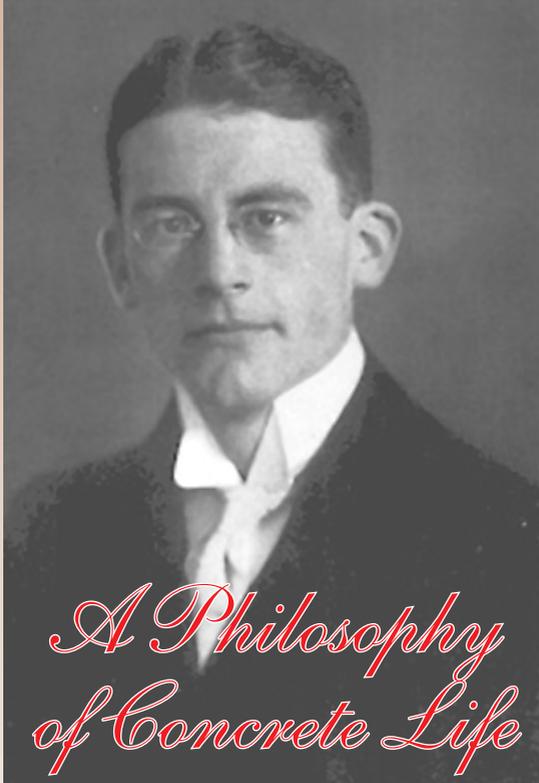


*Mika Ojakangas*



Carl Schmitt and the Political  
Thought of Late Modernity

[SoPhi]

# A Philosophy of Concrete Life



Mika Ojakangas

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## CARL SCHMITT AND THE POLITICAL THOUGHT OF LATE MODERNITY

Woe to him who has no *friend*, for his enemy  
will bring him up for trial.

Woe to him who has no *enemy*, for *I* shall be  
his enemy on Judgment Day.

Carl Schmitt, *Ex Captivitate salus*

SoPhi 77

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## Preface

The initial manuscript for this book was based on the introductory lectures on Schmitt which I held at the University of Jyväskylä in the autumn of 1998. Since then, however, both the form and the content of the text have changed quite a lot. Besides of introducing Schmitt's ideas, I have tried to disclose the common "metaphysical core" of Schmitt's central ideas and concepts. Moreover, I have extended the work to include a comparison of Schmitt's thought with the thought of some of the prominent political theorists in late modernity, including Hannah Arendt, Michel Foucault and Gilles Deleuze. What comes to the technical details of the work, I have made use of all the available translations of Schmitt's texts in English. Therefore, all the references are to translations. Insofar as an English translation has not been available, translations are mine. Sometimes, however, I have also slightly altered the available translation, neither for the reasons of style nor for those of accuracy but rather because of the logic of my own argument.

I owe special thanks to Soili Petäjämäki-Brown who not only corrected my English but gave me a lot of stimulating comments. I also want to thank Alessandro Dal Lago who invited me at the University of Genoa in the spring of 1998 and thereby made it possible to start the work, and Sakari Hänninen whose project "Displacement of Politics" (1999-2001) enabled me to continue the research. However, without a possibility to work as a fellow at the Helsinki Collegium for Advanced Studies during 2003 I could not have completed the work. Finally, I want to thank my colleagues Elisa Heinämäki, Markku Koivusalo, Panu Minkkinen, and Henri Vogt for the highly valued comments.



# 1. INTRODUCTION

We are all navigators on an endless journey and no book is more than a log-book

Carl Schmitt, *Völkerrechtliche Grossraumordnung*

Ever since political thought declined into a mere calculation and classification of empirical phenomena under the auspices of scientific positivism, an obvious vacuum has existed in the conceptualization of modern politics. It is true that a kind of renaissance of political thought is occurring at present. However, it seems at times that this rebirth amounts only to a return to the past. Politics is practice – speech and action – and it should not be framed in terms of those abstract rationalistic models that have recently been proposed as a foundation for political thought. John Rawls sums up the point of departure for these models when he delineates the foundations of his theory of justice. He suggests a model that “generalizes and carries to a higher level of abstraction the traditional conception of the social contract”,<sup>1</sup> which in itself has traditionally been one of the most abstract of all political abstractions.

Of course, in addition to the abstract individualism of liberal contract theory, there exists a communitarian theory whose point of departure is not the individual but the community. And at least part of the communitarian critique against liberalism is justified insofar as liberal contract theory dismisses the fact that man is primarily a social being. The individual cannot provide the point of departure for political theory, because he is merely the outcome of the social interactions taking place in a concrete community. However, the “community” of communitarianism remains often as unhistorical as the “individual” in liberal theory. It rarely corresponds to the historical state of things, in particular because communitarianism tends to ignore the question of “violence” and power inherent in every real existing community.

The critique of abstractions in political theory does not entail, however, that the only alternative left would be the empirical study of politics. Neither does

it mean that we should merely resort to the kind of historical analysis, which explores the political events and concepts of the past step by step. In fact, the assault of conceptual historians on political theory – and on the history of ideas – resembles in some respects the assault which the positivists launched on political theory after the Second World War. Nevertheless, a theory which is not somehow related to concrete historical conditions and events is necessarily empty – as for instance in the case of contemporary social theory. In it, society is often depicted as an automatically functioning abstract system within which different subsystems, the so-called political system included, form relatively independent entities with their own trajectories. The critique of such systems is important but not essential for political theory. This also applies to the theories in which human existence is assessed by the increasingly more obscure measure of “democracy”, the panacea of our time. In my opinion, what is essential for political theory is to reveal the common and concrete foundations of these systems, whether democratic or not. Instead of resorting to easy empiricism, self-sufficient political philosophy or the empty concepts of social theory, political theory should turn its attention to those basic theoretical concepts which could reveal the concrete essence of politics and thereby the “order of human things”.

In this respect, the work done by the German constitutional jurist Carl Schmitt (1888–1985) is among the most promising of the last century. On the one hand, the acuity of Schmitt’s thought lies in his ability to avoid universals and abstractions, which have no reference to a concrete instance or to the concrete state of things. On the other hand, it lies in his capacity to make immediately comprehensible conceptual distinctions, yet without forgetting the demands of generality posed to theoretical thinking. This dual intention becomes manifest already in the name of his approach: “A philosophy of concrete life.”<sup>2</sup> Despite the name, however, we should not identify Schmitt’s philosophy of concrete life with the philosophy of life that was in vogue in Germany and especially in France at the turn of the 20<sup>th</sup> century. Schmitt’s thought does not display a tendency towards organic thinking or metaphysics of life. Admittedly, he argues that there exists a metaphysical core in the work of an author: “The thought and feeling of every person always retain a certain metaphysical character.”<sup>3</sup> In Schmitt’s case, however, this core is not life as such “in its complete spiritual emptiness and mere dynamic”,<sup>4</sup> but what he calls the concrete (*das Konkret*). The aim of this book is to examine the nature and meaning of this concreteness and its philosophy.

Providing a systematic treatment of Schmitt’s work is not the purpose of this text. Neither do I wish to locate Schmitt’s thought in its exact historical or conceptual context.<sup>5</sup> This context is, without doubt, interesting and perhaps it is impossible to understand Schmitt’s real intentions without a good

understanding of it. However, I am not a historian but a political theorist and the task of a theorist is not to reduce ideas to time and place or to reveal the true intentions of writers of times past. Rather, his task is to free ideas from their historical and psychological circumstances and in so doing to actualize them.<sup>6</sup> According to Julien Freund, there are indeed two ways of approaching Schmitt's work:

Either taking into account the context in which they were written, the author's personal positions, his vacillations and sympathies, which themselves changed; or by focusing on the strong points in his thought without reference to particular circumstances.<sup>7</sup>

Of course, even the "strong points" are strong only in a given historical situation. Therefore, a total neglect of the context would lead to misinterpreting the strong points as well. In this book the context is not, however, limited to the exact juridical or political discourse of Schmitt's time. It spans, instead, late modernity – from the turbulent year of 1848 onwards – in general, concentrating in particular on what Schmitt calls the conceptual articulation (*begrifflichen Verarbeitung*) of the social structure of the epoch. My intention is, in fact, to utilize Schmitt's own method of the "sociology of concepts". According to Schmitt, the sociology of concepts attempts – starting from juridical conceptualizations oriented towards immediate practical interests but transcending them – to "discover the basic, radically systematic structure and to compare this conceptual structure with the conceptually articulated social structure of a certain epoch".<sup>8</sup> In the case of a given literary work, the radically systematic conceptual structure constitutes its metaphysical core, whilst simultaneously revealing the "metaphysical character" of an author. According to Schmitt, as already mentioned, the "thought and feeling" of every person indeed always retain a certain metaphysical character. The task of the sociology of concepts is to reveal this character and to compare it with the conceptually articulated social structure of that person's epoch. Insofar as metaphysics also represents, in Schmitt's view, the "most intensive and clearest expression of an epoch", the approach culminates in a comparison of a certain "metaphysical character" of the author's thought with the "metaphysical image" (*metaphysische Bild*) of the world of his epoch.<sup>9</sup>

This is, in other words, the method of the work at hand. It aims at grasping the metaphysical core of Schmitt's political thought by juxtaposing it with the metaphysical image of the world in late modernity. I admit that this approach can appear partially illegitimate given that Schmitt himself emphasized that all political concepts, images, and terms have a polemical meaning: "They are focused on a specific conflict and are bound to a concrete situation."<sup>10</sup> The-

before they remain incomprehensible if one does not know exactly who is to be affected, combated, refuted or negated by these terms.<sup>11</sup> Also in Schmitt's case, however, there exists a concept – or rather an image of thought – which is not merely focused on a specific conflict in a concrete situation but transcends it. There exists a certain metaphysical character, which corresponds to the metaphysical image of the world of late modernity. Primarily, this character pertains to Schmitt's conception according to which the foundation of collective human existence is constituted by *conflict*. This is not only a polemical formulation, but also a metaphysical claim. Yet, it does not suffice to say that conflict constitutes the metaphysical core of Schmitt's thought – he does not claim, for instance, that humankind would be in the middle of a war of all against all. Instead, one has to examine the role of conflict in the general structure of Schmitt's thought. Contrary to what is sometimes claimed, such a structure does exist. We can call this structure metaphysical because it is axiomatic, in other words, there exists an axis which is relatively stable and which orients his thought.

Initially, we can state that the axis which orients Schmitt's thought is the juxtaposition *inside versus outside*. In his view, there is no inside without outside, no order without disorder, no cosmos without chaos. There is no delimited space without a space that remains outside the limits, because life, the movement of living history, presupposes a space of the outside, an "empty space":

There is no movement without an empty space. There is no law [*Recht*] without a free space either. All normative comprehension and delimitation of space presuppose a free space which rests outside, beyond the law. Freedom is freedom of movement, nothing else. What would be terrifying is a world in which there no longer existed an exterior [*Ausland*] but only a homeland [*Inland*], no longer space [*Spielraum*] for measuring and testing one's strength freely.<sup>12</sup>

In this structure, the space of the outside – the space of conflict – is primary. Hence, Schmitt turns inside out the structuring hierarchy of classical modern political theory, characterized by the exclusion of disorder from order, war from peace, and the state of nature from political order. This is not to say that Schmitt simply affirms disorder and war. On the contrary, throughout his work, he emphasizes the necessity of tranquility, security and order. However, there is no tranquility, security and order without the recognition that disorder and war are the ever-present possibilities of every order and peace – or better still, that every order is based on and created out of disorder.

For Schmitt, the decisive place in this configuration, the place of the political, is the borderline between inside and outside, between order and disorder. The

instance which occupies this boundary possesses the decisive political authority. It has the monopoly on the political. However, there exists no predetermined general norm which would authorize an instance to occupy the boundary. Everything depends on the act of decision, on the concrete act of drawing the borderline between order and disorder. It is the decision – the event of the political – which determines the instance. Whoever decides on the borderline is the instance of the political. However, the instance is not necessarily actualized in a person. It can also be realized in a state or a people. The essential point is that it must be situated on the borderline between the spaces of order and disorder. Only this position of in-between guarantees that the inside remains open to the outside and the movement of living history continues. Only the one who occupies this position is the concrete historical subject of a concrete political act – of “the event which founds an order”.<sup>13</sup>

\* \* \*

What makes the study of Carl Schmitt’s theoretical work complicated is his decision to join the National-Socialistic Party (NSDP) in February 1933. Joining the Party in Germany was not unusual at that time but among the intellectuals it was rare. Only one other intellectual of major importance had actually joined, namely Martin Heidegger. However, in 1936 Schmitt was relieved from all of his positions of trust by the Party. He was accused of opportunism and ideological impurity, for instance of Catholicism, Hegelianism, of reluctance to think in purely racial terms and even of anti-Nazism.<sup>14</sup> However, he was allowed to keep his position as a professor of jurisprudence in Berlin and, like Heidegger, he remained a member of the Party until the end of the Second World War. After the war he was arrested on suspicion of being involved in the politics of expansion but his prosecution was waived. After that he did not regain a position at a university or in any other institution in the Federal Republic of Germany.

