He frequently looked to other spheres of thought such as theology, geography, aesthetics and history to find concepts, draw analogies and sharpen arguments. His work is full of literary and historical allusions and frequently makes use of art historical analogy whilst some of his most fundamental conceptual frameworks derive from Christian theology.<sup>242</sup> This reflected Schmitt's identification with a 'classical' form of thought that pre-dated the development of academic specialization.<sup>243</sup> Schmitt's focus always fell on what might

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<sup>242</sup> A fascinating insight into the breadth of Schmitt's reference is provided by the contents of his library compiled by the Carl Schmitt *Gesellschaft* and available at: <http://www.carl-schmitt.de/download/bibliocs.pdf>

<sup>243</sup> As Balakrishnan notes, Schmitt was a product of a time when new disciplines and new disciplinary boundaries were emerging in German academia but "before the consolidation of the social sciences as an institutional complex on the post-war world" (Balakrishnan, *The Enemy*, 4).

be called the political *outside* of the legal system and hence his jurisprudence thinking needed to address and draw on diverse elements from other spheres. These engagements thus marked an attempt to find conceptual resources to tackle the questions of political foundations of legal order from beyond the limits of jurisprudence thinking.

### ***Chapter 3: Knowing Your Enemy / Reading Schmitt***

Any attempt to approach Schmitt's work faces particularly challenging interpretative problems. As Balakrishnan notes Schmitt's work "presents a set of highly specific and unusual problems" concerning the "relationship between the textual and biographical planes" of his career.<sup>244</sup> These problems are of course most pressing in the relation of his work to his involvement with the Nazis and anti-Semitism. This chapter will focus on these troubling issues in the hope that a way to navigate the difficult terrain between the 'textual and the biographical planes' can be found. Schmitt himself noted the difficulty of distinguishing the political from the *merely* theoretical, famously claimed that, "all political concepts, images, and terms have a polemical meaning. They are focused on a specific conflict and are bound to a concrete situation."<sup>245</sup> Hence, it is important to try to understand the relationship between his theoretical work and his understanding of the 'concrete situation' of twentieth century Germany. I hope to show in later chapters how Schmitt's conception of the spatial order bore on his decision to support the Nazi regime as an alternative to a failing liberal state and conversely how his vision of a New European spatial order was shaped by a deep anti-Semitism. But it is first important to establish how to approach the relationship between his theoretical work and his controversial political affiliations and racial views more broadly.

#### **(1) Nazism: Crown Jurist or Benito Cereno?**

"I am the last conscious representative of the *jus publicum Europaeum*; its last teacher and student in an existential sense, and I am experiencing its demise as Benito Cereno experienced the journey of the pirate ship."

Carl Schmitt, 1950<sup>246</sup>

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<sup>244</sup> *The Enemy*, 3.

<sup>245</sup> Carl Schmitt, *The Concept of the Political*, 30.

<sup>246</sup> Quoted in Scheuerman, *Carl Schmitt*, 177.

This was how Schmitt characterized himself in the autobiographical reflections he published in 1950, washed up on the shores of Germany's new Federal Republic. Benito Cereno, the captain of a mutinous slave ship in Herman Melville's story of the same name, was an alias Schmitt had adopted as a distancing tactic even in his wartime correspondences. Ernst Jünger reported that in 1941, during a walk around the "skulls and masks" of the *Musee de l'Homme* in Paris, Schmitt told him that the situation of the "white captain dominated by black slaves" was "similar to that of conservative intellectuals in Nazi Germany."<sup>247</sup> As Jan-Werner Müller and Raphael Gross have shown, Schmitt devoted much of his time attempting to cleanse his record and champion his resuscitation during his years as a taboo figure on the fringes of the fledging democratic republic.<sup>248</sup> Taking on the guise of Melville's fictional skipper steering a ship for rebellious slaves was part of a concerted effort Schmitt undertook to distance himself from National Socialism through self-mythologizing in the aftermath of the war. Casting the Nazis as, presumably, barbarous slaves driving the *Reich* to shipwreck allowed him to take on the role of the wise leader reduced to 'following orders'.<sup>249</sup> According to the logic of this allegory, although Schmitt may have appeared in a leading position in the Nazi state, as Cereno initially appeared in control of the slave ship in Melville's story, he was in fact merely carrying out demands on pain of death.<sup>250</sup> This attempt to find absolution in a literary guise revealed that he was aware, even during the war, that his relation to

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<sup>247</sup> Julia Hell, "Katechon: Carl Schmitt's Imperial Theology and the Ruins of the Future," *The Germanic Review* 84 (2009), 285.

<sup>248</sup> See *Introduction* and Chapter 5 of Gross, *Carl Schmitt and the Jews* (2007), and the detailed probing of Schmitt's self-mythologizing in the entirety of Müller's *A Dangerous Mind* (2003).

<sup>249</sup> The irony being that Schmitt's attempt to show himself as a victim of world-historical circumstance swept up in events over which he exerted no control displayed precisely the 'banality' of his evil, to use Hannah Arendt's famous phrase. William Scheuerman gives a convincing alternative reading of Schmitt's use of the Cereno allegory. He argues that the identification of the slaves is steeped in ambiguity and that they can just as easily be a stand-in for Schmitt's new 'piratical' masters, the Americans. Indeed, Schmitt identified the United States as a distasteful racial 'melting pot' much like the ship in Melville's story. This would of course mean that Schmitt was casting himself a victim, not just of the Nazis, but also, and indeed more so, of Germany's new post-war American masters. See: Scheuerman, *Carl Schmitt*, 175-181. Whichever way this literary allusion is read it at any rate seems clear that Schmitt was always closer to Benito Mussolini than Benito Cereno!

<sup>250</sup> Although obviously meant to exonerate Schmitt, his self-characterization as Benito Cereno paradoxically left him by analogy in the position of a technician of state, precisely the role of the new 'clerks' of liberal modernity he had vented to so much anger against. Driving the ship of state to the directions of his Nazi slave-masters Schmitt, as Cereno, actualized the remark Jünger made some years later in 1949: "The old chivalry is dead ... wars are conducted by technicians." Quoted in Müller, *A Dangerous Mind*, 144.

Nazism would become a decisive interpretative lens in the reception of his work. Balakrishnan argues in *The Enemy* that it was because he wanted to avoid his entire body of work being tainted with ideological contamination that he refused the de-Nazification process.<sup>251</sup> Thus, rather than admit guilt and leave his work under a dark shadow, Schmitt sought to refuse the charge of guilt in order to keep the record of his work clean. Of course this refusal had quite the opposite effect, and in fact entrenched the opinion that after the war he remained an unreconstructed reactionary, holding the same opinions that had led to him to willingly act in the name of the Nazi state. The stakes of this decision were high and cost Schmitt his Chair at the University of Berlin and any future academic position in Germany. This decision not to engage with de-Nazification, as so many others had done, certainly does not tally with the characterization of Schmitt as an arch-opportunist. The question still remains as to whether this choice was driven by ideological opposition to the new Federal Republic, or tremendous intellectual vanity masquerading as principle, or some combination of both. Balakrishnan notes in the concluding chapter of his biography that it was the democratic system and ‘natural law’ jurisprudence of the new West German republic, the ‘indirect’ powers of the United States, and the supposed ‘Jewish elites’ on which Schmitt vented his vitriol after the war, not the defeated National Socialists.<sup>252</sup>

For those approaching his writings, Schmitt’s inexcusable political choice raises in stark terms, what Peter Caldwell refers to as, “the central problem of intellectual history: how to relate text and context.”<sup>253</sup> For some the concentration camps “haunt every word Schmitt writes, no matter how illuminating.”<sup>254</sup> It is not surprising then that many writing about his thought respond to “an affective requirement to condemn Schmitt’s

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<sup>251</sup> Balakrishnan, *The Enemy*, 255-257. Denzification was a serious of juridical processes introduced by the allies in the years after the war to ensure that the German government, institutions, press, culture were rid of Nazi influence. Many people in the American Zone, where Schmitt resided, were required to fill out a background check to assess their culpability for Nazi crimes and graded accordingly for the purposes of re-education.

<sup>252</sup> *Ibid*, 257.

<sup>253</sup> Peter Caldwell, Foreword to *Carl Schmitt and the Jews*, by Raphael Gross (Madison, WI: University of Wisconsin Press, 2007), xv.

<sup>254</sup> Mitchell Dean, “*Nomos: Word and Myth*” in *The International Political Thought of Carl Schmitt*, ed., Louiza Odysseys and Fabio Petito (London: Routledge, 2007), 248.

politics,<sup>255</sup>“an obligation to give an account of what in his work is worth the effort.”<sup>256</sup> Although many European intellectuals of Schmitt’s time favoured fascism, including Heidegger, Benn and Jünger in Germany, and Céline, Gentile, Croce, Pound, Eliot and Yeats, Schmitt is not the “typical case of an intellectual flirting with fascism.”<sup>257</sup> The situation is “more acute” in his case “since he alone of the high intelligentsia which opted for Fascism, was a political thinker of the first rank ... and he was more institutionally complicitous than any of the others in this constellation.”<sup>258</sup> Schmitt was not then typical of those “European intellectuals drawn to the ‘seductions of unreason’, the apparent glamour of ‘the intellectual romance of fascism’ – in Wolin’s terms – because he was too significant politically.”<sup>259</sup> The fact that Schmitt keenly played the role of legal advisor and jurisprudence propagandist for a regime that slaughtered millions on the basis of a racist ideology, brutally eliminated its political opponents (including many involved in emancipatory movements) and spread war across Europe and beyond, raises the hermeneutical stakes high indeed. It is understandable then that Schmitt’s Nazi complicity “continues to evoke supercharged partisan judgements on how to evaluate this episode in terms of what he wrote and did before and ... after.”<sup>260</sup> Balakrishnan correctly notes the responses these questions usually elicit: “unsympathetic commentators denounce him as a Fascist or an opportunist; sympathetic commentators either present neatly sanitized, apologetic accounts of the relationship between his writings and his political allegiances, or – worse – portray him as someone with dark, arcane insights into ‘the political’.”<sup>261</sup>

In order to negotiate a more satisfactory hermeneutical path that does not fall into either of these polemical camps and develop an interpretive approach that treats Schmitt as an object of sober critical reflection rather than an “affectively charged symbol” it is

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<sup>255</sup> Atkinson, David, “Remembering Nazi Intellectuals,” in *Spatiality, Sovereignty and Carl Schmitt*, ed., Stephen Legg (London: Routledge, 2011), 202.

<sup>256</sup> Tracy B. Strong, Foreword to *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, by Carl Schmitt (Chicago, IL: University of Chicago Press, 2008), vii. (Hereafter *The Leviathan*)

<sup>257</sup> Balakrishnan, *The Enemy*, 7.

<sup>258</sup> Ibid.

<sup>259</sup> Atkinson, “Remembering Nazi Intellectuals,” 202.

<sup>260</sup> Balakrishnan, *The Enemy*, 6.

<sup>261</sup> Ibid, 9.

necessary to probe further into how Schmitt's Nazism should be contextualized textually and historically.<sup>262</sup> Can his Nazi writings be separated from his broader thought, and can his work be separated from his political life?

As Peter Caldwell argues, it is remarkable how many "readings of Schmitt, even when critical, have tended to separate [his] ideas from his personal beliefs" either by simply ignoring them or identifying his Nazism as an aberrant 'phase' easily quarantined to the Nazi years.<sup>263</sup> Such arguments were typical of a broad tendency in the early years of the Federal Republic to characterize Nazism as a coarse anti-intellectual movement without any relationship to 'thinkers.'<sup>264</sup> This was one of a number of 'distancing techniques' used to paper over the widespread complicity of the German public with the Nazi regime, something particularly acute in administrative and bureaucratic bodies such as academia, where any historical reckoning was displaced onto an Allied sanctioned discourse of 'collective guilt'.<sup>265</sup> Jan-Werner Müller and Raphael Gross have both shown that this wider tendency was intensified in Schmitt's case, because his post-war reception in Germany was largely transmitted through former and current students and friends, keen to act as his advocate.<sup>266</sup> Indeed, Schmitt was first introduced to Anglophone audiences by Joseph Bendersky and George Schwab, two quasi-apologists in close friendly contact with Schmitt clearly working under his spell. As Gross notes, these personal contacts partly enabled Schmitt to stage-manage his own reception and promote the view that his

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<sup>262</sup> Ibid, 9.

<sup>263</sup> Caldwell, Foreword, ix.

<sup>264</sup> See: Atkinson, "Remembering Nazi Intellectuals" (2011); Gross, *Carl Schmitt and the Jews* (2007); Wolin, "Carl Schmitt" (1993).

<sup>265</sup> Atkinson, alongside other critics such as Eric Santner (1993) and Dirk Mosese (2007), has noted the more subtle and complex set of responses that have been developed in excavating the legacy of Nazism and its repression in post-war Germany in more recent studies. Since the 'historians debate' in the 1980s, which involved among others Habermas and the Schmitt-influenced revisionist historian Ernst Nolte, an increasing number of scholarly works have sought to address the continuities between Nazi Germany and the post-war Republic and the multiple instances of personal and institutional disavowal that underlay the very public declarations of national guilt that saturated post-war German discourse. As Atkinson notes there had been a dramatic move away from the clearly defined identities as 'victim' and 'perpetrator' just as there has been a sharp rejection of any notion of a clean break between war and post-war histories. The changing nature of Schmitt's reception within Germany, both in his growing acceptance after the shift to the right that characterized Germany public discourse from the 1980s and Gross's recent study of Schmitt's anti-Semitism, reflect these broader changes in how the legacy of Nazism in post-war Germany is being addressed in both academic and popular discourses.

<sup>266</sup> See Introduction and Chapter 5 of Gross, *Carl Schmitt and the Jews* (2007).

involvement with the Nazis was a quickly disavowed mistake that has little or no bearing on the content of his thought as a whole. The most common argument is that Schmitt's decision to join the Nazi party in 1933 signalled a 'break' in his thought as a result of an opportunistic drive for power and prestige, or a moral lapse, rather than marking any continuity with his previous conceptual positions or political ideas.<sup>267</sup> Bendersky, for example, argues that Schmitt's decision to support the Nazis revealed "a personal weakness so far as moral principles are concerned."<sup>268</sup> Schwab, likewise, argues that, "intoxicated by what he believed to be the recognition of his own importance and convinced he was finally in a position to make a difference, Schmitt either became oblivious to what was unfolding or deceived himself."<sup>269</sup>

This argument at once separates Schmitt's Nazism from his political thought, relegating the former to a moral lapse or personal ambition, and neatly periodises this failing to the early years of his Nazi involvement. Much is made of the denunciation of Schmitt in the SS journal *Das Schwarze Korps* in 1936, which Günter Maschke characterized as "life threatening."<sup>270</sup> Schmitt's fall from Nazi grace is taken to indicate a second 'break' after which he returned to his pre-1933 positions after a brief fascist lapse. Although Schmitt may have had reason to be frightened after his outing by the SS, it is certainly exaggerated to argue, as Schwab does, that "Schmitt entered the Third Reich as a marked man" or to characterize him either as "an anti-Nazi" or "an antiracist" due to his opposition to the party during the final years of the Weimar Republic and the fact he had twice married Slavic women.<sup>271</sup> Even if 1936 did "constitute a watershed for Schmitt" and his relationship to National Socialism, his subsequent attempts to radicalize the Nazis anti-Semitic politics within jurisprudence, his attempted theoretical legitimization of German expansion in his *Grossraum* work and his role as a roving 'cultural ambassador'

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<sup>267</sup> This argument appears in various guises, for example in the work of Mouffe (2005) and Freund (2002) but is perhaps most forcefully and consistently made by Schwab (1989, 2008) and Bendersky (1983).

<sup>268</sup> Quoted in Neocleous, "Friend or Enemy?", 17.

<sup>269</sup> George Schwab, Introduction to *The Leviathan in the State Theory of Thomas Hobbes* by Carl Schmitt (Chicago: The University of Chicago Press, 2008), xxxvi.

<sup>270</sup> Waldemar Gurian, Schmitt's former friend exiled in Switzerland, devoted an article to Schmitt after his SS condemnation from Swiss exile entitled 'On the Path to Emigration or the Concentration Camp.' See: Tracy B. Strong, Foreword, xx-xxi.

<sup>271</sup> *Ibid*, xxxv.

for the Nazi state as late as 1944 seem rather inexplicable.<sup>272</sup> The claim that Schmitt's writings on *Grossraum* were an attempt to limit himself to a "a domain he thought would leave him out of the limelight" is hardly credible.<sup>273</sup> This argument would quarantine Schmitt's Nazism within the 1933-1936 period, and seems to follow closely on from the claim Schmitt made during his post-war interrogation that he "considered it possible to give meaning to [the Nazi] catchwords" until 1936, after which time he realized he was misguided.<sup>274</sup> Although there are arguably veiled critiques of the Nazis discernible in his writings from the late 1930s and 1940s, like *The Leviathan in the State Theory of Thomas Hobbes* (1938), *The Historical Condition of European Jurisprudence* (1943) and *Land and Sea* (1943), the idea that these amounted to much more than a protective distancing from a regime in which he had lost favour and which was clearly heading to defeat, let alone some sort of 'resistance,' is very hard to defend. After the publication of the *Glossarium*, Schmitt's private journals from the years 1947-1951, in 1991, it was "difficult to focus on the stimulating and brilliant texts he had written outside of their political context" as Peter Caldwell argues.<sup>275</sup> The diaries were riddled with anti-Semitic paranoia, making it much harder to attribute Schmitt's engagement with the Nazis to 'mere' opportunism. The *Glossarium* revealed that even after Nazi defeat, and when the full horrors of the Holocaust were becoming apparent, Schmitt's private writings were still riddled with anti-Semitism, making it much harder to maintain the "opportunism" thesis. If these diaries had shown that Schmitt's private thoughts were still saturated with anti-Semitism after the war, the 2003 publication of his diaries from the years 1912-1915, again flooded with anti-Semitic sentiment, made the idea of a clean break between the Nazi years and his other intellectual output even harder to sustain.<sup>276</sup> It would seem given the content of his pre and post-war diaries that Schmitt's "rock bottom" years of 1933-

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<sup>272</sup> Ibid, xxxi.

<sup>273</sup> Ibid, xxxii.

<sup>274</sup> Ibid, xxi.

<sup>275</sup> Gross, *Carl Schmitt and the Jews*, xi.

<sup>276</sup> See the Afterword in Gross, *Carl Schmitt and the Jews* (2007). It is interesting to contrast the quotes that Gross picks out from the diaries in contrast to the rather more 'white-washed' insights offered to Anglophone readers in Joseph Bendersky's 2009 review in *Telos*. See: Bendersky, "Love, Law, and War" (2009). Bendersky stresses the contacts between Schmitt and Jewish friends such as Fritze and Georg Eisler and uses these, in a strategy familiar to Gross, to present Schmitt as a philosemite. Gross by contrast picks out those elements where Schmitt refers to Jewish people as "bugs and vermin", "sneaks", "a dangerous rabble", "repulsive", "lovely little apes" and so on. See: Gross, *Carl Schmitt and the Jews*, 235.

1936 were not simply an opportunistic abscess on an otherwise spotless intellectual career that can be isolated and ignored.<sup>277</sup>

Such apologist arguments which seek to isolate Schmitt's Nazism to the 1930s or portray his complicity with the regime as a character flaw separable from his contributions to modern political thought are less frequent today in Schmitt's Anglophone reception, despite the continued partisan efforts of Schmitt's character referees at *Telos*. This is perhaps because such arguments reflect the hermeneutic concerns of an earlier generation which have less relevance to a new generation of thinkers increasingly distant from Europe's 'dark century' and looking for neglected sources of revitalization for stale political categories left over from it. Perhaps, however, this separation of corpus and complicity in Schmitt scholarship is a signal that an earlier generation of his intellectual advocates decisively shaped the terms of debate concerning his work. It remains commonplace for contemporary work on Schmitt to acknowledge his Nazi involvement as important before moving swiftly on to engage specific points of his work, if the concern is raised at all. Chantal Mouffe, Schmitt's most tireless advocate on the Anglophone Left, presents a particularly clear example of such an approach.<sup>278</sup> Of course when the reception of Schmitt's work is so broad and so often engaged with particular problems to which his thought is considered germane, it cannot reasonably be expected that every article provide a detailed account of his Nazi involvement or elaborate an ethical position towards it. It can reasonably be assumed that in most cases the readership is aware of Schmitt's Nazi complicity. The problem arises when so much recent Anglophone literature seeks to utilize Schmitt's concepts shorn of any relation to their political and historical context. Whether this is the result of his intellectual minions' efforts or not, Schmitt would doubtless have welcomed his current status as a 'classic' of political thought for whom a conceptual engagement with no justification is required. If, however, we consider Schmitt's Nazism to be a persistent problem in interpreting his work and recognize some form of continuity between this period and his thought as a

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<sup>277</sup> Schwab, Foreword, lii, n53.

<sup>278</sup> Mouffe, *On the Political* (2005)

whole, on the one hand, and between his work and his life, on the other, how is this continuity assessed?

Whilst attempts to isolate Schmitt's Nazi writings from his oeuvre as a whole or to mark a clean separation between his life from his work are evidently fraught with difficulty, arguments on behalf of continuity across Schmitt's thought and between his thought and his political choices are likewise problematic. There is a danger that a continuity thesis may on the one hand posit Schmitt's Nazism as the *necessary* product of his work, and on the other reduce his entire corpus to his Nazism and hence disqualify it as tainted. In my view these should be avoided as they rely on deterministic or reductionist accounts of both Schmitt's work and the relationship between his work and his decision to support National Socialism. Firstly, an argument for continuity between Schmitt's Nazi writings and his work as a whole must not reduce Schmitt to a 'Nazi thinker,' where his Nazi work is either inevitable, given his previous writings, or over-determines his entire oeuvre. Such a reading cannot stand up to the scrutiny of a rigorous textual or contextual analysis which tracks the development of his thought across the changing historical circumstances of a career that lasted across seventy years and four periods of German statehood. Although it can be argued that Schmitt's post-war writings were to a large degree shaped by his attempt to manage his record and reception through intellectual sycophants and his own intricate commentary on earlier work, his writings from the Weimar period were marked by a staggered conceptual development and a number of sharp oscillations in response to turbulent historical circumstances he was trying to keep pace with. Therefore any reduction of Schmitt's corpus to his Nazi output alone adopts a crude form of historical determinism that leaves little scope for understanding the complex relationship between his work, his life and his historical circumstances. This is not to say that his Nazi era writings can be sidelined or ignored but that they must be contextualized in relation to both his previous conceptual development and the volatile historical situation he crafted his work within. A deep immanent criticism probing the internal lacunae of Schmitt's oeuvre, such as that carried out by Galli, or a "diachronic contextualization" between his life and work that typifies Balakrishnan's method are

more subtle and suitable methods of contextualization than a naïve and polemical historicism that sees Nazism as the necessary outcome of Schmitt's earlier thought.

Secondly, whilst an argument stressing a continuity between Schmitt's work and his life and his Nazi writings and his work as a whole must avoid identifying his political choices as necessary, it must seek to identify tendencies in his thought which made them *possible*. The British political theorist Mark Neocleus is surely correct when he argues that Schmitt's decision to join the Nazis was not only possible but "*probable* given the theoretical contours of his work."<sup>279</sup> However, when Neocleus argues that Schmitt's Nazism follows "logically, theoretically, politically from his [theoretical] premises" he in fact makes his political choices 'logically' determined by his thought.<sup>280</sup> It is important to avoid this easy slippage between probability and determination in assessing the relationship between Schmitt's Weimar and Nazi era thought. Although his support for the Nazis was far from a "mere personal aberration" or even a total "intellectual break", to consider it "built into the theoretical premises of his work" leaves no room for the element of personal decision that Schmitt exercised in joining the Nazi regime.<sup>281</sup> Such an argument removes Schmitt's political affiliations from their historical context and understands them purely on the level of a spurious logical causation drawn from a necessarily selective reading of his work. As Carlo Galli notes, if Schmitt's Nazi phase "fully realized all of the risks inherent on the structure of Schmittian thought" it none-the-less "does not occur necessarily or automatically, but ... instead requires a conscious personal will."<sup>282</sup> In other words it is precisely the fact that there was nothing in Schmitt's thought that made his decision inevitable that means it represents such an enormous ethical failure.

This in no way rules out the importance of the tendencies in Schmitt's thought that brought him to the point of 'howling with the wolves' in 1933. Rather it understands these tendencies strictly *as* tendencies that made his decision possible or even likely as

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<sup>279</sup> Neocleus, "Friend or Enemy?," 19.

<sup>280</sup> Ibid, 23.

<sup>281</sup> Ibid, 17.

<sup>282</sup> Quoted in Adam Sitze, Introduction, xxix.

opposed to causes that determined it. This allows for a more complex reading where Schmitt's Nazism was the result of conceptual tendencies, "the bureaucratic baptism of an already essentially fascist argument", and a decisive act of personal will.<sup>283</sup> Schmitt's decision, as his defenders suggest, represents an immense personal moral failure, but it must be read in relation to the political leanings already present in his thought. For many years during the Weimar Republic, Schmitt had formulated a conception of totalitarian statehood focused around a strong Presidential executive and built upon a substantive homogeneity grounded in a national myth. In the later years of the interwar Republic, Schmitt had conceived of such a political form as an authoritarian Presidential system that could replace the liberal constitution. Although during the Papen and Schleicher chancellorships Schmitt saw this Presidential system as a way to exclude the Nazis and the Communists from power, it is clear that he considered the Communists the more serious threat.<sup>284</sup> Indeed, the Nazis provided much of the trappings of what Schmitt had conceived under the name 'qualitative total state,' including the strong centralized executive, a decisive conception of state sovereignty and a clear national myth built upon a particularly forceful understanding of homogeneity. Indeed, the Nazis arguably gave a forceful actualization to his understanding of an anti-liberal democracy based upon homogeneity and given direction by a dictatorial power, something he had been arguing was not a contradiction since the early 1920s. Even if the Nazi state eventually perhaps represented not so much a 'qualitative total state,' which emphasized a classical distinction between state and society, but rather an intensification of the 'quantitative total state' that eroded the distinctions between state and society and laws and measures, there was still ample common ground for Schmitt to find elective affinities with the regime in 1933. Given his previous commitment to an authoritarian form of state, it is not surprising that, believing he was presented with a choice between chaos and Hitler, Schmitt vouched for the latter.<sup>285</sup> Even by 1941, when it was clear that the Nazis had brought about a state of complete legal indeterminacy, and he had been pushed to the fringes of power under Goering's protection, the idea of a greater German Reich

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<sup>283</sup> Neocleous, "Friend or Enemy?," 23.

<sup>284</sup> See Chapter 12 of Balakrishnan, *The Enemy* (2000).

<sup>285</sup> Paul Hirst, "Carl Schmitt's Decisionism," in *The Challenge of Carl Schmitt*, ed., Chantal Mouffe (London: Verso, 1999), 8.

dominating Europe held strong appeal to Schmitt. He saw in it a revitalization of political form beyond the state, which he had increasingly come to question. Thus, although some sympathetic readers, like Schwab, have read Schmitt's 1938 genealogy of the modern European state in *The Leviathan in the State Theory of Thomas Hobbes* as a critique not only of the state, but also of Nazism, the idea of a Nazi-dominated Germany opened up precisely the avenue for thinking political form beyond the state that this book had made necessary. It is arguable that Schmitt always remained at something of an ideological distance from the Nazis and was never what Schwab calls a "Hitlerian Nazi", committed to the coarsest forms of biological racism.<sup>286</sup> However, The fact that he seemingly had few qualms about throwing his reputation behind the regime and joining in the anti-Semitic chorus suggests that his affiliation did not lie only in opportunism but with the sense of a possibly shared political purpose. Schmitt's critique of liberalism does not necessarily lead to Nazism, just as his concept of sovereignty does not necessitate dictatorship nor his concept of the political presuppose or lead to anti-Semitism. It is clear however that this conceptual matrix, formulated by an anti-Semite with a taste for authoritarianism who believed himself to be at the epicentre of an epochal crisis, certainly helped bring him to the point where he could leave one paradigm of state behind and step into the uncertainties of a fascist future.<sup>287</sup>

It is imperative therefore to develop a hermeneutic approach that avoids either an easy separation or a reductive continuity between Schmitt's Nazi writings and his work as a whole and his work and his political life. An interpretive approach that emphasizes *separation* and sees Schmitt's Nazism as an intellectual aberration or an opportunistic lapse too easily facilitates a clear separation between phases of his thought and between his work and his political involvements. It risks absolving Schmitt of personal responsibility and repressing the affinities his work shared with Nazi ideology and practice even if a gap existed between them. Conversely, an approach that foregrounds *continuity* and understands Schmitt as a 'Nazi thinker,' whose earlier thought led naturally to his fascist complicity, reduces the complexity of the relationship between

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<sup>286</sup> Schwab, Introduction, xlv.

Schmitt's evolving thought and developing historical events. It renders Schmitt's historical choices inevitable and makes Nazism the secret hermeneutic key to his entire intellectual corpus. What is required then is an additional approach that neither reduces Schmitt's entire life to his Nazi period nor over-determines his corpus with his Nazi writings, whilst none-the-less remaining sensitive to the tendencies in his thought that led him to make the free, and for that reason ethically inexcusable, choice to join the Nazis.<sup>288</sup> Such a reading contends that any serious study of Schmitt's work cannot reduce his thought to his Nazism nor clearly separate one from the other. It offers an interpretive framework for understanding how Schmitt's decision to join the Nazis represents a rupture with certain elements of his thought whilst remaining consistent with others. Further, it allows this decision to be evaluated as a choice made in a specific set of historical circumstances. The latter point does not provide a defence of Schmitt but rather attempts to show that he acted both opportunistically to further his career and in the belief that through the Nazi regime he might realise his authoritarian political vision at the expense of parliamentary democracy and Germany's Jews.

## **(2) *Anti-Semitism: The "Jewish Complex"***

"In fending off the Jew, I fight for the work of the Lord."

Carl Schmitt, 1936<sup>289</sup>

To what extent was Schmitt's decision to join the Nazis and his political thought more broadly shaped by anti-Semitism? That Schmitt was anti-Semitic has been beyond question since the publication of his pre- and post-war diaries. The claim, made by his

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<sup>288</sup> As Adam Sitze argues, following Carl Galli, the task is not "to 'quarantine' Schmitt's Nazism between 1933 and 1936 in order to free the rest of his thought for 'use'. Nor, is it to follow a 'deeply ambivalent logic of taboo, to treat the whole of Schmittian thought as if it were tainted, as though Schmitt's anti-Semitism were ... akin to a contagious and communicable disease, an incurable illness' against which a total immunization is needed." Rather, "it is to understand Schmitt's Nazism as the extreme actualization of a potential for regression and domination that is internal not external to Schmittian thought, but also, as Horkheimer and Adorno argued, the Enlightenment itself." See: Sitze, Introduction, xxviii.

<sup>289</sup> Henrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction Between Political Theology and Political Philosophy* (Chicago, IL: University of Chicago Press, 1998), 154. Schmitt opened his address to the conference he had organized on the 'Jewish influence' on German Jurisprudence with these words quoted from Adolf Hitler's *Mein Kampf*.

more apologist protégés such as Georg Schwab, that the anti-Semitic outbursts that typified his Nazi-era work was merely an opportunistic attempt to shroud his work in the rhetoric of the day does not stand up in light of his private reflections. The paranoid reflections revealed in the *Glossarium* were not only not meant for public consumption, but came after Nazi defeat, when he had no stake in pleasing them and the full horrors of the Nazi *lager* was apparent. However, the question remains as to whether or not Schmitt's anti-Semitism played a determining role in his decision to join the Nazis in May 1933 or in shaping his political theory more broadly. As argued above, there are clear affinities between aspects of Schmitt's political thought and Nazism that are not strictly identifiable with anti-Semitism but rather arise from a shared concept of totalitarian state. Thus, it seems fair to argue that Schmitt's affiliation with Nazism was not based on anti-Semitism alone. However, this fact does not deny that anti-Semitism had some degree or influence on Schmitt's commitment to National Socialism or provided a point of connection despite an ideological gap. It seems there are two crucial concerns to be addressed here. If Schmitt's anti-Semitism was not opportunistic was it conceptually structural; if it was structural, what role did it play? Secondly, what character did Schmitt's anti-Semitism have? Was it racial or rather, as some have argued, more 'philosophical'; 'traditional'; 'Christian'; 'political'? How should this taxonomy of anti-Semitism be assessed in relation to Schmitt's thought and his political career?

The argument that Schmitt's anti-Semitism was confined to his Nazi writings and served only to please the regime in order to excuse past criticism and advance his career holds little water, given the revelations seeping from the pages of Schmitt's diaries. This 'opportunism' thesis, favoured by Schmitt's acolytes, was of course employed, under Schmitt's influence, as part of an attempt to excuse his Nazi involvement. The most important aspect of this was to cleanse his intellectual corpus of the inevitable fascist taint. Hence the argument that his Nazism could be put down to a break explicable in terms of a personal moral failure rather than any intellectual continuity or precedent found in his work. Denying his anti-Semitism was a way to deny that anti-Semitism had any structural role in his thought. The denial of anti-Semitism does not stand up to scrutiny, but does it necessarily follow that the anti-Semitism was structural?

This is the argument powerfully presented by Raphael Gross in his recent book *Carl Schmitt and The Jews*.<sup>290</sup> The central claim of Gross's study, originally published in German in 2000, and translated into English in 2007, is that "anti-Semitism and Nazism stamped Schmitt's thinking in a basic way."<sup>291</sup> Gross contends that the "Jews and 'the Jewish' had defining importance for Schmitt's work as a whole" becoming "increasingly foundational for his legal theory" as his thought developed.<sup>292</sup> As Peter Caldwell notes in his Foreword to the English edition, "Gross's strong claim is that anti-Semitism is not incidental to Schmitt but pervades his thoughts on law and state."<sup>293</sup> Gross therefore argues that Schmitt's theory cannot be dissociated from anti-Semitism and presented in some supposedly 'purified' state. In Gross's argument, anti-Semitism cannot be separated out from Schmitt's oeuvre precisely because it forms an integral part of it. Gross's book argues that Schmitt's thought is structured around a series of conceptual oppositions to particularism, universalism and historical acceleration, behind which lies his anti-Semitism. As Tracy B. Strong notes, for Gross 'the Jew' "lies under one pole of each of the binary oppositions that Schmitt works with: the Jew is 'enemy', the 'Antichrist.' Lacking spatial and territorial definition they undermine all notions of '*nomos*'."<sup>294</sup> Hence, 'the Jews' become a stand-in for a series of enemies in opposition to whom Schmitt forms his thought.

Gross goes further however by arguing that not only is anti-Semitism an integral part of Schmitt's thought but lies at its foundational core. For Gross, Schmitt's work "achieves its unity through ideas that take up anti-emancipatory and secularized anti-Jewish theological motifs of Catholic and Protestant origin."<sup>295</sup> Anti-Semitism is thus for Gross the key lens through which Schmitt's work should be understood, the hermeneutic key to his supposed 'arcanum.' Although his argument is persuasively made, I would argue that

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<sup>290</sup> To a degree, the question of how to read Schmitt in relation to his anti-Semitism now turns on how Gross's book is read.

<sup>291</sup> Gross, *Carl Schmitt and the Jews*, 226.

<sup>292</sup> Ibid, 227.

<sup>293</sup> Ibid, xiv.

<sup>294</sup> Strong, Foreword, xiv.

<sup>295</sup> Gross, *Carl Schmitt and The Jews*, 227.

Gross analysis goes too far in positing anti-Semitism as *the* structural foundation of Schmitt's thought.

Such a response, one that welcomes Gross's study and lauds its scholarly erudition, but seeks to temper its conclusion that Schmitt's thought can be reduced to an anti-Semitic core, was evidently common in the initial reception of the book's German edition. In the Afterword added to the 2007 English edition, Gross lists 21 reviews that appeared in German and French between 2000 and 2005, including one from Schmitt's long term advocate, the former leftist journalist Günter Maschke. As Gross notes, the main criticism levelled as his book was that although it "locates the inner unity of Schmittian oeuvre in its anti-Semitism, that is actually merely one facet of the oeuvre, since there is no inner core to Schmittian theory but only an 'abundance of facets.'"<sup>296</sup> There are to my mind two serious hermeneutical problems that arise in Gross's reading. The first relates to how he reads Schmitt's thought itself, and the second to how he reads its reception. In the first instance, by reducing Schmitt's thought to an anti-Semitic 'core' and arguing that a fixation on Jew-hatred fuelled his entire intellectual production, he reads him principally as a "demonologist ... never satisfied with sober findings."<sup>297</sup> This leads Gross to dismiss rather too quickly the possibility that Schmitt presents troubling questions to political thought that require serious attention, even if they cannot ever be dissociated or abstracted from his anti-Semitism. Secondly, by understanding Schmitt to have principally carved out his thought in relation to his Jewish 'enemy' he not only over-determines every aspect of Schmitt's work but also risks even the nature of his anti-Semitism itself. He argues in his concluding remarks that the 'substance' of Schmitt's 'concrete order thinking' "can only be found in Aryanism, which itself can be defined only in terms of *not being Jewish*."<sup>298</sup> Although certainly anti-Semitic, Schmitt's thought does not claim anything to do with the concept 'Aryan,' and Gross thus risks reducing anti-Semitism to Aryanism, which is grossly at odds with his own account of the diverse appearances of anti-Semitism even when limited to the nineteenth and twentieth centuries in France and Germany. Thirdly, by reducing his thought to anti-Semitism, Gross

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<sup>296</sup> Ibid, 230.

<sup>297</sup> Ibid, 229.

<sup>298</sup> Ibid, 227.

provides a deterministic account of Schmitt's involvement with the Nazis. As he argues, the fall of the state to the Nazis in 1933 "merely offered Schmitt the chance to express the confrontation [with the Jews] in far more direct and radical terms."<sup>299</sup> Gross's reduction of Schmitt's decision to involve himself with Nazi power to a predetermined response saps Schmitt's move of political and ethical weight. As noted above, there are more complex ways in which to interpret Schmitt's decision than are offered by opportunism, ideology or simply hatred of Jews.

The second major problem is in how Gross accounts for Schmitt's reception. Gross convincingly shows how Schmitt scholars in Germany and the U.S. have consistently underplayed, ignored or actively suppressed Schmitt's anti-Semitism, effectively excluding it from serious consideration. Gross's book goes a long way to exposing this mix of systematic negligence and repression and some way to addressing it. However, in his conclusion, Gross makes the highly dubious jump between Schmitt's advocates, who have actively sought to exclude anti-Semitism from the discussion of his work, and those who critique positivism more generally. This conflation makes an enormous intellectual leap across a gaping chasm of necessary distinctions. Indeed, in a conclusion typified by sloppy and polemical thought vastly at odds with the extreme rigour of the rest of the book, Gross even goes so far as to suggest an inherent relationship between the "post-war renaissance of anti-positivist understanding of law and scholarship" in "many academic circles in Europe and North America" (a thinly veiled critique of post-structuralism and the Frankfurt School) with the "book burnings of May 1933."<sup>300</sup> As detailed above, there are of course more or less explicit engagements with Schmitt's amongst many post-structuralist and Frankfurt school critical theorists, but a Derrida or a Kirchheimer remain very distant from a Goering or a Rosenberg, even if both sets share certain intellectual lineages with Schmitt. Gross' claim that those who draw on Schmitt's work uncritically risk carrying on reactionary and anti-Semitic tradition is a point well taken. To suggest however, that critiques of positivism, driven by political and ethical orientations markedly distinct to Schmitt, necessarily lead themselves into intellectual waters shared

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<sup>299</sup> Ibid, 232.

<sup>300</sup> Ibid, 228.

with Nazism is a claim bordering on intellectual historical paranoia. Schmitt can doubtless be considered “an important representative of this intellectual current [anti-positivism].”<sup>301</sup> Further, his life may “forcefully demonstrate how unproblematically anti-positivism and Nazism could harmonize” but the suggestion that Schmitt and anti-positivism share the same trajectory as such or that Schmitt’s anti-positivism made his Nazism necessary is baseless.<sup>302</sup> Gross ends his book with a dismal argument that collapses Schmitt to anti-Semitism, anti-Semitism to Nazism, and Nazism into a shared trajectory with anti-positivism.

Despite these serious flaws in his conclusions, Gross’ book remains an invaluable guide to the question of how to relate Schmitt’s thought to his Nazism and his anti-Semitism that is absolutely unmatched in any other study available in English. It does however require the exercise of some critical distancing from Gross’ project which ultimately appears driven by the demands of a polemical reduction. Hence, although he is correct to identify the connection between anti-Semitism and the core oppositions in Schmitt’s thought, Gross presents it as a hidden foundation on which these other oppositions rely, rather than as a connected element with which they resonate. In my view, Schmitt’s anti-Semitism is not the structural foundation on which other enmities lie but one of a number of enmities that exist in a mimetic complex that allows for conceptual convergences. Anti-Semitism is thus not *the* centre of Schmitt’s thought but one of a number of centres that resonate with each other in his ‘polycentric’ conceptual framework. This accounts for the paranoid nature of his “Jewish Complex” which finds the influence of ‘the Jewish’ scattered in the most contradictory of places.<sup>303</sup> Hence, in his speech at the 1936 conference he organised on the influence of ‘the Jewish’ on German jurisprudence and the threat presented by “Jewish chaos and Jewish legality ... anarchist nihilism and positivist normativism ... raw sensualist materialism and abstract moralism.”<sup>304</sup> Likewise, during his post-war internment, Schmitt could identify his “new masters”, the

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<sup>301</sup> Ibid.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid, 236.

<sup>304</sup> Quoted in Balakrishnan, *The Enemy*, 206. These words are from a speech Schmitt delivered at the aforementioned conference on the ‘Jewish influence’ on German legal thought.

United States, with the victory of the Jews.<sup>305</sup> For Schmitt, behind this “singular lord of the world, this poor Yankee” stood “his primeval Jews”, a reference to the returning German-Jewish émigrés like Robert Kempner who interrogated him at Nuremburg.<sup>306</sup> The United States was for Schmitt the heir of all he had identified with ‘The Jewish’ in Europe: pluralism; particularism; universalism; relativistic science; technological and economic thinking; spacelessness; the ethnic ‘melting pot’; historical acceleration. Bolshevism was perhaps the only one of his stereotypical connections that Schmitt did not find mirrored in the new ‘lords of the world’.

The question remains however as to what character Schmitt’s anti-Semitism took. Should it be understood as a prejudice understood principally in racial terms or informed rather by religious, political and philosophical categories? This is of some importance in assessing anti-Semitism’s structural relation to his thought as a whole but also its role in his relationship to National Socialism. Whilst he never retracted the statements he had made during the Nazi years when he was publicly airing his anti-Semitism, Schmitt consistently denied after the war that he was anti-Semitic. Rather, he argued his comments could only be said to be “*judenkritisch* – ‘critical of the Jews.’”<sup>307</sup> This tenuous distinction between a ‘base’ biological anti-Semitism such as that of the Nazis, and one of a supposedly more cerebral form that Schmitt displayed, is a common feature of the literature on Schmitt. For example, George Schwab argues that Schmitt was not guilty of “the biological Nazi version of anti-Semitism [but] rather than the traditional Christian form.”<sup>308</sup> Tracy B. Strong likewise distinguishes between the biological anti-Semitism of the Nazis and Schmitt’s apparently “noncrude anti-Semitism.”<sup>309</sup> “Schmitt’s anti-Semitism” Strong argues “is first and foremost an anti-Judaism”, defined by traditional European Christian prejudices.<sup>310</sup> In Strong’s case, the aim is not to excuse Schmitt’s anti-Semitism but to understand its conceptual structure more clearly. In Schwab’s case, however, these distinctions are employed to ensure that Schmitt’s anti-

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<sup>305</sup> *Carl Schmitt and the Jews*, 201.

<sup>306</sup> *Ibid.*

<sup>307</sup> *Ibid.*, 4.

<sup>308</sup> Schwab, Introduction, xxxix.

<sup>309</sup> Strong, Foreword, xvii.

