

The Graduate School and University Center
of the City University of New York
Graduate Center: 33 West 42 Street, New York, N.Y. 10036

C O N F E R E N C E

on

THE RELEVANCE OF CARL SCHMITT'S CONCEPT OF THE POLITICAL

October 29, 1990

P R O G R A M

CHAIR: GEORGE SCHWAB

MORNING SESSION

GEORGE SCHWAB
GRADUATE CENTER, CUNY

JOHN H. HERZ
GRADUATE CENTER, CUNY

GEORGE SCHWAB

JOSEPH W. BENDERSKY
VIRGINIA COMMONWEALTH
UNIVERSITY

JOHN STROUP
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INTRODUCTORY REMARKS

LOOKING AT CARL SCHMITT OF THE 1920s
FROM THE VANTAGE POINT OF THE 1990s

THE SIGNIFICANCE OF THE STATE OF
NATURE IN CARL SCHMITT

CARL SCHMITT AND SIGMUND FREUD ON THE
CONCEPT OF THE ENEMY

THE POLITICAL AS ERNST OR AS SPIEL:
SCHMITT, KOJÈVE, FUKUYAMA

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AFTERNOON SESSION

G.L. ULMEN
TELOS, NEW YORK

ELLEN KENNEDY
UNIVERSITY OF
PENNSYLVANIA

PAUL GOTTFRIED
ELIZABETHTOWN COLLEGE

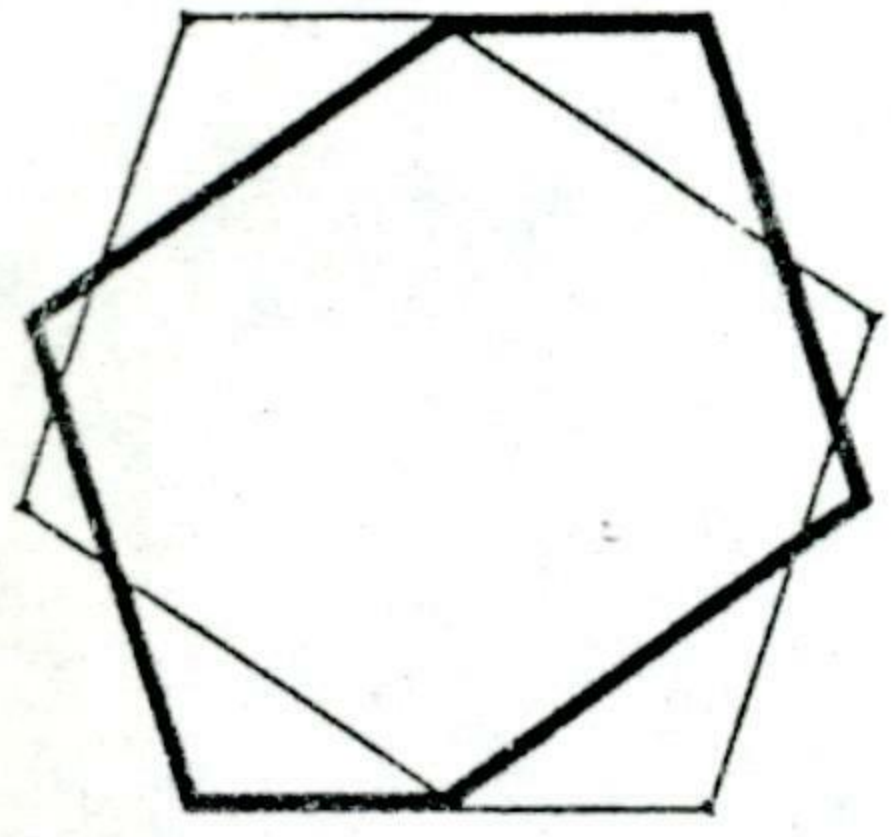
PAUL HIRST
BIRBECK COLLEGE,
UNIVERSITY OF LONDON

RECYCLING THE OTHER: THE POSTMODERN
APPROPRIATION OF THE POLITICAL

CONCEPTUALIZING THE POLITICAL: THE
INTERNATIONAL CONTEXT OF CARL SCHMITT'S
CONCEPT OF THE POLITICAL

THE SOVEREIGN STATE AT BAY

GORBACHEV AND THE EXCEPTION



The Graduate School and University Center

of the City University of New York

George Schwab, Director

Office of Conference on History and Politics

Graduate Center: 33 West 42 Street, New York, N.Y. 10036

212 ~~804728~~ 642-2121

September 9, 1990

Dear *John,*

Twenty-nine October, the date of the conference on "The Relevance of Carl Schmitt's Concept of the Political," is almost upon us. In view of this I would like to acquaint you with some of the details. From the attached preliminary program you will note that eight presentations will be made by colleagues acquainted with the writings of Schmitt.

Because the morning and afternoon sessions at the Graduate Center (room 1700c) will last 2½ hours each (9:30 to 12:00 and 2:30 to 5:00), I suggest that presentations be confined to twenty minutes. This will give us at least some moments to discuss each contribution. Discussions will, of course, continue over lunch (in room 1810, for participants only) and dinner at my house (140 Riverside Drive in Manhattan).

If we are serious about having the volume published by the end of 1991, I will need the final version of your presentations no later than 15 December 1990. Greenwood/Praeger has agreed to publish the proceedings.

In eager anticipation of seeing you soon, I remain,
Yours sincerely,

Gene

Copies:

Joseph Bendersky
Paul Gottfried
John Herz
Paul Hirst
Ellen Kennedy
John Stroup
G.L. Ulmen

Nature of man

"Beyond the line" Nomos: State of nature in Europe?

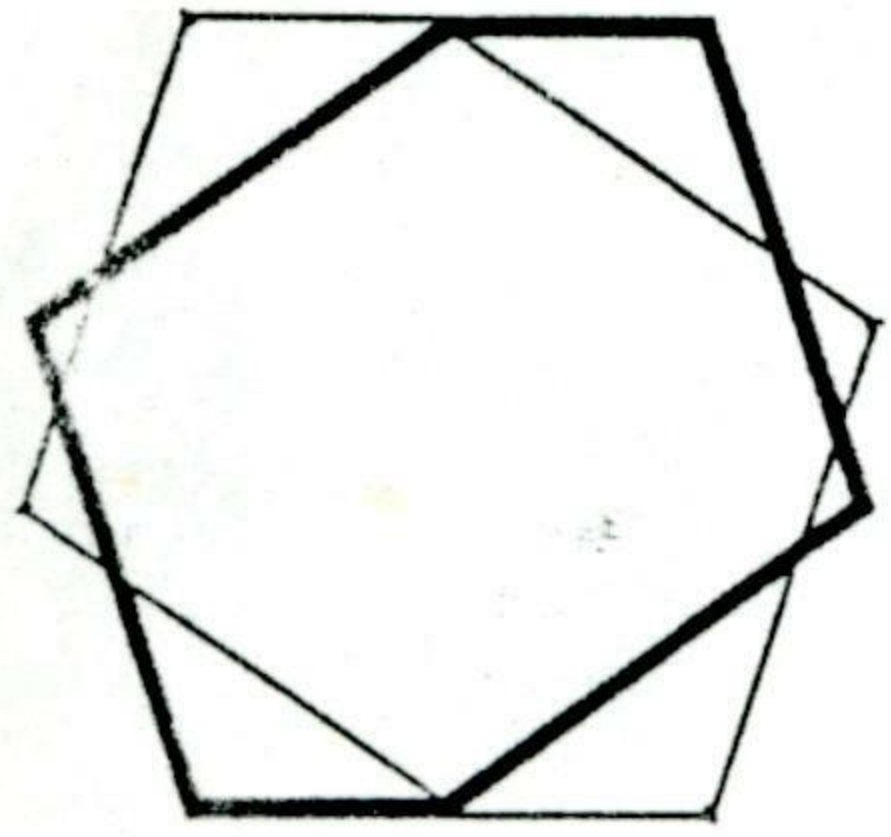
Exc. as "challenge"

Frend nature of man: aggressiveness

" as moralist (anti-war)