Without going into the details of this sad but in many respects consistent political adventure,<sup>15</sup> I want to point out that Schmitt’s relation to Heidegger is not only political but also intellectual. Both of them criticized the individualization and technologization of the West. Both of them also emphasized the primacy of exception in relation to the ordinary, the necessity of decision-making and the importance of human rootedness in soil. And finally, both had a strong desire to overcome abstract philosophical speculation and to proceed toward a philosophy of concrete life – of facticity as Heidegger put it. This does not mean, however, that Schmitt would have wanted to surpass metaphysics. For him, metaphysics was always “something unavoidable”.<sup>16</sup>

The proximity of metaphysics to life, as well as the resemblance of theology to politics, were issues he never ceased to emphasize.

Despite this thematic continuity in his thinking, it is possible to outline two important, although still relative, shifts of emphasis in Schmitt's work. The first one is related to the subject matter of his research, the second one to his approach. In the beginning, approximately until 1936, the subjects of Schmitt's research were mainly constitutional law and the foundations of state order. After 1936 his writings concerned increasingly the topics of international law and world politics. It is usually thought that Schmitt moved away from the issues of domestic politics because of their generally delicate and, as far as his person was concerned, dangerous nature. Schmitt himself has even claimed that the SS kept watch on his activities, publications, mail, and friends in 1936-37.<sup>17</sup> On the other hand, one must remember that this turn took place at a time when the focus of political life in Germany moved towards international arenas, in other words, when Hitler's ideology of *Lebensraum* was transformed from an ideology into Nazi-Germany's concrete politics of expansion.

This change in subject matter was preceded by a shift in approach. The early phase of Schmitt's work can be called decisionist or, more precisely, a phase of decisionist formalism. The approach is decisionist insofar as the core of analysis is not a valid norm or legal order but a decision which imposes a norm and an order. On the other hand, the approach is formalist to the extent that the content of the decision-making is radically separated from the act of decision itself, and the act receives an autonomous juristic value. After the shift, around 1933, it is precisely this content-element, "the political, social and economic meaning of concrete orders and institutions",<sup>18</sup> which becomes Schmitt's focal point. However, even at this stage the question is not whether a norm or legal order is valid or universally just, for Schmitt's emphasis is on the historical continuity and a total concept of law: Law (*Recht*) is identified with spatial order and localization (*nomos*). (In fact, also this late phase can be further divided into a phase which emphasizes the national origins of law – "all law [*Recht*] is the law of a certain *Volk*"<sup>19</sup> – and into one which emphasizes the European origin of law and especially its relation to the tradition of Roman law. It is possible to date this shift, surprisingly enough, to the battle of Stalingrad!) If decisionist formalism can be considered a conservative thinker's radical solution to the problem of modern nihilism, then the thinking of concrete order (*nomos*) can be considered a more traditional type of conservatism, with the reservation that even this approach includes one radical decisionist element, namely the non-anticipated act of appropriation.

## Footnotes

- <sup>1</sup> John Rawls, *Theory of Justice*. Cambridge: The Belknap Press of Harvard University Press 1972, p. 15.
- <sup>2</sup> Carl Schmitt, *Political Theology* (1922). The MIT Press 1985, p. 15.
- <sup>3</sup> Carl Schmitt, *Political Romanticism* (1919). The MIT Press 1986, p. 18.
- <sup>4</sup> Schmitt, *Political Romanticism*, pp. 17–18.
- <sup>5</sup> An excellent recent example of a systematic and contextualizing study is Gopal Balakrishnan's *The Enemy: An Intellectual Portrait of Carl Schmitt*. Verso 2000.
- <sup>6</sup> By actualization I do not mean that Schmitt's ideas should be actualized in today's politics. In this sense, his ideas are already actual – for instance in the neoconservative thought of American republicanism. For example, when the neoconservative Irving Kristol summarized the neoconservative beliefs concerning foreign policy, he came to summarize some of Schmitt's central beliefs: "First, patriotism is a natural and healthy sentiment and should be encouraged by both private and public institutions. Second, world government is a terrible idea since it can lead to world tyranny. International institutions that point to an ultimate world government should be regarded with the deepest suspicion. Third, statesmen should, above all, have the ability to distinguish friends from enemies." Irving Kristol, "The Neoconservative Persuasion." *The Weekly Standard* 25 august 2003. For me, actualization signifies bringing to light the metaphysical foundations of Schmitt's political thought in order to develop intellectual weapons not only for the battle against the neoconservative beliefs but also for the critique of Schmitt and of the political thought of late modernity in general.
- <sup>7</sup> Julien Freund: "Schmitt's Political Thought." *Telos* No 102, Winter 1995, p. 40. A good example of a commentary in English in which both the context and the "strong points" are considered is John P. McCormick, *Carl Schmitt's Critique of Liberalism*. Cambridge University Press 1997.
- <sup>8</sup> Schmitt, *Political Theology*, p. 45.
- <sup>9</sup> Schmitt, *Political Theology*, p. 46.
- <sup>10</sup> Carl Schmitt, *The Concept of the Political* (1932). The University of Chicago Press, p. 30.
- <sup>11</sup> Schmitt, *The Concept of the Political*, p. 30.
- <sup>12</sup> Carl Schmitt, *Glossarium – Aufzeichnungen der Jahre 1947-1951*. Duncker & Humblot 1988, p. 37.
- <sup>13</sup> Carl Schmitt, *Der Nomos der Erde – Völkerrecht des Jus Publicum Europaeum* (1950). Duncker & Humblot 1988, p. 51.
- <sup>14</sup> Before the elections on 31 July 1932 Schmitt in fact wrote: "Anyone who allows the National Socialists to obtain the majority on 31 July, even if he is not a National Socialist and sees in this party only the lesser of evils, is acting foolishly." Cited in Balakrishnan, *The Enemy*, p. 156.

- <sup>15</sup> “I am an intellectual adventurer”, says Schmitt. See “Interrogation of Carl Schmitt by Robert Kempner.” *Telos* No 72, Summer 1987, p. 103. However, every adventurer’s route has some consistency and Schmitt’s adventure includes, as far as I can see, the following landmarks: Schmitt’s antipathy to atheistic socialism and agnostic liberalism but especially his anti-Semitism, which was not based on the Nazi concept of race, but on a conviction according to which Judaism and Christianity are mutually exclusive truths. Moreover, one can approach Schmitt’s commitment from the perspective of his obsession with order and stability, unity of a people and the necessity of the figure of an enemy for the creation and maintenance of that unity. Also his opportunist view according to which a jurist must adjust to any situation which “permits recognition of an authority” should be taken into consideration. On Schmitt’s anti-Semitism, see Raphael Gross, *Carl Schmitt und die Juden*. Suhrkamp 2000. Gross argues that anti-Semitism forms the real substratum of Schmitt’s theoretical system as a whole.
- <sup>16</sup> See Schmitt, *Political Romanticism*, p. 17.
- <sup>17</sup> See “Interrogation”, p. 106.
- <sup>18</sup> Carl Schmitt, “The Plight of European Jurisprudence” (1944). *Telos* No 83, Spring 90, p. 37.
- <sup>19</sup> Carl Schmitt, *State, Movement, People* (1933). Plutarch Press 2001, p. 51. Translation altered.

## 2. METAPHYSICAL CHARACTER

Everything must be forced to the extreme

Carl Schmitt, *The Crisis of Parliamentary Democracy*

What constitutes the metaphysical character of Schmitt's work? As already mentioned, the metaphysical character of a work can be revealed only if the conceptually articulated social structure, and thereby the metaphysical image of the world in a particular epoch, are properly apprehended. What, then, is the metaphysical image of the world in late modernity? Inasmuch as it is probable that an author has at least an implicit idea of the metaphysical image of his epoch and that this idea has a bearing on his conceptualizations, it provides a natural point of departure for an analysis. In Schmitt's case, this is all the more essential, not only because he considers political concepts to function as weapons in concrete political and intellectual confrontations, but first and foremost because the task of the philosophy of concrete life is to create concepts "out of the immanence of a concrete legal and social order".<sup>1</sup> To create concepts out of the immanence of a concrete order presupposes that the author has some conception of the character of that immanence, that is, of the metaphysical image that a particular epoch forms of the world. What then is Schmitt's conception of the metaphysical image of the world in late modernity? In order to answer this question, we have to consider Schmitt's concept of an epoch (*Epoche*) briefly.

Schmitt's clearest presentation of the concept of an epoch can be found in an article from 1929, "The Age of Neutralizations and Depoliticizations". In this article, he argues that the "European mind" has traversed four different epochs and thereby four conceptually articulated social structures and metaphysical images since the 16<sup>th</sup> century. Here, he calls these successive epochs historical stages (*Stufe*):

There are four great, simple, secular stages corresponding to the four centuries and proceeding from the theological to the metaphysical sphere, from there to the humanitarian-moral and finally to the economic sphere.<sup>2</sup>

In Schmitt's view, at issue is neither a historical-philosophical law nor a continuous line of progress or decline. In fact, the various stages are not even mutually exclusive insofar as Schmitt argues that there is "always a plurality of diverse, already spent stages coexisting". The changing stages concern only the concrete fact that

in these four centuries of European history (1500-1800) the intellectual vanguard changed, that its convictions and arguments continued to change, as did the content of its intellectual interests, the basis of its actions, the secret of its political success and the willingness of the great masses to be impressed by certain suggestions.<sup>3</sup>

Of course, this does not yet explain why a particular stage and thereby a certain metaphysical image of the world should prevail. In Schmitt's view, a stage stabilizes itself and becomes prevailing because of an "elemental impulse" that has been decisive for European history: "The striving for a neutral sphere."<sup>4</sup> For instance, following the theological struggles of the 16<sup>th</sup> century, Europeans sought a neutral sphere – Schmitt calls this sphere the central sphere (*Zentralgebiet*) – in which there would be no conflict and they would reach a "common agreement through debates and exchanges of opinion".<sup>5</sup> In the 17<sup>th</sup> century the common agreement and thereby, the neutralization of theological struggles was supposed to be reached by constructing a natural system of metaphysics and law. Nevertheless, the new sphere, at first considered neutral, soon appears to become another arena of struggle in which the "antithesis of men and interests unfold with a new intensity".<sup>6</sup> In other words, the Europeans have always wandered, in Schmitt's view,

from a conflicting sphere [*Kampfgebiet*] to a neutral sphere [*neutrales Gebiet*], and always the newly won neutral sphere has become immediately another arena of struggle, once again necessitating the search for a new neutral sphere.<sup>7</sup>

Hence, if the central sphere of the 16<sup>th</sup> century was religion, insofar as all significant political struggles were theological, it was precisely theology, which was first neutralized by the emergence of the rationalist metaphysics, materialized in the absolute state of the 17<sup>th</sup> century. Subsequently, the humanitarian-moral sphere which arose as the central sphere in the 18<sup>th</sup> century sought to depoliticize and neutralize metaphysics and the state. In turn, the liberal economic

thinking and praxis of the 19<sup>th</sup> century transformed the politicized morals of the previous century into private ethics and aesthetics. Ultimately, technology – the fifth and, in Schmitt’s view, the most neutral and apolitical sphere by essence – comes to occupy the core of the spheres in the 20<sup>th</sup> century:

Here all struggles and confusions of religious, national and social conflicts were leveled into a neutral sphere. Technology appeared to be a sphere of peace, understanding and reconciliation.<sup>8</sup>

Without taking a stand on the correctness of Schmitt’s history of European epochs, of importance here is, from the perspective of the sociology of concepts, that the central sphere is the determining *factum* of the metaphysical image of the world in an epoch: “All concepts derive their concrete historical content from the situation of the central spheres and can only be grasped there from.”<sup>9</sup> Hence, to the extent that one takes seriously Schmitt’s sociology of concepts and applies it to himself, Schmitt’s concepts and thereupon the metaphysical character of his thought can only be grasped from within the central sphere of his own epoch, that is to say, from within the technological stage of the late modern European spirit. What does this entail? Does it entail that Schmitt’s concepts correspond to the metaphysics of neutrality which recognizes only peace, understanding and reconciliation? Not necessarily, because there always coexists, as already mentioned, a plurality of diverse, already subsided stages. In other words, even if economy and especially technology occupy the central sphere of our historical stage, the previous stages and their central spheres still have a role in this epoch as well. Hence, when one examines Schmitt’s own thought, it is not necessary to link it with the conceptually articulated social structure of our own time. On the contrary, it seems reasonable, at least if we take seriously Schmitt’s idea of the unavoidability of metaphysics, that his work should be examined precisely in the light of the metaphysical 17<sup>th</sup> century, the “heroic age of occidental rationalism”.<sup>10</sup> Or perhaps we should find our point of reference even further back in history, in the medieval world and in the juristic rationality of the Roman Church?