<sup>310</sup> *Ibid.*, xv.

Semitism, and hence his thought more broadly, is held apart from Nazi ideology. Indeed, he argues that, “The charge of anti-Semitism cannot be sustained. Schmitt’s relapse into a narrow, exclusionary theology, although it overlapped with Nazi and anti-Semitism and, as such, added to the poisoned atmosphere, lacked the cornerstone of Nazi ideology, a hodge-podge theory of race.”<sup>311</sup> Regardless of the arguments, such distinctions immediately present two problems. Firstly, can this distinction between a biological anti-Semitism and a supposedly non-biological anti-Judaism stand, especially in the context of the Nazi years? Secondly, does this distinction itself serve to divert attention from the role that anti-Semitism, even of a supposedly ‘non-crude’ form, had in Schmitt’s thought more broadly?

The first thing to note here, as Strong rightly does, is that the demarcation between a biological anti-Semitism and a more ‘traditional’ anti-Judaism “would have been moot in the Germany of that time.”<sup>312</sup> Whilst the distinction might hold some conceptual water and indeed be important for assessing the nature of Schmitt’s views and their impact on his thought, they clearly “mattered little if you were in Auschwitz.”<sup>313</sup> Hence, these dubious delineations between forms of anti-Jewish sentiment are of little relevance in how Schmitt’s anti-Semitism is assessed historically or politically. In other words, whether or not Schmitt shared the biological anti-Semitism of the Nazis, he was still willing to share in this discourse at a moment when his voice served to legitimate their racist policies, if not influence them directly in any significant way. Indeed, as Strong notes “his pronouncements ... during the 1933-1936 period are of a violence that goes well beyond a genteel bourgeois anti-Semitism.”<sup>314</sup> Schmitt’s identification with an “anti-Semitism of reason” proves no defence of his relationship with the Nazis’ biological anti-Semitism, as he was willing to publicize and ratchet up his own hatred to meet the requirements of the regime.<sup>315</sup> Regardless of what conceptual differentiation may have been possible between Schmitt and the Nazis on ‘the Jewish Question’ his support for the regime amounted to the same historically and politically.

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<sup>311</sup> Schwab, Introduction, xliv.

<sup>312</sup> Strong, Foreword, xv.

<sup>313</sup> Ibid, xvii.

<sup>314</sup> Ibid, xxiii

<sup>315</sup> Gross, *Carl Schmitt and the Jews*, 236

The question of whether a distinction between anti-Semitism and anti-Judaism is of importance in assessing the role of Jews and ‘The Jewish’ in Schmitt’s thought is however a more complicated matter. This concerns the role that anti-Semitism played in Schmitt’s conceptual framework rather than his political adventurism and thus bears directly on how to assess its structural position in his thought. As has been argued above anti-Semitism represents one of a number of central categories and concerns through which Schmitt structures his thought. It enters in to chains of metonymic association with liberalism, pluralism, universalism, particularism, historical acceleration and spacelessness, often acting as a point of resonance where a number these concepts converge. As Strong argues, for example, Schmitt’s anti-Semitism “is of a piece with his reasons for opposing pluralism and indirect powers.”<sup>316</sup>

It is specifically in relation to Schmitt’s understanding of political theology, however, that anti-Semitism has most significance in his work. Schmitt’s political reading of theology and the importance he attributed to the ghost of theological categories within political thought and conceptions of history is of crucial importance here. Schmitt’s anti-Semitism represents, as Strong notes, “the oldest form of anti-Semitism given a new twist: the denial of Christ as the Messiah constitutes a threat to the possibility of political order.”<sup>317</sup> The fact that Christ has come as Messiah is not simply a religious event but a *political* one, one that anoints secular authority as the representative of God’s law on earth. Thus, secular authority, in Schmitt’s view, represents the highest law on earth for a Christian. The origins of Schmitt’s anti-Semitism thus lie in the belief “that the event of Christianity is *political rather than religious*.”<sup>318</sup> That Jews, in Schmitt’s view, do not accept this means that they “will always be in contradiction to a unified society for the reason that [they claim] a source of right (*Recht*) that is external to the society (God’s Law).”<sup>319</sup> Thus, on the basis of this idiosyncratic political reading of theology Schmitt is able to identify Jews with all those who open a rift between authority, association and

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<sup>316</sup> Strong, Foreword, xvii.

<sup>317</sup> Ibid, xxvi.

<sup>318</sup> Ibid, xxiii.

<sup>319</sup> Ibid, xv-xvi.

awe and undermine political order, which again amounts to an identification with his usual set of villains through a chain of association.<sup>320</sup> The Jews, in Schmitt's view, were politically inclined by theology to undermine order and thus represented a threat to the political community that needed to be protected against: an enemy. Interestingly, as part of his strained defence of Schmitt, Schwab draws attention to the fact that the German lawyer's views on the Jews had altered since the foundation of Israel: "On numerous occasions Schmitt expressed the view to me that the situation of the Jews dramatically changed with the creation of the state of Israel. 'At last they [Jews] again have contact with a soil they can call their own.'" Seemingly Schmitt's anti-Semitism was thus deeply tied to their status as a 'rootless' Diaspora without land and hence disruptive of the *nomadic* relationship between 'order and orientation'. Such a view would potentially support the forced 'resettlement' of European Jews in their 'homeland', a topic hotly debated in Nazi circles and one Schmitt alluded to vaguely in his *Grossraum* writings during the late 1930s and early 1940s.<sup>321</sup>

It is on this point that there may be a connection between the role of anti-Semitism in Schmitt's conceptual framework and his decision to throw his weight behind the Nazi regime. As has been argued, Schmitt understood political order to be facing an epochal crisis in the twentieth century and Germany to be at the vanguard of this historic slide towards catastrophe. Hence, his thought was preoccupied with ways in which a political form could be ensured in order to dam the flood of disorder. In Schmitt's view, order had to assert itself against those forces which threatened political form; parliamentarianism; communism; universalism; the indirect power of capital; Anglo-Saxon imperialism; Jews. Although for a time Schmitt stood in opposition to the Nazis alongside the communists, whom he saw to be carrying out a pincer movement on the stability of the German state his so-called 'Jewish complex' may have helped push him in the direction of the Nazis. He had argued since the early 1920s that sovereignty depended on homogeneity, and hence the Jews, understood as an 'alien' people within Germany, could easily be

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<sup>320</sup> This is the subject of Schmitt's 1938 book *The Leviathan*. Schmitt argues that the modern secular state, as conceived by his revered Thomas Hobbes, was fatally flawed from its inception by a division between public order and private conscience that allowed order to be undermined. However, he singles out the Jews as the greatest culprits in the process of unravelling the state.

<sup>321</sup> Schwab, Introduction, li n49.

identified as the enemy within, who needed to be excluded in order to constitute national identity. Thus, as Gross argues, the Jews became the ‘concrete enemy’ upon whom Schmitt’s understanding of the crisis of political form came to turn. The Jews, insofar as Schmitt identified them with those forces undermining order, could not only be identified as the political enemy but *the enemy of the political*, the invisible force hollowing out order from within.

Schmitt made precisely this association, not only in his public diatribes during the Nazi years but also in his private diaries in the aftermath of World War II.<sup>322</sup> It must remain uncertain however if this was the decisive factor leading Schmitt to Nazi involvement, but it seems undeniable that it would have affected his decision in some way and at the very least made an affiliation more agreeable. Whether Schmitt had a different understanding of anti-Semitism to the Nazis is of little importance in assessing the importance of his co-operation with the regime, but it helps understand how he could have made this decision. In the final instance, however, Schmitt’s anti-Semitism cannot provide a definitive interpretive key to understanding his relationship to Nazism, much less his thought as a whole. It remains structurally woven into the constellation of oppositions through which Schmitt viewed the world, and as such cannot be separated out from his thought, much less denied. Although it took an unusual form that needs to be understood within the broader complex of his thought, it was in many respects not unusual for a conservative intellectual or his time. As George Mosses has argued, “German anti-Semitism is part of German intellectual history. It does not stand outside of it.”<sup>323</sup> Hence the intellectual work still required is to examine Schmitt’s anti-Semitism both textually and contextually, locating it in relation to his thought as a whole and in the intellectual currents of his time within Germany and Europe more broadly. Although this exercise lies beyond the scope of this study, its necessity hangs heavy on Schmitt’s work.

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<sup>322</sup> See: Gross, *Carl Schmitt and the Jews* (2007).

<sup>323</sup> Quoted in Caldwell, Foreword to *Carl Schmitt and the Jews*, xv.

### (3) *A Critical Schmittology*

The Italian Schmitt scholar, Carlo Galli has referred to himself as a “*non-Schmittian Schmittologist*” and this seems a fitting description for the hermeneutical approach I adopt here.<sup>324</sup> It is an approach that considers Schmitt’s ideas to be worthy of rigorous investigation but is careful to maintain at a critical distance from its object of study. On the one hand, it values the contextualization of Schmitt’s work in relation to the complexities of his biography and the historical situation from which it emerged and in which it developed, and indeed the multiple historical and national contexts in which it has been received. On the other hand, it is sensitive to the fact that Schmitt’s work raises questions that do not dissolve in historicization and which still demand answers. Although in engaging with Schmitt I recognize that his work is irreducibly problematic, I nonetheless believe he identified problems that “transcend both his own answers and his own times.”<sup>325</sup> In the following chapters I will seek to outline Schmitt’s conceptual architecture but do so in order to probe its theoretical foundations and test the limits of its use. It should be underlined however that although my reading seeks to approach Schmitt’s corpus as a whole my interest is in the role of spatial concepts in his work and is by necessity deeply selective. There is much that will be sidelined in order to pursue my argument. I do not propose therefore to expose the many faces of this ‘sphinx’ but rather to sketch a portrait of Schmitt as a spatial thinker.

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<sup>324</sup> Quoted in Sitze, Introduction, xi.

<sup>325</sup> Müller, *A Dangerous Mind*, 252 n14.

## ***Chapter 4: Political Form / Spatialising the Political***

In order to identify the important role that spatial concepts play in Schmitt's thought it is necessary to briefly outline some of the core concepts running through his work. The account of Schmitt's thought given here cannot hope to be comprehensive. It will instead focus on those concepts most relevant to the task of elucidating the role of space in his work. This inevitably means that some concepts will be elaborated more fully than others. Rather than providing a synoptic overview of Schmitt's entire oeuvre it aims to establish a conceptual framework within which the analysis of Schmitt's thought carried out in the subsequent chapters can take shape. This chapter seeks primarily to outline the conceptual underpinnings of Schmitt's 'ideal type' of political order - the modern European state form - and its importance for understanding the role of space in his thought as a whole. Given that Schmitt's thought does not follow a clear trajectory of linear development, the analysis here will not provide a chronological account of his output. Rather, it will shuttle back and forth between works in order to synthesize those elements most important to reconstructing the architecture of his thought and elucidating the role of space within it. Focus will nonetheless fall for the most part on his work from the 1920s. It was during this period that Schmitt established the conceptual framework and introduced many of the central terms that underpin his work as a whole. It is against the backdrop of this conceptual framework that the development of his later work from the mid 1930s, where spatial concepts take on a more explicit role, can be understood. Finally, as the purpose is to explicate the structuring role of spatial concepts in Schmitt's thought, critical commentary will be kept to a minimum in this chapter.

### **(1) *The Father of All Things: The Primacy of The Political***

Adam and Eve had two sons, Cain and Abel. Thus begins the history of humanity. Thus appears the father of all things [= Heraclitus's famous description of war]. This is the dialectic tension animating the movement of world history, and world history is not yet at an end.

Carl Schmitt, 1947<sup>326</sup>

“The specific political distinction to which political actions and motives can be reduced is that between friends and enemy.”<sup>327</sup> If any one statement had to be singled out as the most important in Schmitt's thought it would doubtless be this famous definition of the political. It is not an understatement to say that the political is the central concept in understanding Schmitt's thought. All other concepts and structures in his thought relate in some way to the political, including his conceptions of space. So what then is the political for Schmitt? In his 1927 book *The Concept of the Political* Schmitt set out to define the foundations of those phenomena we refer to as ‘political,’ or the origin of politics. Schmitt conceives the political therefore as a more fundamental concept than politics. Indeed something can be considered *politics* because it displays the character of the political, i.e. the distinction between friend and enemy. Schmitt develops this concept on the basis that “various relatively independent endeavours of human thought and action” each have their “own criteria which express themselves in a characteristic way.”<sup>328</sup> Just as the moral, the aesthetic and the economic have their own defining distinction, between good and evil, beautiful and ugly, profitable and non-profitable respectively, so too the political is defined by the distinction between friend and enemy. “All action with a specifically political meaning can be traced” to this distinction.<sup>329</sup> There are two points that immediately arise here: the relationship of the political to other spheres of social relations and the defining role of enmity.

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<sup>326</sup> Quoted in Gross, *Carl Schmitt and the Jews*, 196.

<sup>327</sup> Schmitt, *The Concept of the Political*, 26.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

In Schmitt's view, the political refers to a sphere of human relations that can be distinguished from all others. The political is "independent" of other spheres of human relations such as the moral, the aesthetic and the economic "in the sense that it can neither be based on any one antithesis or any combination of other antitheses, nor can it be traced to these."<sup>330</sup> The "autonomy of the political becomes evident" he argues, "by virtue of its being able to treat, distinguish, and comprehend the friend-enemy antithesis independently of other antitheses."<sup>331</sup> However, the political is not a pure sphere. It can draw on and emerge from antitheses found in other spheres of human relations such as the moral, the economic, and so on. What makes an antithesis political is the degree of intensity with which it is drawn. "The distinction" Schmitt writes "of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation."<sup>332</sup> "The political" Schmitt contends, "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."<sup>333</sup> Hence, the political enemy "need not be morally evil or aesthetically ugly; he need not appear as an economic competitor ... but he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specifically intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible."<sup>334</sup> It is important to note that the political is not a concept, in Schmitt's eyes, "indicative of substantial content."<sup>335</sup> Hence, although it may be judged that the enemy "intends to negate his opponent's way of life" this cannot be determined by pre-existing substantive

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<sup>330</sup> Ibid, 26.

<sup>331</sup> Ibid, 27.

<sup>332</sup> Ibid, 26. It should be noted here that Schmitt made conceptual changes on precisely this point between the first two German editions of *The Concept of the Political* published in 1927 and 1932 respectively. In the first edition the political was defined simply by the degree of intensity of a distinction. Hence, the more intense a distinction the more political it became. However, in the 1932 edition Schmitt introduced a limit to politicization, a point where the intensity of a distinction crossed the bounds of the political proper and became 'absolute.' When an antagonism reached the degree of intensity of absolute enmity it was destructive to the political distinction itself as it led towards the annihilation of the enemy. This points to the tension in the concept of the political, between the intensification and limitation of conflict. For a more detailed account of the changes made see Chapter 8 of Balakrishnan, *The Enemy* (2000). George Schwab's English translation is based upon the 1932 edition and therefore includes the second reading of the intensity thesis whereby the degree of intensity of an antithesis structures the political but an absolute enmity crosses the bounds of the political.

<sup>333</sup> Schmitt, *The Concept of the Political*, 29.

<sup>334</sup> Ibid, 27.

<sup>335</sup> Ibid, 26.

categories.<sup>336</sup> As Schmitt notes the political “can contain and comprehend different contents” although it will always designate the most intense form of distinction.<sup>337</sup> Because it has “no substance of its own ... the political can be reached from any terrain,” Schmitt argues, and can emerge within any social sphere where an antithesis grows intense enough to produce existential conflict.<sup>338</sup>

The most striking aspect of Schmitt’s concept of the political is that he defines politics through enmity. Thus, for Schmitt, within the friend-enemy distinction “resides the very essence of political existence.”<sup>339</sup> Further, given that “war follows from enmity” it becomes a central category in the sphere of the political.<sup>340</sup> “The core of the matter” he bluntly stated in 1937 “lies in warfare.”<sup>341</sup> Yet, war, Schmitt warned, is “neither the aim nor the purpose nor even the content of politics. Nevertheless, as an ever present possibility it is the leading presupposition which determines in a characteristic way human action and thinking and thereby creates a specifically political behaviour.”<sup>342</sup> The political, Schmitt argues, “does not reside in the battle itself ... but in the mode of behaviour which is determined by its possibility.”<sup>343</sup> War, is thus for Schmitt not the aim

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<sup>336</sup> Ibid, 27. This is an important corrective to those that see Schmitt as an essentialist. His concept of enemy is situational and hence socially constituted rather than relying on any predetermined categories or characteristics of the parties in conflict. Hence, although Raphael Gross makes a strong case that the enemy Schmitt has in mind here is actually the ‘concrete’ case of the Jews in Germany he concedes that this can only be deduced from structural affinities between his description of the enemy in *The Concept of the Political* and his later overt anti-Semitism. See: Gross, *Carl Schmitt and the Jews* (2007).

<sup>337</sup> Schmitt, “Ethic of State and Pluralistic State,” 203. Schmitt echoed this in the 1932 edition of *The Concept of the Political*: “Every religious, moral, economic, ethical, or other antithesis transforms into a political one if it is sufficiently strong to group human beings effectively according to friend and enemy.” Schmitt, *The Concept of the Political*, 37.

<sup>338</sup> Schmitt, “Ethic of State and Pluralistic State,” 203. As Schmitt memorably added: “It infuses with its content and values the political unity which lives off the different areas of human life and thought, and draws its energies from science, culture, religion, law and language.... The mythical eagle of Zeus which nourished itself from Prometheus’ entrails.”

<sup>339</sup> Schmitt, *The Concept of the Political*, 49. A type of thinking that denies the possibility of antagonism is not therefore political in Schmitt’s eyes. He argues that, “it is irrelevant here whether one rejects, accepts or perhaps finds it an atavistic remnant of barbaric times that nations continue to group themselves according to friend and enemy, or hopes that this antithesis will one day vanish from the world.... The concern here is nether with abstractions nor with normative ideals, but with inherent reality and the real possibility of such a distinction” (Ibid, 28).

<sup>340</sup> Ibid, 33.

<sup>341</sup> Carl Schmitt, “Total State, and Total War,” in *Four Articles, 1931-1938*, ed, Simona Dragachi (Washington DC: Plutarch Press, 1999), 31.

<sup>342</sup> Schmitt, *The Concept of the Political*, 34.

<sup>343</sup> Ibid, 37. Hence, for Schmitt, war is an exceptional extreme threat that does not signify that war is a ‘continuation of politics by other means’ as Clausewitz had argued (Ibid, 34)

of politics, but its horizon, the “most extreme possibility [from which] human life derives its specifically political tension.”<sup>344</sup> In Schmitt’s view therefore, the possibility of war is inscribed in the very foundations of the political and as such acts as a point to which all politics must be oriented.

The fact that Schmitt defines the political through enmity should not be understood as a celebration of war.<sup>345</sup> Schmitt does not, as some suggest, conceive of the political as a “realm of permanent war.”<sup>346</sup> The friend-enemy distinction, he argues, “neither favours militarism, neither imperialism nor pacifism,” but is rather a sober recognition of the ‘possibility’ of war.<sup>347</sup> War does not have to be “common, normal, something ideal, or desirable” but it cannot be excluded from possibility.<sup>348</sup> Indeed, according to Schmitt, only by recognizing the inherently conflictual nature of politics can the worst excesses of war be managed. Thus, even if war cannot be eradicated or overcome by acknowledging it as an ‘ever present possibility’ it can be limited. At the core of Schmitt’s concept of the political thus lies a peculiar double movement that makes antagonism the foundation of politics on the one hand and on the other makes politics the art of managing this antagonism. Hence, the political itself contains a moment of depoliticization, an inherent self-limitation of enmity.

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<sup>344</sup> Ibid, 35.

<sup>345</sup> Indeed, despite the suggestion of Jeffrey Herf in *Reactionary Modernism* (1984), Schmitt stands at a considerable distance from his friend and fellow conservative, Ernst Jünger on precisely this point. In texts such as *Storm of Steel* (1920), *Total Mobilization* (1933) and *On Pain* (1934) Jünger celebrated the spiritually invigorating power of modern warfare as an antidote to the deadening effects of liberal democracy. Herf argues that Schmitt and Jünger both sought to celebrate a vision of military action that would fuse reactionary politics with technological prowess (see *Reactionary Modernism*, Chapter 5). However, this conflation of Schmitt and Jünger is unwarranted as Schmitt’s entire understanding of politics is based around the attempt to recognize the structural importance of war in order to limit and manage it rather than celebrate it.

<sup>346</sup> Neocleous, “Friend or Enemy?,” 18. See also Mark Neocleous, ‘Perpetual War, or ‘War and War Again’: Schmitt, Foucault, Fascism’ in *Philosophy and Social Criticism* 22 (1996), 47-66. In 1932 Schmitt quite clearly qualifies his conception of the political to avoid such a misreading, already made by Hermann Heller. “It is by no means as though the political signifies nothing but devastating war and every political deed a military action, by no means as though every nation would be uninterruptedly faced with the friend-enemy alternative vis-à-vis every other nation. And, after all, could not the politically reasonable course reside in avoiding war?” See: Schmitt, *Concept of the Political*, 33.

<sup>347</sup> Schmitt, *The Concept of the Political*, 33.

<sup>348</sup> Ibid, 33.

It is one of the many paradoxes at the heart of Schmitt's concept of the political that a politics defined by antagonism can limit warfare. Schmitt argues that by providing clearly defined distinctions between friend and enemy, the political structures and therefore controls conflict, allowing conflict to be managed. This paradoxical structure turns on the concept of the enemy. The enemy for Schmitt is "something existentially different and alien" that threatens one's "way of life and therefore must be repulsed or fought in order to preserve one's own form of existence."<sup>349</sup> This definition at first seems to propose an understanding of the friend-enemy distinction based upon war between groups defined by essentialized identities. However, when examined more closely it reveals something quite different.

Schmitt's concept of enmity is qualified in two ways. He distinguishes between two different sets of enemies, public and private enemies and 'real' and 'absolute' enemies. Schmitt introduces these distinctions to ensure that the limited conflict 'proper' to the political is understood. Firstly, the political enemy is "solely the public enemy" Schmitt states, "*hostis*, not *inimicus*".<sup>350</sup> Thus, the political enemy is distinguished from the private enemy and need not be hated personally. "An enemy exists" he argues "only when, at least potentially, one fighting collectivity of people confronts a similar collectivity."<sup>351</sup> Indeed, conversely "everything that has a relationship to such a collectivity of men ... becomes public by virtue of such a relationship."<sup>352</sup> Thus, the political as the relation between friend and enemy is limited to the public sphere.<sup>353</sup>

Secondly, the political enemy is for Schmitt a 'real' enemy that emerges in a 'concrete situation'. The enemy, like all political concepts for Schmitt, is "focused on a specific conflict and [is] bound to a concrete situation."<sup>354</sup> The political resides, he argues, in

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<sup>349</sup> Ibid, 27

<sup>350</sup> Ibid, 28. This draws on the distinction between public and private enemies in Plato's Republic (Ibid, 28 n9).

<sup>351</sup> Ibid, 28.

<sup>352</sup> Ibid, 28.

<sup>353</sup> The political does not therefore concern conflicts between individuals. Likewise it does not concern the conflicts between groups internal to the political entity unless they grow intense enough to take on a political character, i.e. bringing fighting collectives together. In this case the political entity has collapsed into a state of civil war.

<sup>354</sup> Ibid, 30.

“clearly evaluating the concrete situation and thereby being able to distinguish correctly the real friend and the real enemy.”<sup>355</sup> In *The Concept of the Political* Schmitt opposes this ‘real’ enemy bound to a ‘concrete situation’ to concepts of enmity that appeal to universal terms such as ‘humanity’. Although, as Schmitt notes, it was increasingly common in the twentieth century for war to be discussed in humanitarian terms “the concept of humanity excludes the concept of the enemy, because the enemy does not cease to be a human being.”<sup>356</sup> “Humanity as such” Schmitt notes, “cannot wage a war because it has no enemy.”<sup>357</sup> Or rather enmity takes on “an especially intensive political meaning” as one group claiming to fight in the name of all humanity turns their opponent into the enemy of humanity, the ‘inhuman’.<sup>358</sup> A war waged against the enemy of humanity “is then considered the absolute last war of humanity.” Schmitt argues that: “Such a war is necessarily unusually intense and inhuman because, by transcending the limits of the political framework, it simultaneously degrades the enemy into moral and other categories and is forced to make him a monster that must not only be defeated but also utterly destroyed. In other words, he is an enemy who no longer must be compelled to retreat to his borders only.”<sup>359</sup>

Schmitt distinguishes between a ‘real’ enmity tied to a ‘concrete situation’, where the warring parties recognize each other as legitimate political adversaries opponents and respect each other’s borders, and an ‘absolute’ enmity that respects no limitation and leads towards a horizon of annihilation.<sup>360</sup> Thus, the political enemy considered as both public and ‘real’, but *only* public and ‘real’, presupposes limits on the nature and scope of political conflict.<sup>361</sup> For Schmitt therefore the enemy plays the paradoxical role of both

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<sup>355</sup> Ibid, 37.

<sup>356</sup> Ibid, 54.

<sup>357</sup> Ibid, 54.

<sup>358</sup> Ibid, 54.

<sup>359</sup> Ibid, 36.

<sup>360</sup> For more on the nature of the ‘absolute enemy’ see Carl Schmitt, *The Theory of the Partisan* (New York: Telos Press, 2007), 89-95.

<sup>361</sup> Schmitt clearly had in mind here the inter-state order of modern European international law he identified as the *jus publicum Europeaum* in later works such as *The Nomos of the Earth*. In his description of the *jus publicum Europeaum* Schmitt highlights the central importance of the mutual respect that warring parties within Europe awarded each other. Each considered the others as sovereign equals and approached as ‘just enemies’ who did not have to be annihilated in defeat. Hence conflict was ‘bracketed’ to the conflict

the source of conflict and the means of its limitation. But it is only the 'real' public enemy that can play this role not the private or 'absolute' enemy.

The enemy is also a crucial category for Schmitt as he understands political identity to be constituted through the friend-enemy relation. Hence, any political entity is dependent on an enemy to constitute its identity. "The political entity" Schmitt argues "presupposes the real existence of an enemy and therefore coexistence with another political entity."<sup>362</sup> An entity without an enemy is not, for Schmitt, a political entity. Further, any political entity that fails to identify its enemy will cease to be a political entity. As such the very existence of the political entity is defined by its ability to identify the enemy. Schmitt argues that "The political entity is by its very nature the decisive entity" and its existence turns on the question of its capacity to decide on the enemy.<sup>363</sup> "In the orientation towards the possible extreme case of an actual battle against a real enemy, the political entity is essential, and it is the decisive entity for the friend-or-enemy grouping".<sup>364</sup> Either the political entity identifies the enemy or otherwise as, Schmitt states bluntly, "the political entity is nonexistent."<sup>365</sup> Political identities are thus relational and situational for Schmitt, determined by specific conflicts with 'real' enemies in 'concrete' situations rather than finding a basis in absolute concepts or essentialist categories. Indeed, it is precisely because the political lacks its own substance that these conflicts can arise in any sphere of human relation: the economic, the moral, the religious, and so on. As noted above it is the degree of intensity of an antithesis that produces a political relation and not the substance of the difference itself. Hence, Schmitt argues that, "the friend-enemy grouping is existentially so strong and decisive that the non-political antithesis, at precisely the moment at which it becomes political, pushes aside and subordinates its hitherto purely religious, purely economic, purely cultural criteria and motives to the conditions and

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between states and the conflict between states was limited by the consideration of opponents as equal, purely political, opponents.

<sup>362</sup> Schmitt, *The Concept of the Political*, 53.

<sup>363</sup> Ibid, 44. As Schmitt writes, "In any event, that grouping is always politics which orients itself toward this most extreme possibility [war with the enemy]. This grouping is therefore always the decisive human grouping, the political entity. If such an entity exists at all, it is always the decisive entity, and it is sovereign in the sense that the decision about the critical situation, even if it is the exception, must always reside there" (Ibid, 38).

<sup>364</sup> Ibid, 39.

<sup>365</sup> Ibid, 39. The political entity either decides on the enemy or not, "it exists or it does not exist" (Ibid, 44).

conclusions of the political situation at hand.”<sup>366</sup> Other forms of identity can therefore become political if they grow intense enough that their defining antithesis could lead to warfare. However, whilst these relations may be of the utmost intensity, warfare is nonetheless limited as it takes place between ‘real’ public enemies tied to a ‘concrete’ situation.

Although Schmitt understands political identities to be grounded in situational relations as opposed to essentialist substances, they nonetheless take shape in relation to the possibility of existential conflict. It is from this existential conflict that political existence, indeed even human life as such, receives its ultimate meaning for Schmitt. Existential conflict should be understood here to indicate ‘concrete’ life and death struggles involving the possible loss of human life. Schmitt is explicit in stating that, “the friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing.”<sup>367</sup> Precisely “by virtue of [its] power over the physical life of men, the political community transcends all other associations or societies” Schmitt argues.<sup>368</sup> Although Schmitt argues a world without politics “might contain many very interesting antitheses and contrasts, competitions and intrigues of every kind,” he notes that, “there would not be a meaningful antithesis whereby men could be required to sacrifice life, authorized to shed blood, and kill other human beings.”<sup>369</sup> Thus, the political is the source of a meaning more fundamental than that found in other spheres of human life, indeed it concerns the very question of existence as such. War, “the physical killing of human beings who belong to the side of the enemy ... has no normative meaning” he argues, “but an existential meaning only.”<sup>370</sup> Hence, for

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<sup>366</sup> Ibid, 38.

<sup>367</sup> Ibid, 33.

<sup>368</sup> Ibid, 47.

<sup>369</sup> Ibid, 35. The political tension between friend and enemy gives human life an ‘especially decisive meaning’ for Schmitt. He writes: “War is still today the most extreme possibility. One can say that the exceptional case has an especially decisive meaning which exposes the core of the matter. For only in real combat is revealed the most extreme consequences of the political grouping of friend and enemy” (Ibid, 35).

<sup>370</sup> Ibid, 49. Schmitt argues that there can be no justification for war other than the real ‘concrete’ threat of the enemy. Another justification would lead human lives to destruction for a purpose that lacked an existential meaning. He writes: “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

Schmitt, the political, as the engine of existential meaning, stood against the growing loss of meaning in a modern age he understood to be nihilistic.<sup>371</sup> In Schmitt's view the "specifically political tension" that arises from the friend-enemy distinction is the very locus of meaning in history. In other words, the possibility of existential conflict provides a locus of meaning otherwise lacking in human life. The friend-enemy relation was for Schmitt "the dialectic tension animating the movement of world history" and it is for this reason that he consistently insists through out his work on the *primacy of the political*.<sup>372</sup>

## **(2) Political Conditions: Ontology, Anthropology, History**

It should be clear that *the political* carries out a lot of conceptual work in Schmitt's thought. It defines the essence of politics as antagonism, but limits political conflict to the war between 'real' public enemies who assume each other as equals. Further, it constitutes political identities through mutual enmity and grounds the meaning of human history in the possibility of existential conflict between them. But if the political is a

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by an existential threat to one's own way of life, then it cannot be justified. Just as little can war be justified by ethical and juristic norms. If there really are enemies in the existential sense as meant here, then it is justified, but only politically, to repel and fight them physically" (Ibid, 49). Obviously this is at odds with Schmitt's claim that it is physical combat itself rather than its justifications from which existential meaning arises. In Schmitt's logic the moment of conflict itself would produce an existential meaning and any antithesis would become political in this moment of heightened intensity. However, Schmitt contorts his arguments in this way in order to insist on the limited scope of the friend-enemy distinction.

<sup>371</sup> I will return to discuss this in more detail below but Schmitt understood European historical consciousness to be increasingly governed by concepts of mechanistic reason from which no meaning could be derived. The spirit of the age betrayed a focus on material needs which was incapable of focusing on any higher meaning in human existence. As he wrote in 1923 a "mechanism of production serving arbitrary material needs is called 'rational' without bringing into question what is most important – the rationality of the purpose of this supremely rational mechanism." See: Carl Schmitt, *Roman Catholicism and Political Form*, (Westport, CT: Greenwood Press, 1996), 15.

That Schmitt conceived of the political as something standing against nihilism shows the accusation that Schmitt's thought amounted to a 'nihilistic opportunism' made by Karl Löwith in 1935 was misplaced. Schmitt posited his concept of the political against nihilism, precisely as an answer to the loss of meaning in history. See: Karl Löwith, "The Occasional Decisionism of Carl Schmitt" in *Martin Heidegger and European Nihilism*, ed. Richard Wolin, 137-158. New York: Columbia University Press, 1998.

<sup>372</sup> Quoted in Gross, *Carl Schmitt and the Jews*, 196. The manner in which Schmitt argues war as a source of historical meaning here should be contrasted with the critique of Romanticism he mounts in *Political Romanticism*. There Schmitt lambasts 'political romantics' for lacking the 'moral seriousness needed for real political decision making. It can be seen that for Schmitt the ultimate source of 'seriousness' is the possibility of 'existential conflict' with the 'real' enemy. Political romantics are thus those who above all want to avoid thinking about war. This echoes strongly with the claim Schmitt advanced in *The Concept of the Political* that liberals seek above all to avoid decisive violent confrontations that might risk their life. See: Schmitt, *The Concept of the Political*, 71.

foundational concept in Schmitt's thought, what are *its* conceptual foundations? To what category of thought does the political belong? Schmitt does not systematically categorize the foundations of the political but his understanding can nonetheless be pieced together. In my view, the political can be understood to draw on three principal conceptual registers: the ontological, the anthropological and the historical. To put it schematically: for Schmitt the existential fact of difference (the ontological) creates the conditions for conflict in human societies (the anthropological) and hence the need to establish political order to manage conflict (the historical). If these ontological and anthropological conditions make the political an inescapable part of human existence, the political order that arises in response always remains determined by specific historical conditions. I will briefly examine the ontological and anthropological conditions of the political below before turning to the more complex question of the relationship Schmitt traced between the political and the possibilities for political order in the historical conditions of modernity.

**(i) *Dishevelled Humanity: The Political Pluriverse***

In *The Concept of the Political* Schmitt declares that, "the political world is a pluriverse, not a universe."<sup>373</sup> At the most basic level of analysis, his definition of the political as friend-enemy relations presupposes the existence of multiple political entities. Difference is thus the most primary and foundational fact of the political. Schmitt does not elaborate a theory of the grounds of political difference but rather takes it as the guiding assumption on which he bases his arguments. Difference is simply what there is, in Schmitt's terms. In a 1930 article he wrote that the "world of objective spirit is a pluralistic world; pluralism of races and peoples, of religions and cultures; of languages and of legal systems... even the political world is in its nature pluralistic."<sup>374</sup> Hence, political difference follows from the very difference inherent to existence. Humanity

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<sup>373</sup> Schmitt, *The Concept of the Political*, 53.

<sup>374</sup> Schmitt, "Ethic of State and Pluralistic State," 204.

could not be considered a unity, at least politically, for Schmitt. Rather, it was defined by difference: “dishevelled,” as he claimed.<sup>375</sup>

Although Schmitt rarely uses the words ‘ontology’ or ‘ontological’ and does describe his concept of the political in these terms he clearly sought to claim some degree of ontological validity for the concept.<sup>376</sup> Indeed, the fact that he spoke of political differences in ‘existential’ terms indicates that he understood them to have some basis in the most fundamental level of existence as such. It is tempting in light of Schmitt’s Nazi involvement and his anti-Semitism to read his conception of political as being essentialist, or in other words to read his concept of the political as grounded in an understanding of fixed essential differences.<sup>377</sup> However, at numerous points in his work Schmitt emphasizes the historical fluidity of political differences and their essentially contingent co-ordinates in ‘concrete’ situations. Indeed, as highlighted above, the political is defined by the intensity as opposed to substance of political differences. Nonetheless, the political is for Schmitt defined by the difference essential to human existence as such. Rather than being concerned with the nature of specific differences Schmitt’s concept of the political seeks to tarry with the ‘existential’ fact of difference itself. Indeed, it is precisely because differences are ever-changing that the possibility of conflict cannot ever be overcome. In other words, the fact that differences are not fixed means that the political is shaped by ‘concrete’ situations and can arise from any social sphere. This ontological indeterminacy at the heart of human existence is the essential

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<sup>375</sup> In a 1937 article on piracy Schmitt argued that in the view of liberal international law “all humanity – which is otherwise so dishevelled – suddenly appears as if united on a single front.” Quoted in Daniel Heller-Roazen, “Enemies of the Deep,” *Cabinet* 35, (2009). See: <http://www.cabinetmagazine.org/issues/35/heller-roazen.php>

<sup>376</sup> As indicated in Chapter 1, many readers have interpreted Schmitt’s concept of the political in relation to Heidegger’s distinction between the ontological and ontic levels of existence, or rather mapped the distinction between the political and politics against that between Being and beings. See for example: Ardit (2008); Marchart (2007); Mouffe (2005); Prozorov (2008). However, Schmitt himself makes only minor references to Heidegger in his work. Schmitt was certainly aware of Heidegger’s work and indeed his decision to join the Nazi party may have been influenced to some degree by the letter of prompt he received from the latter.

<sup>377</sup> What is beyond doubt the most subtly articulated and rigorously defended version of this argument can be found in Gross, *Carl Schmitt and the Jews* (2007). In Chapter 3 I addressed some of those points where I believe Gross goes too far in attributing an essentialist understanding of difference to Schmitt, specifically with regard to the significance of his anti-Semitism for interpreting his work as a whole.

crux of the Schmitt's conception of the political. It is precisely because humanity is 'dishevelled' that conflict always remains possible and hence order is needed.

**(ii) *A Dangerous and Dynamic Being: The Need for Order***

The very fact that human existence is defined by ontological difference raises the problem of order for Schmitt as he understood conflict to be born of difference. Out of ontological difference arises the political significance of human nature. 'One could test all theories of state and political ideas' Schmitt argues, "according to their anthropology and thereby classify these as to whether they consciously or unconsciously presuppose man to be by nature evil or by nature good."<sup>378</sup> For Schmitt, all political concepts turn on the question of "whether man is a dangerous being or not, a risky or a harmless creature" and ultimately "the anthropological distinction of good and evil."<sup>379</sup> In *The Concept of the Political* Schmitt argues that, "all genuine political theories presuppose man to be evil, i.e., by no means an unproblematic but a dangerous and dynamic being."<sup>380</sup> As such political order is required to tame a 'problematic' human nature. The human being, as Schmitt writes elsewhere, is "a cowardly rebel in need of a master."<sup>381</sup> To deny the 'dangerous and dynamic' element of human nature is therefore to deny the need for such a master. Hence, as Schmitt notes anarchistic political theories rely on a political anthropology where man is 'by nature good'. "The natural goodness of man" he argues, "is closely tied to the radical denial of state and government. One follows from the other and both foment each other."<sup>382</sup>

Although Schmitt appeals to the concept of 'original sin,' his main point of orientation remains the real possibility of friend-enemy antagonisms.<sup>383</sup> "Because the sphere of the

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<sup>378</sup> Schmitt, *The Concept of the Political*, 58. Indeed, this has become one of the textbook distinctions of modern political thought with Hobbes and Rousseau representing the evil and good readings of human nature respectively.

<sup>379</sup> Ibid.

<sup>380</sup> Ibid, 61. He cites a list that includes Machiavelli, Hobbes, Bossuet, Fichte, de Maistre, Donoso Cortés, H. Taine, and Hegel.

<sup>381</sup> Schmitt, *Roman Catholicism and Political Form*, 33.

<sup>382</sup> Schmitt, *The Concept of the Political*, 60.

<sup>383</sup> It would be easy given Schmitt's Catholicism and his avowed interest in political theology to read his political anthropology simply as a political doctrine of 'original sin.' For recent examples of his argument see: William Hooker, *Carl Schmitt's International Thought* (2008); Simon Critchley, *The Faith of the*

political is in the final analysis determined by the real possibility of enmity, political conceptions and ideas” could not, Schmitt argued, “very well start with an anthropological optimism. In Schmitt’s view this would dissolve enmity, and thereby, every specific political consequence.”<sup>384</sup> Those political thinkers who start by presuming human nature is evil “are always aware of the concrete possibility of an enmity.”<sup>385</sup> In Schmitt’s view the very possibility of a concrete enmity means that human nature must be considered politically volatile and in need of restraint. Any form of political thought that presupposes man to be good or supposes political organization can do without ordering authority, in Schmitt’s view, fails to acknowledge the ‘ever present possibility’ of the friend-enemy grouping. At best this amounts to a dangerous utopianism for Schmitt. In Schmitt’s terms a sober understanding of the political necessitates an understanding of politics based on order. Where there is difference there is the possibility of conflict and where there is the possibility of conflict there is the need for order. Order is not therefore inherent either to the ontological conditions of human existence or the anthropological state of human nature. Rather, it has to be produced through political action and institutions, and is thus historically determined.

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*Faithless* (London: Verso, 2011). Doubtless this argument has some veracity and indeed Schmitt makes prominent mention of original sin in several works. However, he is always careful to distinguish the official Catholic doctrine from a more radical Protestant understanding of humanity’s fallen state and point to the political significance of this difference. As he notes in *Roman Catholicism and Political Form* “the antithesis of man ‘by nature evil’ and ‘by nature good’ – this decisive question for political theory – is in no sense answered by a simple yes or no in the Tridentine Creed. In contrast to the Protestant doctrine of the total depravity of natural man, this Creed speaks of human nature as only wounded, weakened, and troubled, thus permitting of some gradations and adaptations” (Schmitt, *Roman Catholicism and Political Form*, 7-8). This is a point he also makes in *Political Theology* when discussing the work of the Spanish counter-revolutionary philosopher of the nineteenth century Donoso Cortés. See: Schmitt, *Political Theology*, 57. Thus, I think Schmitt’s objection against a theological reading of political anthropology should be taken seriously at least at the time *The Concept of the Political* was written in 1928. As he notes there “theological interference generally confuses political concepts because it shifts the distinction usually into moral theology. Political thinkers such as Machiavelli, Hobbes, and often Fichte presuppose with their pessimism only the reality or possibility of the distinction friend and enemy” (Schmitt, *The Concept of the Political*, 65). Thus, it remains the ever-present possibility of real conflict that means political order is required in Schmitt’s view, rather than a theological presupposition of humanity’s fallen state.

<sup>384</sup> Schmitt, *The Concept of the Political*, 64.

<sup>385</sup> *Ibid*, 65.

### **(iii) *Janus-Faced Grounds: The Paradox of The Political***

Here then a question necessarily arises. How is order to be produced if ontological difference and the ‘dangerous and dynamic’ nature of humanity cannot be overcome? Schmitt’s answer is that the political itself provides the foundation of politics. The radicality of Schmitt’s work lies in this claim that the very cleavage of antagonistic difference that divides human society should be the grounds for order. Political difference itself is the inescapable foundation for political order in Schmitt’s view. Although order is necessary precisely because of the possibility of conflict implicit in difference, it can nonetheless only be constituted on the basis of the very same difference. Schmitt’s concept of the political circulates around this paradoxical relationship between difference and order: difference requires order and order requires difference. As difference is, for Schmitt, embedded in the ontological and anthropological conditions of human existence political order cannot hope to be overcome difference. Rather, order must base itself upon difference and struggle against it. Hence, whilst order is grounded upon difference, difference exceeds all order. The concept of the political contains both understandings of difference simultaneously: as a force that both grounds and exceeds order.

For Schmitt political order thus rests upon the paradoxical foundations of difference. The foundations are thus constituted precisely through the cleavage of difference that runs through them. The concept of the political is, as Carlo Galli argues, Schmitt’s attempt to define this ‘double-sided origin’ of politics.<sup>386</sup> The concept of the political indicates that for Schmitt grounding order and ungrounding difference are not opposed concepts but rather locked in an embrace within the political. As the Finnish political theorist Mika Ojakangas has pointed out, foundation and rupture are not opposed terms for Schmitt but rather coterminous. For Ojakangas, the core of Schmitt’s thought lies in the paradox of a “founding rupture” where foundations are laid in moments of rupture and all foundations are necessarily ruptured.<sup>387</sup> On the one hand order must always rely on an act of

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<sup>386</sup> This is Adam Sitze paraphrasing of Galli’s conception rather than a direct quotation. Sitze shows at length how Galli’s work focuses on a critical appraisal of Schmitt’s analysis of the ‘Janus-faced’ origins of politics in the concept of the political. See Sitze, Introduction, xxvi and xiv.