Universities (article in NYT) pol. correct

Realism: National Interest



The Graduate School and University Center

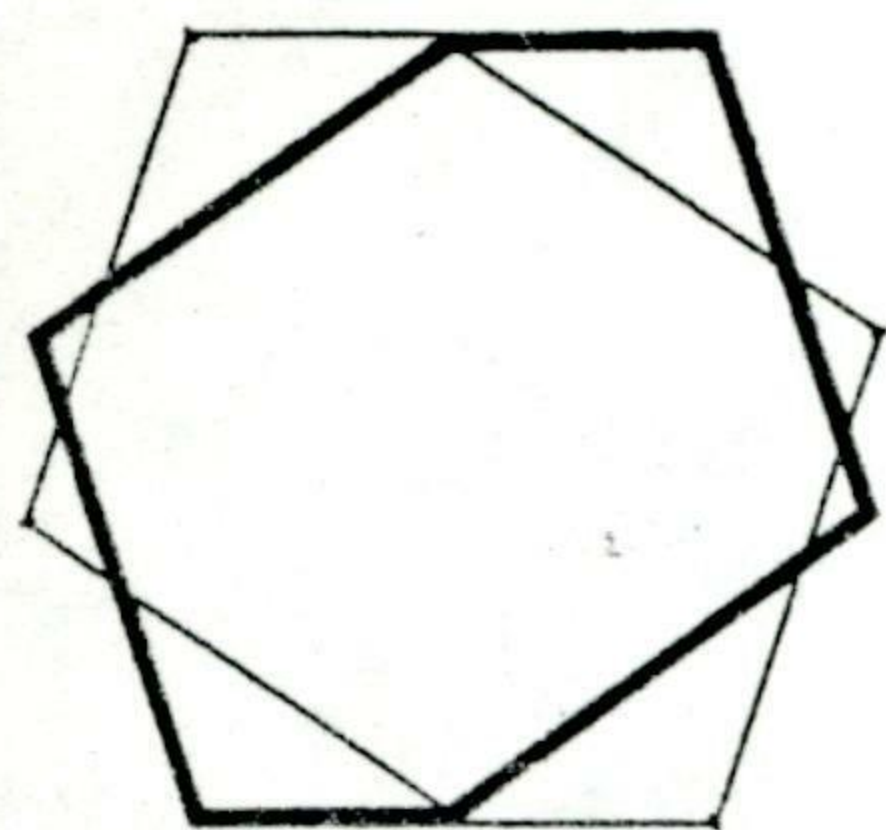
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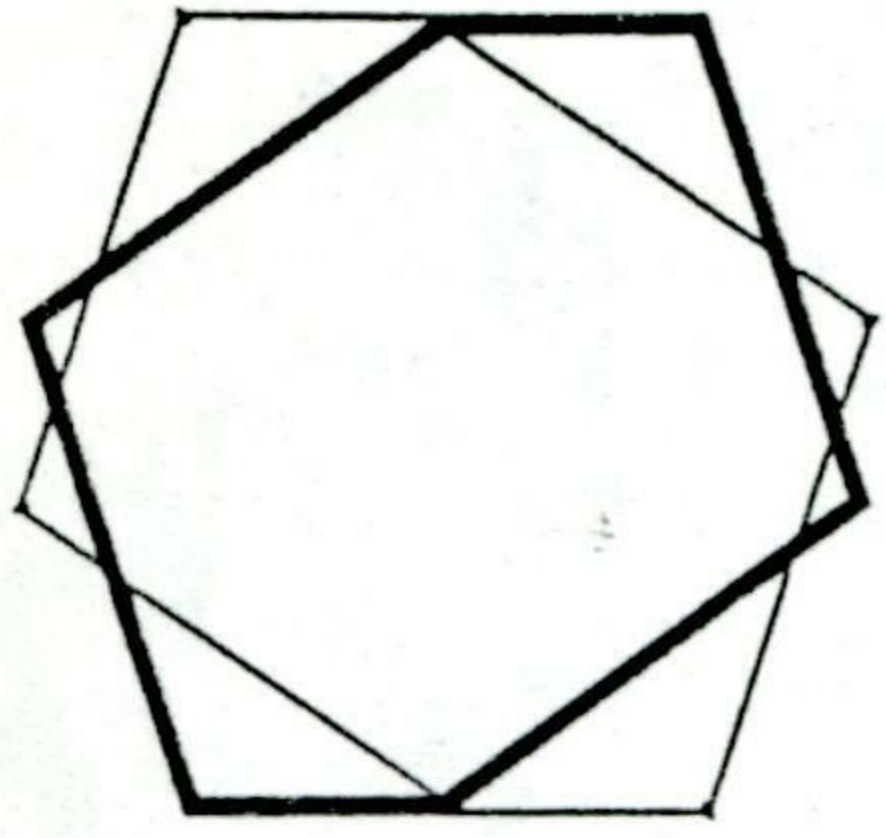
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I am not a Schmittian, although, during my youthful studies in the Germany of the 1920s, some of his ideas made a great impression on me, as on so many interested in politics. It was a time of great intellectual excitement, and when George Schwab asked me to contribute some impressions to this (Schmittian) get-together, I accepted with alacrity because it seemed to me that it might be of interest to show how one who had encountered Schmitt's theories over sixty years ago, one of the few still surviving ones, would assess Schmitt and his impact from the vantage-point of the end of the century.

I must add right away that my remarks are based on rereading Schmitt's "Concept of the Political" (in George Schwab's brilliant translation) and whatever else remained in my memory, since failing eyesight has prevented me from reading, or re-reading, other Schmitt items.

I.

Let me begin with referring to the ~~theoretical~~ conditions of ~~the~~ social ^{theory} sciences in pre-Nazi Germany. There was no political science as we know it today. We would study Staatsrecht and Voelkerrecht, that is, constitutional and international law (Schmitt, of course, himself held his official post as professor of constitutional law in the law faculty). Theoretically, first came the legal norms, with the state somehow disappearing behind them (Hans Kelsen, under whom I wrote my dissertation and who, for a while, deeply influenced me, in his "pure theory of law", held that state and legal order were identical). Thus it made a tremendous impression when Schmitt (as Max Weber to some extent had done before

John H. Herz

Thank you for your understanding.
With warm regards. George

Looking at Carl Schmitt from the Vantage-Point of the 1990ies

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

I.

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

When I just referred to "political theory" I must correct myself or, rather, specify. In pre-Nazi Germany there was no political science as we know it today. One would study ~~Staatsrecht~~ Staatsrecht or Völkerrecht, that is, constitutional or international law (Schmitt's official position, for instance, was that of ^{professor of} constitutional and international law in the respective faculties of jurisprudence at the universities where he taught.) Theoretically speaking, first came the legal norms, with the state somehow disappearing behind them. In Hans Kelsen's, my teacher's, "pure theory of law" (reine Rechtslehre), for instance, the state was considered identical with the legal order. Thus it made a tremendous impression when Schmitt, as Max Weber to some extent had done before

him) established, or re-established, the state as power-holder creating the law; and the political as having its own existence especially in crisis situations of existential threats to organized groups. Formulations such as defining the sovereign as the one who controls the state of necessity (Wer ueber den Ausnahmezustand verfuegt), seemed to fit in with the near-civil war conditions of the early Twenties in Germany, when ~~it~~ ~~seemed that~~ asking who fought whom and who controlled a ~~state~~ constant state of emergency was a more vital question than asking which party was gaining an election or backing one or another government coalition.

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

Which war situation, which enemy is Schmitt aiming at? Not only his extremism but also the vagueness of his concepts is revealed when (~~Concept, p. 27~~) he defines the political enemy as "the other", "the stranger", as one who is "in a specially intense way, existentially something different and alien", and adversary who intends "to negate his opponent's way of life and therefore must be repulsed or fought in order to preserve one's own form of existence." ⁴ Subsequently, in his Nomos der Erde, the enemy is not so existentially defined (at least as far as the members of the jus publicum Europaeum, i.e. of the European territorial state system, are concerned); but in his "Concept", he is the foe, who has to be fought and destroyed in order to ~~be~~ survive, physically or in one's "form of existence". But Schmitt gives no examples. Did he think of World War I, with Britain and France as Germany's "hereditary enemies"? As a friend of mine, Eugene Anshel, who was one of Schmitt's students in the middle Twenties, relates in his memoirs, ^{BT} Schmitt, following the economist ^{Werner} Sombart, distinguished "Helden und Haendler", heroes and traders, or, better, shop-keepers, clearly referring to Germanic heroes as opposed to British (or possibly also American) traders, but Anshel believes that the latter, ^{denigrating} ~~despising~~ ^{characteristic} ~~characteristic~~ ^{zation} also referred to Jews. ⁵ And here, the definitions in his "Concept" ^{noted above} ~~which I have quoted~~ indeed assume a more ominous character. If ^{one} ~~we~~ looks for ^{domestic} ~~internal~~ foes (~~and~~ Schmitt occasionally refers to political Catholicism at the time of the Kulturkampf and to the Socialists at the time of their outlawry by Bismarck in this respect), one cannot help remembering that German antisemites defined the Jew as the "alien", the

