Confronting The Challenge of the Exception: 
George Schwab as an Interpreter of Carl Schmitt

George Schwab's study of Carl Schmitt (1888-1985), which looks back on the period when that German legal theorist became associated with the Nazis, was a ground-breaking work. It first appeared in 1970, when Schmitt was still an obscure figure in the Anglophone world. And where he was known, among German emigre scholars, he suffered from badly flawed as well as unfavorable treatment. Historians George Mosse and Peter Gay echoed the theme that Jurgen Fijalkowski develops systematically in Die Wendung zum Führerstaat published in 1958: that Carl Schmitt from the early 1920s on produced his continuing polemic against parliamentary rule because he longed for a regimented German society organized around a sovereign leader. Fijalkowski and others who adopt his perspective read Schmitt's development backwards, from the time of his Nazi Party membership, starting on May 1, 1933, to his legal and constitutional scholarship of the Twenties and early Thirties. But this interpretative approach is clearly inadequate. Nazi ideologues distrusted Schmitt profoundly, and by 1936 the S.S. publication Das Schwarze Korps denounced him as an opportunistic ally of the Third Reich. Nazi theorists noted that Schmitt had urged President Paul von Hindenburg to maintain a ban on Nazi Party activities in 1931. In Legality and Legitimacy (1932) Schmitt ridiculed the fact that Nazis and Communists were given an "equal chance" under the Weimar constitution to compete for power with nonrevolutionary organizations. He also worked to impress on the aging and by then senile Reichspräsident the danger of the Nazi-Communist obstructionist majority present in the Reichstag. Schmitt exhorted Hindenburg to continue ruling Germany under Article 48 of the Weimar Constitution, by "emergency decree," a practice steadily used after the Depression had radicalized the German electorate and the legislative branch of the government.

Schmitt recommended this exercise of presidential power in the early

Thirties to keep Hitler at bay.' He expressed deep foreboding when on January 30, 1933 Hindenburg named the Nazi leader as chancellor, with the right to fill key ministerial posts.

Schmitt, it was widely known, opposed Hitler's appointment to the chancellorship. The head of the Catholic Center Party, Monsignor Ludwig Kaas, had referred to this fact in a letter to Hindenburg on January 26, 1933, which affirmed the necessity of appointing Hitler German Chancellor. According to Kaas, an earnest parliamentarian, Schmitt was seeking to thwart the return of rule by the Reichstag. He therefore ascribed sovereign authority to the President, while denying to a popular party leader with a mass constituency the chance to form a coalition government.'

Schwab stresses the fact that Schmitt looked upon Hitler's accession to power as the creation of a "sovereign dictatorship." He never mistook Hitler for a party boss who was hying to patch together factional alliances. Nor did Schmitt view him as a "commissarial dictator," that is, as someone who would exercise extraordinary but temporary powers in the face of a crisis that had derailed a constitutional regime. In Dictatorship (1921) Schmitt had analyzed the circumstances that gave rise to the use of extralegal political power, from the continuation of consulships and the appointment of dictators in the Roman Republic down to his own time. He drew a distinction between commissarial dictatorship, adopting the term from Jean Bodin, and a sovereign dictatorship that deliberately and irreversibly changed the constitutional order. Schmitt never deceived himself or his readers about the kind of dictatorship that Germany had inflicted on itself in 1933.

Schwab points to two other problems that one confronts in superimposing Schmitt's brief period of cooperation with the Nazis upon the rest of his career. Though Schmitt received honors from the Third Reich, being made, for example, director of the University Teachers Group of the National Socialist League of German Jurists, and though he inserted anti-Semitic barbs into his publications of the mid- and late Thirties, he also compromised himself by making implicitly critical remarks about the Nazi regime. Chilean-Canadian commentator F. R. Cristi shows that Schmitt tried to present Hitler as a constitutional monarch, even after the Enabling Act on March 23, 1933 had elevated him to a sovereign dictator.' In 1937 Schmitt warned, in an essay with multi-tiered meaning, "The State as a Mechanism in Hobbes and

4. This critical letter from Kaas to Hindenburg was reprinted in Jahrbuch des Offentichen Rechts der Gegenwart (Tubingen: J. C. B. Mohr, 1934), vol. 21 (1933/34), 141-42.
Descartes," against allowing a "qualitative total" state to degenerate into a quantitative total" one. Though the modern state is expected by its people and by the challenges it faces to embrace all aspects of our lives, Schmitt insists that it exercise this responsibility with restraint. The state should protect its subjects without meddling unnecessarily into their private lives. Herbert Marcuse, among other German Marxists, has interpreted Schmitt's remarks about the integrity of civil society as an attempt at building bridges to German capitalists. What advantage was there for Schmitt, however, in asking the Nazi dictatorship to restrain itself in 1937? His by then low standing with party leaders (he avoided arrest in 1936 only because of the personal intervention of Hermann Goering) made the expression of such opinions particularly indiscreet.

Even more relevant, Schmitt in the 1920s was a mainstream academic legal scholar with ties to members of the Catholic Center Party. What had then defined him were his strongly Catholic background, interest in Roman and Canon laws, and his concerned association with the Weimar Republic. American biographer Joseph W. Bendersky observes how hard it is to demonstrate that Schmitt was a German nationalist from his purely civilian role and moderate tone during the First World War. In this period his writing is free of the chauvinistic rhetoric characteristic of other intellectuals in the then belligerent nations. Bendersky also notes Schmitt's conscious identification with the Church, often against the German Empire, throughout his formative years. His Catholic family from the Rhineland, including two uncles who were priests, had vigorously opposed the imperial government during the Kulturkampf of the 1870s. Catholic Saarlanders associated the Prussian leadership of the German Empire with both Protestantism and anticlericalist policies. As a university student at Berlin before the First World War and as a law professor at the predominantly Catholic University of Bonn afterwards, Schmitt lived as a Catholic outsider in a largely Protestant German world of scholarship and politics. Such views come up repeatedly in his letters and recollections.