<sup>387</sup> Mika Ojakangas, *The Philosophy of Concrete Life*, (Bern: Peter Lang, 2006), 38. Ojakangas argues that each of Schmitt’s key concepts is defined by such a ‘founding rupture’, not only the political but the

founding, which must in Schmitt's view be an act that confirms or indeed produces difference. Yet, on the other hand, order must always seek to limit difference, to manage it through acts of unifying. Hence, Schmitt's thought is defined by a deep structural tension between foundational indeterminacy and the demand for order.<sup>388</sup> This tension however does not represent a logical flaw in his argument but rather provides the generative force of his work. His thought is characterized by a dialectical tension that refuses the moment of synthesis – an oscillation without resolution.

Encapsulated in Schmitt's concept of the political is therefore an extremely complex and productive understanding of difference. Difference at once lays and dissolves the foundations for all order. Inherent to the political is both an ordering principle and a restive element of disruption. To use somewhat worn Derridian terminology, Schmitt locates in the political both the *conditions of possibility and impossibility* of political order. Further, by locating the foundations of political order in difference Schmitt implies that it is necessarily contingent. If difference is an ontological condition and the possibility of conflict inherent to human nature, then any attempt to produce order must ultimately remain contingent.<sup>389</sup> Difference does not make all political order impossible, just any definitive or final form of order. The ontological and anthropological conditions of the political ensure thus that all forms of political order are determined by their specific historical conditions. Hence, Schmitt sets his thought in opposition to forms of political thought that presume to locate stable foundations for order in supposedly universal principles, such as reason or humanity, or suppose politics to be necessarily determined by processes such as economic exchange or the unfolding spirit of History.<sup>390</sup> Galli argues that the necessary contingency of political order makes politics a tragic affair

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sovereign exception, the people's 'existential total decision' on the constitution, the act of land appropriation, *nomos*, and so on.

<sup>388</sup> See: Rowan, "A New Nomos or Post-Nomos?" (2011).

<sup>389</sup> Indeed, it is this necessary contingency of all order implicit in Schmitt's concept of the political that puts his work in close proximity to post-foundational thinkers and accounts for some of his recent appeal within Continental political thought on the Left. See for example: Arditì (2008); Marchart (2007); Mouffe (2005); Prozorov (2008).

<sup>390</sup> Schmitt thought has a difficult relationship to historical necessity as his later work is increasingly determined by a Christian eschatological conception of history based upon the second coming of Christ. By framing his political thought on this basis Schmitt ultimately risks grounding politics in a form of transcendental determination.

for Schmitt.<sup>391</sup> Politics remains caught in the process of attempting to establish order in the knowledge that it is must ultimately fail. Indeed, Schmitt's consistent focus on the need for strong political authority needs to be understood against the backdrop of his acute conceptual sensitivity to the ultimately fragile nature of political order.

A further paradox remains to be drawn out. Insofar as the political provides the foundations of political order in Schmitt's view, it involves a certain degree of depoliticization. Politics involves a moment of *politicization*, of recognizing conflict and rendering it explicit, and a moment of *depoliticization*, of managing the destructive force of this conflict. In Schmitt's view whilst the possibility of conflict cannot be totally annulled, given that it emerges from irreparable ontological and anthropological conditions, it can nonetheless be limited. As noted above, the friend-enemy distinction provides a minimal structure within which conflict can be limited. The very principle of enmity itself contains the germ of depoliticization. Enmity is, as William Rasch has noted, a "structuring principle" for Schmitt.<sup>392</sup> Hence, the binary structure of antagonistic difference itself provides a sort of minimal ground on which to frame political order. However, this 'structuring principle' inherent to enmity does not produce a determinate form of political order. Political order is, in Schmitt's analysis, always determined by specific historical conditions. Thus, although the political emerges from ontological and anthropological conditions, the manner in which it takes shape as order is determined by historically specific conditions.

### ***(3) Political Form: Secularisation & Spatialisation***

*The Concept of the Political* opens with the claim, "the concept of the state presupposes the concept of the political."<sup>393</sup> Hence, Schmitt presents his concept of the political as an attempt to think of the fundamental structure of politics rather than the specific historical determination of the state. However, it is clear that he nonetheless worked from within the specific framework of the modern European state and it structured the way in which

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<sup>391</sup> Galli, "The Critic of Liberalism", 30.

<sup>392</sup> Rasch, "Lines in the Sand," 253.

<sup>393</sup> Schmitt, *The Concept of the Political*, 19.

he conceived of the political as such. Thus, although the political is an attempt to conceive of politics as beyond the state, it fundamentally takes the state as the starting point of its reflections. However, the fact that Schmitt takes the state as the basis for his reflections does not mean that his concept of the political can be simply identified with the modern European state. Indeed, his work traces the emergence of the state as the historically specific form the political takes in the conditions of European modernity. By examining Schmitt's account of the modern state's historical emergence in Europe, it is possible to identify the process by which he understands the political to take form.

The core concept in Schmitt's thought here is political form. I will argue that political *form* is the specific way that Schmitt sees political order taking shape in the specific historical conditions of modernity. Although this concept receives scant attention in the Anglophone secondary literature, I believe it is crucial to understanding one of the most important conceptual frameworks running throughout Schmitt's thought as a whole and specifically the structural role of spatial concepts within it. However, to understand the role political form plays in Schmitt's thought it is important to return to highlight two crucial historical processes Schmitt identifies in the emergence of the modern state: Secularization and spatialisation.

### **(i) *Secularization***

The concept of political form appears first in Schmitt's 1923 book *Roman Catholicism and Political Form*.<sup>394</sup> In this early work Schmitt offers an account of the nature of the

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<sup>394</sup> As Gopal Balakrishnan notes, the book was conceived and mostly written in 1922 at the same time as Schmitt was penning the better-known *Political Theology*. Balakrishnan argues that the fact the two books were composed simultaneously attests to the astonishing protean nature of Schmitt's writing as in his reading they have dramatically opposed positions. Balakrishnan argues that whilst *Roman Catholicism and Political Form* is focused on an understanding of the role of both universality and Catholicism in politics *Political Theology* emphasizes difference and a thoroughly secular understanding of politics. See: Balakrishnan, *The Enemy*, 51. To my mind, this interpretation involves a substantive misreading of the book on the Roman Catholic Church. Whilst Schmitt discusses the specifically powerful form of political universality represented by the Roman Catholic Church in Medieval Europe he is explicit in arguing that the conditions of modernity no longer allow for such a universal concept of politics, indeed quite the opposite, and that the role of Catholicism in politics can no longer be leading. In fact his reading of the Roman Catholic Church is largely undertaken in the spirit of 'conceptual analogy' as outlined in his theory of secularization in *Political Theology* and is part of the same attempt to come to terms politically with the historical process of secularization.

political power of the Roman Catholic Church in Medieval Europe. Typical of Schmitt's work, it was a polemical text that presented the Medieval Roman Catholic Church as a critical counterpoint to the political institutions of contemporary Europe. In particular Schmitt looked at the specifically *political* form of thinking in Roman Catholicism in contrast to the depoliticizing 'economic thinking' dominant across the political spectrum of early twentieth century Europe in Schmitt's eyes. In Schmitt's view this 'economic thinking' was dissolving the ability of the political to take form in twentieth century Europe. Nevertheless this book was by no means a call for a Catholic politics. Indeed, Schmitt fell out of favour with Bonn's Catholic literati and the Catholic Centre Party by denying a political role for Catholicism in contemporary politics. "The alliance of throne and altar" he wrote, "will not be followed by an alliance of office and altar, also not of factory and altar."<sup>395</sup> Rather, his analysis of the Medieval Roman Catholic Church should be read in line with the theory of secularization Schmitt outlined in his *Political Theology* written simultaneously. In that text Schmitt famously claimed that "all significant concepts of the modern theory of state are secularized theological concepts."<sup>396</sup> Hence, Schmitt presented a *political* reading of the Roman Catholic Church that emphasized its success as an institution of political order in Medieval Europe. His aim was explicitly not to argue that the Catholic Church should, or even could, play such an ordering role in early twentieth century Europe but rather to examine the formal structure of Medieval Roman Catholicism as a model of political order.

Schmitt presented an image of the Roman Catholic Church as a powerful political institution that successfully brought order to Medieval Europe. It was able to do so, in his view, because it represented a unique political form - "a complex of opposites, a *complexico oppositorum*."<sup>397</sup> This *complexico oppositorum* was, in Schmitt's view, able to embrace all antitheses within a higher unity that neutralized them politically. The central strength of the Roman Catholic Church for Schmitt was therefore its ability to mediate between unity and difference. It did not do so by appeal to a 'higher third' that

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<sup>395</sup> Schmitt, *Roman Catholicism and Political Form*, 24.

<sup>396</sup> Schmitt, *Political Theology*, 36.

<sup>397</sup> Schmitt, *Roman Catholicism and Political Form*, 7. Although he does not attribute the concept, presumably expecting a Catholic readership to recognize its origins, Schmitt draws this idea from the fifteenth century German philosopher and Cardinal Nicolas of Cusa. See also: Sitze, Introduction, xxxiii.

would provide a dialectical synthesis, but rather by providing an umbrella structure in which differences could co-exist with conflict.<sup>398</sup> As a *complexico oppositorum* the Roman Church rested upon a uniquely powerful political universalism that did not seek to flatten differences but rather embrace them within a higher overarching structure. Schmitt saw in the Church's ability to maintain unity precisely by embracing difference "a specific formal superiority over the matter of human life such as no other *imperium* has ever known."<sup>399</sup> For Schmitt, Roman Catholicism drew the power that had sustained it across centuries precisely from its "formal character," or in other words the fact that it stood formally above other differences in order to embrace them.<sup>400</sup>

However, the "essence" of this political form lay, in Schmitt view, in "the political idea of Catholicism."<sup>401</sup> The political idea was that the Church represented the power of Christ on earth through "an unbroken chain" linking the Pope to the "concrete person of Christ."<sup>402</sup> "The formal character of Roman Catholicism" Schmitt argued "is based on a strict realization of the principle of representation."<sup>403</sup> By representing the idea of Christ's power on earth the Catholic Church was able to legitimize its authority and bring unity to Christian Europe. Hence, Schmitt understood the power of the Roman Catholic Church to rest upon a conceptual matrix that fused *authority*, *association* (in the sense of the political unity of a people) and *idea* through the means of representation. Although Schmitt dropped the concept of the *complexico* from his conceptual vocabulary after this

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<sup>398</sup> Schmitt, *Roman Catholicism and Political Form*, 9. Indeed, although Schmitt does not mention Hegel by name he clearly conceives the Catholic *complexico* in direct opposition to Hegelian dialectics. Indeed, for Catholicism "is categorically something other than the 'higher third' of German philosophy of nature and history. To it belong neither the despair of antithesis nor the illusory optimism of their synthesis" (Ibid, 11). Schmitt depicts the need for a 'higher third' as a weakness common to Romantic and Marxist thought that prevents them from understanding the representative power of Roman Catholicism and hence, for Schmitt, the power of representation in politics.

<sup>399</sup> Ibid, 8.

<sup>400</sup> Ibid. Both Balakrishnan and Gross have seen in Schmitt's emphasis on the formal power of Roman Catholicism the influence of Charles Maurras, the founder of *Action Française*. Maurras had laid emphasis on the 'classical' form of politics which he saw being dissolved in the nineteenth and twentieth Century with the rise of the socialist masses. Maurras was an avowed agnostic but appealed to Catholicism as a state religion in France because he believed it had the power to bring about social cohesion necessary for national unity. There are obvious similarities between the two thinker's views on the unifying formal properties of Catholic institutions but as noted above Schmitt stood against any formal role for Catholicism in political life. See: Balakrishnan, *The Enemy*, 55-57; and Gross, *Carl Schmitt and the Jews*, 89-100.

<sup>401</sup> Schmitt, *Roman Catholicism and Political Form*, 8.

<sup>402</sup> Ibid, 14.

<sup>403</sup> Ibid, 8.

book, he carried the concept of political form and the conceptual matrix on which it rested into his future work.

The collapse of the Roman Catholic *complexico* was one of the founding events of European modernity, in Schmitt's account. It above all represented a crisis of political form, as the ordering framework of Medieval Europe was dissolved along with the universal authority of the Catholic Church. This crisis of political form at the beginning of the modern age would have a profound impact, in Schmitt's view, on the development of political order in modern European and world history. In his work between the early 1920s and the early 1950s Schmitt built up an account of modern European, and subsequently world, history book-ended by two crises of political form. The first was produced by the collapse of the Catholic *complexico* in the sixteenth Century and the second by the dissolution of the state in the twentieth. The period between these crises was characterized, in Schmitt's account, by the emergence of the state as the defining political form of modernity. Schmitt thus understood his own reflections as responses to a crisis of the state form but located the deep historical roots of the crisis he was living through in the collapse of the *complexico*. In order to understand the manner in which Schmitt conceived of the crisis of political form in the Twentieth Century it is therefore important to return to his analysis of the shift that took place between the collapse of the Medieval Catholic order and the modern state.

An account of the political effects of secularization on modern European history provides a crucial analytical backbone running through Schmitt's corpus. Although Schmitt largely does not address it in the pages of *Roman Catholicism and Political Form* the process of secularization was both a symptom and a cause of the collapse of the Roman Catholic *complexico* and hence the political form on which Medieval European political order had rested. The matrix of association, authority and idea on which the political form of the *complexico* had rested unravelled as the Roman Catholic Church could no longer claim to represent Christ's authority on earth in the wake of the Protestant Reformation. The Reformation had disputed the legitimacy of the Papacy's claim to represent Christ's power and, its authority undermined, the Church could not bind Europe together. Without

being able to claim indisputable authority to represent Christ on earth, the Church was no longer able to stand above political differences in order to embrace them but instead became embroiled in those differences. In the wake of the Protestant Reformation Christian theology did not represent a unifying power within Europe but a divisive influence. In Schmitt's view the resulting collapse of political form saw unifying authority crumble and the binds of political association unfurl unleashing a century of widespread religious civil war across Europe. The conflict was all the more vicious because there were competing claims to absolute legitimacy grounded in the theology involved. Schmitt returns many times in his work to emphasize the importance of this bloody state of religious civil war for the birth of modern European political order. This period of brutal creedal strife was indicative for Schmitt of what it meant for an age to be without political form and he found echoes of this Europe-wide civil war in the twentieth century when Europe once again became a battlefield of absolute wars of annihilation.<sup>404</sup>

From this great period of turmoil in European history emerged the problem of how to produce a new political form that could restore order and limit conflict. Theological claims could not provide a basis for European order as they were in fact provoking conflict. Theological ideas were no longer able to provide grounds for the partial depoliticization needed for political order and were incapable of providing the conceptual glue to bind authority and association together in a stable political form. Thus, a new basis for political form had to be found in order to quash the religious civil wars that had torn Europe asunder in the sixteenth and seventeenth centuries. From this cauldron of sectarian ferment came the defining question of modern politics, the central question

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<sup>404</sup> The comparison between the twentieth century with the sixteenth and seventeenth centuries runs throughout Schmitt's work. Both periods were for Schmitt defined by the collapse of a powerful and lasting political form and the emergence of civil wars that exceeded the borders of one state or political entity, or rather dissolved the very possibility of making such distinctions. Indeed, I will argue below it is the very collapse of these distinctions which signals for Schmitt a crisis of political form. Further, and not incidentally, Schmitt located in both periods a profound 'spatial revolution' that reconfigured the relationship between politics and spatial order in ways that dissolved the divisions of categories of older political forms. Another period that Schmitt understood to share a world-historical 'elective affinity' with the Twentieth Century was the age of early Christianity in Europe. This period became an increasingly important reference point for Schmitt's later work and he particularly emphasized the texts of Saint Paul. A Christian, Schmitt argued, could not help but notice the 'great parallel' between the middle years of the twentieth century and the early days of Christianity defined by the Roman civil wars. See: Carl Schmitt, "Three Possibilities for a Christian Concept of History" in *Telos* 147 (2009), 168.

lurking unspoken behind Schmitt's work: how can political order be produced without theological grounds? According to Schmitt the answer to this epochal question appeared in the seventeenth century in the form of the modern secular state. The paradigmatic modern institution provided a secular ground on which to conduct politics that provided a neutral alternative to the controversial disputed grounds of theology. The new secular European state removed politics from the conflicted sphere of religion by distinguished private religious belief and public political association. The neutral sphere of the secular state provided the conditions for the necessary degree of depoliticization and once again allowed warfare to be limited by removing claims about the justice of conflict grounded in theology.

The waves of religious civil war that flooded across Europe in the shadow of the collapsing authority of the Catholic Church were dammed by the neutralizing power of the new secular state. This powerful new political form acted as an ordering institution precisely to the extent that it removed politics from the realm of theology, but without theological grounds it needed to find a new form of foundation. It is here that the importance of space becomes clear in Carl Schmitt's thought.

## **(ii) *Spatialisation***

The modern secular state emerged in Schmitt's eyes as a powerful new ordering institution to address the crisis of political form created by the collapse of the Medieval Catholic *complexico*. It provided a secular sphere in which to conduct politics and neutralize religious conflict and answer to the fundamental question of modern politics: how to produce order without theological grounds. The question remains however as to how the state form provided foundations for political order in European modernity. Schmitt's work contains a number of answers each of which play a role in his account of modern European, and world, history; the establishment of a distinction between public political association and private religious belief; the establishment of a new form of authority in the European state sovereign; the growth of European colonialism in the 'New World'; the construction of a new system of international law based on the

limitation of war between legally equal European states; the spreading influence of concepts of immanence in political thought. Rather than one of these factors taking precedence Schmitt understood them to enter into a complex constellation that provided an unsteady historical balance in which a Eurocentric global order could take shape. However, I argue below, this fragile constellation rested above all on one aspect of Schmitt's conception of state form – the division of space.

In Schmitt's view, lacking theological grounds on which to claim universal authority, the modern secular state had to ground itself on difference. In other words, the difference inherent to the political became the grounds for political form. In Schmitt's account the state produced political order by formalizing this principle of political difference in the division of space. Or rather, the minimal structure provided by the friend-enemy distinction took form in spatial division. The political form of the state was therefore in Schmitt's view fundamentally grounded on a *spatialisation of the political*. Thus, for Schmitt, in the absence of theological foundations, political order was produced through the division of space. The spatialisation of the political was therefore the state's answer to the fundamental question of modern politics – how to produce order in the absence of theological foundations.

The state therefore mapped the distinction between friend and enemy against the distinction between inside and outside in Schmitt's view. Schmitt argued however that this spatialisation of the political on which the state form rested emerged within the specific historical conditions of the Eurocentric world order in the sixteenth and seventeenth centuries. Hence, the distinction between inside and outside was not simply a topological abstraction but took shape within the 'concrete' historical situation of Europe during this period. The state form was, in Schmitt's view, founded upon two sets of fundamental inter-related inside-outside distinctions: between the new states within Europe on the one hand and between Europe and the colonial New World on the other.<sup>405</sup>

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<sup>405</sup> In a series of later works written during the late 1930s and 1940s such as *The Leviathan in The State Theory of Thomas Hobbes* (1938), *Land and Sea* (1942) and *The Nomos of the Earth* (1950) Schmitt expanded the number and complexity of the intertwined inside-outside relations on which the modern Eurocentric world order rested. To the relationship between states inside Europe and that between Europe

In the first instance, the relationship between the new European states was managed by proscribing the power of each sovereign to a specific limited space. The border between states marked the limits of sovereign power but also constituted the frame within it operated. Within the borders of the state the sovereign held power and could ensure unity, order and peace. Beyond the border was the realm of the other, of potential disorder and war. Hence, in Schmitt's conception of the state, the spatialisation of the political along the inside-outside distinction produced a structural framework for the limitation of conflict both internal to the state and between states. Firstly, the threat of the external enemy produced unity within the state ensuring the internal differences were politically neutralized. Second, by limiting conflict to that between states it could be formalized and managed. States of war and peace could clearly be distinguished as could warring and neutral parties. Hence, whilst the possibility of war could not be escaped, it could be fought 'in form.' It could be 'bracketed' so order was ensured internal to each state and between them.

The second crucial structural inside-outside distinction was between Europe as a collective of sovereign states and the 'free space' of the New World colonies.<sup>406</sup> Although, Schmitt argued that the 'spatial revolution' signalled by the emergence of modern geometric sciences and the European conquest of the 'New World' had contributed to the collapse of the Medieval Catholic *complexico*, European colonialism in the 'New World' nonetheless created the conditions for the emergence of the modern secular state within Europe.<sup>407</sup> Schmitt argued that by making a clear distinction between

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and the rest of the world was added the distinction between the 'inner' private space of the individual subject and the 'outer' public space of the state on the one hand, and on the other the relationship between land and sea. These distinctions at first helped to cement the spatialisation of the political in the state form although they grew to become destabilizing agents that contributed eventually to its despatialisation and ultimately to the collapse of the state form in Schmitt's eyes. I will return to the importance Schmitt gave to these distinctions for the fate of the political form of the modern state in later chapters.

<sup>406</sup> From the late 1930s Schmitt increasingly turned his attention to analyzing the longer-term historical development of the state form and its emergence within a wider global context of international law and European colonialism. It will return to these reflections in later chapters.

<sup>407</sup> Schmitt thus locates the conditions of possibility for the modern European state in the spread of colonialism in the New World. To a degree, Schmitt's depiction of European modernity as fundamentally predicated on colonialism perversely makes his thought something like a postcolonialism of the Right. From a self-consciously Eurocentric position he offered an analysis of the fundamental constitutive role

the space of Europe and the space of the New World in international law, Europe could be designated as a space of relative order. On the one hand, the sense of collective superiority with which the European powers regarded themselves in relation to the New World allowed a system of international law to emerge based on the mutual respect and legal equality of European sovereign states. Hence, war between these parties took place within the limits of mutual respect. Each state regarded the other as a 'just enemy' that could be fought but not vanquished. On the other hand, these limits could exist within Europe to the extent that war was unlimited in the 'free space' of the colonial New World where competition between European powers was given free reign. Hence, conflict could be limited within Europe to the extent that the New World provided an exterior realm where conflict could take place without limits. The inside-outside distinction between Europe and the New World spatialised the political insofar as Europe became a space where differences were relatively depoliticized and the New World a space where they could be freely politicized.

For Schmitt, therefore, the political form of the modern European state was founded on a spatialisation of the political inscribed in two sets of inside-outside relations: between states within Europe and between Europe and the colonial New World. However, in Schmitt's account the political form of the modern state rested precariously on a complex conceptual architecture fundamentally embedded in this spatialisation of the political. In what follows I will examine some of the ways in which Schmitt understood the political form of the state to take its bearings from this spatialisation of the political.

#### **(4) *The State as Political Form: Authority, Association, Idea***

##### **(i) *Unity & Difference***

In the concept of political form, Schmitt had sought to identify not simply the historically specific nature of Roman Catholic *complexio* but the essential task of an ordering

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colonialism played in creating the conditions necessary for the emergence of the modern European nation state that resonates with some of the arguments made by canonical thinkers of postcolonialism such as Frantz Fanon (1965) and Edward Said (1978).

institution as such. The new political form of the secular state had to carry out the work of the medieval *complexico* within the secular conditions of modern Europe: to mediate between unity and difference and provide a structure for the fusion of authority, association and idea.<sup>408</sup> The political form of the Roman Catholic *complexico* of the medieval period was based upon the Church's ability to mediate between unity and difference. It had done so by representing a powerful political idea that allowed it to produce a form of authority that stood above other antithetical differences and draw them together. In this way the authority of the church mediated between the universal idea of Christ's power and the political differences internal to Europe. This mediation allowed the Church to provide a framework for neutralizing conflict without eradicating difference. By contrast, the modern state relied upon the constitutive division between inside and outside and hence did not establish a universal unity that could embrace all differences. Rather, it provided a partial or relative unity that embraced certain differences in order to neutralize them whilst remaining constitutively founded upon the difference excluded to the outside. This mediation took place along the borderline between states whereby unity was guaranteed inside the state and difference located outside the state. Likewise, the European state system itself constituted a relative unity to the extent that political differences were partially neutralized within Europe with un-neutralized difference excluded to the 'New World'. In both cases it was the spatial division itself that marked the point of mediation between unity and difference. A unity immanent to the field of difference was necessarily a proscribed unity, one that could unify some differences and not others. These limits of unity were precisely located along the lines of spatial division on which the new political form of the state took shape in Schmitt's view.

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<sup>408</sup> The peculiar nature of Schmitt's historiography should be noted here. Whilst he located the concept of political form in the Roman Catholic *complexico* of Medieval Europe he both developed his historical reflections from the perspective of the twentieth century state and understood the structure of the state in terms of the concept of political form he had identified in the pre-modern era. Hence, his historical analysis folds back on itself and ultimately focuses on an abstract conceptual apparatus, political form, that he seeks to identify in different historical conditions. This is not only a weakness in Schmitt's approach to historiography but also accounts for his failure to imagine any solution to the crisis of twentieth century politics than a reaffirmation of the apparatus of political form, first in the shape of the state and subsequently beyond the state from the late 1930s.

## **(ii) *Authority, Association, Idea***

The second role Schmitt had identified for the political form of the Medieval Catholic *complexico* was to provide a framework for binding authority, association and idea. However, the modern European state had to produce a conceptual complex of authority, association and idea without the appeal to theological grounds but rather bind it to the spatial division between inside and outside the state. Firstly, an authority needed to be found which could maintain and enforce the distinction between inside and outside. Second, the members of the political community had to bind themselves to the state's authority and unify around it, which I refer to as *association*. Thirdly, a powerful political idea was needed that could fuse this relationship between authority and association to the concept of political difference inscribed in the division of space. The modern European state therefore relied on balancing the spatial binary between inside and outside and the triadic conceptual matrix between authority, association and idea underlying political form. It is in relation to this triadic structure matrix underlying political form that some of the key concepts in Schmitt's work find their spatial importance. Below I will highlight the importance of understanding three of the key concepts in Schmitt's thought, sovereignty, homogeneity and myth, in relation to the matrix of authority, association and idea Schmitt understood to structure political form. I will briefly show the significance of their relation to maintaining the fundamental spatialisation of the political.

## **(iii) *Authority / Sovereignty***

Schmitt understood the modern conception of sovereignty to be the political authority specific to the new political form of the state that arose in the seventeenth century in Europe.<sup>409</sup> This was a concept intimately bound up with the spatialisation of the political in Schmitt's thought.

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<sup>409</sup> Schmitt's concept of sovereignty was indebted primarily to the theories of Jean Bodin and Thomas Hobbes and indeed he frequently identified the 'ideal form' of the Hobbes's state and the realities of the states that emerged in continental Europe from the seventeenth century.

Modern political form rested on a spatialisation of the political and this necessarily involved a political act of dividing space. Hence, the spaces of modern politics were for Schmitt eminently *political* spaces rather than natural spaces.<sup>410</sup> The distinction between inside and outside emerged through political action rather than a pre-given order implicit in the natural geographic features of the earth.<sup>411</sup> This action therefore requires an agent, a subject capable of spatialising the political. Schmitt identifies this subject with sovereignty. The sovereign was the ‘form-giving power’ capable of producing the distinction between inside and outside, of dividing space. Sovereignty, to echo Foucault, is made for cutting. By identifying the enemy and deciding on the exception the sovereign is granted the fundamental role of defining the limits of the political community - the question of who is included in the community and who is the enemy to be excluded. In the modern state form this question of inclusion and exclusion turns on the relationship between inside and outside. Hence, in its capacity to identify the enemy the sovereign held the power to decide on the spatialisation of the political, the fundamental division of space at the foundations of state order.

For Schmitt, the sovereign’s capacity to produce foundational distinction between inside and outside and hence spatialise the political sets it above other institutions or powers in the political community. Thus, it is following the sovereign’s ability to mark the distinction between inside and outside that a distinction between state and society can be made. By standing above society the sovereign has the power to decide on the fundamental spatialisation of the political and hence holds a monopoly on politics within the state. Further, the crucial relationship between protection and obedience that regulates the relationship between state and society and draws authority and association together rests on the fact that the sovereign is the force capable of standing above society and identifying the enemy. The state form, in Schmitt’s view, therefore requires a robust form of sovereign authority in order to ensure that the spatialisation of the political can be maintained.

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<sup>410</sup> This is a point made by Carlo Galli in *Political Spaces and Global War* (2010) two books deeply indebted to a Schmittian understanding of the relationship between modern state and spatial ordering.

<sup>411</sup> This is not to say that Schmitt totally ignores the natural differentiation in geographic space but that the decisive relationship to spatiality is defined by human, and political, acts.

#### (iv) *Association / Homogeneity*

Although, Schmitt argued, the political world was essentially a pluralist unity, it was nonetheless necessary to provide order. The important question was the “correct placing” of pluralism.<sup>412</sup> There was a place where it was correct to locate pluralism and a place where it was correct to locate unity. The spatialisation of the political in the state form above all marked a division between pluralism and unity. Inside the state was a space defined by political unity whilst political difference was confined to the exterior. This was not to deny the existence of social differences within the state but rather to neutralize political differences. The ordering task of the state was to ensure that internal social differences did not become political. If these differences became political, civil war would loom and the state form would risk dissolution.

It is for this reason that Schmitt consistently emphasizes the homogeneity of the political community throughout his work. Although it takes shape in different contexts and has a different cadence, the demand for the homogeneity of the political community can be found in Schmitt’s work from the early 1920s such as *The Crisis of Parliamentary Democracy* to his work from the late 1930s and 1940s on *Großraum* order.<sup>413</sup> It is important to note that this homogeneity was not a natural homogeneity or one necessarily resting on ethnic basis, but rather a *political* homogeneity. Schmitt insisted on homogeneity to ensure that the political community was unified under a single authority so that the state could maintain its monopoly of the political and hence limit conflict. Whilst it was certainly possible that this homogeneity may also be defined in ethnic terms it was not by definition ethnic in Schmitt’s conception. The essential point was that political difference should remain outside the state rather than within it. Hence, the question of unity turned on the ‘correct placing’ of pluralism and the division between inside and outside.

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<sup>412</sup> Schmitt, “Ethic of State and Pluralist Ethic,” 204.

<sup>413</sup> It of course needs to be noted here that in the former case homogeneity was developed in relation to the democratic constitution and the latter the geopolitical order of an expanding German *Reich*.

Schmitt argued that after 1848 Europe had entered irrevocably into an age of mass politics. Whilst his 1922 book *Political Theology* drew on the French and Spanish counter-revolutionary thinkers of the nineteenth century such as de Maistre and Donoso Cortés and emphasized the exertion of sovereign power against the masses by the time he came to write *The Crisis of Parliamentary Democracy* a year later he had already recognized that mass politics was not in fact inimical to state sovereignty. It could, in fact, Schmitt argued, be the source of a renewal of state sovereignty and a means of strengthening political form. Schmitt noted that democracy had become an unquestioned conceptual presupposition for the political thought of the time. Democracy, if shorn of its liberal trappings, could in Schmitt's view provide a powerful basis for state unity. He argued that there was already a powerful conception of homogeneity at work within the fundamental democratic principle of the identification of ruler and ruled. In his 1923 book *The Crisis of Parliamentary Democracy* Schmitt sketched a conception of democracy based on the homogeneity of the people to which he opposed the pluralism of liberalism. Schmitt even went so far in his 1928 legal treatise *Constitutional Theory* as to develop a radical concept of constituent power and democratic popular sovereignty based around the public declarations of a homogenous people. This was entirely compatible for Schmitt with a strong political homogeneity which would provide the political association necessary to ground political form in a clear distinction between inside and outside.

**(v) *Idea / Myth***

In Schmitt's view, if authority and association were to be bound together they required the conceptual glue of a political idea. Just as the political form of the Medieval Roman Catholic Church had brought about unity in Christian Europe on the basis of a powerful political idea, i.e. the Church's representation of Christ's power on earth, the modern state form required an idea that could gather the political community under sovereign power. In Schmitt's account the political idea operative in the Catholic *complexio* had drawn its power from the theological, and therefore universal, power of Christ. However, as argued above, the modern state's claim to legitimacy was not theological or universal

but rather had to be located in political difference itself. Hence, the state form required an idea of political difference on which to forge the union of authority and association. Only then could the state ensure a clear distinction between inside and outside. It was this that led Schmitt to examine the importance of myth in twentieth century politics.

Schmitt argued that since the mid-nineteenth century two powerful political myths of political difference had emerged in Europe both of which were based on concepts of stark political difference: class conflict and nationalism. Both provided a powerful motivating force to draw association and authority into an effective political unity although there were differences between them. Whilst nationalism provided a political idea that could ground the political form of the state, class conflict would tend to dissolve the foundations of the state form. The former produced conditions for the spatialisation of the political whilst the latter undercut them. The concept of the proletariat and the bourgeoisie were not specific to any one state, so the myth of class conflict could not be spatialised against the inside-outside distinction of the state form. The myth of the nation was by contrast contingent and particular, and could easily be mapped against the spatialisation of the political differences represented by the European state system. Hence, from Schmitt's perspective, the myth of the nation had superior 'form-giving' properties. He looked to Mussolini's Italy as an example of the superior power of the nationalist myth to the socialist myth. Indeed, Schmitt even argued that the success of Bolshevism in Russia could be put down to the Marxist theory of communist dictatorship being aligned to the long-standing tradition of Russian nationalism rather than to any inherent power.

The need for a myth of political difference to provide a political idea that could support the state form was particularly pressing in the twentieth century in Schmitt's view for two reasons. Firstly, the modern European state was born of a process of neutralization, secularization, and since the seventeenth century Europe had passed through a series of leading political ideas, all of which tended towards neutralization. There had been from the beginning a contradiction in the state form between the principle of political difference, inscribed in the spatial division between inside and outside, and the governing

ideas of European modernity, such as reason, humanity, economics, or technology. Hence, the political ideas on which the European state had attempted to found itself had run counter to the very principle of political difference that provided its most fundamental foundation. These had been *depoliticising* ideas that stood in tension with political form. In the second instance, the development of competing political ideas in Europe in the nineteenth and twentieth centuries risked allowing social differences to become politicized. Hence, the spatialisation of the political in the state form risked being dissolved in the growing intensity of political antagonisms within the state. This threat was particularly acute under the conditions of mass politics in Schmitt's view. Whilst the example of Italy, and even Soviet Russia, showed that the masses might respond to the power of the nationalist myth and cohere around a sovereign authority, the intensity of their attachments risked dragging Europe into a state of civil war based upon a plurality of myths.

##### ***(5) Towards a Crisis of the Political Form***

The modern European state emerged, in Schmitt's view, from the pandemonium of religious civil war unleashed by the collapse of the Medieval Catholic *imperium*. In lieu of theological grounds, it founded political form by producing clear inside-outside relations. But this seemingly mighty product of European history relied on a precarious balance of elements that threatened to come undone. On the one hand, the matrix of authority, association and idea on which the political form of the state relied always threatened to unwind and dissolve the political importance of the inside-outside distinction. On the other, the inside-outside distinction was being blurred by the emergence of powerful new developments in technology, the distribution of global power and the spread of universalist ideas which threatened to weaken the fusion of authority, association and idea through which the state produced order. In both cases the risk was that the fundamental spatialisation of the political on which the state form rested would fall apart. The despatialisation of the political would signal a profound crisis of political form that would see the entire 'house of cards' on which European and indeed global order was built topple into a state of nihilistic global civil war.

The stakes of such a despatialisation of the political were thus dangerously high in Schmitt's view. It was precisely such a process that Schmitt understood to be underway in the twentieth century however, when maintaining the inside-outside relationship and the fusion of authority, association and idea in the state form became increasingly difficult. It was against this horizon that Schmitt attempted to theorize the manner in which the state form might be reinforced in the conditions of the twentieth century. Eventually understanding this to be impossible, Schmitt turned away from the state form in order to search for new political forms that might respatialise the political.

In the next chapter I will examine some of the factors that Schmitt identified as leading to the crisis of the state in the twentieth century from the perspective of the spatialisation of the political developed here. This will highlight Schmitt's polemical engagements with liberalism as a set of ideas and practices inimical to the production of political form. It will provide a context for understanding Schmitt's attempt to find a solution to the crisis of the state, first in an authoritarian Presidential regime under the Weimar constitution and then in the National Socialist regime, and his search for new political forms beyond the state.

## ***Chapter 5: The Crisis of the State / Despatialising the Political***

“The liberal, secular state lives off preconditions which it cannot itself guarantee.”

Ernst-Wolfgang Böckenförde, 1976<sup>414</sup>

### **(1) *State Crisis***

Carl Schmitt's thought was fundamentally oriented towards order. In his view the paradigmatic ordering institution of the modern age was the state. However, paraphrasing him, we might say that *the concept of the state presupposes the concept of political form*. In the era of the modern European state political form rested in turn on a fundamental spatialisation of the political or rather the relations of friend and enemy being formalized in a spatial division between inside and outside. On the basis of this fundamental spatial division rested a series of other distinctions through which state order was guaranteed in Schmitt's view: difference and unity; state and society; domestic and international; war and peace; political and non-political; historical meaning and nihilism. In the 'ideal form' of European state order sovereign states produced order by holding a monopoly over the decisive power to make this founding division in space. They thus neutralized political differences internally, but recognized each other as equal and just enemies with the same power. The potential for existential struggle between states generated historical meaning, but their equality allowed wars between them to be limited. As guarantor of this relative peace and stability, the state stood above society and justly demanded obedience in return.

In Schmitt's eyes the twentieth century was above all defined by a crisis of the state. And for him a crisis of the state meant a crisis of political form. The first half of the twentieth century was a twilight period for Schmitt marked by the unravelling of the order the state had brought to Europe and the world for nearly four centuries. Just as the state had

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<sup>414</sup> Quoted in Müller, *A Dangerous Mind*, 4.

emerged in the seventeenth century from the crisis of political form sparked by the collapse of the medieval Catholic *complexio* its dissolution at the beginning of the twentieth signalled a re-emergence of the fundamental question of political form. The crisis of the state in the twentieth century was therefore for Schmitt an epochal crisis that marked the end of one era and the possible emergence of another.

By the early years of the twentieth century the state had started to lose its monopoly on the political and hence the ability to guarantee the spatialisation of the political on which modern political form rested. He therefore understood the crisis of the state to be both the result and the cause of a *despatialisation of the political*. The state was increasingly unable to produce a clear distinction between inside and outside, thus undermining political form. Historical processes undermining the state's ability to produce clear inside/outside distinction were dissolving its monopoly on the political. The erosion of this distinction threatened the entire fragile edifice of differentiations, mediations and limitations on which domestic and international order rested. Schmitt feared the world would slide into a state of formless nihilism characterized by the total breakdown of all legal distinctions and a catastrophic convergence of domestic and global civil wars. Thus, the withering of the state did not promise an earthly paradise in Schmitt's view but an apocalyptic anti-utopia.

Schmitt identified various processes that he believed were undermining the state's ability to spatialise the political. These processes emanated from sources both internal and external to the state but were eroding the very possibility of the state to effectively distinguish between inside and outside. The politicization of social differences within the state was weakening the ability of sovereign authority to identify its enemies and constitute the foundational spatial 'cut' necessary for order. The growth of the United States as an imperial power and the moralization of warfare in international law had created asymmetric sovereignties that effectively denied weaker states the power to define their own boundaries whilst legitimizing the 'pan-interventionism' of the U.S. Thus, in Schmitt's eyes, a confluence of internal and external factors had produced a dangerous political chiasmus subverting the spatial foundations of the state form.

Although Schmitt acknowledged that Europe's "more radical brother" looming in the East played a part in this unravelling of the state form, he consistently identified liberalism as the central culprit.<sup>415</sup> Indeed, one of the main threads running through Schmitt's work was a polemical engagement with what he considered to be liberal despatialisation of the political. His work can be understood as a series of attempts to assert the spatialisation of the political against the despatialising tendencies of liberalism, first within and then beyond the state form. Hence, Schmitt's theorization of the state during the 1920s and early 1930s was shaped by a polemical struggle against liberal despatialisation. It was a battle Schmitt eventually understood the state to lose but, through his engagement, he developed the conceptual armoury he used to imagine new political forms and new spatialisations of the political beyond the state. Therefore, in order to grasp how Schmitt conceived of the relationship between space and political order it is important to understand the ways in which he considered liberalism to have undermined state form in the twentieth century.

## **(2) *The Age of Neutralisations and Depoliticisations***

Throughout Schmitt's work he consistently advanced an understanding of historical development as fundamentally determined by shifts in dominant conceptual frameworks. The political form of any specific historical period found its conditions of possibility in the governing unquestioned philosophical concepts of the day. Hence, in attempting to grasp his diagnosis of twentieth century state crisis, it is necessary to examine his account of the leading conceptual frameworks of the day. There are four texts dotted across Schmitt's corpus in which he explicitly focuses comments on his conceptual history; *Political Theology* (1922); *The Age of Neutralizations and Depoliticizations* (1929); *Land and Sea* (1944); and *Three Possibilities for a Christian Concept of History* (1950).<sup>416</sup>

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<sup>415</sup> Schmitt, "The Age of Neutralizations and Depoliticizations," 81.

<sup>416</sup> Schmitt's understanding of the role of concepts in historical development exerted a strong influence on the practice of 'conceptual history' developed by the late German historian and philosopher Reinhart Koselleck. For an insightful analysis of the relationship between these two thinkers see Müller, *A Dangerous Mind*, 104-116.

There are subtle but significant shifts in the way Schmitt formulates his ‘conceptual history’ between these texts.<sup>417</sup>

Schmitt’s first account of the influence of concepts on the historical development of modern European political form appears in his 1922 book *Political Theology*. In this text Schmitt argued that each epoch of modern European history was governed by a ‘metaphysical image’ that provided a unique form of historical consciousness and set the terms of its political possibilities.<sup>418</sup> “The metaphysical image that a definite epoch forges of the world” Schmitt argued “has the same structure as what the world immediately understands to be the appropriate form of its political organization.”<sup>419</sup> “Metaphysics” Schmitt argued, quoting the nineteenth century Scottish philosopher Edward Caird, “is the most intensive and the clearest expression of an epoch.”<sup>420</sup> Hence, to comprehend the crisis of the state in the twentieth century one had, in Schmitt’s view, to grasp the governing metaphysical concepts of the day. He approached the crisis of the state therefore as a political symptom of the ‘metaphysical image’ of the age.

In examining the historical development of European metaphysics Schmitt claimed to have discovered that “everything in the nineteenth century [and thereafter] was increasingly governed by conceptions of immanence.”<sup>421</sup> In Schmitt’s peculiar conceptual history it was precisely this sin of nineteenth century metaphysics that was visited upon the twentieth century state. Concepts of immanence fundamentally undercut the state form by opposing the ideas of transcendence and differentiation on which sovereign

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<sup>417</sup> Whilst avowedly positioned against any form of historical-materialism it is not clear how Schmitt understood the relationship between these determining philosophical concepts and social processes. It appears, in the latter two texts cited, that governing philosophical concepts are shaped at least in part by social processes, including the development of new technologies of industrial production, warfare or transport and patterns of colonization. Schmitt never explicitly theorizes this relationship or builds a general picture of the influence social processes have exerted on historical consciousness except in specific cases of technologies of war and transport and the spread of European colonization.

<sup>418</sup> Schmitt, *Political Theology*, 46. *Political Theology* was conceived as a work of historical sociology and bore an obvious debt to Marx and Weber although he distinguished his own method of inquiry as a “sociology of concepts.” (Ibid, 45)

<sup>419</sup> Schmitt, *Political Theology*, 46. Liberalism, he argued a year later, “should be understood as a consistent, comprehensive metaphysical system” emanating from the “rationalist spirit.” See: Schmitt, *The Crisis of Parliamentary Democracy*, 35.

<sup>420</sup> Schmitt, *Political Theology*, 46.