### *Psychology of a pessimist*

This last interpretation is supported by the fact that Schmitt does not cease to praise the Catholic counterrevolutionaries, Joseph de Maistre and Juan Donoso Cortés, whose religious and medieval mindset stubbornly opposed modernity in all its manifestations. He praises these counterrevolutionaries for their style and their thoroughly theologico-juridical way of thinking. He

is also enthusiastic about their historical and psychological insightfulness, in particular about their conception according to which man is an inherently dangerous and corrupted being.

In turn of the century Germany, de Maistre and Donoso Cortés were called romantics in Germany on account of their conservatism and reactionism. Schmitt wants to save them from this suspicion. According to him, the most peculiar feature of romanticism, regardless of its traditionalism, is the conception of an “everlasting conversation” in which such authentic romantics as Novalis and Adam Müller experienced the “true realization of their spirits”.<sup>11</sup> Schmitt accepts that romanticism had its own political form of expression. However, the political activism of political romantics is characterized, on the one hand, by a continuous oscillation between contradictory attitudes and principles. On the other hand, it is characterized by a factual indifference concerning concrete political issues. The real and only achievement of political romanticism is, concludes Schmitt, the aestheticization of politics. All political issues are considered merely as occasions for self-expression and exercises in aesthetic imagination.<sup>12</sup>

According to Schmitt, de Maistre and Donoso could not understand moral oscillation and considered the everlasting conversation as a product of a “gruesomely comic fantasy”.<sup>13</sup> Instead of oscillation and conversation, they thrust the decision at the heart of their philosophy. Schmitt concedes that they may have been conservatives, but not extreme traditionalists, since they held that traditionalism leads to an irrational rejection of conscious decision. De Maistre valued the act of decision as such, and believed that regarding the most fundamental issues, making a decision is more important than how the decision is actually made. This conviction prompted him to suggest that every government is absolute, but while an anarchist would state it in order to reproach authority, de Maistre declares authority to be good as such.<sup>14</sup>

Schmitt interprets the development from de Maistre to Donoso as a development from legitimacy to dictatorship. Simultaneously, it represents a turn towards a more pessimistic conception of man. Already de Maistre had wanted to demonstrate the danger inherent the nature of humankind by opposing the optimism of the Enlightenment with the factual and bloody side of the European history:

If you go back to the birth of nations, if you come down to our own day, if you examine peoples in all possible conditions from the state of barbarism to the most advanced civilization, you always find war. From this primary cause, and from all the other connected causes, the effusion of human blood has never ceased in the world. Sometimes blood flows less abundantly over some larger

area, sometimes it flows more abundantly in a more restricted are, but the flow remains nearly constant.<sup>15</sup>

However, Donoso's contempt for man knew no limits. Had God not become man, Schmitt quotes Donoso, "the reptile that my foot tramples would have been less contemptible than a human being".<sup>16</sup> In the rationalist view of the Enlightenment, man was conceived as ignorant and rough by nature, but educable. In Schmitt's view, this belief justified the possibility and necessity of an educational dictatorship. It prompted Rousseau to demand that a legislator must change the nature of man and Fichte to outline the state as an "educational factory".<sup>17</sup> Marxist socialists, for their part, believed that changes in economic and social conditions would change man as well. But Donoso does not believe in the metamorphosis of man, either by education or by altering the relations of production. In this sense, he is in line with the anarchists, but whilst the latter claim that man is good by nature and that all evil derives from theology and its implications – from authority, state, or government – Donoso objects that not even the dogma of the original sin is radical enough. He writes about the absolute sinfulness and depravity of human nature. In his philosophy of history, the victory of evil is obvious and natural. Only God's miracle can prevent it – a miracle that in political life finds its parallel in the notion of decision. For Donoso, as Schmitt demonstrates, a metaphysics which does not take into consideration the necessity of moral decision leads to mere confusion. Therefore, Hegelianism, in its commitment to a higher term of reconciliation, is in Donoso's view nothing but liberal lack of consistency. Such a theory of compromise can exist only in the short interim period in which it is possible to answer the question "Christ or Barabbas?" with a proposal to appoint a commission of investigation. To suspend the decision at the crucial moment, by denying that there was anything to be decided, appears to him as the sign of ultimate irresponsibility. As a remedy for this irresponsibility and in opposition to the practice of everlasting conversation, Donoso proposes dictatorship.<sup>18</sup> According to him, only a dictator can resist the radical evil, which culminated in his view in the 1848 revolution. Like Hegel, the whole epoch had trusted that all oppositions and antitheses would be merged in the compromise of a higher third, but according to Schmitt, Donoso Cortés was gripped by horror at the thought of Hegelianism.

Even though Schmitt did not count on the possibility of a reconciling higher third either, his relation to Hegel was not as simple as Donoso's. In fact, if we examine Schmitt's political views, we discover neither a French royalist, nor a fanatic Spaniard compared to whom even Friedrich Nietzsche's fury would look like childish defiance. Rather, Schmitt's stated objections aside, one finds there the shadow of G.W.F. Hegel. It is true that Schmitt

could not comprehend the ultimate rationality and dialectical development of history in which even the interruptions serve as negations subjected to this development. In Hegel's philosophy, "an exception never comes from outside into the immanence of development",<sup>19</sup> and thereby it is a process without a "definitive, disjunctive judgment": "Hegel's philosophy contains no ethic that would provide a foundation for the absolute distinction of good and evil."<sup>20</sup> In it, good is what is real, evil what is unreal. Nevertheless, Schmitt relies more than once on Hegel's idea of quantity transforming into quality. And he repeatedly quotes Hegel's definition of a bourgeois as the antithesis of a citizen, that is to say, as an individual who is unwilling to leave the apolitical, risk-free private sphere: "He wants to be spared bravery and exempted from the danger of a violent death."<sup>21</sup> Besides, Schmitt accredits Hegel with being the first to formulate the definition of concrete enemy: "The enemy is a negated otherness."<sup>22</sup> Furthermore, Hegel's dialectics does not, in Schmitt's interpretation, merely affirm the higher third term since it also focuses on the concrete battle ("mutual negation") between the opposing terms. In Schmitt's view this reveals, together with the philosophical truth that all spirit is present spirit, the political character of Hegel's philosophy.<sup>23</sup> Finally, Schmitt's own thinking seems to proceed through a specific third term all the time. Even though he repeatedly emphasizes the insuperability of decisive dualisms, for instance in arguing that the sphere of the political presupposes the non-mediated antithesis of friend and enemy, we can detect a specific moment of reconciliation. Yet, at issue is not a preserving reconciliation, *Aufhebung*, but an instance expressing the ceaseless but ultimately insurmountable togetherness of a pair of terms: the state of exception and normal situation, constituent power and constituted power, war and peace. It is not a question of a higher third, in which the opposites become merged, but of a concrete *borderline case* – the sovereign, people, enemy – which exposes the insurmountable togetherness of the two terms. The sovereign decision, which cannot be "deduced from a preceding norm or from a preexisting order",<sup>24</sup> but which nevertheless founds the norm and the order; the "non-organized power" of the people,<sup>25</sup> which nevertheless decides on the form of organization of a political entity; the "other and strange" enemy<sup>26</sup> who is, nevertheless, constitutive for the sphere of the political and therefore, as Schmitt would claim, for stable peace.

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Despite Schmitt's admiration for Donoso Cortés and despite his esteem for the metaphysics of the 17<sup>th</sup> century, the metaphysical character of Schmitt's thought lies precisely in the conceptually articulated social structure of the technological stage of late modernity. Admittedly, he took on the project of

revitalizing concepts such as sovereignty in the sphere of the state and constitutional law. However, his concept of sovereignty does not correspond to the conceptually articulated social structure and the metaphysical image of the 17<sup>th</sup> century, in which the undivided and permanent power of a temporal ruler in a temporal kingdom was structurally identical with the power of God in the Kingdom of Heaven. Instead it corresponds to the conceptually articulated social structure of late modernity in which God has become an “objectively obscure being”<sup>27</sup> and everything is “increasingly governed by conceptions of immanence”.<sup>28</sup> But before we can grasp the implications of this for Schmitt’s political concepts, we need to take a closer look at Schmitt’s understanding of the conceptual structure and the metaphysical image of late modernity.

## 2.1 PHILOSOPHY OF THE EXTREME

What then, in contrast to the earlier epochs, is characteristic of late modernity? In Schmitt’s view, as already mentioned, an outstanding characteristic of this epoch is the dissolution of political struggles and social conflicts into a neutral sphere, above all into the sphere of the technical. To the extent that neutrality is the antithesis of the political, the essential characteristic of late modernity is *the negation of the political*: “Today nothing is more modern than the onslaught against the political.”<sup>29</sup> In late modernity, politics is substituted with technics – with “organizational-technical tasks”<sup>30</sup> – and the political community with the idea of society as a “self-propelling machine” in which everything “functions automatically” and things “administer themselves”.<sup>31</sup> Schmitt sees manifestations of this tendency everywhere. He finds it in modern jurisprudence and especially in the formalism and normativism of legal positivism, which confuses legitimacy and thereby political authority with legality, and which identifies law (*Recht*) with “objectively valid” legal rules and norms (*Gesetz*).<sup>32</sup> He discovers it in the juristic life of the liberal bourgeois “constitutional state” (*Rechtsstaat*), which subjects the power of the state to the rule of law and dismisses the immediate and revolutionary constituent power of the people, reducing it to a mere concept. Moreover, Schmitt finds the tendency to negate the political in the modern liberal administrative state, which resembles more a technical bureaucratic machine – “a huge industrial plant”<sup>33</sup> – than a representative instance of legitimate power. The tendency is manifested as well in the modern parliamentary system, which replaces the necessary either/or decisions (“either Christ or Barabbas”) with the romantic idea of eternal conversation, and, instead of representing publicly the people as a whole, represents mechanically the manifold interests of an electorate

consisting of private individuals. Furthermore, in Schmitt's view, the tendency to negate the political finds expression in modern economic rationalism, according to which every government and political authority is but a necessary evil, replaceable by the freedom of production and consumption in the course of progress made possible by following the mechanical laws of free markets. This tendency is apparent even in the socialist theory which, for Schmitt, is not the opposite of capitalist economic thinking but, on the contrary, its complement.<sup>34</sup>

Schmitt finds the negation of the political also taking place at the level of international order. There the precondition for the political, namely a plurality of political peoples and states, has been challenged by the idea of a "universal-society" populated by a unanimous and apolitical humanity – an idea which, despite the unanimity it evokes, seems to function in reality as a means of "a most awful expansion and a murderous imperialism".<sup>35</sup> In the same vein, Schmitt finds this tendency surfacing in the aftermath of the dominant natural-scientific dogma. This thinking has forced human existence into "rationalist schemes",<sup>36</sup> which are seen as an absolutely neutral, objective and value-free ground devoid of moral and political problems. In the background of this utopian, and therefore, nihilistic *Weltanschauung*, Schmitt perceives the modern metaphysics in which all decisive dualisms at the foundation of moral and political decision-making are replaced with a monistic metaphysics. According to Schmitt, the victory of monistic metaphysics in late modernity signifies, first and foremost, that transcendence is reduced into immanence. This reduction does not entail only the disappearance of transcendence but also an *absolutization* of immanence – an absolute closure of immanence – and thus, in Schmitt's view, an absolute rationalization and neutralization of human existence.<sup>37</sup>

If this is the metaphysical image of the world in late modernity, how do Schmitt's political concepts accord with it? In my interpretation, they accord with it in the form of negation. To the extent that Schmitt considered the modern worldview to be precarious, not only because its aims are utopian, but also because one cannot confront real political problems in its absolutely rationalized and neutralized framework, he developed his central political concepts, including the concept of the political, in order to oppose this worldview. Therefore, Schmitt's concepts must be seen, firstly, as counter-concepts (*Gegenbegriff*) – counter-concepts to the self-propelling machine, based on the idea of absolute immanence. However, although these concepts are posed as antipodes to absolute immanence, they do not oppose it from the perspective of transcendence, but from the perspective of an act (*Akt*) or an instance (*Instanz*) that Schmitt calls the *concrete*. In other words, these concepts refer to a concrete act or an instance that perturbs the universe of the automatically

functioning machines, that is to say, that introduces a *rupture* in the absolute closure of immanence. The sovereign and his decision concerning the state of exception (*Political Theology* 1921); the people and the “existential decision” concerning constitution (*pouvoir constituant*) (*Verfassungslehre* 1928); the enemy and the real possibility of killing in war (*The Concept of the Political* 1932); the act of land-appropriation (*Der Nomos der Erde* 1950) – all these concepts indicate resistance to the absolutization of immanence. The sovereign’s decision (“new and alien”) and the will of a people (“outside and above”), as well as the real existence of an enemy (“other and strange”) and the concrete act of land-appropriation (“territorial mutation”) act as antidotes to the “self-propelling machine”. They are the ever-present stumbling blocks for the “rationalist schemes”, ruptures in absolute immanence.