The shaping role of the Catholic Center Party in the establishment of the Weimar Republic in 1919 and Schmitt's subsequent work as a legal advisor to Center Party officials, including Chancellor Heinrich Bruning, helped remove his sense of political isolation. In 1921 he supported the military action of Socialist President Friedrich Ebert against an attempted coup in Berlin by

---

CONFRONTING THE CHALLENGE OF THE EXCEPTION

a monarchist officer, Wolfgang Kapp." Among Schmitt's many works of scholarship was *Die Verfassungslehre* in 1928, a widely respected study of the Weimar Constitution. Though clearly respectful toward the major frame Hugo Preuss, Schmitt's work sets out to demonstrate how Germany's constitution falls between the two stools of parliamentary procedure and plebiscitary presidency. Though it is possible to find here critical arguments that Schmitt makes more sharply in the early thirties, few if any readers viewed the author as the enemy of constitutional government.

Even moderate Left intellectuals Robert Michels and Karl Mannheim praised Schmitt's insights and invited him to lecture, starting in the summer of 1927, at their center for social thought in Berlin, die Hochschule für Politik. Schmitt's study *The Concept of the Political*, which is known for reducing "the political" to friend-enemy relationships, has been characterized by Francois Bondy as the work of a jurist "closer to power than to justice." According to Bondy, his teachings sent them [the Nazis] off on a "total search for total enemies." In 1927, however, Schmitt presented this later controversial writing as a lecture to predominantly social-democratic auditors at the Hochschule. It appeared originally in print the same year as an essay in the *Archiv für Politik and Sozialwissenschaft*, a periodical then identified with Mannheim and viewed as being on the cutting edge of research in the social sciences.

In 1931 Schmitt made arrangements to have published there a probing commentary on *The Concept of the Political* by a young German Jewish classicist, Leo Strauss. Schmitt also helped obtain for Strauss a Rockefeller Foundation grant so that he could do research on Thomas Hobbes, another interest shared by the two. Schmitt thereby contributed to the happy situation that his later famous commentator was in England, with a stipend, when Hitler came to power. For all the reasons cited, his defection to Nazism was, to many, a mystery in the 1930s. Though Schmitt had harsh critics even then, they were not, by and large, where one finds them today, among social and liberal democrats. For example, the German revolutionary nationalist Ernst Niekisch and the Catholic anti-Communist founder of *Review of Politics* Waldemar Gurian

11. For Schmitt's defense of Ebert's broad use of presidential power during the Kapp incident and in other critical situations, see "Verhandlung der Tagung der deutschen Staatsrechtslehrer zu Jena am 14 and 15 April 1924," *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer*, 1 (Berlin, 1924); and "Reichspräsident and Weimarer Verfassung," *Kölner Volkszeitung* (March 15, 1925), 1.
were two of Schmitt's earliest and most implacable critics. By contrast, the socialist legal scholar Otto Kirchheimer respectfully cited his work well into the Thirties: Kirchheimer saw nothing but opportunism in Schmitt's hurried reconciliation with Hitler, and he generally concurred in his analysis of Weimar constitutionalism. Schwab, who had Kirchheimer on his dissertation board at Columbia, got caught in the ensuing sea-change. He began his dissertation, which eventually became *The Challenge of the Exception*, with the encouragement of his sponsor, Herbert Deane, but then ran afoul of his emigré reader. Like Schwab's mentor, Hans Morgenthau, who openly borrowed from Schmitt but called him "evil incarnate," Kirchheimer grew concerned about his own image. Being a German, albeit a refugee, was enough of a social problem. Such people in the American academy were plainly expected to be "good Germans," a term George Will recently applied to Hegel, whom he mistakenly imagined was a believer in world democracy. Though a Jew and a socialist, Kirchheimer did not intend to let himself be placed in bad company. He therefore grew alarmed when Schwab put Schmitt into historical perspective, partly by dredging up by then discarded opinions. Schwab, nonetheless, got his work published, as a manuscript saved from oblivion, by Schmitt's publisher in Berlin, Duncker and Humblot.

In 1989 an enlarged edition of *The Challenge of the Exception* appeared with Greenwood Press. The same publisher has just printed my own monograph on Schmitt, which shows the marks of Schwab's considerable learning. In 1991 Greenwood will add to the Schmitt works already available in English, by publishing an annotated translation of *Roman Catholicism and Political Form* which first appeared in 1923. The translator, G. L. Ulmen, has just completed a voluminous work on Schmitt and Max Weber in which he expresses his own intellectual debt to Schwab. Schwab's translation of and commentaries on two other works by his subject, *Political Theology: Four Chapters on the Concept of Sovereignty* and *The Concept of the Political* assures him an even greater influence on Schmitt-scholarship in the Anglophone world. An unfriendly interpreter of Schmitt, and an avowed disciple of John Rawls, Stephen Holmes, has assigned Schwab's works for a course that he is now teaching on Schmitt at the University of Chicago.

Schwab's reading of Schmitt has a distinguishing mark setting it apart from other interpretations of his subject, particularly those of some Italian and Spanish scholars and of Schmitt's militant democratic critics in America. Schwab does not believe that one can interpret Schmitt consistently or plausibly as a revolutionary rightist. Depictions of him as a romantic pessimist, counterrevolutionary Catholic, or heroic vitalist are seen to come from reading his statements out of context. Schwab treats Schmitt as a legal-political thinker, with a sense of historical foreboding: Schmitt, it is often mentioned, attacked classical liberalism as the "opposite of the political," and generalized about humans as "dangerous, dynamic beings." But, unlike Holmes, Fijalkowski, and other anti-Schmittians, Schwab denies that Schmitt reveled in organized human violence or in having legal norms suspended by political adventurers. His own Schmitt welcomes the "taming of the political" and exalts the European sovereign state arising at the end of the Middle Ages for precisely this reason.