the enemy -

"other", one who, despite all efforts at integration, would always be an outsider hostile to, and endangering, the German-Aryan way of life. Whether Schmitt was an antisemite or not (before 1933 he probably belonged to those ~~whom~~ among whose best friends or, in his case, whose best colleagues were Jews), nobody faced with such enemy definitions could escape ^a ~~the~~ hidden, codeword-type reference. Whether Schmitt intended it or not, it fitted a racial policy that considered "World Jewry" as the existential enemy of all, and especially the Nordic-Germanic, races, an enemy who, therefore, had to be exterminated. When Hitler, in Main Kampf said "Ich aber beschloss, Politiker zu werden" (I decided to become a politician), he meant by politician and politics something essentially in agreement with Schmitt's concept of the political. ^{To be sure,} ~~I know that Schmitt,~~ ^{Schmitt} prior to 1933, ^{he} was not a Nazi; ^{was} even ^{opposed} Hitlerism ^(on this see below) ~~(about this later)~~. But the trend of his concepts, whether ~~he~~ intended ~~it~~ or not, could well be ^{used} ~~used, not abused,~~ for building up a racist doctrine underlying policies of persecuting and, eventually, exterminating an existential enemy. As Heine once put it, Hitler ~~and his henchmen~~ might well have said "ich bin die Tat von Deinen Gedanken" (I am the deed that sprang from your ideas). ⁶ - ~~So much for Schmitt's~~ So much for Schmitt's vague extremism or extremist vagueness. Just one more word on his anthropology, his basic view of man. It is, as ~~is~~ mentioned, a collectivist one, where, differing from Hobbes who establishes Leviathan to protect the individual, the individual is supposed to sacrifice, if need be, his life for the community.

One is reminded of Bert Brecht's "Der Ja-⁵-Jager", a play written about the time Schmitt wrote his "Concept". There, one member of a group ~~fighting their exploiters~~ is asked to sacrifice his life, ^{complete a task that will save the lives of many;} the only way the group can ~~survive~~; he is not forced but eventually says "yes" to his doom. This ~~is~~ ^{was} heroism as seen from the Left. While Schmitt surely would not have promoted such class-struggle collectivism, it explains the occasional emergence of a Leftist Schmittianism using Schmitt's power emphasis for its own political purposes (exactly as a Hegelian Left used Hegelian dialectic for its purposes, although the Schmittian Left so far has not produced its Karl Marx).

III.

One major criticism one might level against Schmitt's definition of the political is its exclusivism, limiting the political narrowly to the friend-enemy situation of existential survival. On the face of it, this excludes from the realm of the political all normal political activities and policies, economic policies, labor and industrial policies, now environmental policies, you name them, as well as the political institutions and processes connected with them, such as parliaments, political parties, judiciaries, and so forth, at least as long as they are not involved in existential conflict. Now Schmitt's concepts, as all concepts, are products of conceptualization. Everybody is free to define and conceptualize, coming more or less close to "reality". ^{But} Schmitt's conceptualizations are not

in agreement with "common" conceptualizations. ^{They} ~~It~~ does not fit what is commonly comprised under "political reality", and thus Schmitt's political realism comprises only one aspect of the "political", that of conflict and enmity. It neglects, or at least plays down, the realm of compromise and cooperation, and this way is hardly useful for a political analysis of ~~at least~~ most modern industrial states and their more or less liberal-democratic societies. The American constitution and type of governance seems to be farthest ^{removed} ~~at all away~~ from Schmittian conceptualizations. With its separation of powers, checks and balances, independent judiciaries watching over broad realms of ^{the} state's non-interference with individual and groups rights, ^{its federalism,} and so forth, this system pushes concentrated executive power away from the normal functioning of government toward true emergency situations. Even the vital decision about "enmity", that is, the declaration of war, is denied the executive. An existential war in the Schmittian sense, that is, one placing the survival of the union in jeopardy, happened only once in the history of the United States, and even in the Civil War (where the question was the admittance to society of the alleged racial stranger, the Negro), the only emergency measure Lincoln was compelled to take was the temporary suspension of habeas corpus. ^{Thus} ~~The~~ state of the exception has been the exception, not only in the history of the United States but ~~also~~ in that of modern France, Britain, even Germany ~~&~~ (that is, the Federal Republic) and other modern, i.e., developed industrial nations; Schmitt's concepts are ^{more} ~~rather~~ applicable

to Third World countries, where democratic processes like elections and institutions like parliaments are frequently meaningless fig-leaves concealing the real power-holders.

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

Here, however, we encounter the limits of the Schmittian approach. He is inclined to interpret into non-Schmittian theories and policies the same polemical extremism that characterizes his own. Thus he interprets all liberalism as anti-state, authority-negating, basically anarchic or integral-pacifist doctrine and movement.⁷ This may ^{be} ~~be~~ true for some more radical liberal theorists and movements that assume

the basic goodness or perfectability of man or his natural freedom and equality, but it certainly does not apply to those whose aims are liberal in a broad / sense but who, like the fathers of the American Constitution, are pragmatists, well knowing that a parliament, for instance, far from being a tool for getting at some truth, / constitutes an arena for the peaceful settlement of issues, —

for holding the executive accountable, for preparing an opposition to possibly become^{ing} the next government (thus providing^{for} that "alternation of power" that marks a democratic system). Even in the international arena, where the power factor is strongest, what one may call a pragmatic pacifism has been the normal, with war^{like} policies the exception. Has Morgenthau, surely not a utopian ide^{alist}ologist but a power realist, gave his magnum opus, Politics among Nations, the subtitle: "The struggle for power and peace" and considered diplomacy, not settlement of conflicts by force, i.e., war, the normal conduct of foreign affairs.^{8.}

^{This way} Thus one arrives at what one may call a realist liberalism that is midway between the poles of a Hobbesian or Schmittian power realism and a utopian idealism. It is equidistant from advocacy of, or being resigned to, authoritarian or totalitarian power concentration and corresponding power politics, and from anarchistic individualism and integral pacifism. While it recognizes the presence of the power and conflict factor in all human relations, and surely in politics, it tries^{mitigate power and to} to oppose the ever present abuses of power (whether police brutality or judicial partiality, executive arbitrariness or even the tyranny of an overweighing majority) through the liberal-democratic institutions and processes^{remembering Jefferson's "eternal vigilance" needed for the preservation of freedom.} I mentioned before. I myself, starting from a political realism of the Hobbesian, Machiavellian, or Schmittian variety, in the late 1930 began to develop a theory of what I called "realist liberalism", summed up in a book that appeared much later, in 1951: Political Realism and Political Idealism.^{9.}

^{Such} ~~an~~ idealist realism, or, if you want, a realist idealism, in my opinion is the only way to incorporate what is valuable and im-

portant in Carl Schmitt into minimally decent and civilized politics. ~~Thus you can add to the Schmittian Right and the Schmittian Left a Schmittian Center.~~

IV.

As far as
~~A few words on Schmitt's impact on actual political developments,~~ *is concerned, this impact,*
~~I am sorry to have come to the conclusion that,~~
from a liberal-democratic viewpoint, ~~that impact~~ has been nefarious, before 1933 perhaps even more so than after he became Hitler's "crown jurist." To understand this one has to keep in mind the fundamental weakness of Weimar ^{caused by} ~~which rested on~~ the continuation, ~~even~~ after the establishment of the Republic, of the authoritarian tradition of Germany, its "Sonderweg" where, in contrast to the Western countries, the middle classes had remained satisfied with feudal-militarist-nationalist-conservative rulership in return for security in the economic sphere. ^{10,} This had shaped the attitudes of the entire German elite, including the intellectuals in the academe. Authoritarian attitudes pervaded the German elites, in government and judiciary, schools and universities, even in business and trade union organizations, and, in the absence of determined reform, continued into the Weimar Republic. One who, like me, grew up in the 1920s, can attest to the utterly conservative-nationalist spirit that imbued most of ^{the teachers as well as} ~~the young~~ ^{brought up} ~~educated~~ in that system; ^{it rendered} ~~and made~~ ^{most of them} contemptous or at least suspicious of the new democratic institutions and processes, such as political parties, elections, parliaments (derisively referred to as "Schwätzbuden", talking shops), etc.