However, the decision does not merely resist the valid legal order or interrupt the eternal conversation, nor does the existential will of the people merely perturb constitution. The real possibility of the enemy does not necessarily destroy the possibility of peace, and land-appropriation does not immediately lead to the collapse of what Schmitt pejoratively calls the system of “mere production”. As a matter of fact, these acts and instances exist as the *foundation* of every real order, of all fruitful discussion, of stable peace and of authentic, that is, meaningful production. In other words, Schmitt’s political concepts, including the concept of the political, are not only instances of resistance but also constitutive figures. They denote the “historical event” of a constitutive act and a founding instance of order. This is why Schmitt’s central political concepts are not only counter-concepts, representing the intrusion of pure contingency, but also fundamental concepts, that is, original words (*Urwort*) and ground concepts (*Grundbegriff*). It is a question of foundations, the basic and *tragic* foundations of any human order whatsoever, tragic insofar as a real order necessarily includes a serious (*ernst*) and a violent dimension in contrast, for instance, to the play (*Spiel*) of mere conversation. Yet, according to the logic of Schmitt’s thought, this foundation manifests itself necessarily as an instance of resistance or rupture in absolute immanence, to the extent that absolute immanence implies either a pure non-order (anarchy) or an order without meaning or orientation (nihilism). Reciprocally, every real and meaningful order presupposes a founding act or a constitutive instance, which nevertheless cannot be included in that order. Although the sovereign “stands outside the normally valid legal system, he nevertheless belongs to it”.<sup>38</sup> He belongs to it as its borderline case – resisting its enclosure, constituting its life.<sup>39</sup>

From the perspective of the modern self-enclosed systems immanent to themselves, for instance that of the uniform system of norms, the decision “emanates from nothingness” (*aus einem Nichts*).<sup>40</sup> For these systems, systems without an outside, without an other, this nothingness would manifest itself

as irrationality, insofar as the decision is an absolutely non-anticipated event, a contingent exception in the sense of *ex-cipio*, “to take out”.<sup>41</sup> Nonetheless, for Schmitt, the non-anticipated exception, that is to say, the unexpected other that he calls the concrete, signifies the concrete condition of possibility of all rationalities. For this reason, Schmitt’s concrete cannot be in the final analysis defined as irrational, but rather as extremely rational, insofar as the emphasis is on the word extreme, and the extreme (*extremitas*) is understood in its original sense, that is, as an edge, limit, boundary, and borderline. It is precisely the “extreme case”, the borderline case, between abstract rationalism and absolute irrationality, which constitutes the “rational” in Schmitt’s philosophy of concrete life:

A philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree. The exception can be more important to it than the rule, not because of a romantic irony for the paradox, but because the seriousness of an insight goes deeper than the clear generalizations inferred from what ordinarily repeats itself. The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception.<sup>42</sup>

It has been said that Schmitt is a representative of the political irrationalism of the 20<sup>th</sup> century but this is true only if irrationality signifies rationality of the extreme. It is precisely the extreme case that “exposes the core of the matter [*den Kern der Dinge*]”.<sup>43</sup> In fact, the extreme case *is* the core of the thing, the *topos* of the concrete. It is not only an instance of contingency and conflict in the automatically functioning rationalist machine based on the idea of absolute immanence (*Gegenbegriff*). Neither is it a mere foundational act of order (*Grundbegriff*). It is simultaneously both: a contingent and conflictual foundation and a foundational contingency, a founding conflict. In *Political Theology*, Schmitt expresses this double meaning of the political instance – the instance of the political – in one concept: *Grenzbegriff*, a borderline concept. Although this concept signifies an openness of order towards transcendence, as Schmitt described it in the sixties,<sup>44</sup> the transcendence in question, as Carlo Galli points out, should not be considered as a substantial foundation of order. It signifies the very *openness* itself.<sup>45</sup> Every order is merely a transient order and every foundation is merely a provisory order. Only the openness itself, that is, the conflict devoid of substance at the foundation of every order is as permanent as man, this essentially “open question”.<sup>46</sup>

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Although the modern representations of social structure are increasingly governed by conceptions of self-propelling machines and self-enclosed systems, Schmitt is not alone with his conviction according to which the existence of these machines and systems must be subjected to the primacy of exception. In fact, Schmitt's thinking fits perfectly within the radical political thought and reality of late modernity for which *the state of exception* (contingency) *has more and more become the rule* (machine). Already Nietzsche had stated that "from the highest biological standpoint, legal states can only be states of exception".<sup>47</sup> However, the metaphysician to whom Schmitt in this context refers is not Nietzsche, whose metaphorical biologism is incomprehensible to him but Søren Kierkegaard, one of the first deconstructionists of mediating dialectical reason and thereby one of the first to crystallize the late modern philosophy of immediacy. On the whole, Kierkegaard's diagnosis concerning the nature of modern pathologies resembles Schmitt's diagnosis insofar as also Kierkegaard conceived the "present age" as the age which substitutes decisions, visible authorities, and concrete differences for reflection, secret agents, and different degrees of excitement and lethargy.<sup>48</sup> For Schmitt, however, the pivotal element in Kierkegaard's work is his insight into the role of exception:

The exception explains the general and itself. And if one wants to study the general correctly, one only needs to look around for a true exception. It reveals everything more clearly than does the general.<sup>49</sup>

In the epoch of "God's deaths", that is, in the epoch in which all transcendent and substantial foundations of meaning and order from theistic Revelation to deistic Nature and from Enlightenment Reason to romantic Tradition have fallen apart, the exception is in a sense the only path available for anyone who, like Kierkegaard, Nietzsche and Schmitt, wants to avoid the paradoxes of self-propelling machines and abstract rules. In the epoch of absolute immanence, every meaning and order purporting to be something other than a mechanical and lifeless abstraction has to find for itself an irregular foundation, that is, an exception: "Everything must be forced to the extreme."<sup>50</sup> In the context of late modern thought, however, this solution is in no way irregular or exceptional. In fact, it accords with it very well, although it only constitutes the other side of late modernity, the "heroic" and the "dark" side of late modern thought, for which life is hard and hazardous to the extent that ultimately it is death which is supposed to crystallize life: "It is by dying, without possible evasion, that I will perceive the rupture which constitutes my nature and in which I have transcended 'what exists',"<sup>51</sup> wrote Georges Bataille, this eminent philosopher of the extreme. "Behind every exit, marked with the symbols of happiness,

lurk pain and death. Happy is he alone who steps armed into these spaces”,<sup>52</sup> declared in turn Schmitt’s friend Ernst Jünger, an apologist for war and the warrior. “When it comes to the most extreme, as for many of our young friends at the front, then what alone remains essential comes into view almost of itself”,<sup>53</sup> stated finally Martin Heidegger, the paradigmatic philosopher of death. For him the “essential” was not the young friends’ need to survive. Rather, it was their “being-free for death”.<sup>54</sup> It is only when confronted with the “real possibility of physical killing”, with “this most extreme possibility”, as Schmitt describes it, that man approaches the real seriousness of life, that is, the tragic and political essence of his existence, presumably the most meaningful existence that he has: “The core of the matter lies in warfare.”<sup>55</sup>

My intention is not to argue that Schmitt’s basically “classical” style of thought could be identified with Jünger’s and Bataille’s romanticism of violence, quite the contrary. Above all, unlike Jünger and Bataille, Schmitt has no tendency to glorify violence or the will to aggression. All aesthetics of horror horrified him. Moreover, his conception of rupture diverges considerably from those of Jünger and Bataille. In Schmitt’s case, the event of rupture has nothing to do with the “inner experience” (*innere Erlebnis* or *expérience intérieure*) of an individual. Instead of taking place in a subject’s consciousness and imagination – even if the subject is defined in terms of its annihilation and consciousness in terms of unconsciousness – Schmitt’s event has an *objective* existence. Although the objectivity of event is something else than the objectivity of knowledge, there is no reason to confuse it with the moods of an individual. The event may become an event *for* an individual’s imagination, in the same vein as the First World War became a source for Jünger’s imagination and the endless forms of violence and perversion became a source for Bataille’s imagination. In this case, however, a serious understanding of the event has become impossible. Everything is overshadowed by the subject’s private experience, his ephemeral moods. For such a person – Schmitt calls him a romantic – the intercourse with the concrete event becomes “actually the intercourse with himself”.<sup>56</sup>

The above notwithstanding, it is precisely because the foundation of collective human existence is constituted by a rupture, that Schmitt’s “metaphysical character” is to be found in the exception, and that his objects of analysis are the extreme cases: the state of exception, revolution, war, and land appropriation. Admittedly, Schmitt speaks about sovereignty and even about such obscure entities as a people as if they were manifestations of the concrete, but one has to take into consideration that he defines sovereignty in terms of an existential decision concerning the state of exception, and the people in terms of revolution. In the same vein, the enemy does not signify a random adversary for him, but the one who constitutes a concrete and existential threat to the way of life

of a people, thereby exposing the real possibility of physical death, killing and war. For, it is only in war that the tragic, and thus meaningful, political foundation of human existence is revealed. It is this foundation which modernity tries to efface and to substitute with the meaningless economic-technical administering of things. From Schmitt's perspective, however, this project is ultimately doomed to failure since life itself seems to become an exception, and thereby the source of meaning in the late modern epoch of technology: "In the exception the power of real life breaks through the shell of a mechanism that has become torpid by repetition."<sup>57</sup>

## Footnotes

- <sup>1</sup> Carl Schmitt, "Die Lage der europäischen Rechtswissenschaft" (1944). In *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954*. Duncker & Humblot 1958, p. 427
- <sup>2</sup> Carl Schmitt: "The Age of Neutralizations and Depoliticizations" (1929). *Telos* No 96, Summer 1993, p. 131.
- <sup>3</sup> Schmitt, "The Age of Neutralizations", p. 132.
- <sup>4</sup> Schmitt, "The Age of Neutralizations", p. 137.
- <sup>5</sup> Schmitt, "The Age of Neutralizations", p. 137.
- <sup>6</sup> Schmitt, "The Age of Neutralizations", p. 138.
- <sup>7</sup> Schmitt, "The Age of Neutralizations", p. 138.
- <sup>8</sup> Schmitt, "The Age of Neutralizations", p. 139.
- <sup>9</sup> Schmitt, "The Age of Neutralizations", p. 136
- <sup>10</sup> Schmitt, "The Age of Neutralizations", p. 132.
- <sup>11</sup> Schmitt, *Political Theology*, p. 53.
- <sup>12</sup> See Schmitt, *Political Romanticism*, pp. 1-21.
- <sup>13</sup> Schmitt, *Political Theology*, p. 53.
- <sup>14</sup> Schmitt, *Political Theology*, p. 55. See also Joseph de Maistre, *Du Pape*. Garnier Frères 1928, p. 21-23.
- <sup>15</sup> Joseph de Maistre, *Considerations on France*. Cambridge University Press 1994, pp. 27-28.
- <sup>16</sup> Juan Donoso Cortés, "Ensayo sobre el catolicismo, el liberalismo y el socialismo." In *Obras Completas III*. Editorial Católica 1946, p. 532.
- <sup>17</sup> Schmitt, *Political Theology*, p. 56. "Whoever ventures on the enterprise of setting up a people must be ready, shall we say, to change human nature." Jean-Jacques Rousseau, *The Social Contract*. Penguin Books 1980, p. 84.
- <sup>18</sup> Schmitt, *Political Theology*, pp. 61-63. See also Juan Donoso Cortés, "Discurso sobre la dictadura." In *Obras Completas II*. Editorial Católica 1946, pp. 187-204.