<sup>421</sup> Ibid, 49.

power rested. Schmitt argued that until the nineteenth century all established conceptions of political legitimacy had fundamentally rested on some concept of transcendence modelled on theology.<sup>422</sup> Hence, in his view the modern concept of sovereignty was a secularized version of religious authority. However, by attempting to ground political order in concepts of immanence political thought in the nineteenth and twentieth century increasingly unmoored the state from sovereignty's traditional sources of legitimacy in transcendence. Schmitt did not consider it impossible that new forms of state legitimacy could take root in conceptions of immanence. For example, "the democratic thesis of the identity of the ruler and ruled" was for Schmitt a paradigmatic concept of state in the 'age of immanence' but also a potential source of political renewal.<sup>423</sup> However, Schmitt remained fearful that concepts of immanence were inimical to political form insofar as they failed to provide any basis for the differentiation needed for political form. The 'metaphysical image' of the age provided no space in Schmitt's view for the possibility of a radical 'outside', a different state of affairs. More specifically, concepts of immanence provided no framework for coping with an exceptional moment of radical disorder to which ordering authority would need to respond. Hence, in Schmitt's mind, immanence undermined sovereignty by failing to take into account the radical differences at the heart of human existence: both the threat that political differences presented to order and the fact that it was founded in the spatialisation of such differences.

Schmitt expanded the historical perspective of this 'conceptual history' in his 1929 text *The Age of Neutralizations and Depoliticizations*. Schmitt presented here his first formal attempt to develop a philosophy of history but he acknowledged that it was Eurocentric

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<sup>422</sup> Importantly, Schmitt does not posit a radical break in the nineteenth century whereby political legitimacy suddenly shifts grounds from conceptions of transcendence to those of immanence. Rather, Chapter 3 of *Political Theology* traces the growing influence of metaphysical concepts of immanence on theories of political legitimacy from the seventeenth to the nineteenth century. The change is gradual but it is in the nineteenth century that immanence becomes the fundamental metaphysical conception. He notes that the "philosophy of state" of the seventeenth and eighteenth century was still committed to "the transcendence of the sovereign vis-à-vis the state." See: Schmitt, *Political Theology*, 49.

<sup>423</sup> Schmitt, *Political Theology*, 49. In Schmitt's view however democracy was hopelessly compromised by the union with liberal parliamentarianism. Hence, in *The Crisis of Parliamentary Democracy* and his 1928 treatise *Constitutional Theory* Schmitt sought to fashion a radically *anti-liberal* theory of democracy with which to revitalize the state I will return to Schmitt's reactionary redaction [or reduction?] of democracy below in the discussion of the total qualitative state.

rather than global in scope.<sup>424</sup> Cast in the style of Oswald Spengler's contemporary bestseller *The Decline of the West* (1918-1923), this short but ambitious text traced a genealogy of the governing philosophical frameworks and their political significance across four centuries of modern European history.<sup>425</sup> The concept of the 'metaphysical image' of the age found in *Political Theology* was replaced with the concept of changing central domains that governed philosophical thought and conceptions of politics alike. Schmitt argued that, "since the sixteenth century Europeans moved in several stages from one central domain to another."<sup>426</sup> Across these four centuries, he noted, "the intellectual vanguard changed, its convictions and arguments continued to change, as did the content of its intellectual interests, the basis of its actions, the secret of its political success, and the willingness of the great masses to be impressed by certain suggestions."<sup>427</sup> In his view each of these successive historical stages roughly corresponded to a century and each was governed by a 'central domain': the seventeenth century by the metaphysical; the eighteenth century by the humanitarian-moral; the nineteenth century by the economic; and finally, the twentieth century by the technological.

The key to understanding the nature of political thought in any period of modern European history therefore lay, for Schmitt, in identifying the 'central domain' from which it emerged. From the domain of metaphysics in the seventeenth century arose Hobbes, Leibniz and Spinoza, from the humanistic-moral domain of the eighteenth arose Kant and Rousseau, from the economic domain of the nineteenth arose Marx, and so on. However, Schmitt argued that not all of these shifts were equally significant and some signalled more fundamental change than others. "The strongest and most consequential of

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<sup>424</sup> In contrast to the specifically European perspective Schmitt adopted here, in *Land and Sea* (1942) and *Nomos* (1950) both written during the war years, he develops a philosophy of history that is global in scope. Europe remains the origin from which the 'global' perspective can be understood philosophically but the book traces Europe's politically decentering within the 'world' it has helped constitute as a totality.

<sup>425</sup> Unlike Spengler, Schmitt did not characterize his narrative as essentially one of decline. Indeed, he claimed to leave the question open whether the succession of stages he traced in modern European history should be interpreted as an a move "upwards or downwards, as an ascent or a decline." See: Schmitt, "The Age of Neutralizations and Depoliticizations," 82. Indeed, although the text clearly wears the imprint of Spengler's influence Schmitt describes his vision as one common to "the previous German generation ... under the spell of a cultural decline" out of sync with the emergence of a new generation who see in technology the hope of a new future. See: *Ibid*, 92.

<sup>426</sup> *Ibid*, 82.

<sup>427</sup> *Ibid*, 83.

all intellectual shifts in European history”, he argued, was the move from Christian theology to ‘natural science’ in the seventeenth century.<sup>428</sup> “Until now” Schmitt claimed, “this shift has determined the direction of all further development.”<sup>429</sup> As noted in the previous chapter it was in this shift from a theological to a secular domain that Schmitt located the emergence of the modern state as a response to religious war in Europe. “Following the hopeless theological disputes and struggles of the sixteenth century, Europeans” Schmitt argued “sought a neutral domain in which there would be no conflict and they could reach common agreement.”<sup>430</sup> Thus, the central political institution of modern European history emerged from the most profound shift in the ‘central domains’ of European intellectual life.

However, Schmitt argued that the true significance of this shift lay in revealing “an elemental impulse” that he argued was central to the subsequent course of modern European history - “the striving for a neutral domain.”<sup>431</sup> At the centre of Schmitt’s text lay the claim that since the sixteenth century European thought had fundamentally “moved in the direction of neutralization.”<sup>432</sup> The people of Europe had, in his view, collectively shifted from one ‘central domain’ to another “hoping to find minimum agreement and common premises allowing for the possibility of security, clarity, prudence, and peace.”<sup>433</sup> In Schmitt’s account this search for neutrality provided a powerful dialectic that drove the movement of modern European history from one ‘central domain’ to another. Europe, Schmitt argued, had “wandered from a conflictual domain to a neutral domain, and always the newly won neutral domain [had] become immediately another arena of struggle, once again necessitating the search for a new neutral domain.”<sup>434</sup> In each successive phase of neutralization, Schmitt argued, the antitheses that emerged became even sharper and more intense. This culminated in Schmitt’s view of the twentieth century as a time when a deluded belief in the neutrality

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<sup>428</sup> Ibid, 89.

<sup>429</sup> Ibid. “All generalizing ‘laws’ of human history” Schmitt wrote, “stand in the shadow of this great process.” (Ibid)

<sup>430</sup> Ibid.

<sup>431</sup> Ibid.

<sup>432</sup> Ibid.

<sup>433</sup> Ibid.

<sup>434</sup> Ibid, 90.

of technology was leading Europe towards an intensification of absolute warfare in the name of absolute peace.

“Above all the *state*” Schmitt argued, “derives its reality and power from the respective central domain, because the decisive disputes of friend-enemy groupings are also determined by it.”<sup>435</sup> However the search for neutrality that characterized these successive ‘central domains’ increasingly tended towards a state of “absolute depoliticization.”<sup>436</sup> Rather than providing a conceptual basis for the formalization of the friend-enemy distinction in the state, the ‘central domains’ of European thought were increasingly undermining the importance of the friend-enemy grouping as such. Depoliticization was not inimical to the state as such. Indeed, insofar as the state aimed to provide order by limiting conflict, a degree of neutralization and depoliticization was its fundamental operation. Hence, by Schmitt’s account, the modern secular state emerged as a way to neutralize and depoliticize religious conflict in seventeenth century Europe. The more absolute became the governing concepts of neutrality the more they tended towards an absolute depoliticization. Thus, in Schmitt’s view, the dialectical movement between successive ‘central domains’ led to an intensification of neutralizations and hence deeper and deeper contradictions between the state form and the governing concepts of European thought. Schmitt claimed that the tendency towards despatialisation that accompanied the move towards neutrality in European thought reached its apogee in the technological thinking of the twentieth century. “The twentieth century began” Schmitt argued “not only as an age of technology but of the religious belief in technology.”<sup>437</sup>

### ***(3) Enemies of the State: Positivism, Pluralism, Universalism***

In Schmitt’s view the growing tendency in European thought to move towards depoliticisation and despatialisation ultimately culminated in the crisis of the liberal state in the twentieth century. As previously noted, Schmitt did not simply identify the ‘central domain’ of technological thinking with liberalism. Rather, it lay behind all forms of

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<sup>435</sup> Ibid, 87.

<sup>436</sup> Ibid, 95.

<sup>437</sup> Ibid, 85.

politics in the twentieth century, including the communism of the Soviet Union.<sup>438</sup> However, it was in the liberal states of Europe, and specifically the Weimar Republic, that Schmitt located the historical breaking point of the state form that had provided order for nearly four centuries.<sup>439</sup> Although he argued it was “essential liberalism be understood as a consistent, comprehensive metaphysical system” Schmitt never provided such a systematic analysis.<sup>440</sup> Rather, following the protean trajectory of his polemical method he attacked distinct aspects of liberal thought in different texts, although depoliticization always remained the common denominator of his acrimony. In what follows I will briefly examine three aspects of liberal thought that I consider the most important in understanding Schmitt’s critique of liberalism’s corrosive effects on the state form: positivism, particularism and universalism. By grasping his critique of these three aspects of liberalism, we are better able to understand his vision of how the state might recover its ‘form-giving’ power and reassert the spatialisation of the political and his eventual search for new political forms beyond the state.

### **(i) *Positivism: The Machine State***

“No norm is valid in a vacuum.”<sup>441</sup> This statement cuts to the core of two problematic conceptions of the state Schmitt identified with liberalism at the start of the twentieth century: the state as a seamless system of legal norms and the state as a giant mechanism. In Schmitt’s view both images of the state rested ultimately on metaphysical ideas of

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<sup>438</sup> As early as 1922 in *Roman Catholicism and Political Form* Schmitt had located a common root for European liberal and Russian Bolshevik thought in ‘economic thinking,’ but in “The Age of Neutralizations and Depoliticizations” he argued that the Soviet state was in certain respects ahead of its European neighbours in embracing the technological spirit of the age. “The Russians,” he argued, “have taken the European nineteenth century at its word, understood its core ideas and drawn the ultimate conclusions from its cultural premises. We always live in the eye of the more radical brother, who compels us to draw the practical conclusion and pursue it to the end” (Ibid, 81).

<sup>439</sup> Indeed, it seems likely that Schmitt did not consider the Soviet state be suffering from the same crisis as the liberal states of Europe. Indeed, he remarked that in Soviet Russia “a state arose which is more intensely statist than any ruled by an absolute prince.” (Ibid, 81) Indeed, in his view, this intensified statehood came precisely through the embrace of technology. Hence, he did not consider technological thought and the state form to be necessarily opposed.

<sup>440</sup> Schmitt, *Crisis of Parliamentary Democracy*, 35.

<sup>441</sup> Schmitt, “Ethic of State and Pluralistic State,” 199.

immanence.<sup>442</sup> He located the former view in legal positivism, the dominant conceptual framework in German constitutional law since the mid nineteenth century, and the latter in the philosophical foundations of the Continental European state laid by Thomas Hobbes in the seventeenth century. Both were, in Schmitt's eyes, weakening the state from within and contributing to its inability to constitute political form.

Legal positivism, as Schmitt depicted it, conceived of the legal order as an uninterrupted, self-enclosed system of legal norms. It held Schmitt's view that the "state, meaning the legal order, is a system of ascription to a last point of ascription and to a last basic norm."<sup>443</sup> The influence of this conception of state on the interpretation of the Weimar constitution was one of the most consistent targets of Schmitt's polemic during the 1920s and 1930s. Hugo Preuss and Max Weber, two towering figures in early twentieth century German liberalism, had helped craft the constitution and its most prominent proponent in the years of the republic was Hans Kelsen, something of an intellectual nemesis for Schmitt.<sup>444</sup> His attacks on legal positivism (and Kelsen in particular) had brought Schmitt recognition from senior figures in the Federal government.<sup>445</sup>

The crux of Schmitt's critique of the legal positivist's vision of the state was that it left the state vulnerable by eliminating sovereignty. "All tendencies of modern constitutional development" by which he meant legal positivism, "point towards eliminating the sovereign."<sup>446</sup> Kelsen, Schmitt argued "solved the problem of sovereignty by negating it" quoting the great positivist's claim that "the concept of sovereignty must be radically

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<sup>442</sup> See respectively: Schmitt, *Political Theology*, Chapter 3; and Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, Chapter IV. The latter drew on conceptions of self-regulating systems from natural-scientific thinking that emerged in the seventeenth century according to Schmitt's 1937 article "The State as Mechanism in Hobbes and Descartes" included as an appendix in *The Leviathan in the State Theory of Thomas Hobbes*.

<sup>443</sup> Schmitt, *Political Theology*, 19.

<sup>444</sup> For detailed accounts of the role of legal positivism in Weimar jurisprudence and the conflict between Kelsen and Schmitt see: Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law*; Arthur Jacobson and Bernhard Schlink, ed., *Weimar: A Jurisprudence of Crisis*, (Berkeley, CA: University of California Press, 2000); Ellen Kennedy, *Constitutional Failure: Carl Schmitt*, in Weimar, (Durham, NC: Duke University Press, 2004); Scheuerman, *Carl Schmitt* (1999).

<sup>445</sup> See for example: Balakrishnan, *The Enemy* (2000); and Kennedy *Constitutional Failure* (2000).

<sup>446</sup> Schmitt, *Political Theology*, 7.

repressed” as evidence.<sup>447</sup> This conception of a legal order from which sovereignty had been expunged was fundamentally flawed, because it failed to provide an answer to the crucial question of state: *who decides?* From the perspective of legal positivists such as Kelsen, the subjectivism of this ‘decisionist’ question left the door open to a degree of personal discretion that could only lead to the abuse of power and even dictatorship. As Schmitt noted, for legal positivists “all conceptions of personality were aftereffects of absolute monarchy.”<sup>448</sup> But in Schmitt’s view, this depersonalized conception of legal order in effect left the state vulnerable. It provided no mechanism for dealing with the “case of extreme peril” that threatened the very existence of order as such.<sup>449</sup> Such a state of exception required a decisive sovereign subject, first to identify it and then to enact measures to restore order. “It is precisely the exception that makes relevant the *subject* of sovereignty, that is, the whole question of sovereignty,” Schmitt declared.<sup>450</sup> Hence, the personal aspect of the law could not be totally removed as the stability of the state relied upon the subjective capacity of the sovereign to decide on the exception.

Legal positivism eliminated the personal element of sovereignty in the belief that all norms could be ascribed for all situations. “Whether the extreme exception can be banished from the world is not a juristic question,” Schmitt noted, rather, it relied on “philosophical-historical or metaphysical” convictions.<sup>451</sup> Thus, in Schmitt’s view legal positivism was a form of state theory based on immanence, i.e. the ‘metaphysical image’ of the age, and failed to consider the state within the unpredictable realities of the concrete political situation.<sup>452</sup> The positivist ‘law state’ (*Gesetzesstaat*) simply supplied a system of norms abstracted from any relation to a concrete situation where the question of ‘who decides’ could be ignored. For Schmitt it was a state theory designed for a vacuum, but as Schmitt reminded his readers “all law is ‘situational law.’”<sup>453</sup>

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<sup>447</sup> Ibid, 21.

<sup>448</sup> Ibid, 30.

<sup>449</sup> Ibid, 6.

<sup>450</sup> Ibid, 6. Italics mine.

<sup>451</sup> Ibid, 7.

<sup>452</sup> Ibid, 7.

<sup>453</sup> Ibid, 13.

The situation in which these debates took place was far from 'normal'. The seething political tensions that were rending the Weimar Republic were putting serious pressure on its brittle constitution and the state's ability to maintain order. In this context the interpretation of the constitution became a highly politicized issue. A liberal positivist interpretation tried to minimize the personal influence of the President within the state. In Schmitt's view this undercut the capacity of the state to act decisively in order to maintain order. He considered liberal thought to be leaving the state too weak to deal with the concrete realities of political turmoil in the age of mass politics.

Legal positivism represented for Schmitt the 'metaphysical image' of the age in the field of jurisprudence. In *Political Theology* he argued that it was a product of the growing tendency for concepts of immanence to govern all aspects of thought from the nineteenth century. However, in *The Leviathan in the State Theory of Thomas Hobbes* from 1938 and the article "The State as Mechanism in Hobbes and Descartes" from the previous year, Schmitt identified deeper historical roots for the positivist conception of state. The vision of a fully rationalized state system that would run itself without the need for personalized sovereign power had its origins, Schmitt argued, in the seventeenth century. Schmitt claimed that this barren mechanistic conception of the state that was undermining political form in the twentieth century had in fact emerged first in the work of his great intellectual mentor Thomas Hobbes. "The positive law state (*Gesetzesstaat*) began as a historical type in the nineteenth century. But the idea of the state as a technically completed, manmade *magnum-artificium*, a machine ... was first grasped by Hobbes and systematically constructed by him into a clear concept."<sup>454</sup> Thus, the legal positivism that emerged in the nineteenth century not only mirrored the intellectual vogue for immanence but reflected a "four-hundred-year-long process of mechanization" sparked by Hobbes. As Schmitt bluntly stated in 1937, "because of Hobbes, the state becomes a 'huge machine.'<sup>455</sup>

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<sup>454</sup> Carl Schmitt, *The Leviathan*, 45.

<sup>455</sup> *Ibid.*, 98.

This ‘general technologization’ of the European state was problematic for Schmitt in two ways.<sup>456</sup> As an empty rational mechanism, the state was paradoxically too weak and too strong. The state conceived as a rationally functioning system of legal norms or mechanism of rule lacked a political idea. Schmitt argued that by conceiving it as a machine “western liberal democrats agree with Bolshevik Marxists that the state is an apparatus that the most varied political constellations can use as a technically neutral instrument.”<sup>457</sup> This mechanistic neutrality not only meant the state could be harnessed by diverse political ideas, but tended towards the eradication of the political idea as such. As a machine, the state kept the semblance of political form but was hollowed out and lacked the glory associated with the highest political concepts of an earlier age. Without the centrifugal force of the political Idea binding political form together, the relationship between authority and association, protection and obedience on which the state was founded unravelled. The rational state machine could treat all the citizens alike but the citizens would treat it only as an inert instrument to be used for their own diverse ends. The mighty Hobbesian Leviathan had become a “*stato agnostico*,” unable to produce unity and subject to a divisive plurality of interests.<sup>458</sup> The twentieth century state was rationally perfect but politically formless.

In this situation, medieval legal notions such as the right to resistance become merely “disturbances that needed to be put aside.”<sup>459</sup> “The endeavour to resist the leviathan, the all-powerful resistance-destroying, and technically perfect mechanism of command, is practically impossible,” Schmitt notes.<sup>460</sup> The machinery of the state can break down, for example, in the case of civil war, but has nothing to do with any notion of a right to resistance. “There are no points of departure for a right to resist” Schmitt argues. “It has

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<sup>456</sup> Ibid 42. In *Reactionary Modernism* (1984) Herf correctly notes that Schmitt rejects the antediluvian cultural pessimism of those who looked back towards a pre-technological state of authenticity as a product of a political romanticism but goes too far in locating a sort of technological machismo in his work.

<sup>457</sup> It is noticeable of course that Schmitt does not mention fascist states here. The text was written at the height of Nazi power, but after Schmitt’s denunciation by the SS and it is likely that Schmitt’s reserve was due to a mix of persistent belief that Nazis might offer such an alternative mechanized vision of the state and fear that any open association of the Third Reich with capitalist liberalism and Bolshevism would not be well received.

<sup>458</sup> Schmitt, “Ethics of State and Pluralistic Ethics,” 198.

<sup>459</sup> Schmitt, *The Leviathan*, 99.

<sup>460</sup> Ibid, 46.

no place whatsoever in the space governed by the irresistible and overpowering huge machine of the state. It has no starting point, location, or viewpoint: it is ‘utopian’ in the true sense of that word.”<sup>461</sup> This is an image of a technological state that has lost its relation to space. It is without orientation and ultimately without order.

Written and published in 1938 at the height of Nazi power, Schmitt’s critique of the technical state is ambivalent. It is not clear however whether it amounted to a veiled critique of the Nazi state, as Georg Schwab has suggested.<sup>462</sup> What is stated in no uncertain terms however is that Schmitt associates the horrific image of a mechanical state grinding down all resistance from a population ruled by pure command with liberal positivism. The *machina machinarum* of the liberal positivist state was at once irresistibly powerful and utterly disorientated. In Schmitt’s eyes, it pushed its citizens into insecurity at the same time as it failed to provide any political idea around which to orient their unity, or association. The seemingly technical perfection of the state could not conceal its inability to constitute political form.

## **(ii) Pluralism: The ‘Hamletization’ of the State**

Schmitt’s conception of political form started with difference. As he stated in *The Concept of the Political*, “the political world is a pluriverse, not a universe.”<sup>463</sup> In this sense, he argued, “every theory of state is pluralistic.”<sup>464</sup> As argued previously, the question of the unity of the state was therefore not one of denying pluralism in Schmitt’s view but rather of its “correct placing.”<sup>465</sup> Put simply, Schmitt’s conception of the modern European state presupposed that political differences existed *between* states but not *within* states. This is not to say of course that the social body internal to the state was not characterized by plurality but simply that these internal differences were *social* and not *political*. The state form thus turned precisely on the ‘correct placing’ of political

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<sup>461</sup> Ibid, 46.

<sup>462</sup> See: Schwab, Introduction, xxxix-xliv. Schmitt, in typically enigmatic and self-aggrandizing fashion, notes in the Introduction to his book that he is “aware of the danger implicit in the subject” he broaches but it is not clear from where this ‘danger’ comes or what nature it takes. Schmitt, *The Leviathan*, 2.

<sup>463</sup> Schmitt, *The Concept of the Political*, 1996, 53.

<sup>464</sup> Ibid, 53.

<sup>465</sup> Schmitt, “Ethic of State and Pluralist State,” 204.

difference in Schmitt's view. But in order to make the 'cut' between inside and outside the sovereign power had to be able to act as a force representing the unity of the state and conversely the sovereign identification of the enemy produced this unity.<sup>466</sup> Thus, the state, as the bearer of sovereign power, had to stand above the differences of society as a uniquely political force invested with the capacity to both represent and produce the unity of the political community. Without this sense of unity, political difference could not be excluded to the outside of the state and conversely if political difference was not excluded the unity of the state would be undermined. It was precisely this relationship between unity and difference that the pluralism of liberal parliamentarianism unravelled in Schmitt's mind.

Liberalism, in Schmitt's view, undermined the unity of the state precisely because it *misplaced pluralism* and allowed it to develop within the state. This in turn allowed the politicization of internal social relations and hence undercut the spatialisation of the political into a strict inside-outside relation. Thus, insofar as liberalism misplaced pluralism it misplaced the political. Schmitt argued that the institutions of liberal parliamentarianism facilitated this misplacement of the political by providing a mechanism for particular interest groups to pursue their own ends *through the state at the expense of the state*. In Schmitt's view liberal thinkers sought to defend the pursuit of particular interests in the form of a 'pluralist' theory of state that was "polemically directed against" and sought to "relativize the established unity of the state."<sup>467</sup> This had two effects.

Firstly, the growth of pluralism undermined the unity of the state as the public's loyalties were divided. The state became only one of a number of associations that citizens were

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<sup>466</sup> The obviously tautological nature of this relationship between sovereign power and unity lay at the heart of Schmitt's conception of the state. It would be a grave error to see this as a logical weakness lost on Schmitt. In fact he problematized it throughout his work in a variety of ways. One of the key questions driving his work was indeed where to locate sovereignty in an age of mass politics or rather how to address the inevitable fracture between 'the will of the people' and their sovereign representative.

<sup>467</sup> Schmitt, "Ethic of State, and Pluralistic State," 200. But the pluralist theory of state was not simply an intellectual current propagated in learned treatise. Rather, Schmitt noted in 1930, "the pluralistic worldview corresponds with the actual empirical situation which one can observe today in most industrial states" (*Ibid*, 198).

attached to. Schmitt found the clearest expression of this ‘plurality of loyalties’ in the work of the ‘Anglo-Saxon’ ‘pluralists’, G.D.H. Cole and Harold I. Laski. In their vision, Schmitt argued, “the state ... becomes a social group or association which at most stands next to, but never above, the other associations.”<sup>468</sup> For Schmitt the individual imagined by such pluralist theorists lived “in a multiplicity of unordered, equally valid social obligations and loyalty relationships” from religious communities, unions, political parties, clubs, families, and so on.<sup>469</sup> In this “complex of duties, in the ‘plurality of loyalties,’ there is” Schmitt argued, “no ‘hierarchy of duties’, no unconditional prescriptive principle of super- and subordination.”<sup>470</sup> Hence, the bonds of association on which the unity of the ‘public’ relied were loosened. Rather than the primary bearer of the ‘public’ the state became “an object of compromise among the powerful social and economic groups, an agglomeration of heterogeneous factors, political parties, combines, unions, churches, and so on, which come to understandings with each other.”<sup>471</sup> Such a state no longer held a monopoly over politics but was, as Schmitt noted, “at most a *pouvoir neuter*, an intermediary, a neutral mediator, a moment of equilibrium between the conflicting groups, a kind of clearing office, a peacemaker.”<sup>472</sup> This meant that the decisive friend-enemy relation shifted from inter-state relations to intra-state relations and the state was no longer able to effectively identify the enemy and constitute its own identity.

Secondly, liberal pluralism created the conditions for the collapse of the distinction between state and society. Rather than stand *above* political differences in order to neutralize them the state in fact became embroiled *within* them. On the one hand, Schmitt argued that the state was reduced to the object of competition between social groups and the political parties that represented them. On the other hand, the state became the instrument by which each different social group sought to control their competitors and

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<sup>468</sup> Ibid, 196

<sup>469</sup> Ibid.

<sup>470</sup> Ibid.

<sup>471</sup> Ibid, 198.

<sup>472</sup> Ibid.

underwent a process Schmitt referred to elsewhere as *Hamletization*.<sup>473</sup> The danger in Schmitt's mind was that a state rendered indecisive by pluralist dissolution would not be able to manage the growth of internal enmities. The "political unity is the highest unity" Schmitt noted, "because it decides, and has the potential to prevent all other opposing groups from dissociating into a state of extreme enmity – that is, into civil war."<sup>474</sup> Hence, for Schmitt, behind the polite debating chambers of parliament lurked the spectre of civil war.

### **(iii) *Universalism: The Absolute Enemy***

In *The Concept of the Political* Schmitt argued that liberalism typically operated by displacing the political into the spheres of economics and ethics. By displacing politics into the supposedly neutral and universal grounds of economics and ethics, liberalism was, in Schmitt's account, attempting to bring about an 'absolute depoliticization'. In Schmitt's view this appeal to universal categories presented two dangers. Firstly, at the most obvious level by claiming a universal basis for politics in the domains of economics and ethics, liberalism sought to deny the constitutive role of difference in political form. These realms offered no categories of differentiation and hence undermined the foundations of the state form in the spatialisation of the political. This much was implicit already in the concept of depoliticisation as argued above. However, the second move in Schmitt's analysis is more unexpected. Schmitt claimed that the liberal appeal to universal categories did not bring about a genuine depoliticisation but rather produced an escalation of political conflict. Rather than eradicate political difference liberal universalism made it absolute. Thus, in Schmitt's view the escalation of the political and depoliticisation were paradoxically different sides of the same coin.

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<sup>473</sup> Carl Schmitt, *Hamlet and Hecuba*, (New York: Telos Press, 2009), 21. "The hero of the revenge play, the avenger and perpetrator himself as form and dramatic figure, suffers an internal distortion of his character and motivation. We can call this the *Hamletization of the avenger*" (Ibid).

<sup>474</sup> Schmitt, "Ethic of State and Plural Ethics," 198.

This paradox arose from the fact that “state and politics cannot be exterminated.”<sup>475</sup> Whilst the political could be displaced into other spheres and new vocabularies, it could not be overcome. Hence, Schmitt insisted that, “the world will not become depoliticized with the aid of definitions and constructions ... which circle the polarity of ethics and economics.”<sup>476</sup> Instead the political would persist, despite liberal depoliticization, and would adopt the universal terminology of economics and ethics. Schmitt offered a corrective to the former German Foreign Minister Walter Rathenau’s famous declaration that economics had become the destiny of the political by noting, “it would be more exact to say that politics continues to remain the destiny, but what has occurred is that economics has become political and thereby the destiny.”<sup>477</sup>

Schmitt noted that liberals adopted the universalist categories of economics and ethics precisely *not* to overcome politics but rather to conceal their own political aims. He paid particular close critical attention to the manner in which the term ‘humanity’ was evoked in liberal politics and repeatedly paraphrased Proudhon’s famous dictum on property: “whoever says humanity wants to cheat.”<sup>478</sup> Hence, ‘humanity’ was not a term used to deny politics but, as Schmitt argued, “quite on the contrary, [had] an especially intensive political meaning.”<sup>479</sup> Schmitt noted that “to invoke and monopolize such a term probably has certain incalculable effects, such as denying the enemy the quality of being human and declaring him to be an outlaw of humanity; and a war can thereby be driven to the most extreme inhumanity.”<sup>480</sup> Thus, when adopted as a political category the supposedly universal category of humanity had its own inverse, its own enemy. Indeed, in Schmitt’s view the nature of the enmity that arose was particularly intense. When brought into the universal sphere of ethics, the friend-enemy distinction became absolute.

Schmitt argued that the emergence of the absolute enemy of humanity was especially important for understanding the transformations in the nature of war in the twentieth

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<sup>475</sup> Schmitt, *The Concept of the Political*, 78.

<sup>476</sup> Ibid.

<sup>477</sup> Ibid.

<sup>478</sup> Schmitt, *The Concept of the Political*, 54.

<sup>479</sup> Ibid.

<sup>480</sup> Ibid.

century. In his view, liberal thought had profoundly influenced the conduct of war and the theorization of international law since the end of the First World War. The concept of humanity had played a particularly pivotal role in these transformations. “When a state fights its political enemy in the name of humanity” Schmitt noted, “it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent.”<sup>481</sup> The concept of humanity was an “especially useful ideological instrument of imperialist expansion” Schmitt argued “and in its ethical-humanitarian form it is a specific vehicle of economic expansion.”<sup>482</sup> Hence, adopting the universalist terminology of humanity had, in Schmitt’s eyes, become the characteristic means by which liberal powers pursued expansionist wars in the early years of the twentieth century. Hence, although liberal states claimed to operate purely on the basis of the non-political spheres of economics and ethics spheres, Schmitt argued that they were in fact pursuing a ruthless expansion of their political interests in the name of humanity. He argued that:

“A war waged to protect and expand economic power must, with the aid of propaganda, turn into a crusade and into the last war of humanity. This is implicit in the polarity of ethics and economics, a polarity astonishingly systematic and consistent. But this allegedly non-political and apparently even antipolitical system serves existing and newly emerging friend-and-enemy groupings and cannot escape the logic of the political.”<sup>483</sup>

The crucial problem with liberal universalism in Schmitt’s view was that it removed all limitations on warfare. Given that for Schmitt the limitation of war was the principle aim of political order ‘the liberal way of war’ was perhaps the most important aspect in the destruction of the state form and the spatialisation of the political on which it was grounded. The concept of humanity allowed the intensification of enmity beyond the limits that the concept of *justis hostis* had placed on warfare in Schmitt’s account of the

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<sup>481</sup> Ibid.

<sup>482</sup> Ibid.

<sup>483</sup> Ibid, 79.

modern European state system. By claiming to wage war in the name of a universal principle of justice, liberal states produced an unjust enemy that did not require the respect afforded enemies within the modern European order of states. Cast in opposition to humanity, Schmitt argued that, “the adversary is thus no longer called the enemy but the disturber of the peace and is thereby designated to be an outlaw of humanity.”<sup>484</sup> By conducting war on the basis of universal categories such as humanity, it was removed from the spatial constraints that the state form had placed upon it. Schmitt argued that universal concepts like humanity have the “potential for a most awful expansion and a murderous imperialism.”<sup>485</sup> Absolute enmities were untethered from any concrete spatial situation and could become globalized. “With the help of ... a universal concept” like humanity, Schmitt noted, “every distinction may be negated and every concrete community ruptured.”<sup>486</sup>

The horizon of liberal humanitarian war was thus for Schmitt a formless worldwide liberal *imperium*, a formless chaos of absolute enmity indistinguishable from a state of global civil war. However, as the 1930s began Schmitt still believed it might be possible to salvage the state by harnessing the spatialisation of the political to the new technological means that could intensify the bonds between authority, association and idea.

#### **(4) *The Total Eclipse of the State***

For Schmitt these tendencies had coalesced into a profound crisis of the liberal state in the early twentieth century. The spatialisation of the political in the state form was being undermined by the liberal tendency towards depoliticization and the status of the state was, for Schmitt, becoming increasingly tenuous. However in Schmitt’s view liberalism did not so much produce an absolute depoliticization of the state as much as a total politicization of society, as I now will show. The early years of the twentieth century in

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<sup>484</sup> Schmitt, *The Concept of the Political*, 79.

<sup>485</sup> Schmitt, “*Ethic of State and Pluralist Ethic*,” 205.

<sup>486</sup> *Ibid.*

Europe were thus paradoxically defined by the simultaneous collapse and totalization of the state.

Schmitt argued that a new form of state had emerged that held the key to understanding the political crisis of the day: the total state. As the Weimar Republic entered into a period of renewed crisis in the politically polarizing fallout of the 1929 Wall Street crash Schmitt turned to the concept of the total state to explain the dynamic political situation.<sup>487</sup> He did not consider the concept of the total state to be the product of speculative theorizing but to reflect the political realities, or, as he put it in 1931, “the concrete constitutional conditions” of the moment.<sup>488</sup> The emergence of the total state was contemporarily as yet, a process still underway. “One may already talk” Schmitt wrote, “of a transition to the total state.”<sup>489</sup> However, by February 1933, the month after Hitler’s appointment as Chancellor, he felt confident enough to simply declare, “there is a total state.”<sup>490</sup> Schmitt identified two different total states at play in the turmoil of the early 1930s and he believed that the fate of the state form turned on the difference between them.

There was in Schmitt’s view a liberal ‘quantitative total state’ and a fascist ‘qualitative total state,’ and they were to be sharply distinguished.<sup>491</sup> Schmitt presented the liberal ‘quantitative total state’ as the origin of the crisis of state form and the fascist ‘qualitative total state’ as a possible solution, a potential source for the renewal of state form. He argued that the ‘quantitative total state’ dissolved the state’s spatialisation of the political

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<sup>487</sup> Indeed, in his analysis of the total state, Schmitt emphasizes the centrality of the inter-penetration of the state and the economy. His first attempt to address the total state, the 1931 article “The Way to the Total State”, bears the stamp of the debates on the relationship between the state and the economy then raging in the wake of the economic depression and the polarization of the political field between Right and Left.

<sup>488</sup> Schmitt, “The Way to the Total State,” 18.

<sup>489</sup> Ibid.

<sup>490</sup> Carl Schmitt, “Further Development of the Total State in Germany” in *Four Articles, 1931–1938*, ed. Simona Dragachi (Washington DC: Plutarch Press), 20. Schmitt published this article in February 1933. It was two months before Schmitt joined the Nazi party and a note of ambivalence towards the new regime was still detectable. “One may dismiss the ‘total state with any kind of shouts or outrage and indignation as barbaric, servile, un-German or unchristian” Schmitt wrote, “but the thing remains that one does not get rid of it in that way.” (Ibid, 20) Indeed, Schmitt argued that by 1933 the totalization of all politics was complete. “Every political power” he argued, “is forced to take hold of the new weapons” (Ibid, 20).

<sup>491</sup> Even perhaps the total state of the Soviet Union was to be included alongside the fascist total state in its opposition to the liberal total state.

whereas the ‘qualitative total state’ might provide the conditions for its respatialization. The manner in which Schmitt understood the difference between these two forms of total state does much to explain his decision to support the Nazi regime in 1933 and indeed his subsequent turn away from the category of the state in search of new bearer of political form in the late 1930s. The total state was in a sense Schmitt’s last attempt to find a source of renewal for the state form before moving on to seek out new spatializations of the political.

### **(i) *Liberal Leviathan***

The ‘quantitative total state’ was for Schmitt the paradoxical end product of liberal depoliticization. It perfectly described, in his view, the “mess” of the final Weimar years.<sup>492</sup> The ‘quantitative total state’ was marked above all by the collapse of the distinction between state and society that had been the pillar of the nineteenth century liberal state. This growing interpenetration of society and state was for Schmitt principally the result of the democratic thesis of the identity between ruler and ruled. He had already noted in *The Concept of the Political* that democracy “blurs the boundaries between state and society” and “must do away with all the typical ... nineteenth century antithesis and divisions pertaining to state-society.”<sup>493</sup> This had brought about a fusion of state and society in which each came more and more to resemble the other. “Society organized itself in the image of the state” he wrote, leaving “social and economic problems [to] automatically become state problems.”<sup>494</sup> It was no longer possible to distinguish “between the state-political and the societal-unpolitical spheres.”<sup>495</sup> In such a situation the state “seizes all the social, that is to say, everything that has to do with the common life of human beings.”<sup>496</sup> Such a state, Schmitt argued, ‘indiscriminately gets into all spheres of human existence ... because generally it cannot make any distinctions any longer.’<sup>497</sup>

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<sup>492</sup> Schmitt, “Further Development of the Total State in Germany,” 22.

<sup>493</sup> Schmitt, *The Concept of the Political*, 23.

<sup>494</sup> Schmitt, “The Way to the Total State,” 9.

<sup>495</sup> Ibid.

<sup>496</sup> Ibid.

<sup>497</sup> Schmitt, “Further Development of the Total State in Germany,” 22.

Crucially however, the liberal state was for Schmitt “total in a purely quantitative sense, of mere volume, and not of intensity and political energy.”<sup>498</sup> ‘Today’s German state’ he wrote in 1933, “is total out of weakness and absence of resistance, by its inability to hold out against the assault of the parties and of organized interests.”<sup>499</sup> It was by answering the demands of social interest groups organized into parties that the liberal state had become total in Schmitt’s views. Hence, the pluralist state had been rendered total. The pluralist state “must bow to everybody’s wishes, please everyone, subsidize everyone and be at the beck and call of conflicting interests at one and the same time.”<sup>500</sup> Thus, the ‘quantitative total state’ is a totality born of weakness in Schmitt’s eyes. It was a state that had “neither the ability nor the willingness to form a responsible government, capable of action.”<sup>501</sup> On the one hand, Schmitt argued that this liberal total state could “no longer make any distinction either between economy and the state or between the state and the various walks of social life.”<sup>502</sup> On the other hand, the state was unable to forge a unified political will. Rather the ‘quantitative total state’ was characterized by a “pluralistic dispersion” of loyalties.<sup>503</sup> The “political monopoly” of the political parties saw “the political will itself ... parcelled out among some five party lists.”<sup>504</sup> In the parliamentary system the political will was “diverted at source into five channels and in five different directions so that it may never flow together in one stream.”<sup>505</sup> Thus, the expansion of the ‘quantitative total state’ into society was undermining the state’s ability to make decisions and to provide unity. The pluralism of the ‘quantitative total state’ was undermining the state’s ability to produce political form. ‘Its foundations’ became, Schmitt noted, “an uncertain terrain contested from several sides.”<sup>506</sup> As such the ‘quantitative total state’ was threatened to bring about a dangerous despatialisation of the political that would see the decisive friend-enemy distinction shift from the boundaries

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<sup>498</sup> Ibid.

<sup>499</sup> Ibid, 23.

<sup>500</sup> Ibid.

<sup>501</sup> Ibid, 27.

<sup>502</sup> Ibid, 26.

<sup>503</sup> Schmitt, “The Way to the Total State,” 17.

<sup>504</sup> Schmitt, “Further Development of the Total State in Germany,” 25.

<sup>505</sup> Ibid, 26.

<sup>506</sup> Schmitt, “The Way to the Total State,” 17.

between states to the relations between interest groups within the state. Thus behind the ‘quantitative total state’ lay the horizon of civil war in Schmitt’s view. Chaos would probably already have reigned in Germany, Schmitt argued, “were it not for one of the last pillars of the Weimar constitutional order, the President of the Reich.”<sup>507</sup> Schmitt published this in February 1933, just weeks after Hitler’s appointment as Chancellor, and thus he still appeared to be committed to a revitalization of the Weimar state under an authoritarian President rather than the Nazi movement.

## **(ii) *Nazi Behemoth***

If the ‘quantitative total state’ had, in Schmitt’s view, expanded in ‘quantity’ and ‘volume’, the ‘qualitative total state’ by contrast grew in ‘quality’ and ‘intensity’. The liberal state was totality born of weakness but, for Schmitt, the ‘qualitative total state’ was a totality born of increased power. It was, he wrote, “by far the stronger state ... total with regard to quality and energy.”<sup>508</sup> The ‘quantitative total state’ came about through a collapse of the categories of state and society that had produced a pluralist dissolution of the people’s will. The ‘qualitative total state’, on the other hand, maintained the status of the state above society but did so by producing and representing the unified will of the people. ‘Behind the formula of the [qualitative] total state’ was the acknowledgment, Schmitt argued, that, “the present day state has got new means and possibilities of tremendous power.”<sup>509</sup> It was by drawing on these that the ‘qualitative total state’ grew in power. Particularly important for Schmitt were the new mediums of mass persuasion, cinema and radio, as they allowed “the creation of a ‘public’ ... a collective opinion.”<sup>510</sup> The ‘qualitative total state’ was based on the idea that “the new power means belong exclusively to the state and serve to increase its power.”<sup>511</sup> It had, Schmitt argued, “no intention to hand down the new means of power to its own enemies and destroyers.”<sup>512</sup>

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<sup>507</sup> Schmitt, “Further Development of the Total State in Germany,” 27.

<sup>508</sup> *Ibid.*, 21.

<sup>509</sup> *Ibid.* It is in these comments that Schmitt most plausibly emerges as a ‘reactionary modernist’ as Jeffrey Herf argues. I have elsewhere noted the limitations of this characterization and the ambivalent attitude Schmitt often displays with regard to technology. See; Herf, *Reactionary Modernism* (1984).

<sup>510</sup> Schmitt, “Further Development of the Total State in Germany,” 21.

<sup>511</sup> *Ibid.*

<sup>512</sup> *Ibid.*, 22.

The new technical means of control and persuasion were not, however, the true source of the ‘qualitative total state’s’ difference from the ‘quantitative total state’. The real difference lay in the intensity of its political association created by the ‘qualitative total state’. In stark contrast to the pluralism of the ‘quantitative total state’, Schmitt argued that it did not “allow the development of any sort of forces hostile to the state, that obstruct the state and disrupt its internal life.”<sup>513</sup> It understood that the task of the state was to provide unity internally and identify the enemy externally. “Such a state,” he wrote, “can discriminate between friend and enemy.”<sup>514</sup> Indeed, Schmitt noted, that, “in this sense ...every genuine state is a total state.”<sup>515</sup> State theorists, he argued, had “long known that the political is total, and new are only the new technical means, the political efficiency of which must become clear to anyone.”<sup>516</sup> Thus, in Schmitt’s eyes the ‘qualitative total state’ carried out the work of the ‘classical’ state in providing political form but harnessed the new technological means needed to produce unity in an age of mass politics. In contrast to the liberal state this new ‘qualitative total state’ understood the importance of identifying the enemy and hence the proper spatialisation of the political.