It can easily be seen that Schmitt, sharing this tradition with most of his colleagues (those even among constitutional lawyers who supported the new system, like Anschuetz, Kelsen, Heller, were far and in-between), contributed to the ~~weakness and the active~~ weakening of the Weimar system. And this not only through his teaching and his writings (where his unceasing attacks ^{UPON} ~~against~~ parliamentarism could not fail to have its impact), but above all in his political activities. Two of them emerge as particular ^{ly} significant. One was his defense of the conservative-authoritarian Papen cabinet before the Supreme Court in the affair of the "Preussenschlag", when the Reich government had ^{undertaken} ~~tried~~ to deprive republican-democratic forces of their last bastion, the government of the Land Prussia and its control over the Prussian police. ~~Kelsen, in that case, defended the Prussian government, but, of course,~~ The court decided in favor of the Reich, *thus destroying that last bastion.* ^{Schmitt's} His well-known attempt to prevent the Nazi assumption of power through making the Reich President, alleged "guardian of the constitution", a temporary dictator, similarly reflected Schmitt's belief in the effects of concentrated emergency power. Schmitt probably meant Hindenburg to be a "commissarial dictator", as distinguished from a "sovereign" and permanent dictator. ^{12.} He should have known that Germans were not likely to allow a temporary dictatorship to return powers to democratic government after the emergency was over, and I doubt whether he would even have favored such a return. ^{As it was,} The presidential system simply led over to the Nazi-totalitarian one. ^{Thus} Schmitt belonged to the grave-diggers of Weimar democracy.

As far as Schmitt's post-1933 attitudes are concerned,

~~One very last word on Schmitt after 1933.~~ The much discussed question of whether he was an opportunist when openly turning to antisemitism, ^{to} defending Hitler's random killings of SA leaders, ^{and} assorted generals, ~~etc.~~ in the Roehm affair, etc., may be left open. ^{13.} Even had he become a convinced Nazi (and, as I have pointed out, he might have used some concepts of his "Concept of the Political" for that purpose), this would not have excused his attempt to legitimize the Roehm killings through a Hobbesian potestas facit legem, ^{argument,} because Hitler, as also later in the holocaust case, did not even claim that the law (~~domestic as well as international~~) forbidding murder was no longer ^{valid. Schmitt's} law. Writings on international law between 1933 and 1938, little noticed even by subsequent Schmittians, which I analyzed already in the 1930's (cf. my Vöelkerrechtslehre des Nationalsozialismus, 1938), ^{14.} would seem to reveal ~~his~~ ^{thus} opportunism, ~~one~~ ^{one} essay, (Nationalsozialismus und Voelkerrecht, 1934), with its quite un-Schmittian ^{natural rights and natural} ~~argumentation~~ ^{law concepts approach,} ~~ion,~~ ^{15.} served to underpin Hitler's deceptive "peace policy", while an abrupt turn toward power politics, advocating German regional hegemony (Vöelkerrechtliche Grossraumordnung, with the revealing subtitle "mit Interventionsverbot für raumfremde Mächte") ^{16.} served ^{to legitimize} Hitler's first conquest outside the "Germanic" realm (~~Prague, 1939~~). ^{(the take-over of what remained of Czechoslovakia after Munich).}

Why, after 1945 when it was no longer dangerous, didn't Schmitt never return to these actions ^{vices} (not to mention apologizing for them)? ~~at least as far as I knew?~~ Why, indeed, did he never analyze in any depth the new factors in politics, especially

in world politics, ~~which~~ like the nuclear weapon and the change from the traditional, multipartite nation-state system ~~is~~ to the bipolar superpower system of "existential" enemies? With the brilliance of his earlier analyses he might have revealed things succeeding generations of social scientists were never able to. The more's the pity.

Notes

- 1) The Concept of the Political by Carl Schmitt, translated by George Schwab (New Brunswick, N.J., 1976)
- 2) Leo Strauss: "Comments on Carl Schmitt's Der Begriff des Politischen", translated in The Concept of the Political op.cit., ~~note 1~~, pp.81ff. As Strauss points out, what ~~he~~ Strauss ^{reveals} describes as Schmitt's "warlike morality" (p.95) in contrast to Hobbes requires the individual "to sacrifice life" in war (The Concept ..., op.cit., p.35)
- 3) Giovanni Sartori, "The Essence of the Political in Carl Schmitt", Theoretical Politics vol.1, No.1 (January 1989), pp.63ff. (p.68).
- 4). The Concept ..., p.27.
- 5) Eugene Anshel: The World of A German Jew (private printing, 1990), p.85. *Sombart coined the contrast in the title of his book Händler und Helden (1915)*
- 6) One might almost quote Schmitt himself to that effect, ~~when~~ when he ends his book Völkerrechtliche Grossraumordnung (see note ~~16~~, below) with the sentence: "The Führer's deed has ~~lent~~ the idea of our Reich political reality, historical truth, and a great future of international law" (my translation).
- 7) "Liberal thought evades or ignores state and politics"; "liberalism provides a series of methods for hindering and controlling the state's and government's power" (The Concept ..., p.70).
- 8) To be sure, Morgenthau, like other "political realists", such as Reinhold Niebuhr, agrees with Schmitt's anthropology of considering man as basically "dangerous", i.e., "evil", and draws from this overly power-political conclusions. I myself believe that, in view of the complexity of "man's nature", any characterization of his nature as "good" or "evil" suffers from oversimplification. I have based my own political realism on the "security dilemma" that faces politically organized human groupings, especially those which, like nation-states so far, ~~have no authority above them~~

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- 3) Giovanni Sartori, "The Essence of the Political in Carl

(Add to footnote 3:)

At the time of this writing I read in Isaiah Berlin's essay "Joseph de Maistre and the Origins of Fascism" (The New York Review of Books, September 27, October 11, October 25, 1990): "His (i.e., de Maistre's) genius consists of the depth and accuracy of his insight into the darker, less regarded, but potent factors in social and political behavior" (loc.cit., October 25, p.64). Like much else said in this essay on de Maistre's ideas, this fits Carl Schmitt. One might almost define Schmitt as Maistre sans Pope.

- 7) "Liberal thought evades or ignores state and politics"; "liberalism provides a series of methods for hindering and controlling the state's and government's power" (The Concept ..., p.70).
- 8) To be sure, Morgenthau, like other "political realists", such as Reinhold Niebuhr, agrees with Schmitt's anthropology of considering man as basically "dangerous", i.e., "evil", and draws from this overly power-political conclusions. I myself believe that, in view of the complexity of "man's nature", any characterization of his nature as "good" or "evil" suffers from oversimplification. I have based my own political realism on the "security dilemma" that faces politically organized human groupings, especially those which, like nation-states so far, ~~have no authority above them~~

Notes (2)

- (note 8 continued) states so far, have no higher authority above them (on this see my Political Realism and Political Idealism, referred to in note 9, below).
- 9) John H. Herz: Political Realism and Political Idealism, A Study in Theories and Realities (Chicago, 1951).
- 10) The "Sonderweg" interpretation of modern German history - an interpretation that emphasizes Prussia-Germany's authoritarian attitudes and structures in contrast to the liberal-democratic ones of the West (Britain, France, the United States, etc.), is contested. I believe it is justified, provided one does not see its cause in any "innate German national character" but in the three defeats that German liberal movements suffered in the 19th century (after 1815, in 1848, and, in Prussia, in the 1860s).
11. For my personal impressions of German schools and universities in the Weimar period see my autobiography: Vom Überleben - Wie ein Weltbild entstand (Düsseldorf, 1984). - The power of the monarchical, or quasi-monarchical, leadership idea can be seen from the fact that even Max Weber, surely a strong critic of William II's regime and Bismarck's impact on an all-too-submissive German middle class, favored a plebiscitarian democracy for the new republic, with a popularly elected president as counterweight against parliament and parties - an attitude not too remote from Carl Schmitt's. Compare with this the "Sonderweg" of one foremost member of the German cultural elite, Thomas Mann. In his Betrachtungen eines Unpolitischen (Reflections of an Unpolitical Man), the term "unpolitical" had meant almost the opposite, Mann ^{coming close to} ~~almost sharing~~ Schmitt's concept of the political ^{what} with his strongly authoritarian attitude and its polemical thrust against Western "civilizational" anarchistic-utopian individualism (subsequently, and unforgettably, personified by the Settembrini of his Magic Mountain). But then,

(continued note 11) realizing what German power politics and nationalism had wrought, ^{Mann} he returned into a defender of the pragmatic liberal-democratic policies of the Weimar Republic. Had more members of the elite (especially the educational one) followed ^{his example,} him, the Republic's fate might have been a different one.