- <sup>19</sup> Carl Schmitt, *The Crisis of Parliamentary Democracy* (1924). The MIT Press 1994, p. 56.
- <sup>20</sup> Schmitt, *The Crisis*, p. 56.
- <sup>21</sup> Schmitt, *The Concept of the Political*, p. 63.
- <sup>22</sup> See for instance Schmitt, *The Concept of the Political*, p. 63.
- <sup>23</sup> Schmitt, *The Concept of the Political*, pp. 62-63.
- <sup>24</sup> Carl Schmitt, *Über die Drei Arten des rechtswissenschaftlichen Denkens* (1934). Duncker & Humblot 1993, p. 23.
- <sup>25</sup> Carl Schmitt, *Verfassungslehre* (1928). Duncker & Humblot 1993, p. 83.
- <sup>26</sup> Schmitt, *The Concept of the Political*, p. 27.
- <sup>27</sup> Carl Schmitt, *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (1921). Duncker & Humblot 1928, p. 148.
- <sup>28</sup> Schmitt, *Political Theology*, p. 49.
- <sup>29</sup> Schmitt, *Political Theology*, p. 65.
- <sup>30</sup> Schmitt, *Political Theology*, p. 65.
- <sup>31</sup> Schmitt, *The Concept of the Political*, p. 57.
- <sup>32</sup> German *Recht* and *Gesetz* are sometimes expressed in English by the words “right” and “law”. However, inasmuch as *Recht* signifies the “system of law” rather than subjective rights which are usually denoted by the English word “right”, I have translated both *Recht* and *Gesetz* as law. If needed, I have added the German word in parenthesis.
- <sup>33</sup> Schmitt, *Political Theology*, p. 65.
- <sup>34</sup> “The materiality of economic-thinking capitalists is very close to that of radical communism. Neither persons nor things require a ‘government’ if the economic-technical mechanism is allowed its own immanent regularity.” Carl Schmitt, *Roman Catholicism and Political Form* (1923). Greenwood Press 1996, pp. 35-36.
- <sup>35</sup> Carl Schmitt, “Ethic of State and Pluralistic State” (1930). In Chantal Mouffe (ed.), *The Challenge of Carl Schmitt*. Verso 1999, p. 205.
- <sup>36</sup> Schmitt, *Political Theology*, p. 14.
- <sup>37</sup> Schmitt does not use the notion of absolute immanence, but to the extent that his conception of immanence implies the dissolution of all moral and political dualisms (good/evil, right/wrong, friend/enemy), it can be considered absolute. And although Schmitt does not refer to Baruch Spinoza in this context, in his view it is precisely Spinoza’s idea of God as the immanent cause of all things (“Deus sive Nature”) which first paves the way for the dissolution of moral and political dualisms: “If men were born free they would form no conception of good and bad as long as they were free.” Baruch Spinoza, *Ethics*. Everyman 1989, p. 186. On the “horrible dictum” Deus sive Natura, see Schmitt, *Glossarium*, pp. 84-85, 275.
- <sup>38</sup> Schmitt, *Political Theology*, p. 7.
- <sup>39</sup> Slavoj Žižek, who comments on Schmitt from a Lacanian perspective, says that Schmitt’s “notion of exception” stands simultaneously for the “intrusion of the

- Real” and for the “gesture of the sovereign who imposes a symbolic normative order”. Slavoj Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology*. Verso 1999, p. 114.
- 40 Schmitt, *Political Theology*, pp. 31-32.
- 41 See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. Stanford University Press 1998, p. 18.
- 42 Schmitt, *Political Theology*, p. 15.
- 43 Schmitt, *The Concept of the Political*, p. 35.
- 44 See Carl Schmitt, *Der Begriff des Politischen* (fourth edition). Duncker & Humblot 1963, pp. 121-123.
- 45 For Schmitt, “transcendence means contingency”. Carlo Galli, “Carl Schmitt’s Anti-liberalism: Its Theoretical and Historical Sources and Its Philosophical and Political Meaning.” *Cardozo Law Review*. Vol. 21:1597, 2000, p. 1607.
- 46 Schmitt, *The Concept of the Political*, p. 60.
- 47 Friedrich Nietzsche, *On the Genealogy of Morals*. In *On the Genealogy of Morals and Ecce Homo*. Vintage Books 1989, II, § 11. Translation altered.
- 48 See Sören Kierkegaard, *Two Ages. The Age of Revolution and The Present Age*. Princeton University Press 1978, pp. 69-112.
- 49 Sören Kierkegaard, *Repetition*. In *Fear and Trembling – Repetition*. Princeton University Press 1983, p. 227.
- 50 Schmitt, *The Crisis*, p. 59. Schmitt refers here to Marx, but this methodological rule is valid in Schmitt’s case as well. Contrary to Marx, however, Schmitt does not force the elements to the extreme for the reason that they could thus be historically overturned by dialectical necessity, but because the extreme exposes the core of the matter.
- 51 Georges Bataille, *Inner Experience*. State University of New York Press 1988, p. 71.
- 52 Ernst Jünger, “Total Mobilization”. In Richard Wolin (ed.), *The Heidegger Controversy*. The MIT Press 1993, p. 138.
- 53 Martin Heidegger, *Basic Concepts*. Indiana University Press 1988, p. 14. The text is based on Heidegger’s lectures conducted during the winter semester of 1941.
- 54 Martin Heidegger, *Being and Time*. Basil Blackwell 1962, p. 435.
- 55 Carl Schmitt, “Total war, Total Enemy and Total State” (1937). In Simona Draghici (ed.), *Four Articles*. Plutarch Press 1999, p. 31.
- 56 “Neither the cosmos, nor the state, nor the people, nor the historical development has any intrinsic interest for him. Everything can be made into an easily managed figuration of the subject that is occupied with itself.” Schmitt, *Political Romanticism*, p. 75.
- 57 Schmitt, *Political Theology*, p. 13.



### 3. SOVEREIGN AND LAW

In the moment of danger, the life of all depends on it that everybody, immediately and unconditionally, submits to a particular will.

Friedrich Engels, *On Authority*

For Schmitt, the torpid mechanism is the symbol for the Enlightenment rationalism and the economic-technical way of thinking. According to Max Weber's famous formulation, the origin of the victorious rationalism and modern economic-technical thinking lies in the ascetic ideal of Protestantism. But today they no longer need an ideal footing. They rest "on mechanical foundations".<sup>1</sup> Schmitt does not believe, however, in the victory of the mechanical. Like Heidegger, he believes that man, a non-mechanical being by nature, is capable of mastering technology – or binging himself "into the right relation to technology", as Heidegger put it.<sup>2</sup> In Schmitt's view, however, this is not possible as long as people believe in the neutrality of technology, that is to say, as long as they have not reached a political understanding of technology.<sup>3</sup> What, then, does the political understanding of technology entail? In Schmitt's view, it entails a non-neutral – a spiritual-moral – *decision* concerning technology. Although technology is only "an instrument and weapon", it does not follow that it does not need to be decided on, because even neutrality presupposes a non-neutral decision: "No single decision can be derived from the immanence of technology, least of all for neutrality."<sup>4</sup> According to Schmitt, technology is not neutral, precisely because it is subservient to anyone: "Every strong politics will make use of it."<sup>5</sup>

In Schmitt's view, however, the Western intelligentsia has not yet reached a political understanding of technology. Unlike the Soviet Russia, one of Schmitt's pivotal enemies, it has not undergone a Hegelian transformation from quantity to quality. Whilst the Russians have already sublated the mechanical image of technology (*Technik*) in the "spirit of technicity [*Technizität*]",<sup>6</sup> and have thereby succeeded in politicizing technology, the Western intelligent-

sia still believes that an absolute and ultimate ground of neutrality has been discovered in it. Whilst the Russians have the spiritual energy to command technology, the European elites see in it a mere refuge, when faced with the inextricable problems of all the other spheres:

With respect to theological, metaphysical, moral and even economic questions, which are debatable, purely technical problems have something refreshingly factual about them. They are easy to solve.<sup>7</sup>

For Schmitt, however, people who rely on easiness are not going to survive in the battle of competing spirits and cultures. They will be subjected by those who reject this easiness in the name of a new morality and a new asceticism, in the name of a hardening of spirit.

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According to Schmitt, in the field of jurisprudence the tendency to take refuge in neutrality and technical thinking manifests itself above all in legal and constitutional positivism, which had been a general doctrine and a method in the German science of law since 1848. Legal positivism arose as a critical reply to the tradition of natural law, which was conceived as “a weed that has to be uprooted without mercy”, as the German jurist Karl Bergbohm phrased it at the end of the century. For the positivists, it was a question of “a great step forward from illusion to reality”,<sup>8</sup> because the philosophical speculation on law was replaced by the scientific research on objective legal rules and norms.<sup>9</sup> However, Schmitt sees here not only a step forward but also a step back, because in moving into a sphere of propositions and postulates jurisprudence becomes alienated from the concrete reality of men and institutions. In Schmitt’s opinion, the transition to legal positivism paves the way for juridical nihilism, because it dismisses concrete origins and foundations, and thereby the concrete sources of the legitimacy of law. Law (*Recht*) is simply identified with legal rules and norms whereupon the mere objective existence of a norm becomes the criterion of its own validity and legality becomes the only form of legitimacy. According to the doctrine of positivism, argues Schmitt, “something is valid if it is valid and because it is valid”.<sup>10</sup>

Although Schmitt conceived it as his task to outline an alternative to the method of legal positivism, which had become the dominant doctrine of law in the bourgeois “constitutional state” (*Rechtsstaat*), he did not want to return to natural law either. Whilst he repeatedly criticized legal positivism, he also considered the era of natural law to be over. As a solution, he outlined a decisionist doctrine and method, which had some similarities with respect to

positivism, but which focused on the concrete origins and foundations of law instead of systematization and interpretation of legal rules and norms. He did not discover these origins in human nature but in the concrete figure of the executor of law, in the personal decision of the judge and the sovereign.<sup>11</sup> For Schmitt, a decision is necessarily positive inasmuch as it is always a concrete act. But, like natural law, it is also transcendent as regards the legal norm and the normally valid legal order. When a judge adjudicates he does not apply legal norms mechanically but rather, he *concretizes* law: “Law is concretized only in a judgment, not in a norm.”<sup>12</sup> And, more importantly when a sovereign decides, the whole legal order is at stake. Although the sovereign transcends (“stands outside”) the normally valid legal order, he nevertheless “belongs to it”. He belongs to it as its constitutive instance – and thereby the sovereign decision becomes the concrete original act (*Ur-akt*) of the whole legal order as such.

Because Schmitt outlined his decisionist theory in relation to Hans Kelsen’s (1881-1973) normative approach, it is appropriate to examine briefly Kelsen’s ideas and Schmitt’s responses to them.<sup>13</sup> Kelsen’s purpose was, in short, to create a pure science of law which would be purified of all extra-juristic elements. The primary reason for this project lay in Kelsen’s conviction that jurisprudence should attain the status of an objective science. However, it could not be attained if jurisprudence was not capable of defining a specific subject and a methodology of its own. In the same vein as almost all other neo-Kantians, Kelsen begins this search with Immanuel Kant’s distinction between the worlds of *is* (*Sein*) and *ought* (*Sollen*). For Kant, the world of *Sein* is the world of causal relations and thereby the object of natural sciences. The world of *Sollen* is, instead, the world of reason. Also reason is capable of causing effects, but it is free from natural causality. This other causality manifests itself in Kant’s view especially when man sets normative obligations for himself. To the extent that normative obligations were the issue, it seemed natural for the neo-Kantians to include the science of law in this latter world. For Kant, this would have been illegitimate inasmuch as he held that the world of *Sollen* cannot become an object of scientific cognition. But this did not prevent the neo-Kantians from moving precisely in that direction.