Schmitt did not yet explicitly take National Socialist Germany as the model for the ‘qualitative total state’ in his 1933 article *The Further Development of the Total State in Germany* but rather looked to the example of Italian fascism. The ‘qualitative total state’ was total with “regard to quality and energy, in the way the fascist state calls itself a ‘stato totalitario’.”<sup>517</sup> Indeed, although the term ‘qualitative total state’ only appears in Schmitt’s work in the early 1930s, his depiction built on ideas he had developed during the 1920s with Mussolini’s Italy firmly in mind. As previously noted, as early as 1923 in *The Crisis of Parliamentary Democracy*, Schmitt had lauded the success of Italian fascism. Schmitt had opposed the powerful fusion of authority, unity and myth in the

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<sup>513</sup> Ibid, 23.

<sup>514</sup> Ibid, 22

<sup>515</sup> Ibid.

<sup>516</sup> Ibid, 22.

<sup>517</sup> Ibid, 21.

fascist state to the dissolution of the liberal state under the weight of the contradictions between liberal pluralism and democratic homogeneity.

The fascist state was indeed the model for the radically anti-liberal conception of democracy that Schmitt first outlined in *The Crisis of Parliamentary Democracy*. Schmitt argued that the democratic identity of ruler and ruled was the unmovable presupposition of twentieth century European politics which had been irrevocably shaped by the appearance of the politicized masses after 1848. Although in its union with liberal pluralism democracy was undermining the state, and leading to its quantitative expansion, Schmitt argued that it could nonetheless be reconciled with state form. Indeed, if suitably yoked to authority and a powerful political idea, democratic homogeneity could provide a strong basis for the reinvigoration of the state form in the conditions of mass politics. This was precisely what Schmitt argued the fascist state had done in Italy – produced a radically anti-liberal form of democratic state built upon a strong central authority and a powerful myth of national unity. Hence, in Schmitt’s view the fundamental principle of democracy – the identification of ruler and ruled – was compatible with dictatorship. The crucial aspect of democracy, in Schmitt’s reading, was that the will of the people fundamentally dictates the terms of the state. There was no contradiction in Schmitt’s mind between a declaration of the people’s will and its representation in a strong form of authority. As Schmitt wrote in the Preface to the 1926 re-issue of *The Crisis of Parliamentary Democracy*, “dictatorial and Caesaristic methods not only can produce the acclamation of the people but can also be a direct expression of democratic substance and power.”<sup>518</sup>

Schmitt further elaborated the relationship he understood might exist between representative authority and the democratic will of the people in his 1928 book *Constitutional Theory*. Although the conception of constituent power Schmitt advances in this work is at times surprisingly radical for a man clearly on the far Right of the political spectrum by 1928, his formulations nonetheless betray the influence of Mussolini’s Italy. The radical Caesarist conception of democratic dictatorship linking a strong centralized

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<sup>518</sup> Schmitt, *The Crisis of Parliamentary Democracy*, 17.

authority to the public declaration of an homogenous peoples' will was clearly designed to side-step the pluralist formalities of liberal democracy. The homogenous will of the people and the strong central authority was for Schmitt a unity of unities to stand against the pluralist dissolution of the state he identified in parliamentary liberalism at the start of the twentieth century. Hence, the similarities between the authoritarian theory of democracy he developed during the 1920s and the concept of the 'qualitative total state' at the beginning of the 1930s are striking. Indeed the latter clearly finds its seed in the former. But if the concept of the 'qualitative total state' built on ideas Schmitt had earlier developed it arguably provided the frame within which he moved from supporting a transformation of the Weimar Republic into an authoritarian Presidential system to National Socialism.

In *State, Movement, People*, a text he published in 1933, Schmitt attempted to formulate a theoretical conception of the new Nazi state. Schmitt explicitly identified the nascent Nazi order in Germany as an example of a 'qualitative total state' alongside the 'totalitarian' states of Italy and the Soviet Union. By May 1933 Schmitt had decided that Nazism represented the best chance for the renewal of the state form and hence the spatialisation of the political. But if Schmitt had been quick to herald the rebirth of the state in the Nazi movement he soon considered it to have decisively killed of his most revered historical institution. Even the 'qualitative total state' Schmitt had hoped would prevent the collapse of the European order of states was not strong enough to resist the new powers and the new spatializations of the political that were emerging by the middle years of the twentieth century.

##### ***(5) Beyond the State: Respatialising the Political***

The Nazi years were a period of transition for Schmitt's thought that saw him move from a critique of the German welfare state to a new geopolitical ordering of the planet. Over the course of the 1930s many of the key concerns and categories of Schmitt's Weimar output were replaced with a new set of terms, themes and conceptual frameworks. As argued previously, this does not mean that Schmitt's work can be easily divided into two,

or even three, phases defined by clearly marked breaks. Rather, the transformation is better understood as a series of gradual shifts that take place against the background of a wider theoretical continuity. The deep concerns motivating Schmitt's work from the Weimar period remain fundamental but the conceptual framework for approaching it changes. Hence, Schmitt continued to be preoccupied with the question of how to found political form, and hence with the search for a way to spatialise the political, but his work nonetheless, underwent two important shifts of focus that bear directly on these concerns.

He moved away from the category of the state in search of new political forms and new spatializations of the political. This shift away from the state brought Schmitt to examine the spatialisation of political order more directly and hence spatial themes become a more explicit focus of his work. Thus, the 1930s marked a period when Schmitt began to look beyond the state for new sources of political form and sought out new conceptual resources for this task. By the start of the 1940s the centre of gravity of Schmitt's thought had moved dramatically from the internal problems of the liberal constitutional state to speculations on what new macro-political forms might stabilize global order through new planetary spatializations of the political. These new concepts of political form and new theoretical frameworks will provide the focus of subsequent chapters but below I will firstly provide a brief account of the theoretical transition that Schmitt's thought underwent during the 1930s.

The first element of Schmitt's move from beyond the state as the bearer of political form came in *On the Three Types of Juristic Thought* published in early 1934. Here Schmitt sought to lay out a new framework for juridical thought that would move beyond the positivism he had criticized in liberal thought and the decisionism he had opposed it with. In their place Schmitt proposed what he referred to as 'concrete order thinking'. The starting point for 'concrete order thinking' was neither the impersonal norm nor the personal decision but the existing institutional order and its historical development. This was not a rejection of the decisionistic framework that he adopted during the 1920s but rather a tacit acknowledgement of its limitations. Drawing on the work of the French legal theorist Maurice Hauriou, Schmitt emphasized the importance of institutions for the

legal order rather than the objective norm or the subjective acts of decision. Thus, now Schmitt sought to understand the personal decisionism of the sovereign power within the broader social and historical context of pre-existing legal institutions. *On the Three Types of Juristic Thought* was part of Schmitt's attempt to provide theoretical legitimation for the Nazi regime. However, it also marked a serious attempt to establish a sociologically and historically richer understanding of the institutional framework of European political order beyond the boundaries of the state form. The framework of 'concrete order thinking' emerged not simply from Schmitt's attempt to legitimize Nazi order but from the existing trajectory of his thought away from the state form. Indeed, 'concrete order thinking' remained the principal framework within which Schmitt developed his thought even after Nazi defeat.

The move beyond the state signalled by the emergence of 'concrete order thinking' in 1934 was hastened after Schmitt lost favour in the Nazi regime after 1936. Despite his eager attempts to provide legitimation for the new regime some remained suspicious about Schmitt's dedication to the Nazi cause. He was subject to attack both from within the Nazi establishment and from his former friend and student Waldemar Gurian now living in exile in Switzerland. Although Hans Frank and Herman Goring provided protection for Schmitt after he was denounced in the SS publication *Das Schwarze Korps* he still considered himself at risk. Thus, after 1936 Schmitt turned his attention away from attempts to theorize the nature of Nazi order. Instead he took up two projects that led him further from the state. The first was an increasing focus on a critique of international law since the Treaty of Versailles. This was work that Schmitt had been engaged in since the 1920s but which he looked at with renewed vigour after his marginalization from domestic debate. This allowed Schmitt to work on a set of concerns that were less controversial and hence escape the criticism that had been targeted at him within the regime. It gave him the opportunity to understand more clearly the eclipse of the modern European state within the broader context of transformations in international law and the distribution of global power. The second project was a historical genealogy of the modern European state that accounted for the internal roots of its collapse. This work, which culminated in the publication of *The Leviathan in the State Theory of*

*Thomas Hobbes* in 1938, marked something of a final testament for the state within the trajectory of Schmitt's thought. In this book he outlined how the failure of the state form was not simply the result of liberalism in the twentieth century but was inscribed in the very foundations of the state form. Indeed, some readers have even detected veiled critiques of the Nazi state in *The Leviathan in the State Theory of Thomas Hobbes*, although the textual evidence for this is ambivalent. It certainly seems likely given his wider move away from the state that his opinion of the Nazi state had dimmed considerably by 1938.

From 1939 Schmitt's work displayed a new enthusiasm for theorizing the Nazi Reich and found renewed favour with the regime. However, this was no longer a theorization of the National Socialist state but was part of his broader attempt to imagine new political forms and new spatializations of the political beyond the state form. Schmitt's study of international law and the genealogy of the modern European state between 1936 and 1938 led him to the belief that new ordering institutions were needed to reflect new concrete realities that had emerged in global politics. The rising global power of the United States had not only decisively shifted global power away from Europe but also eclipsed the state form as a viable subject for the conduct of international politics. Schmitt argued that in place of the state new institutions with wider reach were needed to provide order under these new conditions. In Schmitt's view the rapidly rising power of the Nazi Reich in Continental Europe produced an opportunity to conceive of a Europe-wide political unity dominated by an imperial Germany. Drawing on the example of the U.S. Monroe Doctrine in the nineteenth century Schmitt began to develop a theory of *Grossraum* order which would see international order constituted around a number of continental imperial powers. Thus, Schmitt's *Grossraum* order was at once an attempt to legitimize the imperial expansion of the Nazi Germany and an attempt to theorize a new foundation for international order in a new political form that would replace the now redundant state and produce a new continental spatialisationthe political.

The *Grossraum* theory Schmitt developed from 1939 marked the emergence of spatial themes as an explicit focus in his work. As I have argued, spatial concepts played a

crucial structural role in Schmitt's work from the start of the 1920s but they remained largely implicit and were not directly theorized. However, the process of looking for new political forms beyond the state led Schmitt towards an explicit focus on the spatial themes from the late 1930s. This search, conducted within the conceptual framework of the 'concrete order thinking', led Schmitt to fundamental questions concerning the foundations of political form. Hence, it was by questioning the 'concrete' institutional foundations of political form that spatial themes emerged as the explicit focus of Schmitt's thought. The theory of *Großraum* order was Schmitt's first attempt to develop an explicit concept of the spatial foundations of order but this question increasingly preoccupied his thought in the 1940s and 1950s. The search for new political forms capable of producing new spatializations of the political was thus not simply a matter of legitimizing the expansion of the Nazi Reich. This was the immediate context in which began this phase of his work but the horizon of his investigation was wider. In Schmitt's view, with the eclipse of the state form in the middle years of the twentieth century, the globe had entered into a world-historical crisis of political form. Beyond the state lay the more profound question of a new spatial order of the earth.

## ***Chapter 6: The Nomos of the Earth / Spatial Order***

### ***(1) Space in Schmitt's Late Work***

Carl Schmitt's spatial thought is most often identified with his late work dating from the 1940s onwards, with much attention centred on his 1950 book *The Nomos of the Earth*. It has been common, therefore, for Anglophone readers, notably within International Relations and Geography, to focus almost exclusively on Schmitt's late postwar work and on *The Nomos of the Earth* in particular when examining spatial themes in Schmitt's work. The impression given by the existing Anglophone literature is that Schmitt's work undergoes a 'spatial turn' sometime in the 1940s. However, it has been one of the central claims of this thesis that spatial concepts in fact play a central structuring role across Schmitt's entire oeuvre and are not simply identifiable with one phase of his output. As argued in the preceding chapters, Schmitt's work from the 1920s and 1930s was centred on the category of the state, an institution he understood to provide ordering form by spatialising the relations between friend and enemy. Despite this continuity in the importance of spatial concepts in Schmitt's work, a transformation can nonetheless be discerned. Although spatial concepts play an important structural role in his work from the 1920s and early 1930s they remain largely implicit: the unspoken theoretical principles on which his thought rested. However, by the time he published *The Nomos of the Earth* in 1950 the position of spatial concepts in his work had undergone a marked change. Spatial concepts were no longer simply an implicit structural element of his thought but the explicit focus of his work, thematically foregrounded and formally theorized.

The shift in the use of spatial concepts in his work was not, however, the result of a clean break or 'turn' but was rather took place gradually over a number of years. As argued in the previous chapter, this process of change was the result of a confluence of developing intellectual trajectories and a variety of personal and political factors during the 1930s

and early 1940s. Firstly, Schmitt made a shift in the early 1930s from a ‘decisionistic’ framework to ‘concrete order thinking’ that led him to an increasing focus on the deeper socio-historical and institutional basis of political order. Secondly, an increasing focus on the critique of international law led him to examine the shift in global power from Europe to the United States and the changing nature of twentieth century warfare. Thirdly, in the late 1930s Schmitt carried out a critical genealogy of the modern European state that located its emergence and decline within a broader historical and geographic context of modern world history. Finally, in the context of Nazi expansion in Europe during the late 1930s and early 1940s, Schmitt attempted to theorize a new form of anti-universalist global spatial order based on a number of continental empires, or *Großräume*. Thus, from the late 1930s spatial concerns increasingly became the focus of Schmitt’s work. The question of the spatialisation of the political came to be explicitly theorized in the concept of *nomos*, or spatial order. By the early 1940s the concept of a global spatial order, or the *nomos* of the earth, had become the governing framework within which Schmitt developed his thought.

It is therefore justified to split Schmitt’s work into early and late phases and note the difference in the role of spatial concepts in the two phases. However, the break between these phases should not be exaggerated or the continuities overlooked. In this chapter and those that follow I will argue that Schmitt’s late spatial thought should be understood in direct relation to the question of political form. Although political form itself is not a central category in Schmitt’s late work a conception of political order founded on spatial division remains crucial and indeed moves into relief in the concept of *nomos*. Thus, whilst I will examine the conceptual development of Schmitt’s late spatial thought in the following chapters, I will also stress the continuities with the concept of political form I have argued underlies Schmitt’s spatial thought as a whole.

It is important to note here that I will not approach Schmitt’s late works in the order that they appeared or chart the development of his late spatial thought in a strictly chronological manner. Rather, I will take a more thematic approach that highlights the importance of different concepts and texts within the broader trajectory of his work as a

whole. Thus, this chapter will focus on *The Nomos of the Earth* although it was published in 1950, some years after Schmitt had already produced major works addressing explicitly spatial themes such as *The Großraum Order of International Law with a Ban on the Intervention of Spatially Foreign Powers* (1939-1941) and *Land and Sea* (1942). I start with *The Nomos of the Earth* because it represents Schmitt's most mature contribution to spatial thought and helps to frame the concerns of his late work as a whole. In the following chapter I will return to address *The Großraum Order of International Law with a Ban on the Intervention of Spatially Foreign Powers* alongside the much later text, *The Theory of the Partisan* (1963). Although these texts appeared over twenty years apart in very different personal and political circumstances they represent Schmitt's two major attempts to imagine new forms of spatial order in the wake of the state form. In the final chapter I will turn to examine the concepts of history that underpin the ideas of spatial order in Schmitt's late work. I will argue that Schmitt's late thought draws upon myth and theology to construct a unique 'spatial history' of modernity, the significance of which has often been overlooked in existing studies of his work.

## **(2) *The Nomos of the Earth***

In recent years *The Nomos of the Earth* has been given many labels, from a "fascist epic"<sup>519</sup> to a "missing classic of IR"<sup>520</sup> to Schmitt's "magnum opus."<sup>521</sup> There is some consensus that it is the most significant book Schmitt produced in the postwar era and arguably in his entire oeuvre.<sup>522</sup> It marks his most sustained attempt to understand the nature of the relationship between space and political order, and provides an original and provocative history of modern international law from the fifteenth to the twentieth century. Although originally published in 1950, it was largely written in Berlin between 1942 and 1945 whilst war raged across Europe. Schmitt noted that he faced "all sorts of

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<sup>519</sup> Gopal Balakrishnan, "The Geopolitics of Separation," *New Left Review* 68 (March-April 2011), 67.

<sup>520</sup> Odysseos & Petito, Introduction, 2.

<sup>521</sup> Hooker, *Carl Schmitt's International Thought*, 3.

<sup>522</sup> As noted in Chapter 1 the book has received an enthusiastic if often critical reception across a number of disciplines in the Anglophone academy since its publication in English translation in 2003.

restraints and restrictions” whilst writing the book.<sup>523</sup> In the Foreword, written in 1950, Schmitt twice noted that the book’s subject matter and the situation in which it was composed were “overwhelming.”<sup>524</sup> This should be read not simply to refer to the difficulties of wartime writing, but also the fact that in the immediate aftermath of German defeat Schmitt was interned by American forces and interrogated at Nuremburg on two separate occasions. Hence, the book was structured around a series of curious silences in order to shield its author from further accusation. Indeed, he warns in the Foreword that he will “avoid mention of contemporary affairs and break off at many points” to “avoid unnecessary controversy.”<sup>525</sup> Thus, there is no mention of several matters we might have expected Schmitt to comment on given his previous work, the theme of the book and the context in which it appeared. He makes no mention of National Socialist expansion in Europe, World War II and the occupation of Europe by American and Soviet Forces. Even his work on *Großraum* order, carried out in the late 1930s and early 1940s, goes largely unmentioned. These omissions are obviously prompted by Schmitt’s perhaps prudent desire to ‘avoid unnecessary controversy’ at a time when he had just been released without charge from interrogation at Nuremburg. They are evidently part of a concerted effort by Schmitt to ‘cleanse’ his record and present his work as acceptable sober and ‘objective’ analysis.<sup>526</sup>

Schmitt’s desire to avoid incriminating topics left the book oddly truncated and seemingly without conclusion despite being nearly 300 pages long. The theoretical and historical trajectories the book followed led him inevitably towards a critique of Europe’s postwar settlement and the continued expansion of U.S. power but it was precisely these

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<sup>523</sup> Schmitt, *The Nomos*, 38. The book’s English translator Gary Ulmen notes that this primarily indicated a lack of access to sources. Indeed, Ulmen notes that the original German edition included many minor errors that were corrected in the English edition following Schmitt’s stated wishes (Ibid, 35). It is safe to assume that Schmitt also considered the occupying forces a ‘restraint and a restriction’ on what he might write given that he had only recently been released from interrogation in Nuremburg. Indeed, Schmitt insinuates this himself in the book’s 1950 Foreword as I mention below.

<sup>524</sup> Within a few lines of each other he writes, “the given subject and the present situation are overwhelming” and “both the theme and the situation are overwhelming.” Schmitt, *Nomos*, 38-39.

<sup>525</sup> Schmitt, *Nomos*, 38-39.

<sup>526</sup> He claims indeed that his aim is to “present new ideas objectively.” (Ibid, 39) This was indeed the defence Schmitt offered of himself whilst under interrogation at Nuremburg. See: Carl Schmitt, “On *Großraum*, The Hitler Regime, and Collaboration (I-III); Answers to Allegations,” *Telos* 72 (1987), 97-129.

things that he left implicit. Like his other works, *The Nomos of the Earth* was a polemical engagement with the political conditions of the day, but his critique remains to be read between the lines. During the 1950s Schmitt published a number of short corollaries to stand in for the original publication's missing conclusion. Hence, the book in fact remained unfinished until the mid 1950s when these supplements were added. Further, the book represented the culmination of the work Schmitt had carried out in late 1930s and early 1940s and gathered together the various strands of his thought during this period.<sup>527</sup> The ideas contained within it are at once the result of previous work and the springboard for subsequent efforts. *The Nomos of the Earth* is thus best understood as the centrepiece of a wider span of work stretching from the late 1930s to the mid 1950s.

The book itself is a complex and sweeping work of vast ambition. The reader cannot help but be immediately struck by the magnitude and erudition of the work, whatever the failings of Schmitt's perspective and argument might be. The book contains several core elements and can be broken down into broad sections. Firstly, Schmitt outlines a concept of *nomos* that indicates the inherently spatial foundations of legal and political order. Second, he provides an account of the rise of the first global spatial order of the earth, the Eurocentric global order he referred to as the *jus publicum Europaeum*. Thirdly, he mounted a critique of the various factors contributing to the collapse of this spatial order of the earth in the twentieth century. Lastly, Schmitt indicated what he considers to be the most pressing question for political thought in the shadow of this collapse: what form the new *nomos* of the earth might take. In the remainder of the chapter I will briefly address each of these elements in turn, highlighting their importance to understanding Schmitt's late spatial thought.

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<sup>527</sup> Schmitt largely avoided his work on *Großraum* order here however. This work had its inception in the context of theorizing Nazi expansion in Europe and Schmitt wanted to avoid any further association with the Nazi regime especially given that his *Großraum* work had already brought him under suspicion. The English edition of the book includes three such corollaries dating from 1953 – 1957. Interestingly although the concept of *Großraum* appears in one of these corollaries, "The New *Nomos* of the Earth," (1953) no mention is made of its original inception in the context of theorizing Nazi expansion in Europe. I will return to address the way in which Schmitt presented his *Großraum* theory in this 1955 text below and will investigate his original formulation in the following chapter.

### **(3) *Nomos* as Concept: Order & Orientation**

#### **(i) *Ordnung und Ortung***

*Nomos*, Schmitt argued, indicates a fundamental “unity of space and law, order and orientation.”<sup>528</sup> It is a concept that points, for Schmitt, to the necessarily “spatial context of all law,” or rather the fact that “all law is law only in a particular location.”<sup>529</sup> “The word, understood in its original spatial sense,” he wrote, “is best suited to describe the fundamental process involved in the relation between order and orientation.”<sup>530</sup> “It constitutes the original spatial order,” he wrote, “the source of all further concrete order and all further law.”<sup>531</sup> *Nomos*, for Schmitt, indicates that all order is, at the most fundamental level, spatial order. Hence, all forms of political, legal and social order rest upon the foundational unity of law and space represented by a *nomos*. “All subsequent regulations of a written or unwritten kind,” Schmitt argued, “derive their power from the inner measure of an original, constitutive act of spatial ordering. This original act is *nomos*.”<sup>532</sup> Thus, regardless of the specific form a political order takes and the particularities of its normative content, it necessarily rests, for Schmitt, on a “structure-determining convergence of order and orientation.”<sup>533</sup> *Nomos* therefore concerns the most fundamental question of legal foundations, or as Schmitt writes, “the existential question of jurisprudence.”<sup>534</sup> It is, in Schmitt’s view, the most fundamental concept of legal order, from which all else emerges and on which all else rests.

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<sup>528</sup> The first chapter of *The Nomos of the Earth* carries the title ‘Law as a Unity of Order and Orientation’. In the original German Schmitt renders order and orientation with the rhyming couplet of *Ordnung und Ortung*. The Italian political theorist Thalin Zarmanian translates *Ordnung und Ortung* as “order and localisation.” See: Thalin Zarmanian, “*Ordnung und Ortung*/order and localisation” in ed. Stephen Legg, *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos* (London: Routledge, 2011), 291. Zarmanian uses the term ‘localisation’ rather than ‘orientation’ to underline not only the concrete spatial particularities implied in Schmitt’s concept but also the dynamic and active nature of *Ortung*. Hence, any crudely geographically determinist reading of the relationship between order and orientation is avoided as the active nature of *nomos* ordering is emphasized.

<sup>529</sup> Schmitt, *The Nomos*, 98.

<sup>530</sup> *Ibid*, 67.

<sup>531</sup> *Ibid*, 48.

<sup>532</sup> *Ibid*, 78.

<sup>533</sup> *Ibid*, 78.

<sup>534</sup> *Ibid*, 38. Schmitt enigmatically noted in the 1950 Foreword to *The Nomos of the Earth* that the ‘existential question of jurisprudence’ was at that time, in his view, “sundered between theology and technology” (*Ibid*, 38). This comment can be understood in relation to the fundamental battle Schmitt

*Nomos* therefore indicates, for Schmitt, a foundational unity of space and law. However, this should not be understood to presuppose a neutral, universal or undifferentiated concept of *Space* on which order rests. Rather, in Schmitt's view, *nomos* points to the process by which order is grounded in the differentiation of *spaces*. *Nomos* above all concerns spatial difference. It is, he notes, a "fence-word."<sup>535</sup> For Schmitt, therefore, order is not simply founded in space but through foundational acts of spatial differentiation. Schmitt notes that *nomos* was originally the Ancient Greek word for "the first of all subsequent measures, for ... the first partition and classification of space, for the primeval division and distribution."<sup>536</sup> Thus, for Schmitt, the foundations of *nomos*, and hence all subsequent order, rested on the division of space. Schmitt argues that, "*nomos* is the *measure* by which the land in a particular order is divided and situated" but "also the form of political, social, and religious order determined by this process."<sup>537</sup> Hence, in Schmitt's view these foundational acts of division simultaneously ordered space and spatially situated order. For Schmitt therefore, it was through these foundational acts of spatial division that an order took tangible form. "*Nomos*," he wrote, "is the immediate form in which political and social order of a people becomes spatially visible – the initial measure and division."<sup>538</sup> Hence, by dividing space an order became visible and took a clear form.<sup>539</sup> The *nomos* division of space not only laid the foundations for order but further gave that order an inherently representational form.

## (ii) *The Forgotten Nomos*

Schmitt argued that the original meaning of *nomos* as spatial order had been forgotten in European legal and political thought, a lapse of cultural memory he understood to have

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staked out between those forces driving the world towards a 'spatial chaos' and those capable of producing spatial order. The former Schmitt identified with those who had placed a utopian hope in technology and the latter with those who might stand in as a *Katechon*, an obscure biblical figure Schmitt takes from Saint Paul's Epistles to the Thessalonians, capable of restraining the end of the world (Ibid, 59-62).

<sup>535</sup> Ibid, 75.

<sup>536</sup> Ibid, 67.

<sup>537</sup> Ibid, 70.

<sup>538</sup> Ibid, 70.

<sup>539</sup> Schmitt noted that in a *nomos*, "measure, order, and form, constitute a spatially concrete unity" (Ibid, 70).

had far-reaching consequences in the twentieth century. “The word *nomos*,” he noted “has undergone many changes in its more than three-thousand-year history, and it often is difficult to retain the big picture, given the etymological and semantic assessments at any particular time.”<sup>540</sup> Schmitt undertook an etymological excavation of the word in European thought stretching from Greek antiquity to the twentieth century in order to understand how the original meaning of *nomos* as spatial order had been lost. He concluded that, “the original meaning was destroyed by a series of distinctions and antitheses. Most important amongst them was the opposing of *nomos* and *physis*, where *nomos* became an imposed *ought* dissociated from and opposed to *is*.”<sup>541</sup> “Originally” Schmitt argued, “the word did not signify a mere act whereby *is* and *ought* could be separated, and the spatial structure of a concrete order could be discarded.”<sup>542</sup> But by the twentieth century, Schmitt noted, “the Greek word *nomos* [had been] transformed from a spatially concrete, constitutive act of order and orientation - from an *ordo ordinans* [order of ordering] into a mere enactment of acts in line with the ought and, consistent with the manner of thinking of the positivistic legal system, translated with the word *law*.”<sup>543</sup> Thus, for Schmitt, in losing sight of the original meaning of *nomos*, legal thought was severed from its necessary relationship to space. Legal acts were no longer conceived in relation to a particular concrete situation but had become abstracted into free-floating norms.

In Schmitt’s view therefore the historical erasure of *nomos* as spatial order had culminated in the system of abstract norms and measures he identified with legal positivism.<sup>544</sup> However, Schmitt understood the roots of the problem to lie much deeper in the past. Indeed, although he based his understanding of *nomos* on a return to the original Greek term Schmitt argued that, “in antiquity *nomos* already had lost its original

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<sup>540</sup> Ibid, 341.

<sup>541</sup> Ibid, 69.

<sup>542</sup> Ibid, 69.

<sup>543</sup> Ibid, 78.

<sup>544</sup> Hence, Schmitt developed his critique of the forgetting of the spatial nature of *nomos* in relation to the critique of legal positivism he had developed in his Weimar work (see the previous chapter). I will return to the relationship between his readings of *nomos* and legal positivism below.

meaning.”<sup>545</sup> He notes that the link between *nomos* and spatial order had been lost “since the Sophists” and “already in Plato, *nomos* signified a *schodon* – a mere rule.”<sup>546</sup> The Greek legacy of rendering *nomos* as a mere law was compounded by the Roman orator Cicero who Schmitt notes, “translated *nomos* as *Lex*.”<sup>547</sup> Nonetheless, Schmitt’s critique of interpretations that detached the concept of *nomos* from its original spatial meaning is squarely aimed at legal positivists. Indeed, Schmitt argued that returning to the original meaning of “the word *nomos* is useful ... because it shields perceptions of the current world situation from the confusion of legal positivism, in particular from the muddle of words and concepts characteristic of nineteenth century jurisprudence dealing with domestic matters of state.”<sup>548</sup> In Schmitt’s view it was precisely the “legislative excesses” of positivism that made it “necessary to recall the word’s original meaning and its connection to the first land-appropriation.”<sup>549</sup> Schmitt sought therefore to employ the concept of *nomos* polemically against the ‘spaceless’ jurisprudence of positivism. Understood as spatial order, the concept of *nomos* could direct thought away from abstract ‘oughts’ towards the concrete question of legal foundations, which positivist thought always tried to occlude.<sup>550</sup> In other words, by returning *nomos* to its original

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<sup>545</sup> Ibid, 67. Even this point would seem to undermine much of the value of his philological argument Schmitt reiterates it a few pages later: “The original spatial character of the word *nomos* could not hold in Greek antiquity either” (Ibid, 75). Schmitt laid great emphasis on the etymological roots of the word *nomos* in making the claim that it should be understood as spatial order and carried out extensive philological work to back his argument in the opening chapters of *The Nomos of the Earth* and again in *Nomos – Nahme – Name* the corollary published in 1957. However, his argument is riddled with inconsistencies and when the etymological evidence does not suit he simply disregards it.

<sup>546</sup> Ibid, 167. Schmitt makes considerable polemical mileage from drawing parallels between the Greek Sophists and legal positivists of the nineteenth and twentieth centuries. Indeed, at points in his critique of the formalist normativism that he argued had obscured the original meaning of *nomos* the two groups seem to merge into one.

<sup>547</sup> Ibid, 342. Schmitt argued that, “the consequences of this fusion with a Roman legal concept are still with us.” He again equates the anti-*nomos* legacy of classical legal thought with the development of legal positivism in the nineteenth and twentieth centuries. He agreed with the Spanish Romanist Alvaro d’Ors “that the translation of *nomos* with *Lex* is one of the heaviest burdens that the conceptual and linguistic culture of the Occident has had to bear. Anyone familiar with the further development of the law-state and the present crisis of legality knows this to be true” (Ibid, 342). Hence, Schmitt casts Cicero as the forefather of Kelsen.

<sup>548</sup> Ibid, 69.

<sup>549</sup> Ibid, 69. Indeed, Schmitt argued that, “the intellectual trick of the postulate ‘not men, but laws’ is easy to see through, if one knows the linguistic history of *nomos*” (Ibid, 342). Hence, he hoped that by returning to original meaning of *nomos* abstract formalism of positivistic legal thought could be undermined.

<sup>550</sup> Schmitt argued that, “jurists of positive law, i.e. of constituted and enacted law, have been accustomed in all times to consider only the given order and the processes that obtain within it. They have in view only the sphere of what has been established firmly, what has been constituted: in particular, only the system of a specific state legality. They are content to reject as ‘unjuridical’ the question of what processes

meaning as spatial order Schmitt sought to posit an alternative framework for understanding law to that presented by positivism's abstract system of norms.<sup>551</sup> His stated aim was to “restore to the word *nomos* its energy and majesty.”<sup>552</sup> However, for this to happen he argued it was necessary for “human thinking again [to] be directed to the elemental orders of its terrestrial being here and now.”<sup>553</sup>

### (iii) *The Law of the Land*

The category of land was of primary importance in Schmitt's account of *nomos*. In his view the unity of law and space, order and orientation, meant above all that law was tied to the earth. “Law,” Schmitt noted “is bound to the earth and related to the earth.”<sup>554</sup> The earth was, for Schmitt, the “*terrestrial fundament*, in which all law is rooted, in which space and law, order and orientation meet.”<sup>555</sup> In other words, *nomos* indicated that law was literally *grounded* in the division of land. “The great primeval acts of law,” he argued, are wedded to “terrestrial orientations: appropriating land, founding cities, and establishing colonies.”<sup>556</sup> Thus, the appropriation and division of land lay at the root of every spatial order, and hence, in Schmitt's view, every other form of social, legal and

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established this order” (Ibid, 82). This emerged in Schmitt's view from the rationale of “a state bureaucracy, which has no interest in the right of its origin, but only in the law of its own functioning” (Ibid, 82).

<sup>551</sup> It is on this point that the relationship between the concept of *nomos* as spatial order and the theoretical framework of ‘concrete order thinking’ Schmitt laid out in 1934 becomes most apparent.

<sup>552</sup> Ibid, 67. It is worth noting that Schmitt mentions in passing his “great respect for the efforts of Wilhelm Stapel and Hans Bogner, who have given *nomos* the meaning *Lebensgesetz* [law of life].” However, Schmitt notes his opposition firstly to the word *Leben* on the basis that it has “degenerated into the biological” and secondly to the word *Gesetz*, which he argues ‘unlike the Greek word *nomos* ... is not an *Urwort* [primeval word].’ “It is deeply entangled in the theological distinctions between Jewish law and Christian grace – the (Jewish) law and the (Christian) gospel ... [and] expresses only the positivistic artifice of what is enacted or obliged – the mere will to compliance” (Ibid, 70 n10). The difficulty of deciphering Schmitt's complex relationship to German conservatism and anti-Semitism are clearly seen in this passage. On the one hand he commends these thinkers of the ‘conservative revolution’ and opposes the use of the term *Gesetz* on anti-Semitic grounds tacitly equating Jews with positivism. On the other, he rejects their biological interpretation of law as a conceptual ‘degeneration’ (Ibid, p 70 n10).

<sup>553</sup> Ibid, 39.

<sup>554</sup> Ibid, 42.

<sup>555</sup> Ibid, 47. In discussing the primacy of the land in the concept of *nomos* Schmitt uses the words ‘earth, ‘land’ and ‘soil’ interchangeably. Stuart Elden has noted that this terminological instability has implications for Schmitt's discussion of territorial sovereignty in *The Nomos of the Earth*. See: Elden, “Reading Schmitt geopolitically” (2010). Elden correctly notes that Schmitt pays insufficient attention to the conceptual shifts indicated by the different terms employed at different times and in different contexts across modern European history.

<sup>556</sup> Schmitt, *The Nomos*, 44.

political order that rested upon it. As he noted, “appropriating land and founding cities always is associated with an initial measurement and distribution of usable soil, which produces a primary criterion embodying all subsequent criteria.”<sup>557</sup> Thus, Schmitt argued that all subsequent order emerged from the primary division of land.

The land did not only provide a material foundation for order but also represented a fundamental source of juridical meaning in human existence. “Every ontonomous and ontological judgement,” Schmitt wrote, “derives from the land.”<sup>558</sup> “In mythical language,” he noted, “the earth became known as the mother of law” and signified a “three-fold root of law and justice.”<sup>559</sup> In this mythical frame “the earth is bound to law in three ways. She contains law within herself, as a reward of labour; she manifests law upon herself, as fixed boundaries; and she sustains law above herself, as a public sign of order.”<sup>560</sup> The crucial point for Schmitt was that the land, insofar as it was divisible, had an inherently representational quality that allowed order to become visible in fixed lines and clear demarcations. Thus, the ‘*terrestrial fundament*’ contained within it the capacity to ground order precisely because it could be carved into a representational form by the appropriation and division of the land.

In contrast to the land, Schmitt argued that, “the sea knows no such apparent unity of space and law, order and orientation.”<sup>561</sup> Unlike the land, the sea lacked an inherently representational quality. It could not be divided nor bear fixed lines and hence, in Schmitt’s terms, provided no *ground* order. “On the sea,” Schmitt noted, “fields cannot be planted and firm lines cannot be engraved.”<sup>562</sup> The sea, Schmitt argued “has no *character*, in the original sense of the word, which comes from the Greek *charaessein*, meaning to engrave, to scratch, to imprint.”<sup>563</sup> “On the waves,” Schmitt wrote, “there is

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<sup>557</sup> Ibid, 45. Schmitt argued further that, ‘all subsequent legal relations to the soil ... and all institutions of the walled city or of a new colony are determined by [the] primary criterion’ of land appropriation (Ibid, 45). I will return below to the centrality of land appropriation in Schmitt’s account of *nomos*.

<sup>558</sup> Ibid, 45.

<sup>559</sup> Ibid, 42.

<sup>560</sup> Ibid, 42. This echoes Schmitt’s claim that the institution of *nomos* is defined by the three-fold relationship between appropriation, distribution and production that I will discuss below.

<sup>561</sup> Ibid, 42.

<sup>562</sup> Ibid, 42.

<sup>563</sup> Ibid, 43.

nothing but waves.”<sup>564</sup> In the traditions of pre-modern law, the sea was considered a lawless ‘free’ space where “there were no limits, no boundaries, no consecrated sites, no sacred orientations, no law, and no property.”<sup>565</sup> “Land and sea were completely different orders,” Schmitt claimed.<sup>566</sup> On land there was law. “On the sea, there was no law.”<sup>567</sup> However, Schmitt noted that since the emergence of global maritime empires, law had been extended into the ‘free’ space of the sea in radical acts of *sea-appropriation*. Hence, the sea had become part of the global *nomos* of the earth alongside the land. This *nomos*, that had emerged in the modern period, rested not only on the land but rather “on a particular relation between firm land and free sea.”<sup>568</sup> Thus, in Schmitt’s view the sea could become part of spatial order as long as it maintained a relation to the foundational element of the earth, which remained primary.

Writing in 1950, Schmitt acknowledged that, “it is conceivable that the air will envelop the sea and perhaps even the earth, and that men will transform their planet into a combination of produce warehouse and aircraft carrier.”<sup>569</sup> Hence, he clearly saw that the emergence of air power might eclipse the existing foundations of spatial order in the relationship between land and sea. “If the domination of airspace is added as a third dimension” to land and sea, Schmitt argued, “still other new spatial orders [will] arise.”<sup>570</sup> Although such a transformation might alter the relationship between order and orientation, law and space, it would not erase the foundational importance of land. Hence, Schmitt argued that even after the advent of air-war and the development of new technologies of communication and transport an “approach to the study of international law based on the concept of land-appropriation is still meaningful.”<sup>571</sup> Indeed, one of the major flaws in existing approaches to international law was the fact that it sought to elide the fundamental importance of land-appropriation and the division of the earth. By

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<sup>564</sup> Ibid, 43.

<sup>565</sup> Ibid, 43

<sup>566</sup> Ibid, 353.

<sup>567</sup> Ibid, 44.

<sup>568</sup> Ibid, 48.

<sup>569</sup> Ibid, 49. Schmitt argued that if this were to occur new “amity lines will be drawn, beyond which atomic weapons and hydrogen bombs will fall,” although he still clung “to the hope that we will find the normative order of the earth, and that the peacemakers will inherit the earth” (Ibid, 49).

<sup>570</sup> Ibid, 80.

<sup>571</sup> Ibid, 80.

employing the concept of *nomos* Schmitt therefore intended to bring jurisprudence back down to earth. Against the groundless abstractions of legal positivism and the boundary-defying dimensions of air power, he sought to reassert the fundamental question of concrete spatial foundations and the primary division of the land.

#### **(iv) *Land-Appropriation***

The act of land-appropriation or “*Landnahme*” is central to Schmitt’s account of *nomos*.<sup>572</sup> For him land-appropriation was the most fundamental process in establishing law, the “primeval act in founding law.”<sup>573</sup> It was, for Schmitt, the “archetype of a constitutive legal process.”<sup>574</sup> As the fundamental constitutive act of a spatial order, it created “the primary legal title that underlies all subsequent law.”<sup>575</sup> The act of appropriating land “creates,” Schmitt wrote, “the most radical title, in the full and comprehensive sense of the term *radical title*.”<sup>576</sup> Hence, if all order rested on spatial order, all spatial order rested in land-appropriation. All further forms of law and order were derived from this foundational “process of order and orientation.”<sup>577</sup> Thus, the act of land-appropriation needed to be distinguished from other forms of law. “In the strictest sense, law is mediation,” but *nomos*, understood as land-appropriation, “is precisely the full immediacy of a legal power not mediated by laws: it is a constitutive historical event – an act of *legitimacy*, whereby the legality of a mere law first is made meaningful.”<sup>578</sup>

It was important that the historical reality of these acts of legitimacy was recognized. Land-appropriation should not be thought of “as a purely intellectual construct,” but should rather be considered “a legal fact, to be a great historical event, even if, historically, land-appropriation proceeded rather tumultuously.”<sup>579</sup> Indeed, “in some

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<sup>572</sup> Ibid, 80.

<sup>573</sup> Ibid, 45.

<sup>574</sup> Ibid, 47.

<sup>575</sup> Ibid, 46.

<sup>576</sup> Ibid, 47. Schmitt makes frequent use of the term ‘radical title’, derived from the English philosopher John Locke, throughout his discussion of land-appropriation.

<sup>577</sup> Ibid, 80. “At this origin of land-appropriation, law and order are one: where order and orientation coincide, they cannot be separated” (Ibid, 81).

<sup>578</sup> Ibid, 73.

<sup>579</sup> Ibid, 46.

form, the constitutive process of land appropriation is found at the beginning of the history of every settled people, every commonwealth, every empire. This is true as well for the beginning of every historical epoch.”<sup>580</sup> Schmitt claimed that “Not only logically, but also historically, land-appropriation precedes the order that follows from it ... It is the reproductive root in the normative order of history.”<sup>581</sup> The statement “in the beginning was the fence,” therefore does not merely point to the mythical foundations of law but the real historical processes through which order is founded.<sup>582</sup> “Every new age and every new epoch in the coexistence of peoples, empires, and countries, of rulers and power formations of every sort, is founded on new spatial divisions, new enclosures, and new spatial orders of the earth.”<sup>583</sup> Schmitt argued that “the history of colonialism in its entirety is ... a history of spatially determined processes of settlement in which order and orientation are combined.”<sup>584</sup>

The historically determining process of land-appropriation “grounds law in two directions: internally and externally.”<sup>585</sup> Internally, the act of land-appropriation established the fundamental division of space on which all forms of ownership and property relations of the land-appropriating group were based. Every form of property “remains dependent on the common land-appropriation and derives legally from the common primeval act.”<sup>586</sup> “To this extent,” Schmitt wrote, “every land-appropriation internally creates a kind of *supreme ownership* of the community as a whole.”<sup>587</sup> Thus, whilst any spatial order necessarily included some degree of internal distribution of space, Schmitt argued that this division was “only a consequence of land-appropriation; ... the effluence and effect of the radical title” established by the land appropriation.<sup>588</sup>

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<sup>580</sup> Ibid, 48.

<sup>581</sup> Ibid, 48.

<sup>582</sup> Ibid, 74. Schmitt takes this statement from the German linguist Jost Trier. Schmitt approvingly quotes Trier’s claim that “the enclosure gave birth to the shrine by removing it from the ordinary, placing it under its own laws, and entrusting it to the divine” Ibid, 74. This seems to have had an influence on Schmitt’s conception of land-appropriation as the naming of a sacred space I will address below. Schmitt builds on Trier’s work in his claim that, “law and peace originally rested on *enclosure in the spatial sense*” (Ibid, 74).

<sup>583</sup> Ibid, 79.

<sup>584</sup> Ibid, 81.

<sup>585</sup> Ibid, 45.

<sup>586</sup> Ibid, 45.

<sup>587</sup> Ibid, 45.

<sup>588</sup> Ibid, 81.