Schmitt's stated admiration for Hobbes was based on this figure's theoretical achievement of defending the sovereign state as an "artifice." The Hobbesian state as interpreted by Schmitt sought to minimize religious conflict in the wake of devastating confessional wars. Hobbes undertook to marginalize factional and sectarian dissension because, like Schmitt, he was a "political pessimist" trying to prevent the war of all against all. Thus he urged the necessity for individuals to abandon their "natural right" to do as they pleased. By conceding to the state a monopoly on violence, Leviathan's subjects would not be able to wage war on each other.\(^\text{19}\)

Schmitt's Hobbes was in no sense a totalitarian. Rather, he hoped to curb the violence to which men were prone by institutionalizing and thereby limiting it. If Schmitt traces "the essence of the political" to friend-enemy distinctions, he never intended, as Schwab explains, to legitimize a struggle to the knife among absolute enemies. On the contrary, he is calling attention to the "anthropological" dimension of social interaction in order to underscore what happens in the absence of institutional restraint. Firmly established political authorities are necessary because the alternative is held to be disastrous. Without a personal or group sovereign, that is, an entity that monopolizes force and can determine and respond to assaults on public order, the political must dominate all human relationships. As Schwab reminds us, Schmitt "never tired of citing" Hobbes's statement in Leviathan about the "mutual relation between protection and obedience."

Hobbes and Jean Bodin helped shape Schmitt's understanding of sovereignty. That view was based on a decisionist element, which Schmitt found


adumbrated already in Bodin's response to the question: Is the sovereign bound by previous contracts made with his estates? The answer is only if such agreements do not keep a sovereign from fulfilling his duties to his subjects. Hobbes enlarged on this decisionism by stressing the attribute of direct power inherent in sovereignty. His maxim "Auctoritas non veritas facit legem," was not intended to disparage the right of conscience or the quest for truth. Rather, Hobbes, as interpreted by Schmitt and Schwab, was responding to the question how political decisions in a realm already subject to recurrent disorder are to be made. Relegating those decisions to religious bodies or to individual conscience, Hobbes points out, is as a suicidal act on the part of the English or of any other sovereign state.  

Schmitt explains, partly from his reading of Hobbes, that precisely because sovereigns decide what are exceptions they can also determine whether normal situations exist. The reason they must make both determinations and that decisionism is, furthermore, essential to sound constitutionalism is clearly stated in Political Theology: "Whenever antagonisms appear within a state, every party wants the general good-therein resides after all the bellum omnium contra omnes."  

That is to say, sovereigns deciding the exceptions are necessary because of the nature of human relations. Like Hobbes's sovereign, the one depicted by Schmitt, or President Hindenburg cast into the role that Schmitt intended for him, stands outside of law, but still belongs to it. He sustains the legal order by ensuring and repairing the contractual and normatively-defined relations within it. Again like Hobbes's sovereign, he must assume this role because, among other reasons, human nature is contentious. The very contentiousness of human nature engenders the recurrent situation which characterizes political existence. It also necessitates the work of sovereigns who can provide for constitutional order by dealing with the exception and even rescinding a particular regime in time of dire emergency.

Does sovereignty or Schmitt's linking of sovereignty to the exception hinge on the acceptance of the Hobbesian premise of natural human contentiousness? There is, it might be pointed out, an argument for sovereignty made by Schmitt, and brought up by Schwab, that does not presuppose the centrality of human antagonism. Schmitt defends the super- and extralegal status of the sovereign as a legitimating force upon which legality depends. Something or someone must stand beyond the normative or legal process in order that people subject themselves to it. Even in democracy, Schmitt reminds us, belief in a particular figure, as the embodiment of popular sovereignty, is required in order to elicit obedience to a body of norms and procedures. Yet, this sovereignty is largely passive in some governments, such as the English

21. Ibid., 45-47; and Der Leviathan in der Staatslehre des Thomas Hobbes, 75-76.
22. Political Theology, 9.
and Swedish monarchies. There legitimating sovereignty can operate in the absence of a vigorous executive, as a passive source of authority. Schmitt is advocating an active sovereignty that he deems as necessary because of the challenge of the exception demonstrated by events in the Weimar republic.

Now it is possible to defend an active sovereign in terms of the problem of exceptions without positing a warlike human nature. Indeed Schmitt does this before and after *The Concept of the Political*, when he does not speculate about human nature in his legal and constitutional analyses. Nevertheless, his stress on antagonistic pluralism and on political struggle in many of his writings point toward the anthropological statements offered in *The Concept of the Political*. There Schmitt tried to strengthen his arguments for the institutionalized use of force to deal with the breakdown of the legal order, by grounding them in at least partly demonstrable generalizations about man's natural bellicosity. He thus evokes the problem of human contentiousness to give an anthropological aspect to this discussion of sovereignty and the exception begun in the early Twenties. In that discussion Schmitt was responding to liberal colleagues who hoped to see the Weimar republic operate exclusively on normativist principles and parliamentary majorities. Schmitt is showing why that system cannot work, inasmuch as it makes erroneous judgments about human nature and political reality. In *The Concept of the Political* he sets out to explore the unchanging foundation of all political relationships, which he traces to the friend-enemy distinction. It is also the foundation on which he builds his legal concept of the challenge of the exception and his neo-Hobbesian definition of sovereignty.

Schmitt does reach for effect in highlighting the all-pervasiveness of politics as struggle. The political is made to embrace "every religious, moral, economic, ethical or other antithesis . . . if it is sufficiently strong to group human beings effectively according to friend and enemy." Furthermore, "the political can derive its energy from the most sacred human endeavors, from the religious, moral, economic, and other antitheses. It does not describe a substance of its own but only the intensity of any association or dissociation of human beings."23 From such passages it seems that Schmitt is equating the political with any antithesis, providing that it becomes sufficiently intense to generate a friend-enemy distinction. Is it not permissible to ask why should we speak of the political at all if what is meant are simply intensely felt differences over specific economic, academic, or theological issues? Why not designate these differences as such instead of subsuming all of them under political life?

In point of fact, Schmitt does not equate such encounters with shooting war. He is only underlining the "ever present possibility of conflict" that can erupt in the internal politics of weak states, in the form of civil war, as well as

among organized nations.' Where the state dissolves itself or renounces sovereignty, armed combat does not cease among organized units, even if the state no longer directs it. Nonpolitical groupings can suddenly transform themselves into violently antagonistic ones, a point forcefully made in an often misunderstood passage from The Concept of the Political: "The real friend-enemy grouping is existentially so strong and decisive that the nonpolitical antithesis, at precisely the moment at which it becomes political, pushes aside and subordinates its hitherto purely religious, purely economic, purely cultural criteria and motives.... That grouping is always political which orients itself toward this most extreme possibility [Ernstfall]."  