This was also the point of departure for Kelsen’s analysis in which the distinction between the worlds of *Sein* and *Sollen* became absolute: “The two worlds stand opposite each other, separated by an unbridgeable rift.”<sup>14</sup> Contrary to Kant, however, Kelsen argues that the world of *Sollen* can indeed become an object of scientific cognition, but only insofar as this world is understood in terms of objective legal rules and norms – and not, for instance, in terms of concrete persons or institutions. Legal rules and norms alone inhabit the world of *Sollen* autonomously, whereas concrete persons and institutions are

subjected to the causal relations of the world of *Sein*: “The behavior of the individuals as it actually is, is determined by laws of nature according to the principle of causality.”<sup>15</sup> For this reason Kelsen argues that the human will cannot be regarded either as the origin of a legal norm or the basis for its validity. In order for the world of *Sollen* to remain pure, a legal norm cannot originate in anything non-normative. This does not imply that norms have no effect on the world of *Sein*. A norm can effectively regulate human behavior in space and time, but the norm itself does not have a concrete spatiotemporal existence. It belongs to another universe, namely that of the normative, in which the relationships between states of things are not defined in terms of causal explanation (if A, then B is), but in terms of what Kelsen calls imputation (*Zurechnung*) (if A, then B should be). However, the statement “should be” should not be understood here as an ethical demand. In the same way as Kelsen excludes the non-normative sciences – including sociology – from jurisprudence, he also excludes all such normative elements which belong to politics and ideology, to metaphysics and the philosophy of law: “The specific subject of legal science is positive or real law in contradiction to an ideal law, the goal of politics.”<sup>16</sup> In a word, he wants to exclude all value judgments from the sphere of jurisprudence. For this reason, the statement “should be” should be understood merely as a neutral statement about “the existence and the contents” of a legal norm.<sup>17</sup> The legal rules and norms alone constitute the objective basis of scientific analysis of law in jurisprudence: “It is precisely by its anti-ideological character that the pure theory of law proves itself a true science of law.”<sup>18</sup>

According to Kelsen, the task of a pure science of law consists of analyzing and systemizing the comprehensive structure of legal rules and norms. This is not to say that jurisprudence should cease to speak about entities such as the state, for instance. However, from the normative perspective the state can no longer be defined as a non-normative entity, as an actual fact. For Kelsen, the state is nothing but the legal order itself understood as the unity of a system of legal norms and prescriptions: “The state as a social order must necessarily be identical with the law.”<sup>19</sup> On the whole, all non-normative concepts and conceptions, all considerations concerning, for instance, the concrete sources of law, have to be set aside – including the existential concept of a people and the personified concept of the sovereign. In this sense, Kelsen argues, “the concept of sovereignty must be radically repressed”.<sup>20</sup> A concept of sovereignty can be retained, but again only on the condition that it refers solely to the unity of a system of legal norms and prescriptions. For, according to Kelsen, personification leads merely to useless anthropomorphism. As pantheism, which identified God with the world, made possible the true knowledge of nature, the knowledge that the state is a system of legal rules and norms

makes possible the true science of law.<sup>21</sup> This is not to say that in Kelsen's view the legal order has no foundation whatsoever. There is a foundation, but this foundation, the "reason of the validity of legal order", is also a norm, the transcendental "basic norm" (*Ursprungsnorm* or *Grundnorm*). According to Kelsen, the whole – hierarchical – system of norms should be, if not derived from, at least understood by means of this transcendental norm. Contrary to all other norms, this norm is not imposed but presupposed. Nevertheless, it should not be considered as the natural foundation of positive law. Although Kelsen calls his approach normative, it is normative only to the extent that it is concerned with positive legal rules and norms. As we already saw, it has nothing to do with the moral and ethical value of norms. The basic norm is neither a natural law nor any other kind of ethical foundation but an epistemologically necessary transcendental-logical presupposition. It is merely a regulative principle of jurisprudence, a hypothetical formulation, but as such, nevertheless, "the highest rule of production" of legal norms.<sup>22</sup>

Schmitt does not agree with Kelsen's reasoning. He sees in it, like in the bourgeois constitutional state in general, merely a variant of the modern tendency towards the nihilistic self-propelling machine, for which every question concerning the concrete source and foundation of a system refers back to the system itself. Schmitt admits that Kelsen's basic norm in a sense transcends the system insofar as it exists prior to the legal order. However, its existence is not existential but epistemological. It is nothing factual but a mere construction – the construction of an "independent juristic perception".<sup>23</sup> Even as a construction it is only a hypothetical presupposition, which exists in the "juristic consciousness".<sup>24</sup> According to Schmitt, the validity of the system of norms presupposes a completely different kind of "rule of production", another kind of transcending moment than the pure "a priori emptiness of the transcendental form".<sup>25</sup> It presupposes a concrete moment and the existential form of a personal decision: "Properly speaking, only something that exists concretely can be sovereign."<sup>26</sup> At first sight, it seems to be precisely the impersonality and anonymity of Kelsen's system which troubles Schmitt most:

The objectivity that Kelsen claimed for himself amounted to no more than avoiding everything personalistic and tracing the legal order back to the impersonal validity of an impersonal norm.<sup>27</sup>

It is obvious that Schmitt neglects Kelsen's neo-Kantian epistemological starting point, thereby failing to construct an immanent critique of his system. However, he does not criticize Kelsen from the perspective of epistemology but rather that of existential ontology. From Schmitt's point of view, the world of *Sollen* is subordinated to the world of *Sein*, and jurisprudence which neglects

this fact cannot address the most important juridical problems at all. Unlike Kelsen, however, Schmitt does not subject the world of *Sein* to natural-scientific causal relations. In his view, “there is a juristic reality and life that need not be reality in the sense of the natural sciences”.<sup>28</sup> In the same vein as the neo-Kantians, Schmitt claims that this reality transcends the natural-scientific reality. However, it does not transcend the latter on the point of normative reason but rather that of an *existential will*. Moreover, also the basic question turns out to be different. Whilst in Kelsen’s normative reality of reason the natural scientific question of “what” addressed to the world of *Sein* is replaced with that of “how” addressed to the world of *Sollen*, in Schmitt’s existential reality of will they both are substituted with the question of “who”.<sup>29</sup> Instead of asking “how” the system of norms operates, Schmitt asks: Who “wills” the system? And although this existential “who” presumably belongs more to the world of *Sein* than to the world of mere postulates, it is not completely alien to the world of *Sollen*. In fact, Schmitt’s “who” is situated precisely at the *threshold* between *Sein* and *Sollen*.<sup>30</sup> This is not to say that Schmitt transgresses the philosophical view according to which it is impossible to derive norms from facts. There is no higher third here to bridge the unbridgeable rift between *Sein* and *Sollen*, but an existential borderline case which *exposes* the insurmountable interrelation of the two terms. For Schmitt, this does not necessarily entail anthropomorphism. It derives from a methodical and systematic precondition peculiar to juristic thinking. It is only from the perspective of an existential “who” that distinctions such as that between *Sein* and *Sollen* are imaginable in the first place. This being the case, it would be untenable to exclude it from scientific consideration. Admittedly, from the perspective of natural-scientific objectivity, it introduces a non-objective element in the analysis, but this does not imply that the question would concern only subjectivity. It implies, instead, a rupture in the world of scientific objectivity, a concrete contingency at the foundation of the consistent worlds of natural scientific facts and objective system of norms – an “undetermined and unfathomable”<sup>31</sup> element which nevertheless determines and fathoms everything that man is capable of determining and fathoming, including natural scientific facts and legal norms.<sup>32</sup>

Although Schmitt continuously emphasized the limited potency of man, the most important juridical question for him throughout his career was *quis iudicabit*: “What matters for the reality of legal life is who decides.”<sup>33</sup> For the reality of that life the most central issue cannot be the norm itself, not even the basic norm, insofar as a norm is not an agent. It neither speaks nor acts. As such, it is totally mute and passive:

A law (*Gesetz*) cannot use, apply or enact itself; it cannot itself interpret, define or sanction: moreover, it cannot – without ceasing to be a norm – designate or nominate those concrete persons who are supposed to interpret or to use the law.<sup>34</sup>

According to Schmitt, only concrete persons can carry out these tasks. Only a concrete “who” decides on the validity of a norm: “There is no norm, high or low, which either interprets or governs, either protects or preserves itself. There is no normative validity that makes itself valid.” In the political life of the state, what is significant is not a hierarchy of norms but that of persons and instances.<sup>35</sup> Regarding the entire legal order, this personal instance is the sovereign. No system of norms can validate itself but, instead, it presupposes the sovereign, who decides whether a system is in force. Schmitt, in other words, sets the concrete person of the sovereign against the impersonal and objective system of norms. However, he does not view sovereignty in the traditional manner, first defined by Jean Bodin and repeated almost identically throughout the history of juristic concepts: “Sovereignty is the absolute and perpetual power of a republic.”<sup>36</sup> According to Schmitt, even the well-known formulation in which sovereignty is defined as the highest power, legally independent and underived, does not have much practical meaning since such an abstract definition can be applied to the most different political-sociological configurations: “It is infinitely pliable, and therefore in practice, depending on the situation, either extremely useful or completely useless.”<sup>37</sup> Therefore, Schmitt does not define sovereignty in terms of abstract principles but in terms of a concrete situation, that is, in terms of a *state of exception* (*Ausnahmezustand*).<sup>38</sup>

For Schmitt, as the well-known formulation goes, the sovereign is he who decides in a state of exception, that is to say, when the “everyday frame of life” is radically disturbed. Given that it is not possible to determine the exception beforehand – insofar as “it cannot be anticipated”<sup>39</sup> and “it defies general codification”<sup>40</sup> – the sovereign is, at the same time, he who decides *on* a state of exception. Moreover, insofar as the sovereign decides whether a state counts as a state of exception, he decides on the “normal situation” as well. He decides “whether the normal situation actually exists”.<sup>41</sup> In Schmitt’s view, an instance which makes a decision on the normalcy must exist, because this state is not a natural given. It must be produced. The sovereign is the one whose decision produces this situation. Moreover, the situation must be understood as concrete and not as a mere “superficial presupposition” in the neo-Kantian sense. This is the case because the validity of legal prescriptions presupposes a concrete normal situation. It presupposes an everyday frame of life to which norms can factually be applied. A legal theory which considers this situation to be extra-

juristic fails to realize that a legal order does not have any sense without such a situation: “There exists no norm that is applicable to chaos.”<sup>42</sup>

In Schmitt’s view, the sovereign is in other words the one whose decision “produces and guarantees the situation in its totality”.<sup>43</sup> He has the “monopoly over this last decision”<sup>44</sup> – and thereupon the monopoly on order as such. Schmitt holds that every order rests thus on a decision: “It is the decision that grounds both the norm and the order.”<sup>45</sup> The decision (*Entscheidung*) is the “absolute beginning”, the “first cause” and the “ultimate origin”, the *arkhe* of any political entity.<sup>46</sup> However, this does not explain why Schmitt’s definition of sovereignty culminates in the concept of the state of exception. What exactly is the status of the state of exception in Schmitt’s theory of the public law and the state? In the first place, it should not be confused with chaos and anarchy. In Schmitt’s view, the state of exception remains within the framework of order, not only in the political sense (“the state remains, whereas law recedes”)<sup>47</sup> but also in the juristic sense. This follows from the fact that Schmitt’s concept of legal order includes two basic form-elements, the legal norm and the decision. The state of exception suspends the normative element of legal order and reveals the element of decision in its “absolute purity”:

The two elements of the concept of legal order are then dissolved into independent notions and thereby testify to their conceptual independence. Unlike the normal situation, when the autonomous moment of the decision recedes to a minimum, the norm is destroyed in the exception. The exception remains, nevertheless, accessible to jurisprudence because both elements, the norm as well as the decision, remain within the framework of the juristic.<sup>48</sup>

However, as a juristic form-element the decision is not equal to the normative element. It is the constitutive form of law as such. This is the cornerstone of Schmitt’s decisionism. The state of exception reveals the original non-normative (“free from any normative ties”<sup>49</sup>) character of law. It is not law as such (*Recht*) which recedes in the state of exception but the normative element of law (*Gesetz*). The state of exception reveals the *existential* character of law. It reveals that, in the final analysis, the decision *is* the law: “*Recht* is *Gesetz* and *Gesetz* is a command which decides on *Recht* in a conflict.”<sup>50</sup> It is precisely for this reason that Schmitt is able to state that “every order is a legal order”.<sup>51</sup> In the normative vacuum of the state of exception the legal order exposes its original existential and, thus, political character.<sup>52</sup>

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In Schmitt's view, no order "establishes itself" and no machine "runs by itself", since every order and every machine is built on the ultimate origin of decision. However, the decision itself seems to have no basis. The decision, Schmitt argues, "emanates from nothingness".<sup>53</sup> Therefore, it is conceivable that in his sociological analysis of political and juridical concepts Schmitt identifies the concept of decision with a miracle, with the divine interruption of theology. However, the fact that the decision is identical with the theological notion of miracle does not necessarily make Schmitt's thinking theological as such. Admittedly, he identifies as his opponents those atheistic and agnostic political thinkers who spoke, like the Russian anarchist Mikhail Bakunin, on behalf of immanence-pantheism or who tried to abandon, like Kelsen, all metaphysics in the name of scientific positivism. Without doubt, he favored Bakunin's idea of immanence over that of Kelsen, but what matters here is the fact that Schmitt wanted to confront his intellectual opponents – whether enthusiastic or indifferent – on their own ground, on the ground of immanence. A decision is indeed immanent to the human order of things, but it is transcendent – a miracle – with respect to the "rationalist schemes" of these things, whose rationalistic order it necessarily confounds: "Looked at *normatively*, the decision emanates from nothingness."<sup>54</sup> These schemes do not comprehend the decision since their purpose is a gapless representation of the "system in general". The decision cannot be included in such a representation, because from the perspective of the system the decision is precisely a gap: "The constitutive, specific element of a decision is", from the perspective of the norm, "new and alien".<sup>55</sup> A way of thinking which concentrates on generalizations conceives of everything new as a miracle. Schmitt's thinking, on the contrary, takes exactly this "miracle", the new and the alien, as its point of departure thereby conceiving of the general only in the light of the former, in the light of the concrete.