Externally, the land-appropriating group is confronted with other similar land-appropriating powers. In this case, Schmitt argued, land-appropriation represented a legal title in international law in one of two ways. Either land “is extracted from a space that until then had been considered to be free” or land “is extracted from a formerly recognized owner and master.”<sup>589</sup> However, although every *nomos* depended on land-appropriation, “not every land-appropriation, not every alteration of borders, not every founding of a new colony creates revolutionary change in terms of international law, i.e. is a process that constitutes a new *nomos*.”<sup>590</sup> Whether a land-appropriation constituted a new *nomos* depended on “whether there is free land to be had, and whether there are accepted forms for the acquisition of non-free land.”<sup>591</sup> When there was neither ‘free’ land nor accepted ways for land to be legally acquired, then land-appropriation would neither found a new *nomos* nor take place within the existing *nomos*. Such acts would thus not produce spatial order but rather spatial disorder.

Finally, Schmitt argued that there was a fundamental relationship between land-appropriation and the act of naming. He claimed his concern was with “the legal-historical meaning of the relation between *Nahme* and name, power and name-giving.”<sup>592</sup> Although Schmitt leaves the question of whether there is an etymological connection between the words *Nahme* and name open it is clear that he employs the word *landnahme* for land-appropriation precisely to imply this connection.<sup>593</sup> He argued that, “a land-

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<sup>589</sup> Ibid, 45-46. Schmitt does, however, immediately qualify this by introducing a further distinction between forms of land appropriation. “There are” Schmitt repeats “two different types of land-appropriations: those that proceed within a given order of international law, which readily receive the recognition of other peoples, and others, which uproot an existing spatial order and establish a new *nomos* of the whole spatial sphere of neighbouring peoples” (Ibid, 82). Technically, in Schmitt’s terms, both forms of land-appropriation that extract land previously considered ‘free’ and those that extract land from a previous owner, could take place within an existing system of international law and receive legal recognition and on the other hand found a new *nomos* of the earth. Thus, there is a degree of slippage between these two sets of land-appropriations that seems to indicate Schmitt had not fully worked the relationship between these various concepts of land-appropriation and how they related to the historical case of European colonialism.

<sup>590</sup> Ibid, 82.

<sup>591</sup> Ibid, 81.

<sup>592</sup> Ibid, 348.

<sup>593</sup> Indeed, in one of the most peculiar and troubling passages of the corollary ‘*Nomos – Nahme – Name*’, published in 1957, Schmitt draws the connection between a woman taking the name of her husband in marriage to the naming of land in land-appropriation precisely on the basis of the relationship between *Nahme* and naming.

appropriation is constituted only if the appropriator is able to give the land a name.”<sup>594</sup> This was a crucial aspect of land-appropriation because “in a name and in name-giving a third orientation of power takes effect; the tendency to visibility, publicity, and ceremony.”<sup>595</sup> This was particularly important for Schmitt as he claimed a name thus “overpowers the satanic attempt to keep power invisible, anonymous, and secret.”<sup>596</sup> This seems to indicate that land-appropriation not only made order visible performing the representative task of political form but further was “able to make *Nahme* a sacred act.”<sup>597</sup> Land-appropriation, it seemed, not only produced an ordered space but a sacred space that provided orientation in a struggle against invisible satanic forces. I will return to discuss the significance of this theological dimension of Schmitt’s conception of spatial division in the final chapter.

#### **(v) *Appropriation, Distribution, Production***

If land-appropriation was the foundational act upon which a *nomos* was grounded, it was not sufficient alone to explain the nature of spatial order. Rather, turning once again to the etymology of the word *nomos*, Schmitt argued that spatial order was defined in fact by three “primal processes of human history,” appropriation, distribution and production.<sup>598</sup> Each of these processes was “part and parcel of the history of legal and social orders.”<sup>599</sup> He located all three meanings in the Greek root of *nomos*, the verb *nemein*. “*Nomos*,” Schmitt noted, “is the *nomen actionis* of *nemein* [to appropriate].”<sup>600</sup> Hence, the first meaning of *nomos* for Schmitt was appropriation. “The second meaning of *nemein* is *teilen* [to divide and distribute].”<sup>601</sup> *Nomos* therefore indicated a

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<sup>594</sup> Ibid, 348.

<sup>595</sup> Ibid, 349. The reference here to a third tendency of power relates to Schmitt’s reading of the German Jesuit theologian P. Erich Przywara who argued that power tended toward secrecy, centrality and visibility.

<sup>596</sup> Ibid, 349.

<sup>597</sup> Ibid, 348. Schmitt noted that, “*nomos* can be described as a wall, because, like a wall, it, too, is based on sacred orientations” (Ibid, 70). For a deeper examination of the act of land-appropriation as a sacred act see Mika Ojakangas, ‘Carl Schmitt and the Sacred Origins of Law’ in *Telos*, 147 (2009), 34-54.

<sup>598</sup> Schmitt, *The Nomos*, 352.

<sup>599</sup> Ibid, 327.

<sup>600</sup> Ibid, 345.

<sup>601</sup> Ibid, 326.

“fundamental process of division and distribution, of *divisio primaeva*.”<sup>602</sup> Finally, Schmitt noted that the “third meaning of *nemein* is *weiden* [literally, pasturage] ... the productive work that normally occurs with ownership.”<sup>603</sup> Hence, a *nomos* order was constituted through a sequence of processes from the appropriation of land, its division and distribution into a certain set of property relations and the productive use of this property. Therefore a *nomos* did not only concern the foundations of legal order but addressed “the basic questions of every social and economic order.”<sup>604</sup>

The problem for Schmitt was that the sequence and evaluation of these processes changed in accordance with transformations “in methods of production and manufacture, even changes in the image people have of themselves, of their world, and of their historical situation”<sup>605</sup> These changes had profound effects on how the fundamental questions of social and economic, as well as legal, order were understood. For Schmitt, of course, appropriation came first as it was the most fundamental element of any order. This was a fact he considered to have been forgotten in modern political and legal thought, which operated on the basis that “no longer is anything taken, but only divided and developed.”<sup>606</sup> Schmitt claimed that “doctrinaire thinkers” had ingeniously “shifted attention away from appropriation and distribution to production.”<sup>607</sup> He argued that there was “something utopian about constructing social and economic systems in terms of mere production.”<sup>608</sup> This was a utopian belief that Schmitt considered characteristic of both liberal and socialist thought. Yet “precisely because socialism raised the question of the social order as one of division and distribution, it once again raised the old problem, of the sequence and evaluation of the three original processes of social and economic life.”<sup>609</sup>

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<sup>602</sup> Ibid, 326.

<sup>603</sup> Ibid, 327.

<sup>604</sup> Ibid, 324.

<sup>605</sup> Ibid, 328.

<sup>606</sup> Ibid, 346. Indeed, Schmitt noted that an unnamed American political scientist had written to him claiming that, “land-appropriation is over and done with” (Ibid, 347).

<sup>607</sup> Ibid, 335.

<sup>608</sup> Ibid, 335.

<sup>609</sup> Ibid, 333. One exception here is Marx, whom Schmitt considers a thinker particularly attuned to the nature of modern appropriation. In Schmitt’s reading Marx’s thought did not focus on distribution, as did that of many socialists, but rather on a powerful new form of appropriation, what Schmitt called “industry-

It was crucial, in Schmitt's view, to return to address the sequence of appropriation, distribution and production, as the primacy of appropriation could again be brought to light. That the industrial powers of East and West both argued for the primacy of production not only led to a dangerous utopian belief that mankind could give and divide without taking, but concealed continuing appropriations under layers of ideology.<sup>610</sup> This was especially important as far as the question of world unity was concerned. "Has humanity today" Schmitt asked in 1953, "actually 'appropriated' the earth as a unity, so that there is nothing more to be appropriated? Has appropriation really ceased? Is there now only division and distribution? Or does only production remain?"<sup>611</sup> If this was so, then further questions followed: "who is the great appropriator, the great divider and distributor of our planet, the manager and planner of unified world production?"<sup>612</sup> Thus, the supposed eclipse of appropriation in production bore directly on the question of who the decisive subject of global order was. Indeed, the question of appropriation had become "even more serious with the appropriation of [outer] space."<sup>613</sup> "We have no right," Schmitt warned, "to close our eyes to the problem of appropriation, and to refuse to think about any more about it."<sup>614</sup>

#### **(vi) Nomen Actionis: *Groundless Ground***

One crucial aspect of the concept of *nomos* in Schmitt's thought is its strange dual nature. The word indicates at once a verb and a noun. Or rather it is a peculiar type of noun, "a *nomen actionis*, i.e., it indicates an action as a process whose content is defined by the verb."<sup>615</sup> Schmitt thus figures *nomos* as both an act of *ordering* and an institutional *order*.

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appropriation [*Industrie-Nahme*]" (Ibid, 334). Schmitt rather disingenuously uses Lenin's arguments against imperialism to claim that Marx's desire to appropriate property from the appropriators was the strongest, most modern form of imperialism.

<sup>610</sup> "Only a god," Schmitt noted, "can give, divide, and distribute without taking" (Ibid, 345). Hence, in claiming to have reached the stage where production could take place without appropriation mankind was claiming the status of gods in Schmitt's mind.

<sup>611</sup> Ibid, 335.

<sup>612</sup> Ibid, 335.

<sup>613</sup> Ibid, 347.

<sup>614</sup> Ibid, 347.

<sup>615</sup> Ibid, 326.

He uses *nomos* to refer to both the foundational acts of land-appropriation on which order rests and the ‘concrete order’ that emerges from these acts. Hence, by rendering *nomos* a *nomen actionis* Schmitt inscribes indeterminacy into the very foundations of his concept of spatial order. This duality within the concept of *nomos* reflects the deep tension between order and indeterminacy that structures Schmitt’s work as whole.<sup>616</sup> Thus, although the concept of *nomos* represents Schmitt’s core attempt to theorize the ‘concrete’ social, geographic and historical rootedness of order, he nonetheless emphasizes the fact that it ultimately rests upon contingent acts of political power in land-appropriation. In the figure of land-appropriation Schmitt casts the structural tension he located at the heart of political existence between order and indeterminacy in directly spatial terms.<sup>617</sup> On the one hand, Schmitt argues that land-appropriation literally *grounds* order in the earth. On the other hand however, these acts reveal the ultimate *groundlessness* of order, its foundation in contingent processes of *grounding*.<sup>618</sup>

The significance of this tension for Schmitt was that insofar as every spatial order relied upon acts of land-appropriation, it was historically contingent. Precisely for this reason, the concept of *nomos* and the category of land-appropriation had enduring relevance. Thus, whilst Schmitt argued that the “constitutive processes” of land-appropriation “are certainly not everyday occurrences ... neither are they simply matters of bygone times and only of archaeological or antiquarian interest.”<sup>619</sup> Thus, not only could the historical development of spatial order be traced through successive patterns of appropriation, but the end of reigning *nomos* of the earth could also be foreseen. “As long as world history

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<sup>616</sup> For further comment on this structural tension between order and indeterminacy in Schmitt’s thought see Chapter 4. For an account that specifically relates this structural tension to the concept of *nomos* in Schmitt’s work see Rowan, “A New *Nomos* or Post-*Nomos*?” (2010).

<sup>617</sup> Hence, the structure of the ‘founding rupture’ that Ojakangas locates at the heart of Schmitt’s thought can be considered to be eminently spatial. Land-appropriation both marks a rupture that divides space and a new foundation for order. See: Ojakangas, “Carl Schmitt and the Sacred Origins of Law” (2009); and Rowan, “A New *Nomos* or Post-*Nomos*?” (2010)

<sup>618</sup> The metaphors of grounds and groundlessness lie at the core of Canadian philosopher Michael Marder’s recent book on Schmitt. See: Michael Marder, *Groundless Existence: The Political Ontology of Carl Schmitt* (London: Continuum 2010). This text offers perhaps the most rigorous analysis of the ontological elements of Schmitt’s thought to date. One flaw that can be identified in Marder’s analysis is that the importance of spatiality in Schmitt’s thought is downplayed. Regardless, his work deserves further engagement and represents a significant contribution to the debates around the relationship between spatiality and ontology in the German jurist’s corpus.

<sup>619</sup> Schmitt, *The Nomos*, 78.

remains open and fluid,” Schmitt argued, “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.”<sup>620</sup> He wrote *The Nomos of the Earth* in the context of what he considered to be a period of world-historical transition, when the world existed “on the threshold of a new stage of human spatial consciousness and global order.”<sup>621</sup> Although the shape of the new *nomos* of the earth was not yet fully apparent, its contours would take shape from the collapse of the old. It was in fact the attempt to grasp the collapse of the old order of international law that drew Schmitt to the question of the *nomos* of the earth in the first instance. Thus, in order to understand his late spatial thought, it is crucial to first grasp his account of the rise and fall of the Eurocentric global order that lies at the heart of *The Nomos of the Earth*.

#### **(4) *Nomos as Institution: Jus Publicum Europaeum***

##### **(i) *The Eurocentric Earth: The First Global Nomos***

“There had always been some kind of *nomos* of the earth,” Schmitt argued.<sup>622</sup> “In all the ages of mankind, the earth has been appropriated, divided and cultivated.”<sup>623</sup> However, every pre-global *nomos* had been “purely terrestrial” and “every powerful people considered themselves to be the centre of the earth,” to rule over a domicile of peace and freedom beyond which chaos reigned.<sup>624</sup> Each bounded world sought to protect itself from the disorder beyond by building “a fence, a line, a Chinese wall” and marking its limits with mythical concepts like the Pillars of Hercules.<sup>625</sup> “Humanity had” Schmitt noted, “a mythical image of the earth but no scientific understanding of it as a whole.”<sup>626</sup> Because there was no “concept of a planet ... a *jus gentium* [international law] capable of

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<sup>620</sup> Ibid, 78.

<sup>621</sup> Ibid, 48.

<sup>622</sup> Ibid, 351.

<sup>623</sup> Ibid.

<sup>624</sup> Ibid.

<sup>625</sup> Ibid, 352.

<sup>626</sup> Ibid, 50.

encompassing the whole earth and all humanity was impossible.”<sup>627</sup> Thus, while distinct *nomoi* had always existed, there was “no spatial ordering of the earth as a whole, no *nomos* of the earth in the true sense,” before the world emerged as a globe.<sup>628</sup>

This first *nomos* of the earth was eclipsed in the fifteenth and sixteenth century with the European discovery of the New World and the opening of the world’s oceans. Schmitt argued that “no sooner had the contours of the earth emerged as a real globe – not just sensed as myth, but apprehensible as fact and measurable as space – than there arose a wholly new and hitherto unimaginable problem: the spatial ordering of the earth in terms of international law.”<sup>629</sup> “The new global image ... required a new spatial order,” he argued, precisely because “the struggle over the land- and sea-appropriations of the New World began immediately after its discovery.”<sup>630</sup> In other words, a new form of order was needed that was adequate to address the new conflicts that emerged alongside the new spaces. Thus, from the “new planetary consciousness of space” emerged a new *nomos* of the earth, the first spatial order that encompassed the earth as a whole.<sup>631</sup> However, although the new *nomos* of the earth that emerged from the European appropriations of land and sea was global in scope, “Europe was still the centre of the earth.” Thus, the second *nomos* of the earth was both global and Eurocentric. Further, in contrast to the first *nomos* of the earth, the new global order of the earth encompassed not only terrestrial spaces but, for the first time, the world’s oceans. A distinction was made between ‘firm land’ divided into states, colonies, protectorates and spheres of influence, and ‘free sea,’ although this was the first time that the free spaces of the sea had become part of a comprehensive spatial order of the earth. Thus the “main characteristics of this second *nomos* of the earth lay first in its Eurocentric structure and second in that ... it encompassed the oceans.”<sup>632</sup> From this global spatial order emerged the historically unique form of international law that Schmitt argued ordered the world from the sixteenth to the twentieth century, the *jus publicum Europaeum*.

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<sup>627</sup> Ibid.

<sup>628</sup> Ibid, 51.

<sup>629</sup> Ibid, 86.

<sup>630</sup> Ibid.

<sup>631</sup> Ibid.

<sup>632</sup> Ibid, 352.

At the centre of *The Nomos of the Earth* lies an account of the historic rise and fall of the global spatial order that Schmitt claimed had borne the *jus publicum Europaeum*. His periodization of the *jus publicum Europaeum* is slippery, in part perhaps because he attempts to describe gradual processes of emergence and dissolution, but it is most often identified with the period between the sixteenth and twentieth centuries.<sup>633</sup> The tremendous achievement of the *jus publicum Europeaum* was the limitation of war through the division of space. Schmitt argued that, “from the sixteenth century to the end of the nineteenth century, there was real progress, namely a limiting and a bracketing of European wars.”<sup>634</sup> Hence European international law achieved a humanization and a rationalization of warfare, at least in Continental Europe that was “nothing short of a miracle.”<sup>635</sup> This “arose solely,” in Schmitt’s view, “from the emergence of a new spatial order.”<sup>636</sup> More specifically it rested upon two forms of spatial division: one the distinction between Europe and the ‘free’ space of the New World, and the other the distinction between ‘firm land’ and ‘free sea.’ Schmitt’s analysis of the collapse of global spatial order in the twentieth century and the possibilities he considered for a new *nomos* of the earth need to be understood against the background of this bracketing of war in a double division of space.

## **(ii) *Beyond the Line***

Schmitt argued that “the struggle among European powers for land-appropriations made necessary certain divisions and distributions” on which order could be established.<sup>637</sup> In response to this demand, a new form of thinking about international law emerged that Schmitt called “*global linear thinking*.”<sup>638</sup> This was at the most basic level a form of

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<sup>633</sup> At various points Schmitt offers different periodizations, that the *jus publicum Europaeum* lasted “for 400 years,” (Ibid, 49) then “300 years,” (Ibid, 140) and finally, “for more than two centuries” (Ibid, 181). In the 1955 corollary *The New Nomos of the Earth* he offered at least a precise end date claiming that, “the Eurocentric *nomos* of the earth lasted until World War I,” (Ibid, 352) but tendered no such precise start date.

<sup>634</sup> Ibid, 140.

<sup>635</sup> Ibid, 151.

<sup>636</sup> Ibid, 140.

<sup>637</sup> Ibid, 87.

<sup>638</sup> Ibid, 87.

dividing up the lands and seas newly opened by European appropriations with the use of lines that could provide ordering orientations. Schmitt notes that despite the superficial character of ‘global linear thinking’ it managed to nonetheless express the fact that the new spatial order concerned both the planet as a globe, and its ordering through spatial division.<sup>639</sup> The question of drawing global lines “was political from the start” and “could not be dismissed as ‘purely geographical.’”<sup>640</sup> Although Schmitt argued that, as “scientific, mathematical, or technical disciplines, geography and cartography certainly are neutral,” they could, “as every geographer knows,” be instrumentalized in highly political ways.<sup>641</sup> Hence the nature and location of global lines of order was a politically charged question over which there had been historical struggle. Three phases of ‘global linear thinking’ had taken shape since the European appropriations of land and sea in the fifteenth and sixteenth centuries: first was the Spanish-Portuguese *rayas*; followed by the English-French ‘amity-lines’; and finally, America’s unilateral declaration of the Western Hemisphere as its zone of influence.

The important transition in understanding Schmitt’s conception of the *jus publicum Europaeum* took place between the Spanish-Portuguese *rayas* and the English-French ‘amity-lines’.<sup>642</sup> The *rayas* were the first global lines drawn after the European discoveries of the New World and carved the Atlantic and Pacific Oceans into areas of Spanish and Portuguese control. Schmitt understood these lines, passed into law in the Treaty of Tordesillas (1494) and the Treaty of Saragossa (1526), to remain largely within the worldview of the Medieval Christian Empire, as the Roman Pope still acted as a common authority with the ultimate right to recognize the division of the New World. By contrast, the ‘amity-lines’ that appeared in secret verbal clauses of the Treaty of Cateau-Cambrésis in 1559 emerged from the lack of a common authority that could arbitrate

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<sup>639</sup> Interestingly Schmitt here notes here that ‘global linear thinking’ was “conceptually clearer and historically more accurate” than other such designations “such as Friedrich Ratzel’s word ‘hologaic’ [literally, whole earth]” which failed to capture the division of the globe (Ibid, 88). This is one of only two mentions Ratzel receives in *The Nomos of the Earth*, the other concerning the development of the seas as a human ‘space’ (Ibid, 283).

<sup>640</sup> Ibid, 88.

<sup>641</sup> Ibid, 88.

<sup>642</sup> Schmitt attached great significance to the emergence of the Western Hemisphere in the nineteenth century but I will address this below as it concerns the collapse rather than the constitution of the *jus publicum Europaeum*.

between parties of a shared faith. They were “modern ... to the extent that they had replaced the old theories and formulas inherited” from the Medieval Christian world, the product of the competition between Catholic and Protestant powers in Europe.<sup>643</sup> These lines marked the point at which “Europe ended and the ‘New World’ began,” the point at which ‘European public law’ ended.<sup>644</sup> Within the line, Europe was a place of legally bracketed war but “beyond the line,” Schmitt argued, “was an ‘overseas zone in which, for want of any legal limits to war, the law of the stronger applied.’”<sup>645</sup> Through the development of amity lines the European powers constructed a space of freedom ‘beyond the line’, a “conflict zone”<sup>646</sup> where “force could be used freely and ruthlessly.”<sup>647</sup> “Everything” Schmitt noted, “that occurred ‘beyond the line’ remained outside the legal, moral, and political values recognized on this [the European] side of the line.”<sup>648</sup>

The amity lines established in the late sixteenth century thus marked a fundamental distinction between European and non-European spaces with different legal statuses and governed by different rules of war. There were two types of ‘open’ space, two spaces of freedom ‘beyond the line’ in which European powers could act without restraint: the ‘free’ land of the New World and the ‘free sea.’ Both played a role in the construction of the *jus publicum Europaeum* but the essential point for Schmitt was the fundamental distinction the amity lines established between a European space of order defined by legally bracketed war and a disorderly non-European space ‘beyond the line’ where force could be tested freely. He argued that the bracketing of war within Europe was dependent on the emergence of the distinction between European and non-European space marked by the amity lines. As he noted, “the designation of a conflict zone outside Europe

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<sup>643</sup> Ibid, 95. “Geographically,” the amity lines “ran along the equator of the Tropic of Cancer in the south, along a degree of longitude drawn in the Atlantic Ocean through the Canary Islands or the Azores in the west, or a combination of both” (Ibid, 93).

<sup>644</sup> Ibid, 93.

<sup>645</sup> Ibid, 93-94.

<sup>646</sup> Ibid, 95.

<sup>647</sup> Ibid, 94. Interestingly, Schmitt notes that the state of exception in English law “was analogous to the idea of a designated zone of free and empty space,” ‘beyond the line’ (Ibid, 98). This is a rather minor point mentioned only in passing in *The Nomos of the Earth* but something that Giorgio Agamben seized upon in his reading of the spatiality of the exception in *Homo Sacer*. See for example: Agamben, *Homo Sacer*, 36-38.

<sup>648</sup> Schmitt, *The Nomos*, 94.

contributed ... to the bracketing of European wars.”<sup>649</sup> The identification of non-European space ‘beyond the line’ as a free space of competition was thus in Schmitt’s view “a tremendous exoneration of the internal European problematic.”<sup>650</sup>

In Schmitt’s account, therefore, the bracketing of European war rested precisely on the distinction between the interstate order of Continental Europe and ‘free’ spaces of competition ‘beyond the line.’ On the one hand the ‘open spaces’ of the New World and the ‘free sea’ played the role of the constitutive outside of European legal order, confirming its status as a realm of higher order separated from the space of disorder beyond. On the other hand, conflict between European powers could be displaced from European soil into the conflict zone ‘beyond the line.’<sup>651</sup> Hence the bracketing of war in Europe, which Schmitt considered to be the miraculous achievement of the *jus publicum Europaeum*, was dependent on the clear distinction between a European space where the relation between states was governed by international law and non-European spaces where powers were able to exercise force freely without legal constraint. Continental Europe could thus be constituted as a realm of relative depoliticization insofar as it was clearly distinguished from a realm ‘beyond the line’ where the political was unconstrained and *homo homini lupus*.<sup>652</sup>

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<sup>649</sup> Ibid, 97-98. Again Schmitt noted elsewhere in the book that, “the appearance of the vast free spaces and the land-appropriation of a new world made possible a new European international law amongst states” (Ibid, 140).

<sup>650</sup> Ibid, 94. In the foreword to *The Nomos of the Earth* Schmitt talked about powers able to “relieve their struggles” in ‘free’ spaces of competition. It is possible therefore that Schmitt understood the conflict zones ‘beyond the line’ to act as areas where Europe could ‘relieve’ its inner tensions and shed the excess energies of the political.

<sup>651</sup> The zone of conflict ‘beyond the line’ hence allowed conflict to be limited and legally managed within European space as it had been under the Medieval Christian Empire, according to Schmitt’s earlier analysis in *Roman Catholicism and Political Form*. Just as the higher authority of the Catholic Church had allowed antitheses to exist within Europe without all out war between powers, so too the spaces of the New World acted as a way for antitheses within Europe to be managed. The appropriation of the New World thus produced something like a colonial *complexico* that produced a form of mediating order without the need of a higher authority whose legitimacy was based on theological claims.

<sup>652</sup> Schmitt argued that although Hobbes’s state of nature was “a *no man’s land*” that did not mean it existed “*nowhere*.” Rather, Schmitt argued, “Hobbes locates it, among other places, in the New World” (Ibid, 96).

### (iii) *Firm Land & Free Sea*

In Schmitt's account, a balance of powers was able to emerge within Europe because the 'free' space of the New World allowed competition and conflict between European powers to be outsourced to colonial lands 'beyond the line.' However, this balance of power between states within Europe relied on a second foundational spatial distinction – that between land and sea. Hence the *jus publicum Europaeum* was based on a “dual balance,” between the territorial states within Europe, and between land and sea.<sup>653</sup> “The separation of firm land and free sea was,” Schmitt noted, “the basic principle of the *jus publicum Europeum*.”<sup>654</sup> Hence, for Schmitt, land and sea were “divided into *two* separate and distinct global orders within the Eurocentric world order that arose in the 16<sup>th</sup> century.”<sup>655</sup> “From the perspective of the *jus publicum Europeum*,” Schmitt argued that, “all *land* on the earth belonged either to European states or to those of equal standing, or it was land free to be occupied, i.e., potential state territory, or potential colonies.”<sup>656</sup> By contrast, “the *sea* remained outside any specific state spatial order: it was neither state or colonial territory nor occupied space.”<sup>657</sup> The sea “was free of any type of state spatial sovereignty.”<sup>658</sup> Each realm had “its own concepts of enemy, war, booty, and freedom” and hence, “land and sea confronted each other as two separate worlds.”<sup>659</sup> However, Schmitt argued that it was precisely “the antithesis of *land* and *sea*” that provided “the universal foundation of global international law.”<sup>660</sup> “The total decision for international law in the 16<sup>th</sup> and 17<sup>th</sup> centuries culminated in a balance of land and sea – in the opposition of two orders that determined the *nomos* of the earth precisely in their mutual tension.”<sup>661</sup>

Schmitt argued that the key to balancing the tensions between land and sea was England, which from the seventeenth century emerged as the great European maritime power.

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<sup>653</sup> Ibid, 352.

<sup>654</sup> Ibid, 183.

<sup>655</sup> Ibid, 172.

<sup>656</sup> Ibid.

<sup>657</sup> Ibid.

<sup>658</sup> Ibid.

<sup>659</sup> Ibid.

<sup>660</sup> Ibid.

<sup>661</sup> Ibid, 173.

“The island of England,” Schmitt wrote, was “the connecting link between the different orders of land and sea.”<sup>662</sup> Through its dominance of the seas England was able to institute a “sovereign of the balance of land and sea.”<sup>663</sup> England was able to assume this “world-historical intermediary position” because it alone had taken the “step from a medieval feudal and terrestrial existence to a purely maritime existence.”<sup>664</sup> By completing the “transition to the maritime side of the world” England was able to prevent a “maritime equilibrium of the sea powers” developing and gained sole dominance of the maritime side of the *nomos* of the earth.<sup>665</sup> England became “the representative of the universal maritime sphere of a Eurocentric global order, the guardian of the other side of the *jus publicum Europeum*.”<sup>666</sup> From its position of maritime dominance, England at once “balanced the whole terrestrial world” and “determined the *nomos* of the earth from the sea.”<sup>667</sup> England hence occupied a unique position of power in Schmitt’s view. Not only was it the dominant global sea power but also the principal force upholding the balance between land and sea on which the internal equilibrium of Continental European land powers rested. England had “the decisive spatial perspective” without which “there would have been no European international law.”<sup>668</sup> Schmitt thus regarded the fate of the *jus publicum Europaeum*, and specifically the bracketing of war in Europe, to rest to a large extent with the English power to dominate the seas and balance the relations between land and sea.

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<sup>662</sup> Ibid, 173. Schmitt pays little heed to the historical development of the internal politics of the British Isles and consistently refers to Great Britain simply as England. Further, he identifies in numerous places England as an island rather than simply the dominant country or crown within the complex and shifting relations between the countries of the British Isles. However, as early as 1938 in *The Leviathan in the State Theory of Thomas Hobbes* Schmitt had noted the significance of the fact that England did not adopt the form of centralized state that emerged in Continental Europe in the seventeenth century. The form of state that developed in England was, in Schmitt’s mind, defined rather by a more open legal system defined by the relations to the ‘free sea’ and ‘free trade.’

<sup>663</sup> Ibid, 173.

<sup>664</sup> Ibid, 173.

<sup>665</sup> Ibid, 173.

<sup>666</sup> Ibid, 173.

<sup>667</sup> Ibid, 173.

<sup>668</sup> Ibid, 145.

#### **(iv) Bracketing of War**

For Schmitt, the key achievement of the *jus publicum Europeum* had been to create the conditions for “the rationalization and humanization of war, i.e., the possibility of bracketing war in international law.”<sup>669</sup> Schmitt regarded it to be an “astounding fact” that European international law had achieved a bracketing of war for several centuries.<sup>670</sup> Schmitt noted that “this was achieved by limiting war to a military relation between states,” at least in the space of Continental Europe.<sup>671</sup> Hence, Schmitt regarded the modern secular territorial state that emerged in Europe during the seventeenth century to be the agent of this bracketing of war. The state, Schmitt noted, “constituted the only ordering institution of this time” and hence was the core of the *nomos* of the *jus publicum Europaeum*.<sup>672</sup> However, he noted that such an inter-state legal order in Europe was only possible “against the background of the immense open spaces of a particular type of freedom.”<sup>673</sup> The balance of power between states within Europe that allowed war to be rationalized and humanized in law fundamentally rested upon the global spatial: on the one hand the distinction between land and sea and on the other that between Europe and the New World.

This spatial division of the earth allowed the European states to collectively uphold a “special territorial status in international law.”<sup>674</sup> Hence, Europe could be considered a realm of peace and order distinct from the disorderly ‘free’ spaces ‘beyond the line.’ Internally Europe was divided into a number of territorially bounded sovereign states that recognized each other as equals “living on common European soil and belonging to the

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<sup>669</sup> Ibid, 141.

<sup>670</sup> Ibid, 148. Again Schmitt’s periodization of the successful bracketing of war is slippery. He at times notes that war was bracketed for ‘200 years’ and sometimes for ‘400 years’. However, I will focus here on the conceptual framework rather than test the historical details of Schmitt’s account of the *jus publicum Europaeum*.

<sup>671</sup> Ibid, 100.

<sup>672</sup> Ibid, 148. Schmitt noted here that the word ‘state’ referred to the concrete historical institution that characterized the period “from about 1492 to 1890” (Ibid, 148). Hence, he locates the eclipse of the state earlier than he did in his pre-war work. It is perhaps best to understand this periodization as marking the beginning of the state’s decline as the ordering institution of the global spatial order.

<sup>673</sup> Ibid, 148.

<sup>674</sup> Ibid, 148.

same European ‘family.’<sup>675</sup> This mutual recognition allowed war between European states to become “somewhat analogous to a duel, i.e., a conflict of arms between territorially distinct *personae morales* [moral persons], who contended with each other on the basis of the *jus publicum Europaeum*, because European soil had been divided under their aegis.”<sup>676</sup> The warring parties “both recognized each other as states” with the “same political character and the same rights.”<sup>677</sup> “The equality of sovereigns made them equally legal partners in war” and hence they became collectively invested in its legal limitation. As a result war became solely an affair of states, a “purely state war,” that was conducted within formal constraints.<sup>678</sup> This “war in form” created the conditions, Schmitt claimed, for the “strongest possible rationalization and humanization of war”<sup>679</sup> ensured that Europe constituted as “a realm of relative reason.”<sup>680</sup>

Schmitt argued that the bracketing of war in the *jus publicum Europaeum* turned on the fact that European states recognized each other as *justis hostes*, just enemies “both legally and morally on the same level.”<sup>681</sup> By recognizing each other as equals European states produced “a concept of enemy able to assume legal form.”<sup>682</sup> This had been made possible, in Schmitt’s view, because “the problem of just war had been divorced from the problem of *justa causa*, and had become determined by formal juridical categories.”<sup>683</sup> The justice of war was no longer “based on the conformity with the content of theological, moral, or juridical norms,” Schmitt noted “but rather on the institutional and

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<sup>675</sup> Ibid, 41. Interestingly Schmitt notes that in contrast to the amity lines that marked the cleave between European and non-European space “the border between two territorial states of modern European international law did not constitute an exclusion, but rather a mutual recognition, above all of the fact that neighbouring soil beyond the border was sovereign territory” (Ibid, 52).

<sup>676</sup> Ibid, 141-142. Schmitt lays great emphasis on the importance of the ‘personification’ of European states noting that the balance of powers worked fundamentally on the basis of an “international personal analogy” (Ibid, 146). Indeed, Schmitt notes that “after 1648, with the Peace of Westphalia, the practice of political relations also was conceived of, in some measure, in terms of such constructions” (Ibid, 145). Hence, Schmitt’s account of the *jus publicum Europaeum* shares some degree of similarity with the standard account of ‘Westphalia’ in International Relations theory.

<sup>677</sup> Ibid, 142.

<sup>678</sup> Ibid, 141.

<sup>679</sup> Ibid, 141.

<sup>680</sup> Ibid, 142.

<sup>681</sup> Ibid, 147

<sup>682</sup> Ibid, 142.

<sup>683</sup> Ibid, 141.

structural equality of political forms.”<sup>684</sup> In other words, Schmitt argued that by removing the question of just cause a new concept of just enemy could be recognized as the regulative basis of wars between European states.

Schmitt argued that a series of important distinctions followed from this concept of *justus hostis* on the basis of which war could be legally formalized and hence bracketed. Firstly, *Justus hostis* made it possible “to distinguish an enemy from a criminal.”<sup>685</sup> European states could recognize each other as *justi hostes* and not as criminals who needed to be punished. Between such equals who regarded each other as just enemies a “non-discriminatory concept of war” was possible.<sup>686</sup> As Schmitt noted, “even if one accepts that ‘man is a wolf among men’ in the *bellum omnium contra omnes* [war of everyone against everyone] this has no discriminatory meaning, because also in the state of nature none of the combatants has the right to suspend equality or claim that only he is human and that his opponent is nothing but a wolf.”<sup>687</sup> Secondly, and as a result, war could be sharply distinguished from peace. War with a legal and moral equal did not have to end with the enemy being vanquished or annihilated but “could be terminated with a peace treaty.”<sup>688</sup> Thirdly, the concept of *Justus hostis* allowed combatants and non-combatants to be distinguished in two ways. On the one hand, wars were conducted “only between the armies of European states” rather than between civilian populations, so combatants and civilians could be differentiated.<sup>689</sup> On the other hand, Schmitt argued it “created the possibility of neutrality” as states involved in the conflict, and third parties who were not, could likewise be distinguished.<sup>690</sup> Hence, in Schmitt’s view, the concept of the *Justus hostis* allowed European ‘war in form’ to distinguish between enemies and criminals, war and peace, combatants and civilians, and warring and neutral parties. From these distinctions arose that “marvellous product of human reason,” the bracketed warfare of the *jus publicum Europaeum*.<sup>691</sup>

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<sup>684</sup> Ibid, 143.

<sup>685</sup> Ibid, 142.

<sup>686</sup> Ibid, 147. As Schmitt noted, the enemy was no longer someone “who must be annihilated” (Ibid, 142).

<sup>687</sup> Ibid, 147.

<sup>688</sup> Ibid, 148.

<sup>689</sup> Ibid, 353.

<sup>690</sup> Ibid, 142.

<sup>691</sup> Ibid, 151.

## (5) *Collapsing Nomos: Spatial Chaos*

Despite its endurance across several centuries, the *jus publicum Europaeum* remained nonetheless a fragile order. In the first instance, it rested on a precarious balance between two spatial divisions: between Europe and the lands ‘beyond the line,’ and between land and sea on the other. These spatial distinctions were increasingly challenged by a combination of technological development and the self-assertion of new powers beyond Europe. Secondly, the principal achievement of the *jus publicum Europeum*, the bracketing of war, only extended as far as the boundaries of Continental Europe and relied upon a concept of war increasingly undercut by the neutralizing tendencies of modern European thought. As the nineteenth century led into the twentieth these tendencies had begun to eat away at the basis of European international law and unravel the *nomos* of the earth. One crucial aspect of *The Nomos of the Earth* was Schmitt’s attempt to grasp these processes of world-historical dissolution. If his pre-war work had examined the crisis of the modern European state, his 1950 masterwork sought to contextualize this crisis in a wider collapse of the Eurocentric spatial order.

*The Nomos of the Earth* offers a critical analysis of the factors contributing to the collapse of the *jus publicum Europeum* at the start of the twentieth century. Schmitt provides a sweeping account of the convulsions of global politics and a rigorous dissection of the subtle shifts they effected in conceptions of international law from the late nineteenth to the mid twentieth centuries. Although his analysis of “world-political development” during this period is too rich to examine in its entirety here, the dominant factors ranged against the integrity of the *jus publicum Europaeum* can be identified.<sup>692</sup> His account of the collapsing *nomos* highlighted three core shifts that I will examine below: the collapse of the Eurocentric spatial order through the ‘relativization of Europe’ and the rise of U.S. power; the emergence of a discriminatory concept of war; and finally, the development of modern technologies of war that intensified the first two tendencies.

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<sup>692</sup> Ibid, 225-226.

### **(i) *The Eclipse of Europe***

Schmitt argued that by the early years of the twentieth century Europe had been eclipsed as the centre of global power relations. This had universal repercussions in Schmitt's mind precisely because the *jus publicum Europaeum* had been a Eurocentric global order centred upon the special status of Europe in international law. For Schmitt, this "relativization of Europe" spelled the end of the *nomos* of the earth as it dissolved the foundational distinction between European and non-European space on which global spatial order rested.<sup>693</sup> Although he argued that this process was gradual and came about through a complex matrix of factors Schmitt identified two principle causes, one emanating from within Europe and the other from beyond Europe: the failure of European jurisprudence to understand the concrete spatial basis of international law and the rise of the United States as a global power.

Firstly, Schmitt argued that from the late nineteenth century European legal thought increasingly lost sense of Europe's special spatial status within international law and overlooked the concrete spatial foundations of global order. This was a symptom of the growing influence of positivism in jurisprudence that Schmitt had critiqued within the sphere of domestic state law in the 1920s and 1930s. Building on his pre-war critique of positivist normativism, Schmitt argued that "European international law lost any sense of the spatial structure of a concrete order" and had become solely concerned with abstract systems of norms.<sup>694</sup> This form of legal thought focused on norms was inherently 'spaceless' and undermined the conception of Europe as a space defined by a distinct legal system. Thus European juridical thought at the beginning of the twentieth century was characterized by "spacelessness of a general universalism" and completely unable to grasp the concrete spatial foundations of international law.<sup>695</sup> Insofar as legal positivism was unable to grasp the *nomos* of the earth, juridical thought fell into a deep disorientation. Schmitt argued that European jurisprudence was not only producing judgments that fell into deep contradiction with its own foundations but was

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<sup>693</sup> Ibid, 217.

<sup>694</sup> Ibid, 220.

<sup>695</sup> Ibid, 230.

systematically excluding all foundational questions of political, economic and spatial basis of order from legal thought as “unjuridical.”<sup>696</sup>

Schmitt argued that the influence of positivism in legal thinking directly undermined the spatial distinction between Europe and the ‘free’ space ‘beyond the line’ as a growing number of cases arose in which European and colonial lands were given “territorial parity” in law by European jurists.<sup>697</sup> This fundamentally undermined the Eurocentric nature of the global spatial order by removing the legal distinction between European and non-European space on which the *jus publicum Europaeum* was based. Such cases were marked by a failure to understand the “different soils statuses” that underpinned the spatial order of the earth.<sup>698</sup> European international law was dissolving its own foundations by appealing to universal and abstract norms that made no reference to their spatially concrete situatedness. Schmitt noted that this was evident between 1890 and 1918 in the shift from a specifically European international law to a form of ‘international law’ understood to apply everywhere in the same way. The ‘spaceless universalism’ of this international law ate away at the spatial distinction upon which the specifically European international law of the *jus publicum Europaeum* had rested.

However, if Schmitt located the decline of the Eurocentric *nomos* partly in the universalization and abstraction of European jurisprudence, a much more profound challenge emerged from outside Europe in the form of new global powers that challenged the Eurocentric division of the world. Although Schmitt focuses some attention on the rise of Japanese power in Asia the main focus of his analysis and critique is the rise of the United States to global eminence. Schmitt argued that by declaring the ‘Western Hemisphere’ its sphere of interest, the United States presented a challenge to spatial order of the *jus publicum Europaeum*, the first “counterattack of the New World against the Old.”<sup>699</sup> The United State’s unilateral declaration of the Monroe Doctrine in 1823 established a third form of global line (following the European *rayas* and amity lines)

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<sup>696</sup> Ibid, 239.

<sup>697</sup> Ibid, 218.

<sup>698</sup> Ibid, 221.

<sup>699</sup> Ibid, 99.

separating the space of the New World from European intervention.<sup>700</sup> The Monroe Doctrine therefore produced a new continental sphere of international law that dissolved the distinction between ‘Old Europe’ and the New World that had provided the foundations for the *jus publicum Europaeum*. Further, Schmitt noted that although the Monroe Doctrine was declared unilaterally, it became key to the conduct of United States foreign policy as it was signed into bilateral treaties with other states in the Western Hemisphere, giving the U.S. extensive rights to intervention. Schmitt argued that these intervention treaties gave the United States ultimate sovereignty over the internal affairs of those states in its sphere of influence. In this continental sphere of influence the United States occupied a strange position of ‘absent presence’ within other states, or as Schmitt wrote, “a mixture of absence in principle and presence in practice.”<sup>701</sup> Whilst such intervention treaties respected the territorial integrity of other states, in Schmitt’s view, they ‘hollowed out’ the substance of their sovereignty by ceding it to the U.S. Hence the Monroe Doctrine was both the recognition and the legitimation of the increased “spatial sovereignty” of the U.S. in the Western Hemisphere.<sup>702</sup>

Schmitt noted that the application of the Monroe Doctrine was steadily extended during the early part of the twentieth century as the United States increasingly moved from an isolationist to an intervention approach to global affairs. Hence, Schmitt argued, that whilst the Monroe Doctrine had originally extended the U.S.’s “spatial sovereignty” to the continental space of Western Hemisphere, it gradually became the grounds for a “pan-interventionism” that was global in scope.<sup>703</sup> Schmitt argued that American involvement in the First World War and post-war legal settlement in Europe spread the ‘absent-present’ power of the United States into European affairs, ultimately signalling the complete eclipse of Continental Europe as a specific sphere of international law. When confined to the Western Hemisphere the Monroe Doctrine had originally had the potential to provide a new form of spatial order in Schmitt’s mind. However, as the

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<sup>700</sup> Schmitt had already dwelt extensively on the Monroe Doctrine in several articles dating from the 1930s. I will examine these in the next chapter.

<sup>701</sup> Ibid, 217.

<sup>702</sup> Ibid, 253.