Schmitt wishes us to know that no amount of neutralization can render human relations a-political. However earnestly we strive for a programmed and peaceful society, the political, as friend-enemy distinction, continues to resurface; and even when that distinction thrusts itself on us, liberals and Marxists persist in concealing its true nature. Thus liberals try to reduce struggles to debating contests shaped by norms among parliamentary factions; but Marxists bring politics in through the back door by organizing economic groups against each other, while calling the political struggle they incite an economic one. Not all struggle in any event must involve bloodshed in order to be described as political. Both the intensity of a conflict and its power to drive friends and enemies into rival camps can be used to define the encounter Schmitt is analyzing.

Schmitt, then, as interpreted by Schwab, presents "the political" not as an ideal, but as a fate that overtakes those who seek to escape it. Wherever we turn as members of groups, life-endangering confrontations await us, even if we choose to call them by other names, including crusades for peace and social justice. At their zenith European nation states limited "the political" to legally circumscribed conflicts, between professional armies fought as a last resort in territorial and diplomatic disputes. Schmitt's postwar magnum opus, Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum in 1950 is a study of the European order of things that developed especially after the Age of Religious Wars. From his remarks, Schwab properly infers that Schmitt looked back to this order with both respect and nostalgia. In an extremely learned essay "Enemy oiler Foe. Der Konflikt der modernen Politik," Schwab holds the view that Schmitt does not go far enough in dramatizing the fierce hostility unleashed by the weakening of sovereign states in the present age.

Schwab suggests that the English word "foe" is more useful and more

25. The Concept of the Political, 38.
precise than the term "Feind" in designating the new form of political struggle.\textsuperscript{27} He notes the overlap between the current attempt to identify politics and struggle with just causes and the medieval concept of the "just war." As in the Middle Ages political confrontations have become holy crusades. It is therefore appropriate, Schwab concludes, after the interlude of the sovereign state, to see in the "return of the foe" a hallmark of the present age. Schwab views his own time as suspended between "the remnant of the epoch of the European sovereign state and the as yet undetermined new epoch." He also believes that "the latter is rapidly displacing the former: political relations are reverting to those reminiscent of the confessional civil wars. European sovereign states succeeded in humanizing war-subjecting it to certain "rules of the game" by "neutralizing religion, and by accepting and treating each other as equals. The introduction of a new kind of theology-militant ideology-is subverting the achievement."\textsuperscript{28}

It is known that Schmitt came to accept Schwab's concept of the "return of the foe" and proceeded to insert it into the foreword of the 1963 edition of \textit{The Concept of the Political}. There he made Schwab's distinction between the enemy as defined by the sovereign state and the "old English word foe" that "has awakened from its ancient four-hundred-year slumber."\textsuperscript{29} G. L. Ulmen is correct to observe that Schmitt's acceptance of Schwab's distinction involved more than a semantic refinement. Unlike Schmitt, a jurist who focused in \textit{The Concept of the Political} and in \textit{The Theory of Partisans} in 1963 on the subversion of the \textit{jus publicum Europaeum}, the European territorial and legal order, Schwab, an intellectual historian, makes explicit the links between the erosion of the sovereign state and militant ideology. Ulmen states that the closest Schmitt came on his own to appreciating the role of ideology in \textit{The Theory of Partisans} were his remarks on the "absolutization" of values and the Party in Lenin and in other world revolutionaries. It was from Schwab that Schmitt drew a deeper sense of the pattern of thinking that was leading to absolute war in the modern era.

Schmitt's overriding concern, obviously shared by Schwab, of maintaining sovereign states against the untamed "political" helps to explain the polarities in his work between legality and legitimacy and between parliamentary liberalism and plebiscitary democracy. Though Schmitt may have had aesthetic and cultural as well as political objections to liberalism, Schwab

\textsuperscript{27} George Schwab, "Enemy oder Foe. Der Konflikt der modernen Politik," \textit{Epirrhosis. Festgabe für Carl Schmitt} (Berlin: Duncker & Humblot, 1968), II, 665-82. A version of Schwab's study that is more accessible to Anglophone readers and is therefore cited below is "Enemy or Foe: A Conflict of Modern Politics," \textit{Telos}, 72 (Summer 1987), 194-201.

\textsuperscript{28} Ibid., 201.

insists on the need to take him at his word when he characterizes liberalism as the "negation of the political." Being both individualistic and optimistic about a self-regulating human nature (corresponding to a deistic universe), liberals minimize the importance of the state as a counterforce to human violence. They reduce government to procedural matters and to the interplay of parliamentary parties. Never do they move beyond a universe of norms toward the historically compelling question: "Who should wield authority?"

In a liberal culture: "[t]he state turns into society, on the ethical-intellectual side it becomes an ideological and, at the same time, an economic-technical system of production and traffic." 3

Because liberals refuse to recognize that "no abstract orders of norms but always real human groupings and associations rule over other human groupings and associations," they cannot deal effectively with the political taken as intense conflict. In *Legality and Legitimacy* and in *Protector of the Constitution*, Schmitt holds up against liberal legality the ideal of plebiscitary leadership able to rise to the challenge of the exception. Unlike liberal parliamentarians in the Weimar Republic who would give the enemies of the German state as well as those of the constitution an "equal chance" to seize power, Schmitt defended a presidial government above the judiciary and political parties. The executive would draw authority from a popular mandate and be authorized to play two roles: that of a "neutral mediating, regulating, and conserving" force as permitted under Article 48 of the Weimar Constitution; and that of a privileged protector both of the constitution and, what for Schmitt was even more important, of the state during times of political and national crises.