- 12) On Schmitt's distinction between "kommissarische" and "soveräne" dictatorship see his Die Diktatur: Von den Anfängen des modernen Souveränitätsgedanken bis zum proletarischen Klassenkampf (1921).
- 13) On the "opportunism" debate see George Schwab, "Carl Schmitt Political Opportunist?", in Intellect, February 1975, pp. 334-337 and my reply in ibid., May-June 1975, pp.482f. Regretfully, I must still consider applicable to the Schmitt of the Nazi period what an anecdote about Richard Strauss, related in my reply to Schwab, said: When Arturo Toscanini, stout anti-Fascist and anti-Nazi, was asked what he thought of Strauss (who had allowed himself to be made the head of the Nazi-controlled Reich Cultural Chamber - just as Schmitt had allowed himself to be appointed "Prussian State Councilor" by Goering), he answered: "Before Strauss the composer I take off my hat; before Straus, human being, I put it ^{on} ~~up~~ again."
- 14) Eduard Bristler (i.e. John H. Herz): Die Völkerrechtslehre des Nationalsozialismus (Zürich, 1938). I had to use a pseudonym to protect my family then still living in Germany. The book, of course, was immediately suppressed by Nazi censorship and thus could neither be read nor discussed in Germany (and Austria, annexed in 1938) until after 1945.
- 15) See Bristler, op.cit., pp.118-121; also on Schmitt cf. pp.76, 78, 83f., 149. With all his adaptations to Nazi concepts and verbiage, Schmitt occasionally still tried to make use of his basic approach. Sometimes in almost absurdly exaggerated fashion, thus, when his konkrete Ordnungsdenken

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(Add to footnote 12 (without new paragraph):

More generally on Schmitt's activities in 1932 (his ideas on setting up von Hindenburg as "presidential dictator pro tem, etc) see Joseph W. Bendersky: Carl Schmitt, Theorist for the Reich (Princeton, 1983), chapters 6, 7, 8, and George Schwab: The Challenge of the Exception (2nd edition, Westport CT, 1989), chapter IV.

stout anti-Fascist and anti-Nazi, was asked what he thought of Strauss (who had allowed himself to be made the head of the Nazi-controlled Reich Cultural Chamber - just as Schmitt had allowed himself to be appointed "Prussian State Councilor" by Goering), he answered: "Before Strauss the composer I take off my hat; before Straus, human being, I put it ^{on} ~~up~~ again."

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Notes (4)

(note 15 continued) (thinking in terms of concrete ~~orders~~ orders) makes him consider the "Geneva League of Nations" a different organization each time an important member enters or leaves (the entrance of the Soviet-Union made it "the seventh League") A listing of Schmitt's ^{widely} ~~vastly~~ scattered ^{international law} writings of the period 1933-1939 ^{may be} found in Bristler, p.223. ^{On Schmitt's international law in the Nazi period now see also Detlev Vagts, "International Law in the Third Reich";}

16) Carl Schmitt: Völkerrechtliche Grossraumordnung mit Interventionsverbot für raumfremde Mächte Berlin-Vienna, 1939)

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International Law,
84(3), July 1990,
661-704.*

17. ~~16~~) Any future biographer of Schmitt will have to face the question of why Schmitt neglected decisive world developments after 1945 and, even in his one major postwar work, Nomos der Erde, in his illustrations and exemplifications, hardly ever goes beyond the events of World War I and its aftermath. He remains as if obsessed with things like the British attempt, in alleged violation of the rules of sea warfare, to defeat Germany through a "hunger blockade" (never mind that Germany, too, had violated these rules in its unrestricted submarine warfare - as one Britisher remarked at the time: Britannia rules the waves, Germany waives the rules). The war seemed to him to inaugurate the end of the era of "limited war" (gehegter Krieg) that, according to Schmitt, had characterized the relations of territorial states under the jus publicum Europeum (that war was hardly ^{at} thus "limited" during most of those centuries I have tried to show in my contribution to George Schwab (ed.): Ideology and Foreign Policy, A Global Perspective (New York, 1978), see "Power Politics and Ideology? The Nazi Experience", pp.14ff. (pp.28-30). Germany's defeat in World War I seems to have been the traumatic event in Schmitt's emotional life. That of all nations the "nation of shopkeepers" had defeated the "nation of heroes" must have seemed the height of injustice to him, although the author of the "Concept of the Political" who had defined the existential decision of war as being beyond morality, jenseits von gut und böse, could never ^{openly} have admit ^{ted} to such moral evaluation.

John H. Herz

Looking at Carl Schmitt from the Vantage-Point of the 1990ies

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

I.

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

When I just referred to "political theory" I must correct myself or, rather, specify. In pre-Nazi Germany there was no political science as we know it today. One would study ~~Staatsrecht~~ Staatsrecht or Völkerrecht, that is, constitutional or international law (Schmitt's official position, for instance, was that of ^{professor of} constitutional and international law in the respective faculties of jurisprudence at the universities where he taught.) Theoretically speaking, first came the legal norms, with the state somehow disappearing behind them. In Hans Kelsen's, my teacher's, "pure theory of law" (reine Rechtslehre), for instance, the state was considered identical with the legal order. Thus it made a tremendous impression when Schmitt, as Max Weber to some extent had done before

him) established, or re-established, the state as power-holder creating the law; and the political as having its own existence especially in crisis situations of existential threats to organized groups. Formulations such as defining the sovereign as the one who controls the state of necessity (Wer ueber den Ausnahmezustand verfuegt), seemed to fit in with the near-civil war conditions of the early Twenties in Germany, when ~~it seemed that~~ asking who fought whom and who controlled a ~~stat~~ constant state of emergency was a more vital question than asking which party was gaining an election or backing one or another government coalition.

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

Which war situation, which enemy is Schmitt aiming at? Not only his extremism but also the vagueness of his concepts is revealed when (~~Concept, p. 27~~) he defines the political enemy as "the other", "the stranger", as one who is "in a specially intense way, existentially something different and alien", and adversary who intends "to negate his opponent's way of life and therefore must be repulsed or fought in order to preserve one's own form of existence." ^{4.} Subsequently, in his Nomos der Erde, the enemy is not so existentially defined (at least as far as the members of the jus publicum Europeum, i.e. of the European territorial state system, are concerned); but in his "Concept", ~~he~~ is the foe, who has to be fought and destroyed in order to ~~be~~ survive, physically or in one's "form of existence". But Schmitt gives no examples. Did he think of World War I, with Britain and France as Germany's "hereditary enemies"? As a friend of mine, Eugene Anshel, who was one of Schmitt's students in the middle Twenties, relates in his memoirs, ^{5.} Schmitt, following the economist Sombart, distinguished "Helden und Haendler", heroes and ^{merchants} traders, or, better, shop-keepers, clearly referring to Germanic heroes as opposed to British (or possibly also American) traders, but Anshel believes that the latter, ^{denigrating} ~~despising~~ characteristic ^{zation} also referred to Jews. And here, the definitions in his "Concept" which ^{noted above} I have quoted indeed assume a more ominous character. If ^{one} ~~we~~ looks for ^{domestic} ~~internal~~ foes (~~and~~ Schmitt occasionally refers to political Catholicism at the time of the Kulturkampf and to the Socialists at the time of their outlawry by Bismarck in this respect), one cannot help remembering that German antisemites defined the Jew as the "alien", the

the enemy -

Werner

"other", one who, despite all efforts at integration, would always be an outsider hostile to, and endangering, the German-Aryan way of life. Whether Schmitt was an antisemite or not (before 1933 he probably belonged to those ~~whosxxxx~~ among whose best friends or, in his case, whose best colleagues were Jews), nobody faced with such enemy definitions could escape ^a ~~the~~ hidden, codeword-type reference. Whether Schmitt intended it or not, it fitted a racial policy that considered "World Jewry" as the existential enemy of all, and especially the Nordic-Germanic, races, an enemy who, therefore, had to be exterminated. When Hitler, in Main Kampf, said "Ich aber beschloss, Politiker zu werden" (I decided to become a politician), he meant by politician and politics something essentially in agreement with Schmitt's concept of the political.

^{To be sure,} ~~I know that Schmitt,~~ prior to 1933, ^{Schmitt} was not a Nazi; ^{he was} ~~even~~ ^{opposed}

^(on this see below) ~~to~~ Hitlerism ~~(about this later)~~. But the trend of his concepts, whether ~~he~~ intended ~~it~~ or not, could well be ^{used} ~~not abused,~~ for building up a racist doctrine underlying policies of persecuting and, eventually, exterminating an existential enemy.

As Heine once put it, Hitler ~~and his henchmen~~ might well have said "ich bin die Tat von Deinen Gedanken" (I am the deed that sprang from your ideas). ⁶ ~~So much for Schmitt's~~

So much for Schmitt's vague extremism or extremist vagueness. Just one more word on his anthropology, his basic view of man. It is, as ~~mentioned~~, a collectivist one, where, differing from Hobbes who establishes Leviathan to protect the individual, the individual is supposed to sacrifice, if need be, his life for the community.