In *Political Theology* Schmitt locates the origin of the rationalist schemes in the ideas of the 18<sup>th</sup> century. Although it is true that thirty years later Schmitt traces their history back to the Sophists,<sup>56</sup> in this work it is exactly the era of Enlightenment that produces the rationalistic political idea which prevents the immediate intervention ("outside interference") of the sovereign in the valid legal order. This idea, as Schmitt writes in his sociological study of the concept, first emerges with deism, in other words, with the kind of theology and metaphysics which "banished the miracle from the world" and rejected "the transgression of the laws of nature through an exception brought about by direct intervention, as is found in the concept of miracle".<sup>57</sup> Yet, deism is nothing but a preliminary stage in this development. In the deistic view of the world there still exists a sovereign although not as an instance of immediate intervention but as an original engineer of the great machine, identical with the figure of the omnipotent legislator in the 18<sup>th</sup> century political thought.

However, in the course of the expansion of natural-scientific thinking into all spheres of human life, also the “original engineer” has been pushed aside. The general validity of a legal prescription has become identified with the lawfulness of nature, which applies without exception: “The machine now runs by itself.”<sup>58</sup>

### *Miracle of the real*

Despite the fact that Hannah Arendt can be considered in some respects as an anti-Schmittian thinker, her political thought has significant similarities with that of Schmitt. In their respective critiques of modern mass-society this resemblance becomes obvious. They both lament the dissolution of the sense of place and thereby, of the world and worldliness, which ails modernity. They also grumble over the loss of the public sphere and consequently, of politics. For both of them, modernity represents an unhappy epoch where anonymous production and consumption have replaced heroic and excellent action. Likewise, both of them consider the power to produce stories – representations and myths, as Schmitt would say – as a precondition for the meaningfulness of life. They both emphasize the visibility of power and authority. They both speak about the sacredness of the *nomos*. They both view cosmopolitanism as a contradiction in terms – and so on. My aim here is not, however, to demonstrate the common content in these critiques of modernity, which is, after all, shared by many of the 20<sup>th</sup> century critical minds. My aim is, instead, to show that the *structure and logic* of Arendt’s thought follow the coordinates of Schmitt’s decisionism. It is true that certain differences exist: Arendt emphasizes, for instance, the essential plurality of political action whilst the Schmittian decision seems to presuppose a single agent. Nevertheless, from the point of view of the sociology of concepts, Arendt’s notion of action occupies the same structural place and has the same function regarding her system of thought in general as the notion of decision in Schmitt’s thought.

Like the decision for Schmitt, action for Arendt is a counter-concept opposing the machine-like modern society in which everything functions automatically and things administer themselves. In fact, for Arendt the society as such is a modern phenomenon and therefore the term “modern society” is a tautology. Society is, by definition, an entity in which everything functions automatically and things administer themselves. According to Arendt, the reason for this is that in a society, the everyday life with its automatic “life process” has been channeled in one way or another “into the public realm”.<sup>59</sup> This channeling blurs the distinction between private and public, between households and po-

itics, bringing about the decline of both in the end. In Arendt's view, however, the possibility of politics does not completely disappear even in this self-propelling society, this social automaton. But the resulting politics is meaningless, because it is politics without a name, without a "who" attached to it.<sup>60</sup> It only amounts to an anonymous administration characterized by the "no-man rule", the "rule of nobody"<sup>61</sup> – corresponding to Schmitt's "administrative state" in which neither men nor norms rule, but "things administer themselves".<sup>62</sup> In Arendt's view, however, a rule by nobody is not necessarily the same as a no-rule: "It may indeed, under certain circumstances, even turn out to be of its cruelest and most tyrannical versions."<sup>63</sup> The rule of nobody is possibly the most tyrannical rule, because it excludes the possibility of genuine action. This possibility is excluded, in turn, because the anonymous administration of society imposes innumerable and various rules aimed at normalizing its members: "Society equalizes under all circumstances."<sup>64</sup> In society, man as a public and therefore as a political animal, capable of action, is reduced to a "conditioned and behaving animal".<sup>65</sup>

Action – action with a name – is, for Arendt, that which disrupts the "smooth functioning"<sup>66</sup> of this anonymous and tyrannically normalizing social automaton. It is, like Schmitt's decision, an outside interference through which something "new and alien" enters in the automaton insofar as action signifies above all beginning, "to begin new".<sup>67</sup> It interrupts the system of the immanent "life processes", and thus it does not come as a surprise that in the final analysis, Arendt considers action as a *miracle*:

Every act, seen from the perspective not of the agent but of the process in whose framework it occurs and whose automatism it interrupts, is a 'miracle' – that is, something which could not be expected. If it is true that action and beginning are essentially the same, it follows that a capacity for performing miracles must likewise be within the range of human faculties.<sup>68</sup>

However, despite the fact that action – or the decision in Schmitt's case – interrupts the automatism of the life processes of society, action is not only a counter-concept to these processes. Action is also, like Schmitt's decision, a constitutive concept, a ground concept. Action is the *topos* of the real, that which constitutes the real:

It is in the very nature of every new beginning that it breaks into the world as an 'infinite improbability', and yet it is precisely this infinitely improbable which actually constitutes the very texture of everything we call real. Our whole existence rests, after all, on a chain of miracles.<sup>69</sup>

Hence, society itself with its automatic life processes is revealed as an abstraction whilst action, which was supposed to be an exception, appears to be – from the most human point of view, from the point of view of the agent – the rule: “The fact that man is capable of action means that the unexpected can be expected from him”, that it is highly probable that he perform what is “infinitely improbable”.<sup>70</sup> This does not mean that the rule, the probable, has become an exception but that the exception, the infinitely improbable, has become a rule – the rule of existence. Our whole existence is constituted by a “shock of surprise”.<sup>71</sup> Existence without this shock, without the exceptional, is no existence at all. What could be more Schmittian?

These similarities notwithstanding, and although Arendt knew Schmitt’s work – in *The Origins of Totalitarianism* she quotes him several times, but mainly in order to grasp the essence of National Socialism<sup>72</sup> – it is obvious that her analysis is more indebted to her teacher Martin Heidegger than to Schmitt. It was precisely Heidegger who, in *Being and Time*, had charged at the domination and the real dictatorship of an anonymous *das Man*. *Das Man* dominates although – or precisely because – he is not a definite someone but an indefinite anybody and finally, a nobody. First and foremost, it dominates in the sphere of everydayness, because it maintains itself in an averageness: “In this averageness with which it prescribes what can and may be ventured, it keeps watch over everything exceptional that thrusts itself to the fore.”<sup>73</sup> In other words, the real dictatorship of the anonymous *das Man* normalizes. Like Arendt’s society, it “levels down”. It was also Heidegger who, in contrast to the society of *das Man* constituted by the noisy and mediocre “motley mass”,<sup>74</sup> outlined time and again alternative ways of being, great and grandiose ways of being of exceptional men capable of action and decision, that is, “capable of ruling”.<sup>75</sup> Admittedly, these men, “authentic Selves”, “historical men”, “creators” and so on, bear more resemblance to Schmitt’s struggling men than Arendt’s discussing men insofar as, for Heidegger, a struggle – sustained, for instance, by statesmen – is the situation in which the “world comes to be”.<sup>76</sup> However, this world, like Arendt’s real, comes to be solely in exceptions, in unexpected and unrepeatable events – in the rare and unique events of decision: “The event [*Ereignis*] of a decision”, Heidegger writes, “is exceptional”.<sup>77</sup> This event is not exceptional only because of its rarity but also because the event is not calculable beforehand: “How the decision is made, and if it is made, no one can establish immediately from any kind of mark or certitude.”<sup>78</sup> However, two things can be established with certainty. One the one hand, this event has nothing to do with “multiplicity of the ordinary”, because everything decisive is *despite* the ordinary – “for the ordinary and usual recognizes and wants only its own kind”.<sup>79</sup> On the other hand, the event of the decision is that which constitutes the true reality of man to the extent that those who remain

within the framework of the ordinary, and who therefore cannot decide, live in an illusion. Instead, the one who liberates himself from this framework determined by the “compulsion of utility” and the “unrest of consumption” reaches the true reality, because he thereby gains the power to decide and deciding signifies, for Heidegger, deciding about the essential – about the meaning of being and the essence of truth.

However, in contrast to Heidegger to whom that “what alone remains essential”<sup>80</sup> – in the last analysis the decision itself – is revealed in Being-toward-death, that is, “at the front”, Arendt introduces the natality of man at the center of her analysis: “Natality, and not mortality, is the political activity par excellence.”<sup>81</sup> Moreover, Arendt repeatedly emphasizes human togetherness, whilst Heidegger – and even Schmitt – was obsessed with the loneliness of man. But despite these and other differences,<sup>82</sup> the structure and the logic of their thought remains the same. Only the exceptional can be conceived as essential, as real. For all of them, the event is a real event if it is a “shock of surprise” – and existence without this shock, without the exceptional, is no existence at all. It is a mere abstraction, an illusion of the average man and a source of meaningless tyranny.

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It is not primarily tyranny which is at stake in the philosophy of the extreme but rather, meaninglessness. The no-man’s rule is a problem for Arendt, not so much because of the evilness of its action but because action without a name, “a ‘who’ attached to it, is meaningless”.<sup>83</sup> It is precisely meaning which most often seems to constitute the measure of the rational in the philosophy of the extreme:

It is a hopeless enterprise to search for meaning in politics or significance in history when everything that is not everyday behaviour or automatic trends has been ruled out as immaterial.<sup>84</sup>

Likewise, Schmitt does not criticize “rationalist schemes” because they are too rational, but because their rationality is meaningless and thereby ultimately irrational: “A marvellously rational mechanism” of a totally rationalized production “serves one or another demand, always with the same earnestness and precision, be it for a silk blouse or poison gas or anything whatsoever.”<sup>85</sup> If a rational mechanism is not capable of distinguishing a silk blouse from poison gas, should it be considered rational? According to Schmitt it should not, and therefore the instrumental rationality of the rational mechanism has

to be subjected to a “rationality of the purpose”.<sup>86</sup> No mechanism can decide on this purpose – it can be decided only by a concrete person.