Schmitt's defense of presidial government should not be seen as an invitation to a welfare state guided by a reforming president or to a fascist cult of the willful leader. I believe that Joseph Bendersky is correct in describing Schmitt as "a Burkean conservative." 32 But so is Schmitt's critic, Giovanni Sartori, who notes his preoccupation with "hot politics," based on struggle. Given his druthers, Schmitt would have favored a sovereign state limited to the maintenance of public peace and to the protection of "concrete orders." By these orders Schmitt denoted the spheres of religious and communal life with which the sovereign state was intended to coexist. From these orders constituting civil society, the state drew a legitimating force. 34 Two factors,

---

30. The Concept of the Political, 72.
31. The Challenge of the Exception, 81-82.
however, kept Schmitt from proposing a merely custodial state combined with a self-governing civil society. One, was the belief that a state whose character was narrowly and irreversibly restricted could not deal with manifestations of the political in civil society. A state that was legally shackled in dealing with threats to its necessary operation would not end challenges of the exception. It would merely succumb to the political in civil society, for even sports clubs, Schmitt observes in 1931, would claim the sovereignty abandoned by a weak state.

Two, by the early Thirties, Schmitt saw no escape from the historical necessity for a qualitative "total state." By this, Schwab stresses, he did not mean a government that controls everyone's life totally. Schmitt did believe that mass democracy, nationalism, socialism, and other contemporary political forces represented challenges to which the sovereign state had to adapt. Indeed Schmitt hoped the state could moderate those forces and never confused democracy or socialism with progress and justice. F. R. Cristi notes Schmitt's profound distrust of democratic politics, even when he appealed to them against liberal legalism. In *Legality and Legitimacy* Schmitt approvingly cites the German scholar H. O. Ziegler on the relationship of democracy to total political control. It is hard to read these passages without having the sense that Schmitt disliked liberalism partly because it forced on him the choice of plebiscitary democracy as the alternative to utter chaos.

What made that prospect, for Schmitt, in the present instance palatable was the availability of Hindenburg, an imperial field marshall and monarchist defender of the Weimar Constitution who began his second term as Reichspräsident in 1932. Hindenburg was integral to those hypothetical reconstructions of the Weimar Republic undertaken by Schmitt in the early Thirties, from a presidial regime, anchored in Article 48, to a commissarial dictatorship owing more conceptually to jean Bodin than to Hugo Preuss. Schmitt deviated, according to Schwab, further and further from his initial plan of reenforcing the presidential aspects of the Weimar Constitution in light of the mounting ferment in Germany from the onset of the Great Depression. By stages he moved away from a reinterpretation of the constitution intended to make it more crisis-resistant toward the idea of a presidential dictatorship. By 1932, Schwab demonstrates, Schmitt was concerned with saving the German state and no longer preserving the constitutional framework it had received in 1919. The army, civil service, and the president became for him the backbone of that state, which alone could protect German citizens and territory.

It is by outlining this process of dērapage for Schmitt and the Weimar Republic that Schwab accounts for his subject's decision to make up with the Nazis. This seems to me the most brilliantly argued but problematic side of Schwab's interpretation of Schmitt's career. It was "Weimar's suicide" Schwab maintains, that allowed Schmitt to interpret the Nazi revolution as one further step in Germany's political transformation. The Enabling Act testified to Germany's having become a sovereign dictatorship under a new form of government with a new leader. Schmitt thereupon bowed to the inevitable and tried to operate as a German and legal theorist within a fated political structure.

Schwab tries to understand from this perspective Schmitt's defense of Hitler's rule "Der Führer schützt das Recht" published in August 1934, after the SS, on Hitler's orders, had wiped out the SA leadership together with Schmitt's friend, General Kurt von Schleicher. Schmitt gropes for justification for the June 30, 1934 Night of the Long Knives, which Hitler himself had commanded, and he goes so far as to call it "immediate justice" by Germany's "highest judge." Schwab explains such statements by telling us that Schmitt viewed Hitler as a sovereign dictator; "though neither terms-sovereign or sovereign dictator-appear in Schmitt's article." The appeal to Hitler's "sense of responsibility is somewhat naive" but also seen as explainable given the reality of German political life at the time. 37

These attempts to give theoretical coherence to Schmitt's political statements of the middle and late Thirties are never purely speculative. Schwab had known and visited Schmitt since the 1950s, before his mind was ravaged by age. The Challenge of the Exception incorporates the fruits of conversation and correspondence as well as citations from published works. 38 Perhaps, it may be concluded that Schmitt did not want others to believe that he acted in the Thirties without a serious theoretical basis. Significantly, in a response to an American prosecuting attorney assessing his wartime activities in 1947 to determine whether he had been a Nazi criminal, Schmitt had called himself an "intellectual adventurer." 39 Though released from American custody in April 1947, as someone who could not be denazified since there was no proof that he had ever been nazified, Schmitt has retained a certain reputation as an adventurer-among friendly as well as unfriendly commentators.

One gets this impression even from Schwab's judicious treatment of his work-and more strongly still from another exponent of Schmitt, an anti-American rightist, Gunter Maschke. Unlike Schwab, Maschke discerns

37. Ibid., 132.
38. Ibid., 8; and G. L. Ulmen, "Return of the Foe," (Summer 1987), 190-93, for further remarks on Schwab's relationship to Schmitt.
brilliant "malice" combined with Catholic counterrevolutionary impulses running throughout Schmitt's writings. He interprets his reconciliation with the Nazis, moreover, as an existential gamble taken after all hopes for a substantial restoration of Catholic traditionalism in the West had come to seem unrealistic. Schwab's reading of Schmitt is far more convincing and certainly less embarrassingly autobiographic than that of Maschke. What they have in common, all the same, is the view that Schmitt's move toward the Nazis was a real phase in his evolution as a legal and historical theorist. This was in fact the way Schmitt may have wished to see his own life: Better an amoral theorist than a terrified individual or a professor concerned with social recognition.