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One is reminded of Bert Brecht's "Der Ja-^Sager", a play written about the time Schmitt wrote his "Concept". There, one member of a group ~~fighting their exploiters~~ is asked to sacrifice his life, the only way the group can ~~survive~~; he is ^{complete a task that will save the lives of many;} not forced but eventually says "yes" to his doom. This ~~is~~ ^{was} heroism as seen ⁿ from the Left. While Schmitt surely would not have promoted such class-struggle collectivism, it explains the occasional emergence of a Leftist Schmittianism using Schmitt's power emphasis for its own political purposes (exactly as a Hegelian Left used Hegelian dialectic for its purposes, although the Schmittian Left so far has not produced its Karl Marx).

III.

One major criticism one might level against Schmitt's definition of the political is its exclusivism, limiting the political narrowly to the friend-enemy situation of existential survival. On the face of it, this excludes from the realm of the political all normal political activities and policies, economic policies, labor and industrial policies, now environmental policies, you name them, as well as the political institutions and processes connected with them, such as parliaments, political parties, judiciaries, and so forth, at least as long as they are not involved in existential conflict. Now Schmitt's concepts, as all concepts, are products of conceptualization. Everybody is free to define and conceptualize, coming more or less close to "reality". ^{But} Schmitt's conceptualizations are not

in agreement with "common" conceptualizations. ^{They} ~~It~~ does not fit what is commonly comprised under "political reality", and thus Schmitt's political realism comprises only one aspect of the "political", that of conflict and enmity. It neglects, or at least plays down, the realm of compromise and cooperation, and this way is hardly useful for a political analysis of ~~at least~~ most modern industrial states and their more or less liberal-democratic societies. The American constitution and type of governance seems to be farthest ^{removed} ~~of all~~ away from Schmittian conceptualizations. With its separation of powers, checks and balances, independent judiciaries watching over broad realms of ^{the} state's non-interference with individual and groups ^{its} rights, ^{federalism,} and so forth, this system pushes concentrated executive power away from the normal functioning of government toward true emergency situations. Even the vital decision about "enmity", that is, the declaration of war, is denied the executive. An existential war in the Schmittian sense, that is, one placing the survival of the union in jeopardy, happened only once in the history of the United States, and even in the Civil War (where the question was the admittance to society of the alleged racial stranger, the Negro), the only emergency measure Lincoln was compelled to take was the temporary suspension of habeas corpus. ^{Thus} ~~The~~ state of the exception has been the exception, not only in the history of the United States but ~~also~~ in that of modern France, Britain, even Germany ~~&~~ (that is, the Federal Republic) and other modern, i.e., developed industrial nations; Schmitt's concepts are ^{more} ~~rather~~ applicable

to Third World countries, where democratic processes like elections and institutions like parliaments are frequently meaningless fig-leaves concealing the real power-holders.

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

Here, however, we encounter the limits of the Schmittian approach. He is inclined to interpret into non-Schmittian theories and policies the same polemical extremism that characterizes his own. Thus he interprets all liberalism as anti-state, authority-negating, basically anarchic or integral-pacifist doctrine and movement.⁷ This may ^{be} ~~be~~ true for some more radical liberal theorists and movements that assume

for holding the executive accountable, for preparing an opposition to possibly become^{ing} the next government (thus providing^{for} that "alternation of power" that marks a democratic system). Even in the international arena, where the power factor is strongest, what one may call a pragmatic pacifism has been the normal, with war^{like} policies the exception. Has Morgenthau, surely not a utopian ideologist^{alist} but a power realist, gave his magnum opus, Politics among Nations, the subtitle: "The struggle for power and peace^x" and considered diplomacy, not settlement of conflicts by force, i.e., war, the normal conduct of foreign affairs.^{8.}

^{This way} Thus one arrives at what one may call a realist liberalism that is midway between the poles of a Hobbesian or Schmittian power realism and a utopian idealism. It is equidistant from advocacy of, or being resigned to, authoritarian or totalitarian power concentration and corresponding power politics, and from anarchistic individualism and integral pacifism. While it recognizes the presence of the power and conflict factor in all human relations, and surely in politics, it tries to^{mitigate power and to} oppose the ever present abuses of power (whether police brutality or judicial partiality, executive arbitrariness or even the tyranny of an overwhelming majority) through the liberal-democratic institutions and processes I mentioned before, I myself, starting from a^{remembering Jefferson's "eternal vigilance" needed for the preservation of freedom.} political realism of the Hobbesian, Machiavellian, or Schmittian variety, in the late 1930 began to develop a theory of what I called "realist liberalism", summed up in a book that appeared much later, in 1951: Political Realism and Political Idealism.^{9.} Such^{an} idealist realism, or, if you want, a realist idealism, in my opinion is the only way to incorporate what is valuable and im-

portant in Carl Schmitt into minimally decent and civilized politics. ~~Thus you can add to the Schmittian Right and the Schmittian Left a Schmittian Center.~~

IV.

As far as
~~A few words on Schmitt's impact on actual political developments, I am sorry to have come to the conclusion that,~~
is concerned, this impact,
from a liberal-democratic viewpoint, ~~that impact~~ has been nefarious, before 1933 perhaps even more so than after he became Hitler's "crown jurist." To understand this one has to keep in mind the fundamental weakness of Weimar ~~which rested on the~~ *caused by* the continuation, ~~even~~ after the establishment of the Republic, of the authoritarian tradition of Germany, its "Sonderweg" where, in contrast to the Western countries, the middle classes had remained satisfied with feudal-militarist-nationalist-conservative rulership in return for security in the economic sphere. ^{10.} This had shaped the attitudes of the entire German elite, including the intellectuals in the academe. Authoritarian attitudes pervaded the German elites, in government and judiciary, schools and universities, even in business and trade union organizations, and, in the absence of determined reform, continued into the Weimar Republic. One who, like me, grew up in the 1920s, can attest to the utterly conservative-nationalist spirit that imbued most of *the teachers as well as* ~~the young educated~~ *brought up* in that system; ~~and made~~ *it rendered* most of them contemptuous or at least suspicious of the new democratic institutions and processes, such as political parties, elections, parliaments (derisively referred to as "Schwätzbuden", talking shops), etc.

It can easily be seen that Schmitt, sharing this tradition with most of his colleagues (those ~~even~~ among constitutional lawyers who supported the new system, like Anschuetz, Kelsen, Heller, were far and in-between), contributed to the ~~weakness and the active~~ weakening of the Weimar system. And this not only through his teaching and his writings (where his unceasing attacks ^{upon} ~~against~~ parliamentarism could not fail to have its impact), but above all in his political activities. Two of them emerge as particular ^{ly} significant. One was his defense of the conservative-authoritarian Papen cabinet before the Supreme Court in the affair of the "Preussenschlag", when the Reich government had ^{undertaken} ~~tried~~ to deprive republican-democratic forces of their last bastion, the government of the Land Prussia and its control over the Prussian police. ~~Kelsen, in that case, defended the Prussian government, but, of course,~~ The court decided in favor of the Reich, ^{thus destroying that last bastion.}

^{Schmitt's} His well-known attempt to prevent the Nazi assumption of power through making the Reich President, alleged "guardian of the constitution", a temporary dictator, similarly reflected Schmitt's belief in the effects of concentrated emergency power. Schmitt probably meant Hindenburg to be a "commissarial dictator", as distinguished from a "sovereign" and permanent dictator. ^{12.}

He should have known that Germans were not likely to allow a temporary dictatorship to return powers to democratic government after the emergency was over, and I doubt whether he would even have favored such a return. ^{As it was,} The presidential system simply led over to the Nazi-totalitarian one. ^{Thus} Schmitt belonged to the grave-diggers of Weimar democracy.