<sup>703</sup> Carl Schmitt, “The *Großraum* Order of International Law with a Ban on Intervention by Spatially Foreign Powers: A Contribution to the Concept of Reich in International Law” in *Writings on War*, ed., Timothy Nunan (Cambridge: Polity Press, 2011), 90.

means by which the ‘pan-interventionist’ expansion of the United States was legitimized, it produced only a form of “spatial chaos.”<sup>704</sup> Schmitt argued that the League of Nations founded in 1919 gave perfect expression to such a ‘spatial chaos’. On the one hand the ‘Geneva League’ was based on the idea of a universal international law that applied equally across the globe and gave legal parity to powerful European states and relatively marginal former colonies alike. On the other hand, the United States, the world’s dominant “spatial power,” was not a signatory and operated by proxy through the supposedly independent states under its sphere of influence in the Western Hemisphere.<sup>705</sup> Thus the rise of U.S. power did not only dissolve the formerly core distinction between European and non-European space but provided no firm spatial distinction on which a new *nomos* could be grounded.

## **(ii) Discriminatory War**

The core achievement of the *jus publicum Europeum*, in Schmitt’s account, had been the bracketing of war within Continental Europe. The fundamental division between European and non-European space had allowed Continental Europe to become a realm of relative order, characterized by ‘war in form’ between sovereign states that recognized each other as equals. Schmitt argued that the First World War revealed this bracketing of war to have definitely collapsed along with the spatial ordering of the earth. However, Schmitt argued that what emerged in the aftermath of this total war was not an attempt to establish a new spatial balance between states and a new bracketing of war but rather a new concept of war that made this ever more unlikely. In contrast to the non-discriminatory concept of war that created the conditions for its rationalization and humanization in the *jus publicum Europeum*, a new discriminatory concept of war appeared. If the old European international law had managed to replace a notion of just war with a concept of just enemy, Schmitt argued that the laws of war that emerged in the wake of the First World War reversed this process. A new concept of just war appeared and along with it a concept of an unjust enemy. This new concept of the enemy dissolved the grounds on which all the distinctions through which war had been limited in the *jus*

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<sup>704</sup> Schmitt, *The Nomos*, 246.

<sup>705</sup> *Ibid*, 245.

*publicum Europeaum* had been based. Rather than provide a structure for a new bracketing of war, the international legal frameworks that emerged after Versailles allowed for its escalation.

Schmitt argued that the new discriminatory concept of war turned on the criminalization of ‘aggressive’ war had progressively come to dominate international legal thinking between 1919 and 1939. He tracked this new criminalization of ‘wars of aggression’ from its first appearance in the so called ‘war guilt’ clauses of the 1919 Versailles Treaty, through the Geneva Protocol issued by the League of Nations in 1924, to the 1928 Kellogg Pact, where the condemnation of aggressive war became part of U.S. national policy. Rather than a conflict between two legally and morally equal belligerents, a discriminatory concept of war distinguished between the legal and moral status of the warring parties. On the one side was a legitimate party pursuing a just war and on the other was an unjust enemy now rendered a criminal in international law. Schmitt argued that the crucial distinction between enemy and criminal, the *justus hostis*, had therefore collapsed, turning war from a formal match of strength between equals into a punitive exercise against a criminal aggressor. “Interstate war in European international law had been replaced” Schmitt argued by “action against a criminal felon.”<sup>706</sup> Further, as war became the legal pursuit of a criminal enemy, the concept of third party neutrality became increasingly untenable.<sup>707</sup> When the justice and criminality of warring parties was enshrined within the framework of international law, non-combatant states could not uphold neutral status. By dint of their involvement in international legal agreements, third party states were already legally implicated in the conflict and were thus forced to take sides. Lastly, Schmitt argued that the distinction between war and peace became increasingly problematic as a peace treaty could not be signed with a criminal enemy on a different legal and moral footing. A war against an unjust criminal enemy could be considered as a series of punitive measures that could be pursued to the point of annihilation. This was a tendency he had already identified in the critique of humanitarian

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<sup>706</sup> Ibid, 269.

<sup>707</sup> This was a point Schmitt had already made in a 1937 article. See: Carl Schmitt, “The Turn to the Discriminating Concept of War” in *Writings on War*, ed., Timothy Nunan, 30-74. Cambridge: Polity Press, 2011.

wars ‘against war’ in pre-war works such as *The Concept of the Political*. From Schmitt’s standpoint, the emergence of a new discriminatory concept of war unravelled the lattice of distinctions on the basis of which European war had been bracketed in the *jus publicum Europaeum*.

### (iii) *Technology & Spaceless War*

Technological developments at the beginning of the twentieth century intensified the two processes that were contributing to the collapse of the *jus publicum Europaeum*: the unbracketing of war with the loss of the *Justus hostis*, and the collapse of the Eurocentric spatial order with the rise of the United States as a global interventionist power. Technologies of transport, communication and military power rendered the spatial divisions on which order rested increasingly redundant, and the increasingly destructive capacity of these same technologies allowed the escalation of enmity. It was indeed principally in the sphere of warfare that the influence of technology on the collapse of the *nomos* of the earth was most visible. Although Schmitt acknowledged the importance of submarines on the transformation of war, his analysis focused largely on the appearance of air power and the new methods and conceptions of war that emerged as a result.

Firstly, Schmitt noted that air power dissolved the traditional distinction between theatres of war that had characterized the *jus publicum Europaeum*. With the advent of air war it was “no longer possible, as it was before, to speak of a theatre of war.”<sup>708</sup> He argued that the Eurocentric *nomos* of the earth had rested upon a distinction between land and sea, each of which had its own concepts of war, booty and the enemy tied to the specific spatial theatre of conflict. However the emergence of air power marked the dissolution of land and sea as distinct theatres of war and a collapse of the categories of warfare on which it had been bracketed. In air war “all institutions and principles” that made a bracketing of war possible “lose their meaning.”<sup>709</sup> International law struggled to keep up with this “transformation in the spatial perspective” and was unable to account for the

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<sup>708</sup> Schmitt, *The Nomos*, 319.

<sup>709</sup> *Ibid*, 319.

changes effected by air war within the existed frames of land and sea war.<sup>710</sup> By introducing a new vertical dimension into the conduct of war, air power rendered the two theatres of war, “the surfaces of both land and sea ... indiscriminate.”<sup>711</sup> Furthermore, air power allowed war to become increasingly intense as it became focused above all on destruction. In contrast to land war, orientated towards effective occupation of territory, and sea war, oriented towards prize booty, Schmitt argued that “the only purpose and meaning of an air raid is destruction.”<sup>712</sup> Air war simultaneously brought about a collapse of spatial order and an escalation of warfare.

Second, the increased destructiveness of air war created an intensification of enmity. The combatant who could effectively marshal air power had a decisive advantage over their opponent but a moral asymmetry followed directly from this technological asymmetry. “Intensification of the technical means of destruction,” Schmitt argued, “opens an abyss of an equally destructive legal and moral discrimination.”<sup>713</sup> “If the weapons are conspicuously unequal,” he noted, “then the mutual concept of war conceived of in terms of an equal plane is also lacking.”<sup>714</sup> The asymmetries of power resulting from the emergence of air war meant it was “no longer possible to realize the concept of *justus hostis*.”<sup>715</sup> Schmitt claimed therefore that a discrepancy in military power intensified the discrimination against the enemy, the two processes running in tandem with each other, “superiority in weaponry” indeed taken to be “an indication of ... *justa causa*.”<sup>716</sup> Indeed, technologies of destruction would perhaps inevitably be used more freely in wars conducted as punitive measures against a criminal enemy. Given that war had been “transformed into a police action against trouble-makers, criminals, and pests, justification,” Schmitt argued that, “the methods of this ‘police bombing’ must be intensified.”<sup>717</sup> Thus the development of new technologies was pushing “the

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<sup>710</sup> Ibid, 313.

<sup>711</sup> Ibid, 320.

<sup>712</sup> Ibid, 317.

<sup>713</sup> Ibid, 321.

<sup>714</sup> Ibid, 320.

<sup>715</sup> Ibid, 321.

<sup>716</sup> Ibid, 321.

<sup>717</sup> Ibid, 321.

discrimination of the opponent into the abyss.”<sup>718</sup> A crack had opened in the spatial order of the earth through which a terrifying vision of future war could be glimpsed – a world of spaceless wars where absolute enemies were annihilated through aerial bombardment in the name of justice.

### **(6) *The New Nomos of the Earth?***

The horizon of Schmitt’s work in *The Nomos of the Earth* was the question of what new global spatial order might emerge from the wreckage of the *jus publicum Europaeum*. The stakes of this task could not have been higher. The world depicted in *The Nomos of the Earth* faced a stark choice between an emerging state of global civil war and a new global spatial order that could respatialise the political and provide a new framework for limiting war. In the book’s Foreword, written in 1950, Schmitt posed the question of a new *nomos* of the earth as the decisive problem of the age. He nonetheless offered little indication of where an answer might be found. He noted only that a solution would no more be provided by new scientific discoveries than by “men on their way to the moon discovering a new and hitherto unknown planet that could be exploited freely and utilized effectively to relieve their struggles on earth.”<sup>719</sup> He closed the Foreword by echoing the New Testament: “The earth has been promised to the peacemakers. The idea of a new *nomos* of the earth belongs to them.”<sup>720</sup> But he offered no elaboration of what that idea might be. Indeed, the comments Schmitt made elsewhere in the book were just as sketchy. Although Part IV of the book, the closing chapter of the original publication, carried the title ‘The Question of the New Nomos of The Earth’ the question was not addressed there. Rather this was the section where Schmitt outlined the collapse of the *jus publicum Europeaum* and he indicated only that a coherent *nomos* of the earth was lacking.

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<sup>718</sup> Ibid, 321.

<sup>719</sup> Ibid, 39.

<sup>720</sup> Ibid, 39.

A fuller answer had to wait until Schmitt took the question up again in a short text entitled ‘The New *Nomos* of the Earth’ published in 1955.<sup>721</sup> Schmitt acknowledged that “today (1954), the world in which we live is divided into two parts, East and West, which confront each other in a cold war and, occasionally, hot wars.”<sup>722</sup> However, it is obvious that Schmitt did not consider the Cold War to be more than a fleeting historical moment even though it had carved the world into opposing camps around a geopolitical and ideological faultline running through his native Germany.<sup>723</sup> The Cold War division seemed to represent nothing more than the final collapse of the old *nomos* into an unstable dualism where both sides were equally determined by the ‘religion of technology’.<sup>724</sup> Schmitt thus looked beyond the Cold War bipolarity to find a new *nomos* of the earth but argued that there were only three possibilities. “The first, and apparently the simplest,” was for one of the Cold War parties to emerge victorious. “The victor,” Schmitt argued, “would be the world’s sole sovereign” and “would appropriate the whole earth – land, sea, and air – and divide and manage it according with his plan and ideas.”<sup>725</sup> Schmitt argued that advances in modern technology led many to assume this to be an inevitable course but warned that the belief in a unification of the world by technological means could only ultimately lead to destruction.<sup>726</sup> The second possible *nomos* he foresaw was an attempt to recreate the balance of land and sea that typified the *jus publicum Europaeum* by using modern technology to combine the rule of the sea and

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<sup>721</sup> This is the last of the three ‘Concluding Corollaries’ included with the English translation.

<sup>722</sup> Ibid, 353

<sup>723</sup> Schmitt’s comments on the Cold War here are confused and riddled with contradiction but are nonetheless thought provoking. He notes that East and West are “geographical concepts” but “in terms of the planet they are also fluid and indeterminate concepts” (Ibid, 353). He contrasts the concept of East and West to the poles of North and South in a curious contrast of human and physical geographies. His point however is that the line between East and West is in fact indeterminate. He notes that, “in purely geographical terms, it is impossible to find either an established border or a declaration of mutual enmity” (Ibid, 353). Schmitt argued however that “behind the geographical antithesis, a deeper and more elemental antithesis is visible,” that between land and sea (Ibid, 353). In Schmitt’s view the East (the Soviet Union and China) was a giant land mass and the United States dominated West an oceanic world covering the Atlantic and Pacific oceans. Thus, he cast the Cold War in terms of the geo-elemental distinction between land and sea.

<sup>724</sup> He indeed seemed to consider it likely that “the present global antithesis would become only the last stage before an ultimate, complete unity of the world” (Ibid, 354).

<sup>725</sup> Ibid, 354. “Most of those considering this frightful problem,” Schmitt noted “rush blindly toward a single sovereign of the world” (Ibid, 355).

<sup>726</sup> Thus, he reprises an argument running through his late work that technology could only overcome the inherent conflictual nature of human nature by destroying humanity. Schmitt argued that, “no matter how effective modern technical means may be, they can destroy completely neither the nature of man nor the power of land and sea without simultaneously destroying themselves” (Ibid, 355).

air. He noted that the United States had the power to play the role of a global hegemon that would none-the-less maintain the balance of the rest of the global spatial order.<sup>727</sup> This had the “greatest chance” of success in Schmitt’s view given that it had “accepted tradition and custom on its side.”<sup>728</sup> Finally, Schmitt presented a third possibility that he clearly favoured. It was also based on the idea of a global balance but not under a single hegemonic power. Rather Schmitt argued that, “a combination of several independent *Großräume* or blocs could constitute a balance ... and precipitate a new order of the earth.”<sup>729</sup> This, Schmitt argued, was the most “rational”, presumably because it was based on territorial blocs rather than the ‘elements’ of sea or air.<sup>730</sup> It would only work however if the *Großräume* were “differentiated meaningfully and ... homogenous internally” but Schmitt gave no indication here of what this might mean.<sup>731</sup>

The idea of a new global spatial order based upon a number of large territorial blocs was not new to Schmitt in 1955. It had in fact been at the centre of his attempts to conceive a post-state world order since the late 1930s. Although it predated the question of the new *nomos* of the earth by some years, Schmitt’s *Großraum* theory represented his most sustained effort to develop a new form of spatial order from the wreckage of the *jus publicum Europaeum*. Schmitt makes no mention of this earlier work in *The Nomos of the Earth* or in the 1955 corollary. This is doubtless because he had originally developed the concept in part to theorize Nazi expansion in Europe and it was precisely these efforts that had led to his arrest and interrogation at Nuremberg. I will return to examine the theory of *Großraum* order and its relationship to Nazi policy in more detail in the next chapter. However, I want to pause here briefly to consider why Schmitt favoured this of the three possibilities for a new *nomos* of the earth he laid out for the reader.

To understand why Schmitt favoured a global spatial order based around a number of *Großräume* it is necessary to ask what he hoped a new *nomos* would achieve. The

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<sup>727</sup> America would thus step into the shoes of England in Schmitt’s view. It would be, he argued, “the greater island that could administer and guarantee the balance of the rest of the world” (Ibid, 355).

<sup>728</sup> Ibid, 355.

<sup>729</sup> Ibid, 355.

<sup>730</sup> Ibid, 355.

<sup>731</sup> Ibid, 355.

question of a new *nomos* of the earth was pressing for Schmitt because the alternative was a catastrophically violent spaceless disorder. Indeed, he argued that the twentieth century had become increasingly defined by such conditions after the collapse of the old Eurocentric *nomos* of the earth. The fundamental problem for Schmitt was that order had become increasingly untied from orientation and hence the political had become despatialised. Without a spatial framework within which enmity could be fixed to clear inside-outside distinctions, war could float free of all constraint. The central task of a new *nomos* of the earth was thus to provide a framework within which the political could be respatialised. By providing new spatial determinations between inside and outside it would allow new constraints on war to emerge and stand against the growing tide of spaceless disorder. However, in Schmitt's view, powerful new political forms capable of producing these new spatializations were needed for such an order to emerge. In Schmitt's view, a single world sovereign would erase all spatial differentiation and would thus utterly fail to provide a form capable of producing order. It could only, in Schmitt's view, create the conditions for increasing spaceless disorder. A global balance overseen by one hegemonic power would provide a limited degree of spatial distinction but would replicate the precarious state of the *jus publicum Europaeum*, dependent on one power unable or unwilling to enforce its rule. A *Großraum* order, by contrast, would establish clear spatial divisions and hence allow the respatialized of the political along the lines of new inside-outside distinctions. It represented for Schmitt the clearest chance for constructing a new spatial order of the earth.

The search for a new *nomos* of the earth that shaped Schmitt's late thought therefore involved an attempt to define new political forms that could respatialise the political after the eclipse of the European state system. The attempt to provide an answer to the crisis of political form in the wake of the state was synonymous with the attempt to define a new *nomos* of the earth. Although his late work focused more on developing a critique of the conditions that brought about a collapse of the state-centric *jus publicum Europeaum* he nonetheless identified two political forms that could potentially respatialise the political. The first, as noted above, was the concept of *Großraum* that he developed principally in the late 1930s and early 1940s. The second emerged in Schmitt's 1963 book *The Theory*

*of the Partisan* where he reflected on the nature of partisan warfare. Despite marked differences in the nature of these concepts and the contexts in which they were developed, both can be understood as attempts to imagine new political forms that might lay the foundations for a new *nomos* of the earth. In the next chapter I will examine each of these new political forms in turn in order to understand a new global spatial order might be possible once the horizon of the state form had been crossed.

## ***Chapter 7: New Political Forms / Großraum and Partisan***

### ***(1) Respatialising the Political***

For Schmitt the Second World War was definitive proof that the world existed in a state of ‘spatial chaos’. The war was a symptom of a dangerous despatialisation of the political, the result of the global bonds of order and orientation that had previously been provided by the modern European state system being undone. By the late 1930s Schmitt considered the state form to have been eclipsed as the ordering institution of international law and had already begun groping for a new political form capable of respatialising the political. Hence, although his wartime writings contextualized this eclipse of the state in the wider collapse of global spatial order Schmitt’s search for the decisive subject of a new *nomos* of the earth was well underway. Indeed, Schmitt’s work from the late 1930s up to the 1960s revolves around the attempt to find new political forms capable of respatialising the political in a new *nomos* of the earth.

Schmitt took it as a given that such a new spatial order of the earth was necessary. The core question in his view was what nature it would take. “The development of the planet,” Schmitt wrote, “finally had reached a clear dilemma between universalism and pluralism, monopoly and polypoly.”<sup>732</sup> However, Schmitt understood this “core question of the spatial structure of international law – the alternative of a plurality of *Großräume* or the global spatial unity of one world order, the great antithesis of world politics, namely the antithesis of a centrally ruled world and a balanced spatial order, or universalism and pluralism, monopoly or polypoly,” to have been systematically excluded from an international law increasingly governed by universalist concepts.<sup>733</sup> The real stakes of this debate for Schmitt was therefore the opposition to the dominant universalist conceptions of global order. In his view universalist conceptions of global order could lead only towards an ever deeper ‘spatial disorder’ as they could not provide

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<sup>732</sup> Schmitt, *The Nomos* 243.

<sup>733</sup> *Ibid*, 247.

the grounds for spatial differentiation and hence for political form. For Schmitt universalism was formless and without political form there could be no subject capable of spatialising the political and hence limiting war. By contrast pluralist conceptions of global order necessarily rested on some type of differentiation and hence could potentially provide the grounds for a political form capable of spatialising the political and fusing order and orientation once again. Schmitt thus conceived of a pluralist world order against the historical rush to separate the political from space, or rather war from spatial limitation, that he understood to characterize the twentieth century. His late thought included two attempts to formulate new political forms capable of standing against this headlong drive into the abyss of despatialisation: a *Großraum* order of large spaces and the figure of the partisan fighter. In this chapter I will look at each in turn, examining the ways in which Schmitt thought they might provide a ‘spatial fix’ to the problem of twentieth century world order.

## (2) *Großraum*

Schmitt’s first attempt to imagine a new political form beyond the state that might be capable of respatialising the political came with the concept of *Großraum*. This was not only one of the governing ideas in Schmitt’s late spatial thought but perhaps the most controversial of his entire career due to its relationship to Nazi foreign policy. He first introduced the concept in *The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers: A Contribution to the Concept of Reich in International Law*, originally delivered as a lecture to a conference on National Socialist lawyers in Kiel and subsequently published in April, 1939 in the journal *Deutsches Recht*.<sup>734</sup> The text was then published as a stand-alone book, several editions of which appeared between 1939 and 1941 as Schmitt made additions reflecting his expanding project and political developments.<sup>735</sup> Although the text appeared to have little or no effect on Schmitt’s standing with the Nazi regime it was widely read both in Germany

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<sup>734</sup> Hereafter “The *Großraum* Order.”

<sup>735</sup> The first edition was published before The Molotov–Ribbentrop Pact was signed on August 23, 1939. This treaty of non-aggression between Germany and the Soviet Union allowed for German expansion in Eastern Europe and the subsequent additions made to later editions of Schmitt’s text reflect these developments.

and in translation in Japan and across Europe. It seemed likely that the book was designed to appeal both to the domestic regime and to international legal opinion across Europe. Hence, George Schwab's claim that Schmitt turned to international law because it was "a domain he thought would leave him out of the limelight" is rather implausible.<sup>736</sup> *The Großraum Order* was both an attempt to formulate a new basis for international law that reflected real changes in the distribution of global power and an attempt to provide theoretical legitimacy for Nazi foreign policy. As with Schmitt's other important Nazi era writings *The Großraum Order* can neither be taken simply as a contribution to scholarly debate nor mere intellectual propaganda for the *Reich*. It was both, and any reading must attempt to stay sensitive to this fact whilst noting the tensions between them. I will return below to the question of the relationship between the text and the Nazi regime but will first provide a brief account of its major features.

### (i) *The Economic Precedent*

Schmitt's fundamental aim in *The Großraum Order* was to "introduce the concept of the *concrete Großraum* and its related concept of *Großraum order* into international jurisprudence."<sup>737</sup> He claimed that due to the eclipse of the state form it was "necessary to revise ... existing international legal theory through the concept of the nation but also to regard it from the point of view of spatial order." (77) He noted that the idea of *Großraum* was not a conceptual novelty but in fact reflected already changed realities, a "concrete, historical-political concept of the present": "the change in the dimensions of the earth and in the way space is conceived – a change that dominates current global political developments – is articulated in the word *Großraum*."<sup>738</sup> However, in Schmitt's view, political and legal thought, mired in nineteenth century positivism, had been slow to come to terms with these changes. Although the concept had already appeared it was "characteristically not in the domain of the state but rather in the domain of technics, industry, commerce, and organization."<sup>739</sup> By the early years of the twentieth century

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<sup>736</sup> Schwab, Introduction, xxxi.

<sup>737</sup> "The *Großraum Order*," 77.

<sup>738</sup> Ibid, 77.

<sup>739</sup> Ibid, 78.

“*Großraum* economy” was already a “beloved buzzword” of economists and the spread of electricity and gas infrastructures across Europe had made *Großraum* a reality in the “energy economy.”<sup>740</sup> Given the fact that the economy had become the determining political factor, Schmitt argued, that it was “of course, no coincidence that the theoretical and practical realization of the concept of the *Großraum* ... lie first in the economic-organizational sphere.”<sup>741</sup> Hence, according to Schmitt, the world was already informally constituted by a “technical-industrial-economic” *Großraum* order but political and legal thought stubbornly refused to come to terms with these transformations.<sup>742</sup> Schmitt’s aim therefore was to develop a concept adequate to the demands of addressing these new spatial and economic realities in the field of international jurisprudence.

### **(ii) *The Monroe Doctrine***

In attempting to find a model for a *Großraum* concept in international law, Schmitt turned to the Monroe Doctrine of 1823. It was, Schmitt argued, “the first and until now, the most successful example of a *Großraum* principle in the modern history of international law.”<sup>743</sup> It offered, Schmitt claimed, the “best approach and point of departure” for considering the concept of a *Großraum* in international law.<sup>744</sup> Schmitt noted that although the Monroe Doctrine had a complicated history, knowing “periods of obfuscation and falsification,” its “original meaning [was] marked with three key phrases: the independence of all American states; non-colonization in this space; non-intervention of extra-American powers in this space.”<sup>745</sup> With the proclamation of the Monroe Doctrine the United States unilaterally declared the American Continent to be a space of non-intervention free of foreign, and specifically European, interference and colonization. It provided, in Schmitt’s view, “the legal foundation for a unique Continental-American international law.”<sup>746</sup>

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<sup>740</sup> Ibid, 78.

<sup>741</sup> Ibid, 79.

<sup>742</sup> Ibid, 78.

<sup>743</sup> Ibid, 83.

<sup>744</sup> Ibid, 83.

<sup>745</sup> Ibid, 83.

<sup>746</sup> Ibid, 85.

In this original form the Monroe Doctrine provided a “unique and important precedent” for thinking about continental large spaces in international law.<sup>747</sup> However, Schmitt noted that the doctrine had a remarkable “elasticity with respect to changing political situations” and had morphed in line with the changing conceptions of American interests and foreign policy goals.<sup>748</sup> Hence, Schmitt argued it had become a “justification for a capitalistic imperialism”<sup>749</sup> in the hands of President Theodore Roosevelt.<sup>750</sup> “An originally defensive concept of space that defended against the intervention of spatially foreign powers” thus became “the foundation of a ‘dollar diplomacy’” pursued in the defence of U.S. interests.<sup>751</sup> President Woodrow Wilson oversaw a further mutation in Monroe Doctrine from “a concrete geographically and historically determined concept of *Großraum* into a general, universally conceived principle for the world.”<sup>752</sup> The United States thus decisively left “behind its continental spatial principle and [bound] itself with the universalism of the British world empire.”<sup>753</sup> The healthy core of the *Großraum* principle of international law of non-intervention” was thus transformed “into a global ideology that interferes in everything, a pan-interventionist ideology ... under the cover of humanitarianism.”<sup>754</sup>

At the time of its original proclamation in 1823 the Monroe Doctrine nonetheless expressed in Schmitt’s view, “a genuine principle of *Großraum*, namely the connection between a politically awakened nation, political idea, and a *Großraum* ruled by this idea, a *Großraum* excluding foreign interventions.”<sup>755</sup> This fusion of a politically self-assertive

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<sup>747</sup> Ibid, 83.

<sup>748</sup> Ibid, 86.

<sup>749</sup> Ibid, 89.

<sup>750</sup> Ibid, 89. Some months after the original edition of *The Großraum Order* appeared in 1939 Schmitt published another article addressing *Großraum*, ‘*Großraum* versus Universalism: the international legal struggle over the Monroe Doctrine’. This short polemical screed emphasised the critique of capitalism in relation to U.S. foreign policy and the ‘falsification’ of the Monroe Doctrine. Although it represents one of Schmitt’s most ‘anti-capitalist’ texts it shows that this critique is tightly wound up with his antipathy to the expansionist foreign policy of the U.S.

<sup>751</sup> Ibid, 89.

<sup>752</sup> Ibid, 89.

<sup>753</sup> Ibid, 89.

<sup>754</sup> Ibid, 90. Schmitt argued that this followed a pattern of thought at the beginning of the twentieth century whereby “a concrete, spatially determined concept of order” was dissolved into a “universalist ‘world’ [idea]” (Ibid, 90).

<sup>755</sup> Ibid, 88.

nation, a political idea and a continental large space lay at the “core of the great original Monroe Doctrine”<sup>756</sup> The spatial aspect of the doctrine was crucial for Schmitt and he noted that it conceived of “the planet in spatial terms, in a modern sense, ... something totally extraordinary and worthy of special attention in international law.”<sup>757</sup> However, he argues that the core of a *Großraum* is the relationship between this spatial dimension and the assertion of a political idea. “A purely geographical conception may have great political-practical meaning but alone it does not represent a convincing legal principle,” Schmitt claimed.<sup>758</sup> Referencing Haushofer, whom he refers to as “the master of geopolitical scholarship,” Schmitt notes that “the meaning of space and political idea do not allow themselves to be separated from one another.”<sup>759</sup> There are, Schmitt claims “neither spaceless political ideas nor, reciprocally, spaces without ideas or principles of space without ideas.”<sup>760</sup> Thus, a genuine *Großraum* is grounded upon the mutually constitutive relationship between a particular space and a specific political idea. However, Schmitt qualifies this further noting that, “it is an important part of a determinable political idea that a certain nation carries it and that it has a certain opponent in mind, through which this political idea gains the quality of the political.”<sup>761</sup> Thus, the fusion of a space and a political idea is crucially tied to a specific set of friend–enemy relations. Indeed, this enmity governs the relations between the ordering nation and the ‘spatially foreign’ forces banned from intervention within the *Großraum*.

### **(iii) European Großraum: Nazi Reich**

Schmitt argued that this core of the Monroe Doctrine, the fusion of a politically awakened nation, political idea and a continental large space ruled over by a principle of non-intervention, was “translatable to other spaces, other historical situations, and other friend-enemy groupings.”<sup>762</sup> He stressed however that the aim of *The Großraum Order*

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<sup>756</sup> Ibid, 88.

<sup>757</sup> Ibid, 87.

<sup>758</sup> Ibid, 87.

<sup>759</sup> Ibid.

<sup>760</sup> Ibid.

<sup>761</sup> Ibid.

<sup>762</sup> Ibid, 88.

was not to imagine a ‘German Monroe Doctrine,’ but rather to identify its “core thought” in order to make it “fruitful for other living spaces and other historical situations.”<sup>763</sup> Indeed, Schmitt argued that this core idea, “namely the thought of the impermissibility under international law of interventions of spatially foreign powers in a *Großraum* ruled by a principle of order, ” was “reasonably translatable [in Europe] given the state of political reality.”<sup>764</sup> Hence, rather, than theorise a ‘German Monroe Doctrine’ Schmitt claimed his work presented “an application of the idea of spatial order in international law appropriate to the current political and historical position of the German *Reich* and the East European space.”<sup>765</sup> “Today” Schmitt noted, “a powerful German *Reich* has arisen. From what was once weak and impotent, there has emerged a strong centre of Europe that is impossible to attack and ready to provide a great political idea, the respect for every nation, as a reality of life determined through species and origin, blood and soil, with its radiation into the Middle and East European space, and to reject the interference of spatially alien and *unvölkisch* powers.”<sup>766</sup> The rising “sun of the concept of *Reich*”<sup>767</sup> had thus created the conditions for the realization of a “*völkisch Großraum* order” in a loosely defined ‘Eastern European space’.<sup>768</sup>

Schmitt noted that, “the *Großraum* is of course not identical to the *Reich*” but as the dominant nation Germany would provide the political idea on which this European *Großraum* was to be based.<sup>769</sup> What precisely was this “National Socialist national idea” to be in Schmitt’s terms?<sup>770</sup> It contained three fundamental aspects that deserve mention here. Firstly, the National Socialist *Reich* was to establish a *Großraum* order standing “between the old state order of the nineteenth century and the universalistic goal of a

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<sup>763</sup> Ibid, 84.

<sup>764</sup> Ibid, 88.

<sup>765</sup> Ibid, 99-100.

<sup>766</sup> Ibid, 111.

<sup>767</sup> Ibid, 101.

<sup>768</sup> Ibid, p 111. “The action of the *Führer*” he wrote, had “lent the concept of our *Reich* political reality, historical truth, and a great future in international law” (p 111). Schmitt used the phrases “Eastern European space,” “Central and Eastern European space,” and “Middle and Eastern European space” interchangeable and the geographic definition remains vague. It is likely of course that the exact scope of the *Großraum* was left an open question so as to leave space for the *Reich*’s developing policy of expansion.

<sup>769</sup> Ibid, 101.

<sup>770</sup> Ibid, 99.

global *Reich*.”<sup>771</sup> It would, Schmitt argued, fulfil the “long due overcoming of the concept of the state in international law,”<sup>772</sup> whilst “steering the world out of the ... universalistic-imperialistic world law” with which the “Western democracies” sought to replace it.<sup>773</sup> Secondly, it was to be “a concept of order based on national groups”<sup>774</sup> and the “principle of mutual respect for every nationhood.”<sup>775</sup> Such a concept implied “the rejection of all ideals of assimilation, absorption, and melting pots” and aimed to protect the “unique *völkisch* nature of every national group” from these “Western ideas.”<sup>776</sup> The *Großraum* would be protected from the intervention of external ‘spatially foreign’ powers and internally divided into different national states, although of course all existing under the ultimate ‘spatial sovereignty’ of the German *Reich*.

The third element was what Schmitt referred to as “the thoroughly unique Jewish problem.”<sup>777</sup> The “political idea for the Central and Eastern European space” was of a *Großraum* “in which there live many nations and national groups, that are, however, not – apart from the Jews – racially alien from one another.”<sup>778</sup> Schmitt distinguished his concept of *Großraum* from contemporary theories of *Lebensraum*, rather coyly noting that “[the] ‘demographic’ right to land can be seen as a universal foundation for a justification of territorial demands; it cannot, however, be seen as a concrete *Großraum* principle of international law in a specific sense that contains recognizable limitations and standards in itself.”<sup>779</sup> Nonetheless, his work clearly gave an exceptional status to European Jews on the basis of race. *The Großraum Order* mentioned the Jews and their position within the Nazi-dominated *Großraum* only briefly and provided no indication about how this unique ‘problem’ should be addressed. The Jews did however play a

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<sup>771</sup> Ibid, 110.

<sup>772</sup> Ibid, 104.

<sup>773</sup> Ibid, 111.

<sup>774</sup> Ibid, 100.

<sup>775</sup> Ibid, 100.

<sup>776</sup> Ibid, 99. Schmitt argued that this principle of respect for every national group’s unique nature found expression in Hitler’s *Reichstag* declaration of February 20, 1938 on the “German right to protection of German national groups of foreign state citizenship” (Ibid, 99). Further, Schmitt claimed, that the “purpose” of the German-Russian border and friendship treaty of September 28, 1939, was to “guarantee to the peoples living there a peaceful existence corresponding to their *Völkisch* unique nature” (Ibid, 100).

<sup>777</sup> Ibid, p 97.

<sup>778</sup> Ibid, p 99.

<sup>779</sup> Ibid, 81.

significant role in the opposition Schmitt drew between an empty neutral conception of space and the concept of *Großraum*. Schmitt argued that the theory of *Großraum* had superseded “the mathematical-neutral, empty concept of space ... [with] a qualitative-dynamic greatness.”<sup>780</sup> The word *Groß* indicated “a qualitative escalation” rather than a “merely quantitative” increase in space.<sup>781</sup> Schmitt identified this “empty concept of space,” that had now been overcome, with “the spirit of the Jew.”<sup>782</sup> Hence, he placed the Jews in direct opposition to the theory of *Großraum* order as such. “The Jewish people,” Schmitt claimed, had not only historically been “an important fermenting agent in the dissolution of concrete spatially determined orders,”<sup>783</sup> but their “misunderstanding ... with respect to everything that concerns soil, land, and territory, is grounded in [their] style of political existence.”<sup>784</sup> He thus ominously seemed to imply that the Jews were existentially alien to the new spatial order of the European *Großraum*. Schmitt quoted “the founder of a new science of space,” Friedrich Ratzel, to the effect that “*coming to terms with space [is] the defining trait of all life.*”<sup>785</sup> Characterised precisely by the failure to ‘come to terms with space’ the Jews were excluded from Schmitt’s vision of a European spatially, politically, racially and even existentially. He provided no indication of what this meant for the fate of the Jews in the new European spatial order under the Nazi *Reich*.

#### **(iv) Nazism, Lebensraum, Geojurisprudence**

In the aftermath of Nazi defeat Schmitt was interned by American forces and interrogated in Nuremberg precisely on suspicion that his work on *Großraum* order had provided legitimation for Nazi war crimes in Eastern Europe. Although Schmitt was released without charge for lack of evidence his work and particularly his *Großraum* theory has been morally tainted ever since. What however was the nature of the relationship between

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<sup>780</sup> Ibid, 79.

<sup>781</sup> Ibid, 119. Schmitt notes, that “It is, therefore, not a space that is only greater compared to a relatively smaller space; it is not an expanded minor space” (Ibid, 119). Referencing Ratzel he notes that “the word ‘great’ should and can *change the conceptual field,*” overturning the existing mathematical, neutral concept of space (Ibid, 119).

<sup>782</sup> Ibid, 122.

<sup>783</sup> Ibid, 122.

<sup>784</sup> Ibid, 121.

<sup>785</sup> Ibid, 122.

Schmitt's *Großraum* work and Nazism? It seems safest to consider Schmitt's work a sincere attempt to legitimize the expansion of the National Socialist Reich, whilst nonetheless acknowledging that Nazi policy was not shaped, and likely not even influenced, by his theoretical efforts. As Timothy Nunan notes, Schmitt's *Großraum* theory "was the most confident and articulate – if not the official – [theorization] of the Nazi New Order in Europe."<sup>786</sup> However, in the late 1930s and early 1940s many in Europe outside Germany took Schmitt's *Großraum* work to offer something like an 'official' theory of the regime's expansionist policy.<sup>787</sup> Nunan notes, for example, that Schmitt's work was reported on in the British newspapers *The Daily Mail* and *The Times*, the latter noting that Schmitt offered "a trustworthy guide" and a "precise definition" of Hitler's aims in Eastern Europe.<sup>788</sup> But as Balakrishnan claims this view was based upon an "immense overestimation of [Schmitt's] role and stature."<sup>789</sup> Doubtless Schmitt's *Großraum* work was widely read abroad – he noted himself in 1941 that Bulgarian, French, Italian, Japanese and Spanish editions were already published or in press – but this did not mean it was translated into Nazi policy.<sup>790</sup>

The claim that Schmitt's article had an impact on Nazi policy rests to a large degree on Hitler's speech to the Reichstag of April 28, 1939. Hitler here responded to Roosevelt's earlier telegram warning Germany and Italy against attacking or invading any 'independent nation' in Europe by claiming that the U.S. President was a hypocrite and called for a German-led Monroe Doctrine for Europe. "We Germans," he wrote, "support a similar doctrine for Europe – and above all for the territory and the interests of the Greater German *Reich*."<sup>791</sup> It is not clear if Hitler took this appeal to the Monroe Doctrine from Schmitt's work and the German Foreign Minister Joachim von Ribbentrop had made reference to it in discussion with American state officials before the publication of

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<sup>786</sup> Timothy Nunan, Introduction to *Writings on War*, ed., Timothy Nunan (Cambridge: Polity Press, 2011), 17.

<sup>787</sup> Indeed, Balakrishnan argues that during the 1930s and early 1940s Schmitt was frequently regarded by those outside Germany as the "official philosopher" of the Nazi state. See: Balakrishnan *The Enemy*, 203.

<sup>788</sup> Nunan, Introduction, 10.

<sup>789</sup> Balakrishnan *The Enemy*, 203.

<sup>790</sup> Schmitt, "The *Großraum* Order," 76.

<sup>791</sup> Nunan, Introduction, 13.

Schmitt's work.<sup>792</sup> However, Hans Frank, Schmitt's protector within the Nazi establishment, advised him in a phone call to stay quiet about the origin of the idea as "the *Führer* prided himself on his originality."<sup>793</sup> Nevertheless, there seems little to indicate that Schmitt's thought had any more influence on shaping the direction of Nazi policy. As Nunan notes, "little suggests that leading members of the Nazi regime were interested in a formal theory of empire that might do anything to limit the dynamism of expansion and genocide to the East."<sup>794</sup> Further, Nazi policy was far from coherent but was rather developing in tandem with German expansion making it difficult for those trying to construct theoretical frameworks around it. Indeed, in a note to the 1941 edition of the text Schmitt noted that "we resemble navigators on an unbroken voyage, and every book can be nothing more than a logbook."<sup>795</sup> Indeed, the rather modest discourse of a 'respect for every nation' in which Schmitt formulated his theory of an Eastern European *Großraum* was profoundly out of step with the realities of genocidal slaughter that Nazi policy was pursuing in the East. Thus, it is perhaps a sounder approach to locate Schmitt's concept of *Großraum* in relation to the wider intellectual debates in the Nazi era rather than identify it as a source of policy. Two concepts in circulation in the Nazi era to which Schmitt's *Großraum* clearly related were Geojurisprudence and *Lebensraum* both of which were tied to the wider debate on geopolitics within Weimar and Nazi Germany.

Geojurisprudence was a school of thought that attempted to integrate the insights of law and geopolitics, briefly gaining popularity amongst Right wing intellectual circles during the late Weimar and Nazi years. Although principally associated with the work of Manfred Langhans-Ratzeburg from the 1920s, Germany's most eminent geopolitical theorist Karl Haushofer also contributed an article to this debate in 1928.<sup>796</sup> Indeed, as the

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<sup>792</sup> The sequence of dates proves little either way about the chain of influence. Ribbentrop references the Monroe Doctrine in a March 4 meeting. Schmitt's speech in Kiel was on April 1 and reached its first publication on April 29, the day after Hitler's Reichstag speech.

<sup>793</sup> Quoted in Nunan, Introduction, 13.

<sup>794</sup> Ibid, 14.

<sup>795</sup> Schmitt, "The *Großraum* Order," 77.

<sup>796</sup> For more on Geojurisprudence and Haushofer's relationship see: David T. Murphy, *The Heroic Earth: Geopolitical Thought in Weimar Germany, 1918-1933*, (Kent, OH: Kent State University Press, 1997), 110 – 116.

American political scientist Andrew Gyorgy claimed this “surprising product of the artificial crossbreeding between geopolitics and other sciences”<sup>797</sup> bore witness to the “all-pervasive influence of Haushofer’s ‘portmanteau science’” in German geo-sciences at the time.<sup>798</sup> Already in 1944 Gyorgy had associated Schmitt with Geojurisprudence, claiming him to be its “foremost exponent.”<sup>799</sup> However, in a polemical rush to condemn Geojurisprudence as a “a National Socialist theory of international law based on the idea of ‘spatial purity,’” Gyorgy conflated Schmitt’s *Großraum* theory with the claim that “world powers have a *natural right* to their living space.”<sup>800</sup> Thus, whilst Gyorgy described Geojurisprudence as an attempt to “introduce the *Lebensraum* doctrine into international law,” this did not accurately describe Schmitt’s conception of *Großraum* nor distinguish it from the biologically and racially defined concept of *Lebensraum*.<sup>801</sup> From the distance of a half-century the geographer David T. Murphy offered a more sober assessment, noting that whilst Schmitt differentiated his concept of *Großraum* from the geographically determined ideas fashionable in German geopolitics his “application of *Raum* concepts to international law and state relations had been prefigured in the 1920s by geopolitical thinkers, including Haushofer and Manfred Langhans-Ratzeburg.”<sup>802</sup> Hence, whilst Schmitt employs insights from key thinkers of the German geopolitical tradition such as Haushofer and Ratzel his work stands at some distance from the more racially defined readings of other Geojurisprudence thinkers of the 1930s.<sup>803</sup>

Both authors however note that Schmitt’s theory of *Großraum* failed to live up to its goals both conceptually and in terms of shaping policy, as did Geojurisprudence thinking more broadly. In the first instance, as Murphy argued, Geojurisprudence “was never able to devise a convincing reconciliation between its claims for godeterministic

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<sup>797</sup> Andrew Gyorgy, *Geopolitics: The New German Science*, (Berkeley, CA: University of California Press, 1944), 265.

<sup>798</sup> *Ibid*, 261.

<sup>799</sup> *Ibid*, 266.

<sup>800</sup> *Ibid*, 265.

<sup>801</sup> *Ibid*, 265. Indeed, Gyorgy shows little understanding of Schmitt’s thought in general and goes so far as to compare his theory of greater spaces to Hans Kelsen’s ‘pure theory of law’ to which of course Schmitt conceived of his work in direct opposition (*Ibid*, 266).

<sup>802</sup> Murphy, *The Heroic Earth*, 29.