To whatever extent Schmitt accommodated himself to Nazi rule, it is possible to explain his utterances and gestures after 1933 as determined by anxieties about his career and about his very survival. Bendersky observes that once Schmitt decided, by default, to stay in Germany under a dictator he had conspicuously opposed, he tried to put the best face on a bad situation. His pamphlet in 1934, *Staat, Bewegung, Volk*, affirmed the need to keep racially dissimilar people from participating in German political life, and it praised the Fuhrer and the Nazi movement as the "vital center [tragende Mittel] uniting the state and a heretofore nonpoliticized German people. But Schmitt also insisted that the German leader must make his will conform to that of his people. In a lecture to Italian jurists in 1935, he contrasted Italian fascism, with its worship of the state, with the German national revolution, which

40. Cf., for example, Gunter Maschke's "La Rappresentazione Cattolica: Carl Schmitts Politische Theologie mit Blick auf italienische Beiträge," *Der Staat*, 28.14 (1989), 557-75; and by the same author "Die Zweideutigkeit der Entscheidung. Thomas Hobbes und Juan Donoso Cartes im Werk Carl Schmitts," *Complexio Oppositorum. Über Carl Schmitt*. Maschke is undoubtedly correct about Schmitt's high standing as a German Catholic intellectual in the Twenties; what he may exaggerate is the continuity in Schmitt's intellectual association with the traditional Catholic Right. Though Maschke has edited the most recent edition of *Der Leviathan in der Staatslehre des Thomas Hobbes*, he nonetheless underestimates to what extent Schmitt broke with the medieval Catholic political model. Far more, it can be argued, than Maschke himself, who praises Catholic integralists. For a more balanced view of Schmitt's relationship to Catholic theology, see Michele Nicoletti, *Trascendenza e Potere: La teologia politica di Carl Schmitt* (Brescia: Morcelliana, 1990), particularly 39-81,152-95, 567-617.

41. Carl Schmitt, *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit*, 3d ed. (Hamburg: Hanseatische Verlag, 1935), 23-24; and *The Challenge of the Exception*, 113-14. Schwab points to what may have been a deliberate inconsistency in Schmitt's view of the interdependence of the leader and people as set forth in S. B. V. Whereas "the omnipotence of the power of the German people" was seen as expressed through periodic plebiscites, the leader was sovereign insofar as he owed his authority to these procedures. All the same, as Schwab notes, Schmitt is discreetly silent about whether the German people may then rescind their electoral decision, through an act of rebellion.
created a state responsive to a truly popular movement.

Such assertions, as Schwab points out, were desperate efforts to make Hitler feel accountable, but there is no reason to assume that Schmitt took his role seriously as the theorist of a German sovereign dictatorship. By 1934, Nazi ideologues were ridiculing his alleged opportunism and soon thereafter the SS were keeping files on him and his Serbian wife. Some of his friends had been killed in the purges that began on June 30, 1934, and Schmitt's earlier opposition to Hitler and the Nazi Party and his close friendship with Jewish professors and students remained matters of record. His most gratifying appointment in Nazi Germany, as professor of public law at Berlin in October 1933, was probably unconnected to his clumsy efforts at serving the new order. Schmitt had been earmarked for that appointment as early as 1932, and as someone who had once studied at Berlin as a Catholic outsider, it may have seemed a particularly fitting reward for twelve remarkably productive years of scholarship.

Maschke pleads insufficient information in not discussing the context of a congress in which Schmitt participated on the "Jewish question" and German legal thought in 1936. Schmitt's utterly pedestrian comments in "Die deutsche Rechtswissenschaft im Kampf gegen den jiidischen Geist" stresses the spiritual incompatibility between the Jewish and German understandings of law. More important, the commentary was delivered and printed when Schmitt was already under SS scrutiny and trying to present himself as an earnest Nazi.

Schwab notes that Schmitt's anti-Semitism seems invariably contrived and, even when grossly unkind, is unrelated to Nazi racism. It was at most a protective device, like Schmitt's distancing himself from Jewish colleagues and students after he had joined the Party. Unlike Martin Heidegger, who praised the Nazi revolution to Karl L~with and other Jewish students after 1933, Schmitt was more restrained about exhibiting such enthusiasm. In a

---

43. Bendersky, Carl Schmitt: Theorist for the Reich, 197-202. Although Schmitt told Schwab in conversation that he had broken with Jewish friends as an act of obedience toward the new German order, Schwab's remark, that "Schmitt's recently acquired anti-Semitism was certainly opportunistic," maybe the more accurate explanation. See The Challenge of the Exception, 138. Bendersky, who stresses Schmitt's cornered position under the Nazis, completes Schwab's picture of his subject's desperate maneuvers after January 1933.
44. This conclusion can be easily inferred from Schmitt's academic correspondence in 1932 and 1933, parts of which have been made available to me by George Schwab.
conversation to Schwab, he explained that he had not answered Leo Strauss's letters after May 1933 because of his own decision to become a Nazi. The decision, however, may have come from Schmitt's justified sense of vulnerability, after contemplating a rampaging and successful demagogue against whom he had warned.

Schwab in fact never suggests that Schmitt became an authentic Nazi ideologue. At most he proposes a possible conceptual intersection between Schmitt's views on the dissolution of the Weimar Republic and his agonized involvement with the Nazi regime. My own reading of Schmitt, though certainly influenced by Schwab's, has left me increasingly skeptical about such a point of contact. Even more than Schwab, but unlike Schmitt's strident contemporary critics, I perceive no real theoretical links between Schmitt's legal analysis of the Twenties and early Thirties and Nazi ideology. It may even be problematic to find an intellectual fit between Schmitt and German nationalist revolutionaries of the interwar period. Though Schmitt knew some of these mystical anti-liberal nationalists, like the journalist Hans Zehrer, he never displayed any affinity for their movement, especially for its pagan and naturalist sides. A legal rationalist, though one critical of the Enlightenment and a Catholic Latinophile unaffected by nationalism or racist theory, Schmitt was a questionable convert to the conservative revolution and to Nazism. Reinhard Hohn, Otto Koellreutter, and other convinced academic Nazis who distrusted him were entirely right on this point.

There is also abundant evidence of contradiction in Schmitt's writings during the years of the Nazi dictatorship. On the one hand, he continued to criticize the League of Nations and its politics of collective security, which he asserted had been directed against the Germans. He repeatedly appealed to German national sovereignty in his critical evaluations of the League, and he stressed the discrepancy between collective security and traditional defensive and offensive alliances concluded between sovereign states. In such polemics; Schmitt maintained, his concern was to uphold not only his own country's interest but the right of sovereign states to act independently of a supranational agency that was usurping their functions.