As far as Schmitt's post-1933 attitudes are concerned,

~~One very last word on Schmitt after 1933.~~ The much discussed question of whether he was an opportunist when openly turning to antisemitism,^{to} defending Hitler's random killings of SA leaders,^{and} assorted generals,^{13.} etc. in the Roehm affair, etc., may be left open. Even had he become a convinced Nazi (and, as I have pointed out, he might have used some concepts of his "Concept of the Political" for that purpose), this would not have excused his attempt to legitimize the Roehm killings through a Hobbesian potestas facit legem,^{argument,} because Hitler, as also later in the holocaust case, did not even claim that the law (~~domestic as well as international~~)^{valid. Schmitt's} forbidding murder was no longer ~~law~~.^{law.} Writings on international law between 1933 and 1938, little noticed even by subsequent Schmittians, which I analyzed already in the 1930's (cf. my Voelkerrechtslehre des Nationalsozialismus, 1938)^{14.} would seem to reveal ~~his~~ opportunism,^{thus} one essay, (Nationalsozialismus und Voelkerrecht, 1934), with its quite un-Schmittian ~~argumentation~~^{natural rights and natural law concepts approach,} served to underpin Hitler's deceptive "peace policy"^{15.}, while an abrupt turn toward power politics, advocating German regional hegemony (Voelkerrechtliche Grossraumordnung, with the revealing subtitle "mit Interventionsverbot fuer raumfremde Maechte")^{16.} served/Hitler's first conquest outside the "Germanic" realm (~~Prague, 1939~~). (the take-over of what remained of Czechoslovakia after Munich).

Why, after 1945 when it was no longer dangerous, didn't Schmitt never return to these actions^{vices} (not to mention apologizing for them)? ~~at least as far as I know?~~ Why, indeed, did he never analyze in any depth the new factors in politics, especially

in world politics, ~~which~~ like the nuclear weapon and the change from the traditional, multipartite nation-state system ~~is~~ into the bipolar superpower system of "existential" enemies? ^{17.} With the brilliance of his earlier analyses he might have revealed things succeeding generations of social scientists were never able to. The more's the pity.

Notes

- 1) The Concept of the Political by Carl Schmitt, translated by George Schwab (New Brunswick, N.J., 1976)
- 2) Leo Strauss: "Comments on Carl Schmitt's Der Begriff des Politischen", translated in The Concept of the Political op.cit., ~~note 1~~, pp.81ff. ~~As Strauss points out~~, ^{What Strauss} ~~describes~~ ^{reveals} as Schmitt's "warlike morality" (p.95) in contrast to Hobbes requires the individual "to sacrifice life" in war (The Concept ..., op.cit., p.35)
- 3) Giovanni Sartori, "The Essence of the Political in Carl Schmitt", Theoretical Politics vol.1, No.1 (January 1989), pp.63ff. (p.68).
- 4). The Concept, p.27.
- 5) Eugene Anshel: The World of A German Jew (private printing, 1990), p.85.
- 6) One might almost quote Schmitt himself to that effect, ~~when~~ when he ends his book Völkerrechtliche Grossraumordnung (see note 1b, below) with the sentence: "The Führer's deed has lent the idea of our Reich political reality, historical truth, and a great future of international law" (my translation).
- 7) "Liberal thought evades or ignores state and politics"; "liberalism provides a series of methods for hindering and controlling the state's and government's power" (The Concept, p.70).
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11. For my personal impressions of German schools and universities in the Weimar period see my autobiography: Vom Überleben - Wie ein Weltbild entstand (Düsseldorf, 1984). The power of the monarchical, or quasi-monarchical, leadership idea can be seen from the fact that even Max Weber, surely a strong critic^c of William II's regime and Bismarck's impact on an all-too-submissive German middle class, favored a plebiscitarian democracy for the new republic, with a popularly elected president as counterweight against parliament and parties - an attitude not too remote from Carl Schmitt's. Compare with this the "Sonderweg" of one foremost member of the German cultural elite, Thomas Mann. In his Betrachtungen eines Unpolitischen (Reflections of an Unpolitical Man), the term "unpolitical" had meant almost the opposite, Mann ^{what} ~~almost~~ ^{coming close to} sharing Schmitt's concept of the political with his strongly authoritarian attitude and its polemical thrust against Western "civilizational" anarchistic-utopian individualism (subsequently, and unforgettably, personified by the Settembrini of his Magic Mountain). But then,

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- (continued note 11) realizing what German power politics and nationalism had wrought, ^{Mann} ~~he~~ returned into a defender of the pragmatic liberal-democratic policies of the Weimar Republic. Had more members of the elite (especially the educational one) followed ^{his example,} him, the Republic's fate might have been a different one.
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- 13) On the "opportunism" debate see George Schwab, "Carl Schmitt, Political Opportunist?", in Intellect, February 1975, pp. 334-337, and my reply in ibid., May-June 1975, pp.482f. Regretfully, I must still consider applicable to the Schmitt of the Nazi period what an anecdote about Richard Strauss, related in my reply to Schwab, said: When Arturo Toscanini, stout anti-Fascist and anti-Nazi, was asked what he thought of Strauss (who had allowed himself to be made the head of the Nazi-controlled Reich Cultural Chamber - just as Schmitt had allowed himself to be appointed "Prussian State Councilor" by Goering), he answered: "Before Strauss the composer I take off my hat; before Straus, human being, I put it ^{on} ~~up~~ again."
- 14) Eduard Bristler (i.e. John H. Herz): Die Völkerrechtslehre des Nationalsozialismus (Zürich, 1938). I had to use a pseudonym to protect my family then still living in Germany. The book, of course, was immediately suppressed by Nazi censorship and thus could neither be read nor discussed in Germany (and Austria, annexed in 1938) until after 1945.
- 15) See Bristler, op.cit., pp.118-121; also on Schmitt cf. pp.76, 78, 83f., 149. With all his adaptations to Nazi concepts and verbiage, Schmitt occasionally still tried to make use of his basic approach. Sometimes in almost absurdly exaggerated fashion, thus, when his konkrete Ordnungsdenken

Notes (4)

(note 15 continued) (thinking in terms of concrete ~~orders~~ orders) makes him consider the "Geneva League of Nations" a different organization each time an important member enters or leaves (the entrance of the Soviet-Union made it "the seventh League").

A listing of Schmitt's ^{widely} ~~vastly~~ scattered ^{international law} writings of the period 1933-1938 ^{may be} found in Bristler, p.223. *On Schmitt's international law in the Nazi period, see also Detlev Vagts, "International Law in the Third Reich",*

American Journal of International Law
84(3), July 1990,
661-704.

16) Carl Schmitt: Völkerrechtliche Grossraumordnung mit Interventionsverbot für raumfremde Mächte Berlin-Vienna, 1939)

17. ~~16~~) Any future biographer of Schmitt will have to face the question of why Schmitt neglected decisive world developments after 1945 and, even in his one major postwar work, Nomos der Erde, in his illustrations and exemplifications, hardly ever goes beyond the events of World War I and its aftermath. He remains as if obsessed with things like the British attempt, in alleged violation of the rules of sea warfare, to defeat Germany through a "hunger blockade" (never mind that Germany, too, had violated these rules in its unrestricted submarine warfare - as one Britisher remarked at the time: Britannia rules the waves, Germany waives the rules). The war seemed to him to inaugurate the end of the era of "limited war" (gehegter Krieg) that, according to Schmitt, had characterized the relations of territorial states under the jus publicum Europeum (that war was hardly ^{at} ~~thus~~ "limited" during most of those centuries I have tried to show in my contribution to George Schwab (ed.): Ideology and Foreign Policy, A Global Perspective (New York, 1978), see "Power Politics and Ideology? The Nazi Experience", pp.14ff. (pp.28-30). Germany's defeat in World War I seems to have been the traumatic event in Schmitt's emotional life. That of all nations the "nation of shopkeepers" had defeated the "nation of heroes" must have seemed the height of injustice to him, although the author of the "Concept of the Political" who had defined the existential decision of war as being beyond morality, jenseits von gut und böse, could never ^{openly} admit ^{ted} to such moral evaluation.

p. 2 l. 5, 6: Uml. correct except one

p. 3 l. 18: "traders" replaced with "merchants"

" " likewise

" l. 5 fr. below: "sinister" for "ominous"

p. 4 l. 9: change

p. 10 l. 4: new Umlaut (Anschütz)

" l. 13: change

p. 11 l. 4: Umlaut (Röhm)

l. 8: same

Notes p. 2, n. 11: restore Uml. in Düsseldorf

" p. 3 n. 10: additional Uml. (Souveränitätsgedanken)

" p. 3 n. 11: Uml. Götting

" " " : change (Strauss "the man")

" p. 4, n. 14, second but last l. : stet

At top: Identification!

John H. Herz, article on Carl Schmitt

Addenda and corrections

Notes, p.1: Add to footnote three (no new paragraph):

At the time of this writing I read in Isaiah Berlin's essay "Joseph de Maistre and the Origins of Fascism" (The New York Review of Books, September 27, October 11, October 25, 1990): "His (i.e., de Maistre's) genius consists of the depth and accuracy of his insight into the darker, less regarded, but potent factors in social and political behavior" (loc.cit., October 25, p.64). Like much else said in this essay on de Maistre's ideas, this fits Carl Schmitt. One might almost define Schmitt as Maistre sans Pope.