<sup>803</sup> See for example Gyorgy’s discussion of other Geojurisprudence thinkers such as Hans K. E. L. Keller and Eduard Bristler. Gyorgy, *German Geopolitics*, 265–269.

development of law and the realities it was attempting to explain.”<sup>804</sup> The appeal to geography did not provide the groundings for law thinkers of Geojurisprudence, including Schmitt, had hoped for. “The temptation to turn to geography for the sources of law was,” as Murphy argued, “as much a chimera as was the effort to derive the sources of politics from geography.”<sup>805</sup> It was, as Gyorgy noted, conceptually weak. “Neither law nor geography nor politics,” Geojurisprudence is simply “the projection of National Socialist power dreams and wishful spatial thinking into the sphere of jurisprudence.”<sup>806</sup> Further, as Gyorgy noted, “Nazi geojurists” found it “impossible to give a comprehensive description of international legal principles” because they were in “a constant state of flux and subject to change in time and space,” given the developing fronts of Nazi expansionist policy.<sup>807</sup>

Despite the fact that Schmitt’s *Großraum* theory cannot be easily identified with the concept of *Lebensraum* the relationship between them is nonetheless tricky to disentangle. Hence, Nunan notes that although Schmitt’s concept of *Großraum* “may sound similar at first glance to Nazi *Lebensraum* theory ...the relationship between the two is complex.”<sup>808</sup> Nunan charts several points of divergence between *Großraum* and *Lebensraum* that deserve consideration. Firstly, he highlights the fact that in contrast to *Lebensraum* theory the central element of Schmitt’s *Großraum* is the ‘political idea’ rather than race or nationality. Secondly, although Schmitt describes the Jews as ‘racially alien’ he envisaged the European *Großraum* as a place where many nations would meet and co-exist, which doesn’t seem to imply implicit relationship between land and rights defined in racial or national-cultural terms. Thirdly, Nunan notes that Schmitt’s work was criticized by contemporary *Lebensraum* theorists such as Werner Daitz for having forgotten the primacy of racial homogeneity in his concept of *Großraum* order.

Nevertheless, Nunan notes that despite the conceptual distance separating *Großraum* and *Lebensraum* Schmitt developed his work to support racialised Nazi foreign policies.

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<sup>804</sup> Murphy, *The Heoric Earth*, 117.

<sup>805</sup> *Ibid*, 117.

<sup>806</sup> Gyorgy, *German Geopolitics*, 269.

<sup>807</sup> *Ibid*, 266.

<sup>808</sup> Nunan, Introduction, 13.

Firstly, Schmitt singled out the Jews as a separate ‘racially alien’ group who stood outside a new European order of ‘national groups’. Although he offers no detail on how “the Jewish Problem” (97) is to be addressed his celebration of the forced migration and resettlement of the German population from the Baltic states might be understood to provide some indication.<sup>809</sup> Indeed, although Schmitt conceives of a *Großraum* order to be grounded upon a ‘political idea’ rather than racial or biological categories such as *Lebensraum* the distinction appeared to dissolve when viewed in relation to the context in which Schmitt was writing and the deep anti-Semitism evident in his later writings. Schmitt noted that the ‘political idea’ of a *Großraum* took shape with “a certain opponent in mind, through which this political idea gains the quality of the political.”<sup>810</sup> Given these factors it is not hard to imagine that the specific ‘spatially foreign’ enemy against which the European *Großraum* was to be defined was for Schmitt the Jews. It is clear of course that Schmitt opposed a Europe of ‘national groups’ to the ‘melting pot’ of the United States but as several critics have noted his conception of the U.S. as a spaceless empire of assimilation shared much with his critique of the Jewish position within Europe.<sup>811</sup> It is not beyond the imagination that Schmitt considered the U.S. to represent the ‘spatially foreign’ enemy outside Europe whilst the Jews were the ‘spatially foreign’ enemy within. Thus, although Schmitt’s theoretical articulation of *Großraum* is not grounded in the explicitly racial categories of *Lebensraum* it is nonetheless plausible to locate a deep-seated anti-Semitism in his apparently non-racial categories.

#### **(v) *The Gross Failure of Großraum***

Despite his grand hopes of providing a theoretical framework for the respatialisation of world order it is clear that Schmitt’s vision of a *Großraum* order failed both conceptually and politically. Conceptually Schmitt’s *Großraum* failed on its own terms on a number of fronts. In the first instance it is not clear how Schmitt’s proposed Central and Eastern European *Großraum* related to the concept of *Großraum* as developed from the U.S. Monroe Doctrine. As Nunan correctly points out, the ‘Eastern European space’ was not a

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<sup>809</sup> Schmitt, “The *Großraum* Order,” 97.

<sup>810</sup> Nunan, Introduction, 11.

<sup>811</sup> See: Nunan, Introduction, 16; Scheurman, *Carl Schmitt*, 178; Gross, *Carl Schmitt and the Jews*, 203.

clearly defined space and certainly did not take on the continental shape of the Western Hemisphere.<sup>812</sup> Hence, one of the key factors necessary for a *Großraum* order was missing in the very case Schmitt sought to address. His work was thus caught in the antinomies of attempting to provide a theoretical model for the changing political dynamics of a specific geopolitical situation. Further, when read in relation to Schmitt's broader conception of spatial order it is not clear how a *Großraum* order would provide a framework for governing the relations between political entities and limit warfare. Gyorgy noted that Schmitt's work did "not offer any guidance to the legal relationships of individual greater areas, or *Grossräume*."<sup>813</sup> *Großraum* was a "failure from the very outset" because it failed to "set up legal norms governing the relationships of these regions *inter se*."<sup>814</sup>

Perhaps more serious from the perspective of Schmitt's understanding of spatial order was the fact that his *Großraum* order hoped to achieve a balance of power between several large space powers that was planetary in scope. The problem with this, in Schmitt's terms, was that it provided no space of 'outside' that could constitute the balanced relations between *Grossräume*, nor established the spatial division allowing ordering hierarchies to be established within to each *Großraum*. The European interstate balance of the *jus publicum Europeum* had relied upon a double global spatial division between Europe and the New World and land and sea. A balance of power within Europe was achieved precisely because a constitutive outside existed where antagonism could be played out. Schmitt's global *Großraum* order provided no such constitutive outside and seemed to simply place hope in the ordering capacity of spatial difference as such. The division of the globe into a number of *Grossräume* might allow for a respatialisation of the political, but without any clear mechanism for governing their relations and no 'outside' into which antagonism could be displaced Schmitt provided no indication of the means by which war could be bracketed. This was a fatal oversight given that the limitation of war was for him the essential aim of political order. Thus, even within his own terms *Großraum* was a rather weak attempt to theorize a new *nomos* of the earth.

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<sup>812</sup> Nunan, Introduction, 16.

<sup>813</sup> Gyorgy, *German Geopolitics*, 266.

<sup>814</sup> *Ibid*, 267.

Schmitt's *Großraum* theory was also a failure politically. His vision of a European *Großraum* led by a German *Reich* was reduced to rubble by the end of the Second World War. Further, the global reordering that emerged from the ashes did not take the form of a new *nomos* of the earth based upon a number of independent *Großraum*. In the years directly preceding the war Schmitt had argued that the informal realities of global power already reflected the existence of a *Großraum* order. Ironically, however the German attempt to formalize this regional hegemony in a policy of aggressive expansion led to a world war that erased this implicit balance between *Grossräume*. The Second World War had served to dramatically extend the global power of the United States and marked its decisive rejection of continental isolation in favour of global interventionism. The formerly sovereign states of Europe were maintained as hollowed out shells, the “meaningless fossils” of *magni homines*.<sup>815</sup> Europe was partitioned between the universalist powers of East and West, both equally committed to the common civilizational horizon of technical-industrial development and the utopia of world unity. The Second World War had served as the catalyst for an intensification of the spatial disorder Schmitt already understood to have characterized the interwar years. In the immediate postwar years, Schmitt clung to the hope that a new *nomos* of the earth could be constructed around a global *Großraum* order but the new realities of global power made it appear the geopolitical fantasy of a reactionary Don Quixote.

### (3) *The Partisan*

Schmitt's last attempt to imagine a new political form capable of respatialising the political came in his short 1963 book on partisan warfare, *The Theory of the Partisan*. Here he sought to directly engage with what new relationships might be forged between the political and the spatial in late twentieth century conditions, seemingly defined by the complete domination of ‘technical-industrial’ universalism. However, the book strikes a rather minor key in contrast to the world-historical bombast of his mid-century writings. The author himself noted that *The Theory of the Partisan* was a “sketchy work” taking

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<sup>815</sup> Schmitt, *The Nomos*, 248.

“modest form” and its uncharacteristically uncertain tone contrasts sharply with the majority of Schmitt’s output.<sup>816</sup> It appears the product of man desperately clinging to the latest developments in current affairs as he is increasingly swept out of time by the tide of change. Although he is keen to display his grasp on the contemporary moment, peppering his text with topical references to Che Guevara, Ho Chi-Minh and the Cold War ‘Space Race,’ Schmitt nonetheless oscillates between nostalgic glances to a lost world of order and an ominous apprehension of a catastrophic future. Since the early 1940s Schmitt had argued that the world was caught at a world-historical crossroads between a spaceless techno-industrial disorder and a new form of global spatial order. *The Theory of the Partisan* marked his last attempt to salvage the possibility of the latter from the growing inevitability of the former.

*The Theory of the Partisan* marked an attempt to examine the changing concept of the political and hence of the enemy in the late twentieth century when everything was, in Schmitt’s view, flowing “into the force-field of technical-industrial development.”<sup>817</sup> Indeed, Schmitt subtitled the book ‘An Intermediate Commentary on the Concept of the Political’ explicitly linking it to his earlier book, just in time for the publication of a new edition. In Schmitt’s view the nature of warfare, and hence the concepts of the political and the enemy, had undergone a radical transformation since the eclipse of the state form and the collapse of the *jus publicum Europaeum*. In the late twentieth century warfare had become increasingly untied from state bracketing as the global antagonisms of the Cold War were played out in civil wars and wars of decolonization. This had made partisan warfare, once a relatively obscure issue of interest mostly to military planners, a pressing concern in which the very nature of the political could be located. Schmitt argued that these changes had made the once marginal partisan into “a key figure in world-history.”<sup>818</sup> He hoped that an investigation of this seemingly peripheral figure would therefore open a series of subsequent questions bearing on the concerns that had shaped his work. The book’s closing sentence stated that “the theory of the partisan flows

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<sup>816</sup> Schmitt, *The Theory of the Partisan*, 1.

<sup>817</sup> *Ibid*, 68.

<sup>818</sup> *Ibid*, 88.

into the question of the concept of the political, into the question of the real enemy and of a new *nomos* of the earth.”<sup>819</sup>

**(i) *Real & Absolute Enemies***

Schmitt first attempted to define the nature of the partisan, tracing the development of the concept from the Spanish guerrilla war in 1808 to the decolonization struggles of the 1950s and 1960s. The most fundamental aspect of the partisan, on which “his essence and his existence” lay, was the fact that he stood outside the traditional bracketing of war between states.<sup>820</sup> By pushing beyond these brackets the partisan moved from a realm of “conventional enmity” into a new and more intense realm of “real enmity.”<sup>821</sup> Schmitt further qualified the ‘essence’ of the partisan in several ways, noting that they were defined by irregularity, mobility and intense political commitment.<sup>822</sup> The irregular and mobile nature of partisans set them apart from state armies and their intensely political status distinguished them from mere criminals or pirates, from a “corsair on land.”<sup>823</sup> Despite these common defining features Schmitt argued that two distinct types of partisan had emerged in the late twentieth century, the “motorized” partisan<sup>824</sup> and the “telluric” partisan,<sup>825</sup> each of which bore relation to a specific type of enmity. The distinction between them provided a lens through which the changing relationship between space and the political could be understood in Schmitt’s view.

The telluric partisan had a defensive character, tied to the protection and integrity of a particular space. Although their intense political commitment generated a ‘real’ enmity more intense than the ‘conventional’ enmity of bracketed state warfare it was still bound to a specific place and hence spatially limited. The telluric partisan was hence attached to a ‘real’ enmity and a specific place-based struggle. By contrast, the motorized partisan had an aggressive character detached from a particular place. The motorized partisan was

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<sup>819</sup> Ibid, 95.

<sup>820</sup> Ibid, 11.

<sup>821</sup> Ibid, 11.

<sup>822</sup> Ibid, 14-20.

<sup>823</sup> Ibid, 70.

<sup>824</sup> Ibid, 76.

<sup>825</sup> Ibid, 20.

one who “leaves his own turf and becomes more dependent on technical-industrial means.”<sup>826</sup> In adapting to the “technical-industrial environment” the motorized partisan develops an ‘absolute’ enmity unbounded from spatial limits and increasingly dependent on technologies of mass destruction.<sup>827</sup> Hence, for Schmitt, the distinction between the two types of partisan turned on the question of the relationship between enmity and spatial limitation. The ‘real’ enmity of the telluric partisan is spatially limited, and therefore limited in intensity, whereas the ‘absolute’ enmity of the motorized partisan is unlimited in space and intensity. Therefore, although both types of partisan are defined by enmities that go beyond the bracketing of ‘conventional’ state warfare only the ‘real’ enmity of the telluric partisan has any inherent limitation. “The war of absolute enmity knows no bracketing” and has no inherent limitation.<sup>828</sup>

## **(ii) *The Last Sentinel of the Earth***

The distinction between a telluric partisan and a motorized partisan is significant within the trajectory of Schmitt’s late spatial thought as the former represents his last attempt to locate a new ordering subject capable of respatialising the political and limiting war. The telluric partisan was the last figure Schmitt identified as capable of standing against the techno-industrial force field of absolute enmity and spaceless war. This position of importance rested on the telluric partisan’s “specifically terrestrial” character,<sup>829</sup> the fact that “[he] defends a piece of land with which he has an autochthonous relation.”<sup>830</sup> Writing in 1962, Schmitt reminded his readers that, “the names Mao Tse-tung, Ho Chi-minh, and Fidel Castro indicate that the tie to the soil, to the autochthonous population, and to the geographical particularity of the land – mountain ranges, forests, jungles, or deserts” remained a topical concern in world politics.<sup>831</sup> However, Schmitt argued that the

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<sup>826</sup> Ibid, 76.

<sup>827</sup> Ibid, 78. See also: Ibid, 88-95. In a note the books translator, Gary Ulmen, points out that Schmitt introduces the distinction between ‘real’ and ‘absolute’ enemies as ‘the German language makes no distinction between enemy (*Feind*), i.e., a legitimate opponent, whom one fights according to recognized rules and whom one does not discriminate against as a criminal, and a foe, i.e., a lawless opponent, whom one must fight to the death and destroy” (Ibid. 89, n 90).

<sup>828</sup> Ibid, 52.

<sup>829</sup> Ibid, 21.

<sup>830</sup> Ibid, 92.

<sup>831</sup> Ibid, 21.

telluric partisan had a relevance that went far beyond the latest communist revolution. “Until now,” he noted “the partisan always has been a part of the true earth; he is of the last sentinel of the earth as a not yet completely destroyed element of world history.”<sup>832</sup> Thus, for Schmitt, the telluric partisan was the last bearer of an order grounded in the earth that could fix enmity to spatial limitations in an age of air war, nuclear weapons and the appropriation of extraterrestrial space.

In heralding the telluric partisan as the last agent of terrestrial order, Schmitt is drawn to celebrate an unusual mix of figures from the Right and Left of the political spectrum. Thus, Chairman Mao and Raoul Salan are both lauded for the spatial particularism of their struggles despite the fact that the former was the leader of a Communist revolution in China and the other of a failed coup against the French decolonization of Algeria.<sup>833</sup> Both presented resistance to the despatialisation and absolutization of enmity that grew from universalist political thought and the growing destructiveness of military technologies. However, he noted that even the telluric partisan can be “drawn into the force-field of irresistible, techno-industrial progress,”<sup>834</sup> become “completely disorientated,” and morph into a motorized partisan.<sup>835</sup> Indeed, Schmitt claimed that this was precisely the danger during the Cold War when “powerful central [agencies] of world politics” sought to use the partisan as a “transportable and exchangeable tool” that could be deployed in overt and covert wars and ‘deactivated’ when no longer useful.<sup>836</sup> Indeed, given the forces ranged against these last remaining telluric partisans Schmitt acknowledged that they might disappear “in the smooth-running fulfilment of technical-functional forces just as a dog disappears on the freeway.”<sup>837</sup> Perhaps even unfit for survival in the “thoroughly organized technological world” it seemed unlikely that the

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<sup>832</sup> Ibid, 71.

<sup>833</sup> Indeed, Schmitt notes that Mao’s poem *Kunlun* outlines a “pluralistic image of a new *nomos* of the earth” (Ibid, 59). *The Theory of the Partisan* is one of the hardest of Schmitt’s texts to situate politically. The book emerged from lectures originally delivered in Francoist Spain in 1962 and Salan emerges as the obvious hero of the piece. Although it is vehemently anti-Leninist many figures of the Communist Left including Mao and Ho Chi-Minh are celebrated, albeit with reservation.

<sup>834</sup> Ibid, 22.

<sup>835</sup> Ibid, 22.

<sup>836</sup> Ibid, 22.

<sup>837</sup> Ibid, 77.

telluric partisan could produce a new *nomos* of the earth.<sup>838</sup> Even Schmitt himself seemed to acknowledge that the hope he placed in telluric partisan was little more than a world-historical clutching at straws born of theoretical exhaustion. He ended the book by reflecting on a near distant future when the world will have slid into an “abyss” of absolute enmity, a time when “destruction will be completely abstract and completely absolute.”<sup>839</sup>

#### **(4) *The End of Schmitt’s World***

Even before Schmitt came to write *The Theory of the Partisan* it was clear that his model of the political based on the clear division of space was no longer adequate to the times. His two attempts to conceive of a new political form capable of respatialising the political failed to gain traction in political reality. Further, despite Schmitt’s pretensions the concept of a *Großraum* order was conceptually weak and merely tried to refashion a new order from the remnants of an old world. Investing hope in the idea that marginal localized struggles could produce a new global spatial order was the sign of a chastened intellect. The world of the European spatial order that Schmitt had so soundly theorized and identified with so strongly had come to an end. But rather than accommodate himself to the new postwar world Schmitt instead seemed to conflate the end of the Eurocentric *nomos* with the end of the world itself.

From the early 1940s Schmitt thought was increasingly defined by an eschatological “Christian concept of history” that saw the twentieth century world in a headlong rush into a nihilistic abyss of catastrophic destruction.<sup>840</sup> The obscure biblical figure of the *Katechon* adopted from Saint Paul became a key reference point. The *Katechon* was a force capable of ‘restraining’ the mindless acceleration into a state of total disorder and disorientation.<sup>841</sup> In this eschatological fantasy world the ‘spaceless disorder’ of the twentieth century came to represent the hidden handiwork of the ‘lawless one,’ the

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<sup>838</sup> Ibid, 77.

<sup>839</sup> Ibid, 94.

<sup>840</sup> See for example: Schmitt, “Three Possibilities for a Christian Concept of History,” (2009)

<sup>841</sup> See: Schmitt, *The Nomos*, 59-62: and Schmitt, “Three Possibilities for a Christian Concept of History,” 169-170.

Antichrist. Hence, in an act of supreme intellectual vanity Schmitt cast his struggle against his conceptual enemies – liberals, positivists, The United States, Leninists, Jews – as a cosmic struggle between order and disorder, *nomos* and *anomie*, *Katechon* and Antichrist. In his desperation to cling to orientation, it was Schmitt himself that had become disoriented. Rather than alter his understanding of the possible relations between space and the political Schmitt simply retreated into the satisfactions of apocalyptic pessimism. His last word on the future of spatial order came in a diary entry from 1948: “That is the new *Nomos* of the earth; no more *Nomos*.”<sup>842</sup>

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<sup>842</sup> Quoted in Gary Ulmen, Introduction to *The Theory of the Partisan*, by Carl Schmitt (New York: Telos Press, 2007), xx.

## ***Conclusion: Limits & Engagements***

The main contention of this thesis has been that spatial concepts play a central structural role in Carl Schmitt's thought. Put simply, my claim has been that Schmitt consistently conceived *political order to be grounded in the division of space*. I have argued that Schmitt's thought was fundamentally orientated towards the problem of founding political order, and that he located the solution in spatial divisions upon which clear ordering distinctions could be based. In contrast to those readings that locate the spatial elements of Schmitt's thought exclusively in his late work, I hope to have shown that such spatial divisions play a fundamental role throughout Schmitt's oeuvre. Thus, I have argued that one of Schmitt's key concerns was the spatial foundations of order even before he developed an explicit concept of spatial order in the idea of *nomos*. I hope to have demonstrated that the central category of Schmitt's thought, the concept of the political, which he understood to indicate the inherent antagonism of political relations, had a crucial relationship to spatial division. For Schmitt, political order necessarily involved what I call the *spatialisation of the political*, or the mapping of political difference against a foundational division in space. This was the means by which the fundamental task of political order, the limitation of war, could be achieved, in Schmitt's view.

Hence, I have presented Schmitt's work as a series of attempts to find political forms capable of producing and guaranteeing a stable spatialisation of the political and hence limiting war. Schmitt understood the modern European state to have successfully provided a formal order for several centuries, but to have been fallen into a profound crisis in the twentieth century. This prompted him to radically rethink the spatial foundations of order. Hence, I have argued that although Schmitt first conceived of the .for new political forms capable of respatialising the political beyond the state form. I have traced how this search led him to an explicit attempt to theorize the spatial basis of

order, in the concept of the *nomos* of the earth. I identified Schmitt's two principal attempts to envisage new political forms and new spatializations of the political after the eclipse of the state; an international order based around a plurality of *Großraum* powers and the lonely figure of the partisan fighter. I concluded by arguing that even within Schmitt's own conceptual framework these concepts failed to provide an adequate answer to the problem of founding a new spatial order and that by the 1960s Schmitt was left theoretically barren and staring into the abyss of a global spatial disorder he believed was endangering the very continuity of human history.

This project advances the current understanding of Schmitt within Geography by providing a comprehensive account of his spatial thought. Existing engagements with his work within Anglophone Geography had focused on specific aspects or periods of his work without trying to identify the core of his spatial thinking or account for its development. Further, this thesis presents Schmitt as a spatial thinker, or rather as a thinker whose thought is fundamentally concerned with the relationship between space and politics, an argument that it is novel not only within Geography but also within the expansive secondary literature devoted to his work from other disciplines such as Political Theory and International Relations. Although a number of studies from other disciplines have read Schmitt's work in relation to his biography and his controversial political involvements this is the first to do so from within Geography, and the first to offer a full assessment of his spatial thought in relation to his shifting personal fortunes and political allegiances. I hope therefore to have convincingly demonstrated that spatial concepts play a key structural role within Schmitt's work and made a contribution to better understanding the nature of his thought both within Geography and beyond. However, questions remain as to how Schmitt's work might relate to the core concerns of political geography and what the uses and limitations of his spatial thought might be today. How might the clearer understanding of Schmitt's spatial thought that this thesis provides help assess existing readings of his thought and what new avenues of engagement with his work might it have opened for the future? It is to these questions that I turn briefly below by way of conclusion.

### ***(1) Schmitt and Political Geography***

One of the aims of this thesis has been to make clear that although Schmitt stands outside the canon of thinkers usually associated with political geography his work bears on some of the discipline's core concerns. If these core concerns can be considered to revolve around the relationship between space and power - the multiple and historically specific ways in which this relationship is organized in institutions such as the state, tied to the production of subjectivities, shaped by spatial imaginaries and produced through discursive representations - then I believe Schmitt's work clearly finds its place in relation to some of the fundamental issues animating the discipline.

I have argued throughout that at the very centre of Schmitt's thought lies a conception of political order grounded upon the division of space, or more precisely an understanding of order as founded upon the production of inside-outside distinctions. Hence, my claim has been that the relationship between space and power is the most fundamental structural element in Schmitt's entire oeuvre making him a thinker whose work is germane to the central concerns of political geography. Secondly, as I have shown, Schmitt's thought focused for a large part on a variety of attempts to theorize institutional forms in which this foundational relationship between space and power could be managed. Although his early work focused on the modern state Schmitt's focus later shifted to finding new institutional forms capable of managing the relationship between space and power in new geopolitical, technological and conceptual conditions to which the state was no longer adequate. Thus, the institutional organisation of the relationship between space and power, central to political geography, was one of the key preoccupations of Schmitt's work.

If another of political geography's key concerns is the relationship between political subjectivity and space then Schmitt's work again bears clear relation to the field. As argued in Chapter 4 and Chapter 5 Schmitt understood the modern European state as a model of spatio-political subjectification whereby the inside-outside distinction between states ensured unified political communities and vice-versa, unified political communities

could maintain clear inside-outside distinctions with others. As argued in Chapters 6 and 7 his late spatial theory was largely concerned with how to re-establish stable structures for new forms of spatio-political subjectification when the crucial distinctions between inside-outside that bound space to power were no longer located in the state but at wider geographic scales. Finally, if one of the crucial aspects of political geography is the analysis of the ways in which spatial imaginaries shape our understanding of politics and the role that discursive representations play in producing such imaginaries, then Schmitt's work can again be located squarely in relation to the discipline's core concerns. Schmitt at times reveals a deep appreciation of the way in which spatial relations rely on conceptions of space that are themselves subject to change. For example, in *Land and Sea* Schmitt's comments on how "spatial revolutions" effect transformations in "spatial consciousness" bring his thought remarkably close to contemporary political geographers even as he insists on the political imperative to establish strict inside-outside distinctions.<sup>843</sup>

Man has a clear awareness of his space, which historically is subject to deep-going perturbations. To the plurality of forms of existence corresponds an equal plurality of spaces. ... The inhabitant of a big city has a different image of the world than does a farmer. A whale hunter has a vital space that differs from that of an opera singer. Life and the world are seen in a different light by an airplane pilot, and they have different dimensions, depths and horizons. The differences in the perception of space are even larger and deeper among various nations and among various periods in the history of mankind.<sup>844</sup>

Schmitt's understanding of the relationship between space and power – one fixed to a strict distinction between inside and outside – is of course by no means unique. Conceptions of political order premised on the union of particular political communities and particular spaces might be recognised in the tradition of German geopolitics but are

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<sup>843</sup> Schmitt, *Land and Sea*, 28.

<sup>844</sup> Schmitt, *Land and Sea*, 28.

also common to wider traditions of state theory and much of contemporary international relations thought. However, despite this rather over-familiar spatial imaginary running through his work I believe that an engagement with Schmitt's thought is nonetheless valuable for political geography. As a key political thinker of the twentieth century, with a deep, broad and continuing influence on the Right and the Left in Europe, The United States and beyond, who theorised the relationship between space and politics, Schmitt is a figure that political geography not only can but, *should* engage.

The fact that Schmitt was involved with the Nazi state and indeed attempted to formulate spatial theory to legitimate the regime's murderous expansion in Eastern Europe does not rule him out as a worthy source of investigation. On the contrary, Schmitt's Nazi association makes him an even more important case in attempting to understand the history of geographic thought in the twentieth century and its complicated entanglements with political power. Schmitt's *Großraum* theory positions his thought at a unique intellectual crossroads between Nazi spatial thought and the wider field of modern European political thought, a relationship that political geographers are well placed to examine. Indeed, although it has recently begun to receive greater attention, Nazi spatial thought has been an area of study long under-examined in Anglophone political geography, perhaps reflecting an assumption that the German geopolitical tradition and its relationship to Nazism has been digested and is in no need of further critical attention. However, I think that it would be a mistake to assume that the nature and importance of the German geopolitical tradition or Nazi spatial thought have been adequately understood or have no afterlife today. Indeed, the fact that Schmitt's theory of *Großraum* continues to have influence in mainstream International Relations discourse in Europe, on both the Right and the Left of the political spectrum, make it important for political geographers to engage with his work in order to offer a more nuanced critical perspective that builds on a deeper engagement with conceptions of spatio-political relations.

Below I offer a very brief outline of some of the ways in which I believe Schmitt's spatial thought may be productively engaged within political geography and related areas of

inquiry but also highlight some of the limits to his thought that act as stumbling blocks to its critical application today. I start first with these limitations.

## **(2) *Limits***

One doesn't have to look deeply to identify some of the limitations of Schmitt's spatial thought and its use in contemporary attempts to understand the relationship between space and politics. Several are immediately manifest. I will here only highlight four of the most immediately obvious and most pressing concerns.

First, unsurprisingly, is the bearing Schmitt's relationship to Nazism and anti-Semitism has on his spatial thinking. As discussed at length in Chapter 3, assessing the relation between Schmitt's theoretical work and his political commitments is a complex matter of some controversy. Whilst I have argued that neither Schmitt's complicity with Nazism or evident anti-Semitism can be ignored his conceptual work cannot be merely reduced to 'Nazi' theory. Rather, an approach that remains aware of the antinomies of Schmitt's polemical method is required. Nonetheless, Schmitt specifically developed his work on a European *Großraum* in order to legitimize the National Socialist's aggressive expansionist policy in Eastern Europe. Further, this was the only case where Schmitt's spatial thought had a chance of influencing policy, even if this remained ultimately remote. Schmitt took this chance to propose an image of a European spatial order based on the difference between 'national groups', dominated by an imperial Germany and in which the Jewish population clearly had no place. Although Schmitt's *Großraum* theory in no way defines his spatial thought as a whole, it reflected some of its key structural concerns, i.e., the relationship between spatial division and political difference, understood as the relations of enmity between unified political groups. Schmitt's vision of a European *Großraum* order perhaps reflects some of the dangers in a conceptual framework that fixes political to spatial differences. This is of particular concern in relation to Schmitt's implicit claim that European Jews were the 'spatial enemies' of the German *Reich*. This cannot help but suggest a relationship between Schmitt's concept of the friend-enemy relation, his spatial thought and the influence of anti-Semitism in his

work. The idea of a pluralist world order based upon a number of independent *Großräume* is not essentially tied to the specifics of Nazi foreign policy, but should give pause to those wishing to appropriate the concept in attempts to rethink imagining the nature of contemporary world order.

A second concern, and one that inevitably flows into the others, is the relationship between spatiality and the concept of political. Although Schmitt's definition of the political as the relationship between friends and enemy has an undeniable conceptual force and is something of an unmovable object within contemporary Continental political theory, it nevertheless expresses an extremely limited understanding of political possibilities. This is not the place to enter into the extensive and complex debate on the nature of the political, but suffice to say that by approaching politics solely through the lens of antagonistic difference, Schmitt excludes many other frameworks within which different forms of political relations can be imagined. For example, Schmitt develops his understanding of political difference as a polemical counterpoint to all forms of universalist thinking in politics. However, he understands political universalism to either assume, or aim towards, an undifferentiated totality. This excludes many relationships between universality and difference that could be conceived of in the realm of political co-existence. As a thinker avowedly committed to pluralism, Schmitt's vision of plurality takes a severely limited form. Indeed, as argued in Chapters 4 and 5, his thought is principally focused on the means by which pluralism can be limited whilst nonetheless maintaining a minimum of difference.

These limitations inherent to Schmitt's concept of the political are significant in relation to his spatial thought because he understands political order to be founded upon a spatialisation of the political. The division of space is the means by which political difference is both given expression and managed, in Schmitt's view. In other words, he understands order to operate precisely by fixing political differences to spatial differences. In this sense spatial difference is thus principally considered a means of ordering political difference. Although he makes many comments about the fluid and contingent nature of the relationship between space and the political, Schmitt is always

insistent that political differences should be mapped against clear spatial divisions between inside and outside. In this way, he believed conflict could be limited by channelling antagonism into relationships defined by clear spatial differences. Space is hence seen both as a medium for antagonism and the means of its containment. Whilst this certainly might go some way to explaining certain forms of relations between space, violence and political subjectivity, it fails to acknowledge the possibility of political spaces of gathering, co-operation and collective action unless as sites for the representation of political unities defined by enmity. Further, within Schmitt's framework, spaces of mobility, exchange and transformation represent only the possibility of political disorder, the dissolution of political unities and escalating levels of antagonism freed of spatial restraint. This is not only a deeply reactionary conception of the relationship between politics and space, but provides no entry point for understanding the complexity of contemporary political subjectivities often defined by the intersection of multiple, dynamic and overlapping sets of spatio-political relations.

A third limitation of Schmitt's spatial thought is that it shaped by a largely *representational* understanding of space. Schmitt repeatedly stressed the importance of the visibility of order in a number of works, and spatial division is considered a medium through which order can be rendered visible. Hence, although Schmitt rails against the empty, neutral understanding of space typical of modern scientific thought, his own conception remains largely wedded to a concept of space as a flat representational plane that can be visibly partitioned. Indeed, Schmitt valorises the earth over land and sea precisely because it can, in his view, bear fixed lines of demarcation. Despite interesting discussions of the shifting patterns of 'spatial consciousness' and the changing dimensions of air war, Schmitt's thought remains bound to a cartographic imaginary in which political distinctions can be represented in the division of a flat plane. Such a representational understanding of space has long been subject to critique in social and cultural geography, not only because of the other conceptions of space it excludes, but for the limitations it places on how the relationship between space and politics is understood. Hence, although Schmitt appeals to the importance of 'spatial consciousness' and the relationship between a political idea and a political group's awareness of its concrete

spatial situatedness, his representational understanding of space leaves no room for conceiving of the multiple performative practices and emotional attachments that bind a political community to a sense of place and shape specific understandings of space that have powerful political resonances.

Lastly, Schmitt's spatial theory remains remarkably weak in relation to socio-economic factors. Although his work on the Monroe Doctrine and the development of U.S. interventionism includes perceptive remarks on the relationship between politics and economy, especially with regard to their different relation to space, such analyses are not typical of his spatial thought more broadly. His historical account of the rise and fall of the European state system pays little attention to the influence of socio-economic factors. He makes no significant analysis of the importance of the economic relationships between Europe and its New World colonies, nor of socio-economic developments within Europe including the industrial revolution. When he does address historical developments such as the French Revolution or the emergence of the industrial proletariat, he does so only in relationship to the changing nature of state power with scant attention to their relation to shifts in socio-economic relations. Schmitt's discussion of the relative importance of appropriation, as opposed to distribution and production, in the foundation of spatial order can be understood as an active attempt to shift analysis away from socio-economic processes to singular political acts. This is an understanding of spatial order that ultimately highlights the importance of political decisions over and above socio-economic processes. The bearing this lack of socio-economic engagement has on his spatial thought is perhaps most evident in Schmitt's discussion of the key role of England in the *jus publicum Europaeum*. Rather than engage with the development of socio-economic factors that shaped, and were conversely shaped by, the spread of Britain's maritime empire, Schmitt claims it was based upon a 'decision for the sea,' a *political* choice by the English to tie themselves to the geo-elemental force of the sea. Hence, Schmitt displaces an analysis of socio-economic transformations into the realm of mythical events. The lack, or indeed the active avoidance, of socio-economic factors renders Schmitt's spatial history of the *jus publicum Europaeum* historically questionable and politically reactionary.

### **(3) Engagements**

The obvious limitations of Schmitt's spatial thought should not deter us from honestly identifying areas for productive engagement and potential use. This is a task that doubtless needs careful consideration, but one that I think it would be wrong to neglect. I will here briefly indicate four areas where I believe productive engagement can be made with Schmitt's spatial thought.

Firstly, there is much valuable work to be done in *locating Schmitt's spatial thought more squarely in the history of ideas* and more specifically in the relationship between spatial and political thought in twentieth century Germany and Europe. As one of the key political and legal theorists of the twentieth century, Schmitt's spatial thought alone deserves critical examination not only within Political Theory but also within Geography. This is especially true given Schmitt's wide and deep reception across a number of historical and contexts and opposing ends of the political spectrum. More particularly however, Schmitt's work occupied a fascinating position between different intellectual traditions and scholarly disciplines during a period of turbulent political transition on which he reflected directly. Hence, it represents a rich political and philosophical crossroads in which the significance of spatial thought has yet to be fully examined. The fact that Schmitt conceived of the political crises of the twentieth century to find its roots in a deep-seated crisis of spatial order should be of significant interest to those attempting to understand the relationship between political and geographic thought in the last century.

Of particular note here are three areas of investigation. Firstly, examining the relationship between Schmitt's thought and the tradition of German geopolitical thought is an area of that I believe deserves further investigation but which unfortunately lays beyond the scope of this project. As argued above, the fact that Schmitt explicitly engaged with German geopolitical thought during the period of his complicity with the Nazi regime might provide interesting avenues for an investigation of the impact of geopolitics on

other realms of German intellectual life during the first half of the twentieth century and a lens through which to map the relationship between Nazi spatial thought and modern political thinking more broadly. Secondly, it would be fruitful to trace the chains of influence running from Schmitt's spatial thought to wider field of post-war intellectual thought in Europe and the United States. Of particular interest would be an examination of his influence upon the nascent discipline of International Relations in the United States via German émigré intellectuals such as Hans Morgenthau and Leo Strauss. Tentative studies have already been made of the relationship between Schmitt's thought and Morgenthau's influential work but it seems a direction that can be developed further.<sup>845</sup> A similar study might be possible of the influence of Schmitt's spatial thinking on conceptions of world order in post war Europe developed by those such as Alexandre Kojève and Raymond Aron with whom Schmitt engaged in friendly intellectual dispute in the 1950s and 1960s.<sup>846</sup> Thirdly, Schmitt's work occupies a crucial position within the largely unexplored relationship between twentieth century spatial thought and the debates concerning secularization, the meaning of history and the 'legitimacy of the modern age' both within and beyond Germany.<sup>847</sup> Investigating the relationship of Schmitt's spatial thought to these debates could prove useful in excavating the unarticulated spatial imaginaries that underpin them and set his thought in conversation with still pertinent questions about the relationship between philosophies of history and global order

Second, Schmitt's analysis of the *spatial foundations of order and the patterns of historical change through which they are transformed* offers many suggestive insights into the nature of the modern European and world politics. The question of the *nomos* of the earth provides a framework for thinking about the spatial foundations of political order that moves beyond the limited state-based understandings typical of much International Relations scholarship whilst avoiding the geographic determinism of the German geopolitical tradition. The concept of *nomos* offers a provocative starting point

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<sup>845</sup> See: Coleman, "Colonial War" (2011); Scheuerman, *Carl Schmitt* (1999), 225-252.

<sup>846</sup> See: Müller, *A Dangerous Mind*, 96-103; Howse, "Europe and the New World Order" (2006).

<sup>847</sup> See for example: Hans Blumenburg. *The Legitimacy of the Modern Age* (Cambridge, MA: MIT Press, 1985); Reinhart Koselleck. *Critique and Crisis: Enlightenment and The Pathogenesis of Modern Society* (Cambridge, MA: MIT Press, 1987); Jacob Taubes, *The Political Theology of Paul* (Stanford, CA: Stanford University Press, 2004).

for interdisciplinary investigations tracing the historical dynamics that have shaped the constitutive relationship between space and law, in ways that both build on and challenge Schmitt's work. Despite its historical sweep and its global ambition, Schmitt's own investigation of the spatial foundations of order in the concept *nomos* undoubtedly has a number of conceptual and empirical flaws, but it opens a potentially rich seam of historical and philosophical reflection on the spatial nature of order.

Further, Schmitt's gestures towards 'planetary' thought find much common ground with recent attempts within Geography, but also in Philosophy and Political Theory, to pose the question of how 'worldliness' or 'the planetary' might be thought after 'globalisation' (or rather after the discourse of 'globalisation' has been eclipsed).<sup>848</sup> At a time when we are faced with the no-longer avoidable problems of climate change there seems a pressing need to have a framework to approach macro-scale problems beyond the terms of a liberal progressive 'globalisation'.<sup>849</sup> The 'spatial histories' that Schmitt sketches in *Land and Sea* and *The Nomos of the Earth* - sadly under-developed in this project due to restrictions on time and space - offer one avenue through which the question of 'planetary' space may be approached and a productive engagement between Schmitt's thought and this emerging literature might be possible in the future.

Thirdly, Schmitt's work can provide an important link between debates on *the nature of political pluralism and spatial questions*. Schmitt highlighted the central importance of the distinction between universalist and pluralist forms of world order. This remains a crucial question at a time when the balance of global power is changing with the emergence of new regional powers and an American hegemony weakened by military adventurism and economic crisis. Although his vision of a globe carved up between hermetically sealed regional hegemonies is neither possible nor desirable, Schmitt's work can nonetheless make an important contribution to understanding and imagining the

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<sup>848</sup> See for example: Stuart Elden, "Lefebvre and Axelos: Mondialisation before Globalisation." *Space, Difference, Everyday Life: Reading Henri Lefebvre*, edited by Goonewardena, Kaniska., Kipfer, Stefan., Milgrom, Richard., & Schmid, Christian., 80-93. New York: Routledge; 2008; Jean-Luc Nancy, *The Creation of the World, Or, Globalization* (SUNY University Press, 2007)

<sup>849</sup> See for example: Geoff Mann and Joel Wainwright, "Climate Leviathan" *Antipode* (forthcoming 2012): Accessed July 18 2012. DOI: 10.1111/j.1467-8330.2012.01018.x

spatial foundations of a pluralist world order. Furthermore, although Schmitt's work remains marginal to debates on the relationship between space, the political and democratic contestation, his work can provide important insights for these discussions. Not only was Schmitt the first to develop the concept of the political but also already directly related it to questions of space. This has been largely overlooked by geographers engaging with the question of spatial contestation on the one hand and by political theorists using Schmitt's work as a resource in developing concepts of radical democratic pluralism on the other. Thus, the relationship between Schmitt's spatial thought and his use within democratic theory has yet to be examined. Although, as noted above, Schmitt's spatial thought is ill-equipped to deal with the complexities of contemporary spatio-political relations it might nonetheless provide useful tools for developing a concept of democratic spatial contestation if engaged with carefully and selectively.

Lastly, although it has already received significant attention, further productive engagement can be made with Schmitt's *diagnosis of the collapse of the spatial order of the earth in the twentieth century*. Schmitt's critique of U.S. interventionism, humanitarian warfare and the antinomies of universalism in international law may appear to be routes of scholarly critique well worn during the last decade, but in my view remain bracingly relevant to contemporary global politics. Schmitt's analysis continues to offer profound insights into the nature of the contemporary relations between space, law and violence that have in no way been exhausted. Although these concerns within Schmitt's work came to prominence in Anglophone debates during the period of the 'war on terror,' they continue to bear light on the nature of global disorder. This phase of U.S. interventionism cannot be considered of merely historical interest given that the U.S. led war in Afghanistan is ongoing, the use of drone attacks along the frontier with Pakistan has been expanded under President Obama's administration, and detainees continue to be held without charge in Guantanamo Bay. Hence, the concerns to which Schmitt's critique was considered relevant over the last number of years persist. This is despite a shift in media, and often scholarly, attention that appears to have followed a change in the discursive frame in which U.S. foreign policy is conducted. More importantly, however, the deeper concerns reflected in this engagement with Schmitt's work, i.e., the nature of

humanitarian interventionism, the role of universalism in international law and the changing relationship between war and space, are areas that remain topical and require ongoing critical examination. That many prescient insights can be drawn from Schmitt's spatial thought in the investigation of these areas is demonstrated by the existing literature. However, the appearance of new translations of Schmitt's work from the late 1930s and early 1940s provide a further resource for critical engagements with contemporary global politics.

The Italian political theorist, Carlo Galli and the geographers Robert Meyer, Janosch Prinz and Conrad Schetter have all argued that Schmitt's spatial thought is invaluable in understanding the "spatial-political nexus" of the modern era of nation states, but has little to offer attempts to understand contemporary spatio-political relations.<sup>850</sup> Both claim that the categories of Schmitt's spatial thought are no longer adequate to grasp the increasing complexity of the spatio-political relations today. To some extent this argument is understandable. It is clear, for instance, that the solutions Schmitt proposed for the crisis of twentieth century spatial order provide little positive orientation for a progressive engagement with contemporary spatial politics. However, such a view goes too far in positing a break between the era of the modern state and the contemporary moment. Indeed, many of the problems Schmitt diagnosed were not confined to his time alone and their legacy continues to shape the present. That Schmitt's critiques of humanitarian warfare and U.S. interventionism have been considered germane by so many in recent years, despite originally being developed over seventy years ago, attests to this fact. Thus, even if the limitations of Schmitt's spatial thought are acknowledged it cannot simply be consigned to the status of a reactionary curiosity from a dark chapter in European history that is out of joint with the times. Nonetheless, any engagement with Schmitt's spatial thought must approach his work with a critical awareness of its conceptual limitations and a historical and political sensitivity to the compromised context of its emergence. I hope that this thesis has made a contribution to clarifying the nature of Schmitt's spatial thought, and indeed establishing Schmitt as a spatial thinker, both within Geography but also within the wider field of Schmitt scholarship. I hope that

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<sup>850</sup> Meyer, et al. "Spatial Contestation?" (2012), 696. See also: Sitze, Introduction, liv.

it goes some way to providing a contextual and conceptual framework within which future scholarly engagements with his spatial thought might be made. both within Geography but also within the wider field of Schmitt scholarship.

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