Leaving aside ulterior motives for what after 1933 was a justification for German rearmament and aggression, Schmitt probably did believe that he

---

47. For a critical evaluation of the attempt to identify Schmitt with German conservative revolutionaries, see Joseph W. Bendersky, "Carl Schmitt as Occasio," Telos, 78 (Winter 1988/89), 197-205. The introductory essay by Alain de Benoist to texts by Schmitt in French translation put into the series "La revolution conservatrice" takes a surprisingly skeptical view of Schmitt as a conservative revolutionary. See Du Politique (Paris: Pardes, 1990), x-xiii.

was defending state sovereignty, even as he worked to stay on Hitler's good side. In his older years, he fancied himself as holding back the utter collapse of the European state system that had arisen in the sixteenth and seventeenth centuries. On the other hand, Schmitt had already begun in the 1930s to plot the territorial redivision of the world after the European order of things had vanished. In an age of global politics, he thought governing entities would no longer be coextensive with more or less fixed borders or be limited to single continent. 49 The world would break down into global spheres of influence (Grossrdume), which Schmitt explored most fully in his study Nomos der Erde. Schmitt's writings from the mid-Thirties through the Forties have a predominantly geopolitical focus, and beyond his transparent concessions to Nazi rhetoric, they also indicate how much in flux his thinking really was.

These differences with Schwab are entirely minor against the background of his interpretative achievement. More than any other Schmitt-commentator, he has placed into a unified perspective the bulk of Schmitt's writings between Dictatorship in 1921 and Legality and Legitimacy in 1932. He has also cast valuable light on some of Schmitt's work during the Nazi years; and he has suggested bridges between the young jurist and the postwar author of Der Nomos der Erde and The Theory of Partisans. Two major objections have been raised against Schwab's view of Schmitt as a conservative but nonpartisan scholar who tried to confront change with analytical rigor. One is the now prevalent view in America, presented in The New Republic by Stephen Holmes, that Schmitt was a mischievous anti-democrat looking to establish a dictatorship long before Hitler came to power. 50 Such a view has been raised to the status of dogma; and its defenders make no attempt to allow the other side a hearing in any of their forums or publications. This may be the proper stance for those whose only interest in Schmitt is in preparing an object lesson. Thus he remains for these critics the authoritarian Catholic who inevitably came to a bad end for challenging human rights and other liberal and democratic doctrines.

The second objection against Schwab, which at first blush seems more serious, is that his interpretation leaves loose ends in plotting the lines of force in Schmitt's work. Political Theology in 1922 and Roman Catholicism and Political Form in 1923 both give evidence of Schmitt's continuing ties to political Catholicism. In Legality and Legitimacy, moreover, his remarks about concrete orders and the institutional integrity of religious bodies strike thematic notes heard among other Catholic political theorists of the period. There are also strains of thought interwoven in Schmitt's writing that point toward Hegel, Rousseau, the anthropological vitalist Helmut Plessner, and

49. See, for an example of this new direction in Schmitt's thinking "Völkerrechtliche Grossraumordnung," Zeitschrift für Volkerrecht, 24 (1940), 134-40.
the Catholic counterrevolutionaries Juan Donoso-Cortés and Joseph de Maistre. And Schmitt long debated with the intellectual historian Hans Blumenberg on the religious preconditions of modernity. He began this particular debate as a defender of Catholic culture.

Schwab makes some of these observations in his own interpretative studies, but he also makes clear that he is looking for the general, persistent drift in Schmitt’s writing. Though Schmitt started as a Catholic apologist, he became a sympathetic expositor of Hobbes, whom he characterized as the "completer of the Reformation." The Hobbesian project was the defense of a sovereign state, which was strong enough to curb sectarian passions and which tamed the political for the sake of safety. Schmitt's fear, Schwab notes, was the replacement of the European state system in which religious differences were subordinated to geopolitical interest by a new age of doctrinal hatred. Like Hobbes, Schmitt, as accurately described by Leo Strauss, remained "within the horizons of liberalism," even as a critic of secularization and neutralization. Though a cultural neomedievalist who admired canon law, politically Schmitt came to stand with Bodin and Hobbes, a point that he makes unequivocally in his postwar journal, Ex Captivitate Salus,

It is this political side of Schmitt and its analytical basis that Schwab has tried to develop in his own work. As a cofounder with Hans Morgenthau of the National Committee on American Foreign Policy, Schwab has worked to formulate an effective American position in the Cold War. He speaks of the need to resist militant ideology while being able to rally other states against Soviet aggression. He also makes short shrift of the "bombastic ideals" occasioned by past American military adventures, particularly Wilson's crusade for democracy. Nonetheless, because of the American people's political and cultural liberalism, Schwab does not believe that the United States will try to translate "universal concepts of humanity, justice, and progress" into "military doctrines of action." Schwab views America as an established


52. Schmitt's designation of Hobbes as the completer of Reformation comes in a review essay of works by Hobbesists in Der Staat 4.1 (1965), 51-54.


55. Ideology and Foreign Policy, 143-44.
liberal society and therefore in no permanent danger of having the state pursue militant ideological ends. If anything, Americans are seen to undervalue a strong executive; they therefore keep their sovereign at bay, by rendering him incapable of conducting a strong and consistent foreign policy.

In the 1970s Schwab tried to apply Schmitt's analysis of *Grossräume* to the conceptualization of an American-controlled "open-society bloc." 56 This bloc would have both ideological and military aspects and serve to bring together those favoring liberal democratic institutions with the victims of Soviet and Communist expansion. Schmitt associated territorial blocs with varying degrees of political homogeneity; Schwab, who draws on the notion of homogeneous blocs, appeals to pluralism and democracy as the foundations for an American order. Schwab asserts that America cannot afford to be a territorially-limited sovereign state on the classical European model. The old European order of things has disintegrated even in Europe; and Schwab can point to the fact that Schmitt had regarded America as a hemispheric power ever since the Monroe Doctrine.