Notes, p.3: Add to footnote 12 (without new paragraph):

More generally on Schmitt's activities in 1932 (his ideas on setting up von Hindenburg as presidential dictator pro tem, etc see Joseph W. Bendersky: Carl Schmitt, Theorist for the Reich (Princeton, 1983), chapters 6, 7, 8, and George Schwab: The Challenge of the Exception (second edition, Westport CT, 1989), chapter IV.)

Corrections:

p.2, line 11: "winning" instead of "gaining"

p.4, line 9: Change into: "enemy of all races, and especially the Nordic-Germanic one..."

p.5, line 6: "seen" for "seem"

Notes (3), footnote 12, line 3: add an s to "Souveränitätsgedanken" (making it "Souveränitätsgedankens")

Notes (3), footnote 13, line 12: Add an s to "Straus" (making it "Strauss")

Notes (4), footnote 17, line 15: ~~xxx~~ Insert an a into "Europeum" (making it "Europaeum")

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**Comments on:
Looking at Carl Schmitt from the Vantage-Point
of the 1990s**

The author presents his critique of Carl Schmitt as a reconsideration of Schmitt's famous work, The Concept of the Political. The author's rereading of that work after many years was undertaken in light of its relevance to the ending of the twentieth century. Consequently, this paper deserves consideration.

What is significant as well as interesting about this paper is that the author belongs to that generation of German scholars who were directly influenced by Schmitt, albeit with major reservations. Also it is significant that he raises the question of Schmitt's neglect to analyze the unique problems resulting from the aftermath of World War II, the nuclear stalemate and the bipolar superpower system. (pp. 11-12) While Schmitt died in 1985, it was perhaps clear by then as it definitely has been since 1989, that this unique political situation only concealed the perennial conflicts of politics which remained the concern of Schmitt.

The author acknowledges Schmitt's penetrating insight into the issues resulting from World War I but regrets the fact that Schmitt offered no such analysis of the world after 1945. But have not recent events shown that the problems that emerged in 1918 were never resolved? Consider the issue of national self-determination in the Balkans. Perhaps the unique issues of the recent past and the present are best understood from some broader perspective than that of the world after 1945. The chief question would be: does Schmitt's "concept of the political" supply the basis for such a perspective?

As a young man, the author was attracted to Schmitt's thought as a corrective to "the pure theory of law" of his teacher, Hans Kelsen. Rightly, the author found

Kelsen's reduction of politics to legal norms as a distortion of reality. For Schmitt the state is the sovereign power which determines the state of emergency. Inasmuch as the author became chiefly interested in the study of international affairs, Schmitt's brand of political realism exerted a powerful influence on his thought. However, he was also affected by liberalism, which was the object of Schmitt's devastating critique. The author formulated what he termed "a realist liberalism that is midway between the poles of a Hobbesian or Schmittian power realism and utopian idealism." (p. 8) I think one may ask whether such a "synthesis" really resolves the issue or overcomes the deficiencies either of Schmitt's realism or of idealism. A combination of a pragmatic liberalism in domestic politics and a moderate realism in foreign affairs may be the reasonable policy. But what is the general political principle which may direct this dual policy? It would seem that the author does not consider as adequate the principle of classical liberalism—the right to self-preservation as the source of individual freedom and the sanction of political power.

Upon rereading The Concept of the Political, the author concludes that Schmitt's thought exhibits three chief characteristics: extremism, vagueness, and collectivism or statism, that is, an anti-individualist anthropology. (p. 2) Needless to say, the nerve of the author's argument is his perception of the negative characteristics of Schmitt's theory. While I think the author points to the decisive issues, he does not clearly distinguish the polemical and theoretical strands of the argument, a distinction which is essential in discussing a theorist of Schmitt's stature.

According to the author, Schmitt's extremism is closely related to the vagueness of the concepts from which his theory is derived. For Schmitt each sphere of human action and experience must be understood in terms of a specific distinction. The criterion of morality is the antithesis of good and evil and that of aesthetics the antithesis of the beautiful and ugly. In politics the specific distinction is that between friend and enemy. Schmitt's extremism consists of the reduction of politics to the condition of conflict, to the state of emergency, thus to the possibility of war if not war itself. The criterion of the political essentially determines the exceptional or extreme situation.

The author deduces from Schmitt's reductionism an ideological extremism which in turn suggests the vagueness of its meaning. (pp. 3,4) For the author politics must include the "normal" or peaceful resolution of conflict through compromise and accommodation. He faults Schmitt for narrowing political reality to irreconcilable conflict through an unusual method of conceptualization. (p. 56) Further, he relates this methodology to Schmitt's eventual support for the Nazi regime. But he does not clearly demonstrate the conceptual relationship between Schmitt's theory and Nazi ideology.

The author does acknowledge Schmitt's original objection to Nazism. However, the "vagueness" of the concept, "enemy," leads the author to suggest a possible ideological predisposition to, or at any rate affinity for, Nazism. With the hindsight of the horrors of World War II, the author raises the question as to the exact reference of the term, enemy. Schmitt characterizes the enemy as the other, the stranger, who in an intense way is alien and thus in an extreme or threatening situation conflict or war is possible. (The Conflict of the Political, ed. G. Schwab, sec. 2) On the basis of this

definition of the enemy, the author suggests that the enemy is any hated and threatening race or nation which justifiably may be exterminated. And, of course in the view of Nazism, the Jewish people became such an enemy. Thus, for the author, whether consciously or unconsciously, anti-Semitism or racism generally is the logical consequence of Schmitt's theory.

I agree that Schmitt's reductionist conceptualization may contribute to extremist politics. But as the author himself recognizes that extremism may take on different ideological guises, including Marxism. (p. 5) More to the point, Schmitt replaced "the pure theory of law" with "the pure theory of political power" which is constructed on a formal definition and thus empty of content.

Schmitt's concept of the political is not so much vague as the result of a misplaced abstraction. I think Schmitt lucidly distinguishes the political enemy from any other kind of adversary. (op. cit. sec. 3 and 4) The enemy need not be morally evil nor aesthetically ugly. "An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity." (Ibid., p. 28) Normally, the fighting collectivities are sovereign states. The real issue is what is the substantive purpose or goal of political conflict? What is the substance of concrete political reality of which the friend-enemy antithesis is a major component?

Leo Strauss, in his famous critical commentary on The Concept of the Political, offered a penetrating insight into the major limitations of Schmitt's thought. (included in Op. cit., ed. Schwab) The author cites Strauss with regard to Schmitt's disagreement with Hobbes as to his anthropology or view of human nature. (p. 2, note 2) While

Strauss understood this issue within a theoretical or philosophical context, the author approaches it from the vantage point of liberal ideology.

Notwithstanding the similarity between Hobbes and Schmitt as to their conception of man's dangerous nature, the author polemically contrasts the individualism of the former to the apparent collectivism of the latter. For the friend-enemy antithesis presupposes the extreme association of friends as well as the extreme disassociation of enemies. The possibility of self-sacrifice is essential to the defense of the political order. However, the radical individualism derived from Hobbes is also not totally compatible with the author's realistic liberalism.

In contrasting Schmitt from Hobbes with regard to the opposing views of the relation of the individual to society, Strauss put in bold relief the real theoretical issue presented by modern liberalism. Schmitt's affirmation of the political, defined as conflict, in opposition to the Hobbesian and liberal negation of the political in favor of peace is not the glorification of a warlike morality, for which the author condemns Schmitt. Schmitt's polemical attack on liberalism was ultimately designed to reveal "the order of human things." (op. cit., pp. 94f.) For Strauss by affirming the political, Schmitt wished to demonstrate the seriousness of life and then the foundation of morality. It would appear that Schmitt's moral imperative is inseparable from the affirmation of the political—of the dangerous human condition that Hobbes wished to overcome. However, according to Strauss, Schmitt abstracted politics from morality because he still remained under the spell of liberalism—he conceived of no other morality but that of liberal

humanitarianism. (Ibid., p. 102) Schmitt's project was thus a failure, however brilliant, because he did not recover the comprehensive basis of politics.

Strauss transcended the limits of the liberal tradition by appealing to classical political philosophy—to Plato and Aristotle. In light of the classical teaching of natural right, of the moral virtues, man by nature has the power of speech and reason, but because he has also need for others he must fulfil his potentiality in a political community. Realism and idealism are joined together by the nature of the human soul itself.

Perhaps the author's "realist liberalism" or "realist idealism" is understandable in terms of natural right.

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

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

I

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

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

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

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

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

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

II

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

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

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

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

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

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

III

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

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

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

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

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

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

NOTES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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