In a German lecture in 1986, Schwab characterized the "open-society bloc" as a "time-bound conception [zeitbedingte Vorstellung]" that would provide a foreign policy for a drifting America and its allies. 57 This makeshift policy unfortunately came to assume cosmic redemptive proportions, as Schwab's associates on the N.C.A.F.P., most notably Jeane Kirkpatrick, failed to make his distinction between cobbling together an alliance and saving political souls. Schwab himself has always recoiled from the messianic internationalism that he associates with Wilson and Roosevelt, but like Schmitt he persists in seeing Americans as both a liberal and expansionist people. Americans, that is to say, can be made to take political life seriously only by being enlisted for a crusade." Neither Schwab nor Schmitt shows a sufficient understanding of America before it strayed from being a true member of the old state-system. Early America was a Protestant republic, but established diplomatic relations with European states that were politically and culturally different from itself. It paid its debts to foreign creditors, negotiated a territorial dispute soon after winning its independence, with Catholic autocratic Spain, and sought "esteem" as a sovereign state in its dealing with other such states. Jeffersonian Democrats who became ambassadors to the Court

56. See George Schwab, "From Quantity and Heterogeneity to Quality and Homogeneity: Toward a New Foreign Policy," *National Committee on American Foreign Policy Newsletter* (August-October 1980), 2-4.
57. The phrase above is from an unpublished lecture delivered at the University of Freiburg in 1986.
of St. Petersburg worked to cultivate good relations with the Tsar, not to make common cause with revolutionaries on the street. Unlike medieval confessional governments or modern ideologues, pre-Wilsonian America did not go in search of foreign monsters to destroy. In his statement of the Monroe Doctrine, John Quincy Adams was careful to give geopolitical reasons for American opposition to European plans to reconquer South America. Nowhere did Adams speak of creating a democratic bloc: his only explicit concern was the noninterference by European powers in the internal affairs of the Western hemisphere. Schmitt was correct to view this move as one with momentous geopolitical implications, but it is doubtful whether it can be seen as a precedent for the export of the current or of any other version of American democracy.

Schwab is generally on firmer footing when he explores the historical uniqueness of sovereign states existing on the basis of mutual recognition. His essay on the enemy and the foe brings out this uniqueness brilliantly, particularly when he turns to the antiquity of his key distinction. Schmitt himself had noted that polemological differences could be found in the Vulgate (which bids us to love, our "inimicos" but not our "hostel") and to the Greek attempt to distinguish between *exthroi* and *polemioi*, personal and political enemies. Starting from these observations, Schwab goes on to give a fuller account of the operation of the distinction Schmitt had located in the ancient world. He points out that the ancient Hebrews perceived a difference between *soneh* and *øyev* that corresponded to the Greek one between *exthros* and *polemios*. When Jesus' command about loving one's enemies was rendered in Greek *"Agapate tous exthrous humon"* and in Latin *"Diligete inimicos vestros"* the translators were following a distinction already known to the Hebrews, between personal and public enemies.5

A book on this subject might mention that the fourth-century, B.C., Athenian rhetorician Isocrates incorporated the distinction between *exthros* and *polemios* into a more comprehensive taxonomy of rivalries. In the *Panegyric* Isocrates distinguishes the "emulousness [hamilla]" marking the relationship between Athens and Sparta during the Persian Wars from destructive hostility. In their defense of Greece against the Persians, the two city states driven by "love of glory [philotimia]," tried to surpass each other in acts of bravery. In the process they grew into *antagonistai*, friendly rivals in a common cause. By contrast, the Greeks became *exthroi* for each other in the Peloponnesian Wars and in later struggles pitting one city against another. Isocrates seeks to end the *exthros* that has poisoned the relations among Greeks through a joint useful pursuit: a military struggle against the Persians.

who are polemioi, intended to free Greeks everywhere of foreign control.

Isocrates is following that distinction Socrates already suggests in Republic, Book Five. There Socrates praises the moderation of a city that refuses to take war captives or to desecrate temples in a struggle against other Greeks. Greeks cannot by definition be polemioi, for those among them who are divided are destined to be reconciled (\(\&ca\ 2, d^a yr\)) 60 \(\&\)EV0\(\&\)vat ovx aE\(\&\) Eglaov\(\&\)tov [diallagesomenon kai ouk aei polemesonton]).

Socrates' distinction between the Greeks as "kinsmen, GI)yyEvets [suggeneis]," and the non-Greek as the "stranger and the other, oOvEtov Kat aA,XoTptov [othneion kai allotrion]" was ignored in practice from the Peloponnesian War on. Xenophon's Hellenica documents the all-consuming strife among Greek cities in the early fourth century, B.C., and Diodorus Siculus and Polybius detail the wars and treachery during the centuries following the death of Alexander. 62 Both Diodorus and Polybius propose rules for war between Greeks and between Greeks and non-Greeks to mitigate the ferocity of the struggles of their time, and they anticipate the move toward legally circumscribed conflict between "just [but temporary] enemies" that Schmitt associates with the legal and theoretical developments of the seventeenth and eighteenth centuries.

Schwab credits early modern Europeans with the first effective taming of international hostility without imperial hegemony. He then goes on to stress the precariousness of this achievement. Our own age has seen attacks on state sovereignty and militant ideologies inside and outside of established govern menu 6 Neither entirely sovereign states nor secure spheres of influence as outlined by Schmitt can be said to characterize regimes assailed by competing social and sectarian interests and by revolutionary pressures. Early America entered the state system delineated by Schmitt while that system was still at its high noon, and Americans gave and demanded the respect that other countries possessing armies, revenues, and a territorial base took for granted. But the French Revolution and the new upheavals it unleashed and the steady advances of military technology made the European order of things here and across the ocean a brief interlude in a world of struggle, within and among political entities. Schmitt points to a somber future in his works of the 1960s. It is a world marked by the activities of political intellectuals, each pushing a salvific value and a revolutionary agenda while sovereign states continue to decay. In The Law of War, Ingrid Detter DeLupis reveals a new legal basis

61. Plato, Republica, Oxford Classical Text (Oxford, 1957), 5.460e1-2; 5.469 b, c, d; and 5.4716.
63 "Enemy or Foe: A Conflict of Modern Politics," Telos, 72 (Summer 1987), 201.
for this nightmare. She observes that "the U.N. Charter forbids the aggressive use of force but only between states: force against or by insurgents is not prohibited." DeLupis connects this characteristic of the U.N. Charter to a "worldwide growth of sympathy for insurgents." Furthermore: "The focus in international society has shifted from states to groups of individuals." The political, as defined by Schmitt, has indeed returned, with or without glasnost.

*Elizabethtown College*

PAUL GOTTFRIED

---