Schmitt does not apply this argument only to economic rationalism, but also to political thinking and jurisprudence. He claims that ever since Aristotle impersonal law has stood for the faculty of reason, whilst a concrete person has been seen as determined by irrational desires and passions.<sup>87</sup> According to this tradition – Schmitt calls it liberal – the law is not the will of one or several men, but a universal being of reason: “Not a *voluntas*, but a *ratio*.”<sup>88</sup> Yet in Schmitt’s view, personal authority does not bring an irrational element into an otherwise rational order – even though tradition, which sets the rational norm and irrational person in opposition to each other, does not apprehend this. Every human law presupposes a personal decision and it is only from the point of view of a bee that a person, a proper name, would represent something incomprehensible and irrational. Schmitt admits, however, that the rationality of law before the 19<sup>th</sup> century has completely another meaning than the rationality of modern positivism. In the former case, the law was valid and thereby rational because it was just and reasonable – because it was *natural*. And it was natural because people had the energy to declare it as such. In positivism, on the contrary, the law is valid because it is positive. In Schmitt’s view, however, the law is valid and thereby rational because someone wills it. Therefore, the liberal concept of law – that of the Enlightenment as well as the positivist – has to be substituted with a political one: “The law in the sense of the political notion of law is a concrete *will* and a *command* and an act of sovereignty.”<sup>89</sup>

From this perspective it is understandable that Schmitt time after time quotes Hobbes’ phrase according to which authority rather than truth makes the law: *Autoritas, non veritas facit legem*.<sup>90</sup> It is true that Hobbes is often considered as the real originator of the rationalistic and mechanistic concept of politics. Even Schmitt himself admits that Hobbes was the first political philosopher for whom there existed a necessary and determinate interconnection between the political reality and the natural-scientific reality. According to Schmitt, however, the nature of this connection remained unclear to Hobbes: “Despite his nominalism and natural-scientific approach and his reduction of the individual to the atom”, he postulated a concrete instance of decision. Hobbes described his sovereign state not only as an animal and a machine, but also as a person and a myth, as a personality transcribed “straight to mythology”.<sup>91</sup> In Schmitt’s view, it was not until the 18<sup>th</sup> century that a rationalistic political idea was developed which rejected the sovereign’s direct intervention in a valid legal order. This did not lead to the total disappearance of sovereignty, because the people became the sovereign. Yet the unity of a people is not decisionist but organic in character, argues Schmitt in *Political Theology* (1922).<sup>92</sup> In other

words, Schmitt does not identify a people with a concrete will but rather with a universal – organic – reason. A people is not *voluntas* but *ratio*. Admittedly, in *Verfassungslehre* (1928) Schmitt outlines also a decisionist theory of the people. In the same vein as the sovereign, who “stands outside the normally valid legal system”, the people (*Volk*) now “precedes the constitution and is above it”.<sup>93</sup> In the same vein as the sovereign who produces and guarantees a situation in its totality, every democratic constitution rests on an existential total-decision (*Totalentscheidung*) of the people. Arguing again against Kelsen, Schmitt writes:

The will of the German people – an existential element – founds the political unity and the public law beyond all the logical contradictions, incoherence and obscurities of particular constitutional laws.<sup>94</sup>

However, in *Political Theology* Schmitt does not yet regard the people, the existential will of the people, as the transcendent origin of constitution but argues that the people is identical with it. From his perspective, this identity corresponds again to the modern tendency for everything to be governed by conceptions of self-propelling machines and self-enclosed systems, by conceptions of absolute immanence.

### *Panopticon and the “founding rupture”*

Despite the fact that the point of departure of Michel Foucault’s genealogical analysis of disciplinary power is the radical exclusion of sovereignty from political theory, his analysis nevertheless resembles that of Schmitt. For both of them, modern politics is a politics which replaces the visible and personal power of the sovereign with the invisible and impersonal power of the mechanical administration of persons as things. They both share the view that in the conceptually articulated structure of modernity – in the modern episteme as Foucault would put it – transcendence is replaced with immanence. Moreover, the structure of Foucault’s genealogical thought, its “metaphysical core”, resembles that of Schmitt. Also Foucault the genealogist is a philosopher of the extreme, whose metaphysics has the idea of a “founding rupture” at its core.<sup>95</sup>

The reason why Foucault demands that sovereignty should be excluded from political theory can be derived from his view that power in modern societies is no longer exercised in the form of sovereignty but in the form of discipline. Disciplinary power is neither a matter of bringing death into play in the field of sovereignty, as in the case of the traditional theory of sovereignty, nor is it a

matter of deciding on the state of exception as Schmitt's theory suggests. It is a matter of distributing the living within a domain of value and utility. Its task is to take charge of life that is supposed to need a continuous regulatory and corrective mechanism. Contrary to sovereign power, the logic of disciplinary power is not prohibitive but affirmative, not that of deduction but production: "It exerts a positive influence on life, endeavours to administer, optimize, and multiply it."<sup>96</sup> Disciplinary power replaces the sovereign's right to "take life and let live" with that of a power to foster life – or disallow it to the point of death. Instead of being exercised by means of law and violence, disciplinary power is exercised through the normalising biological, psychological and social technologies – through the "methods of power capable of optimizing forces, aptitudes, and life in general".<sup>97</sup> Moreover, contrary to sovereign power, disciplinary power is not personal but impersonal, not spectacular but self-concealing: "It is exercised by surveillance rather than ceremony."<sup>98</sup> Instead of focusing on the spectacular figure of the sovereign, disciplinary power renders its subjects visible. The objective of this visibility is not to celebrate the subject, but to make him docile. Disciplinary power aims at transforming its subjects into useful components of a smoothly functioning machine. In fact, for Foucault, the paradigm for disciplinary power is precisely a machine, namely Jeremy Bentham's prison-machine, Panopticon.<sup>99</sup> Foucault describes the structure of Bentham's machine as follows:

At the periphery, an annular building; at the center, a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheral building is divided into cells, each of which extends the whole width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other, on the outside, allows the light to cross the cell from one end to the other. All that is needed, then, is to place a supervisor in a central tower and to shut up in each cell a madman, a patient, a condemned man, a worker or a schoolboy.<sup>100</sup>

No great imagination is required in order for one to recognize the similarity between Foucault's Panopticon and Schmitt's description of Kelsen's theory of law. Firstly, just as Kelsen's legal order, defined as an "uninterrupted system of orders",<sup>101</sup> Panopticon is also a gapless ("enclosed") system.<sup>102</sup> Secondly, just as in Kelsen's legal order in which the sovereign must be radically repressed, Panopticon dispenses with "the need for the prince".<sup>103</sup> Like Kelsen's order, which is based on "the rejection of all 'arbitrariness'",<sup>104</sup> it aims at repressing those "sudden, violent, discontinuous forms that are bound up with the exercise of sovereignty".<sup>105</sup> Thirdly, just as in Kelsen's order, in which there are no real or fictitious persons but only the "impersonal validity of an impersonal

norm”,<sup>106</sup> Panopticon functions anonymously. It neutralizes, automatizes and depersonalizes power: “Power has its principle not so much in a person as in an arrangement whose internal mechanisms produce the relation in which individuals are caught up.”<sup>107</sup> Undoubtedly, there must be someone to operate the machine but it does not matter who. “Any individual, taken almost at random, can operate the machine.”<sup>108</sup> The reason for this is not that the machine would be arbitrary in itself but on the contrary, that the reliability and predictability of power require that its user be irrelevant. Fourthly, just as Kelsen’s legal order, Panopticon aims at transparency, which is generally seen as an essential prerequisite for liberal democracy. It is a machine which controls not only those who lack power but also those who have it: “This Panopticon enables everyone to come and observe any of the observers.”<sup>109</sup> And lastly, to the extent that in Foucault’s analysis Panopticon turns out to be an “ideal form”<sup>110</sup> and a “generalizable model of functioning”<sup>111</sup> rather than a particular institution, it comes to resemble Kelsen’s presupposed, transcendental-logical “basic norm”. Like the basic norm, Panopticon is merely a regulative principle, in the final analysis a fiction, which nevertheless has factual effects: “A real subjection is born mechanically from a fictitious relation.”<sup>112</sup> Gapless unity, anonymity, neutrality, predictability, transparency, liberal democracy and effective fiction – at every point these two descriptions of the modern social order converge.

However, the solutions that Schmitt and Foucault offer to the problem of the anonymous power of modern society are almost diametrically opposed. Foucault takes for granted the fate of the modern society as an anonymous society, in which the death of the decision-maker concurs with the death of the author.<sup>113</sup> One cannot analyze power in personal terms since what appears as personal is in fact no more than an effect of the impersonal technologies of power. For the same reason one should abandon the sovereign, not just as a historical figure but also as a figure in political theory where it functions merely as an ideological disguise of the real disciplinary power: “What we need is a political philosophy that is not erected around the problem of sovereignty, not therefore around the problem of law and prohibition.”<sup>114</sup> Schmitt, however, continued to “erect around” the problem of sovereignty, not because he could thus preserve the theme of law and prohibition – for Schmitt sovereignty had no necessary connection to the problem of prohibition – but because of his manner of posing questions. In the face of modern power, Foucault’s response was, in fact, quite Kelsenian: to identify its forms and strategies, to reveal how power operates.<sup>115</sup> The question concerning the “who” – who operates the Panopticon – did not deserve more attention than the above-mentioned reply: anyone. For Foucault, it was enough to identify the technological forms of power since, according to him, modern power functions very well without an operator. From Schmitt’s point of view, however, he “anyone” is paramount:

“What matters for the reality of legal life is who decides.”<sup>116</sup> The anonymity of power does not imply the displacement of the question of “who” and its substitution with the question of “how”, but it does presuppose careful analyses and radical conclusions. It points towards an analysis of politics represented – although it does not seem to have any representative function – by the obscure figure of the “sovereign whoever”.

Besides, unlike Schmitt, to whom “authority emanates from the top, trust from the bottom”,<sup>117</sup> Foucault approaches politics from the bottom up, not from the perspective of a prince but from the perspective of *resistance*. For this reason, he does not speak on behalf of the sovereign person whose political decision would disrupt the self-propelling panoptic machine, but on behalf of something which “in some sense” always escapes the machine, namely on behalf of a “certain plebeian quality” (“*de la blèbe*”). The question concerns a quality to the extent that for Foucault the plebs refers neither to a real sociological entity, nor to “reactive primal matter”. Rather, it refers to a certain “centrifugal movement”, an “inverse energy”, a “discharge”:

There is plebs in bodies, in souls, in individuals, in the proletariat, in the bourgeoisie, but everywhere in a diversity of forms and extensions, of energies and irreducibilities. This measure of plebs is not so much what stands outside relations of power as their limit, their underside, their counter-stroke, that which responds to every advance of power by a movement of disengagement.<sup>118</sup>

However, the plebeian points of resistance are not only the underside or internal limit of power. They are also the motivation “for every new development of networks of power”.<sup>119</sup> Because of this, the plebeian resistance is important and even indispensable, not only for an analysis of the apparatuses of power, as Foucault suggests, but also for power itself. It is, as the Schmittian sovereign, constitutive (“a chemical catalyst”) for the networks of power.<sup>120</sup> Foucault’s plebs is situated exactly in the same place as the Schmittian sovereign who is “outside the normally valid legal order”, but “nevertheless belongs to it” as its constitutive instance. It is outside the networks of power, but it nevertheless belongs to them, not as a part but in relation to their totality: “Where there is power, there is resistance.”<sup>121</sup> The plebs founds the networks of power *in toto*, not by deciding on them but by resisting them. In this sense, the plebs has the same function as Schmitt’s sovereign decision. It is “located in the break”<sup>122</sup> of the panoptic power in the same way as the Schmittian sovereign – as well as the people in *Verfassungslehre* – is located in the break of the legal order. In both cases the break is decisive. Therefore, the plebs and the sovereign, the point of resistance and that of decision are concepts of the same sphere, namely the “extreme sphere”, which sustains every rule.

Like Foucault, also Schmitt has been accused of vitalism and not without cause. For instance, Schmitt's concept of the constituent people in *Verfassungslehre* seems to fulfill all the criteria for vitalism. According to Schmitt, a people belongs to a sphere of living immediacy, which resists all representation and organization. A people is the constituent entity which cannot be constituted, the organizing entity which cannot be organized. A people is

the source of all power, which manifests itself always in new forms, and produces always new forms and organizations out of itself, but which never submits its political existence to a final form.<sup>123</sup>

Also Schmitt's concept of decision, especially in *Political Theology*, can be considered as a vitalistic response to the abstractions of normative juridical thinking. In the decision, the "power of real life" breaks through the "shell of a mechanism that has become torpid by repetition". However, we should not confuse Schmitt's vitalism with that of the romantic *Lebensphilosophie* of the 19<sup>th</sup> century. Schmitt's concept of life does not denote life as such "in its complete spiritual emptiness and mere dynamic",<sup>124</sup> but that which he calls the concrete, that is, concrete acts and instances. As a matter of fact, Schmitt identifies the romantic *Lebensphilosophie* as his intellectual enemy. Even though *Lebensphilosophie* claims to oppose the Enlightenment belief in reason, Schmitt sees these two as complementing each other. Admittedly, unlike in the rational scientific-technical world-view which emphasizes the general and the objective, the romantic *Lebensphilosophie* focuses on the singular and the subjective. According to Schmitt, their relation to concrete reality is nevertheless the same. From their point of view, every thing, object, and person is commensurable and interchangeable. In the scientific-technical vision this commensurability – indifference – is the point of departure. In the romantic *Lebensphilosophie* the indifference is instead caused by the attitude of the romantic who views every object as a source of his aesthetic creativity and subjective enjoyment:

The individual subject treats the world as the *occasio* of his activity and productivity. For him, even the greatest external event – a revolution or a world war – is intrinsically indifferent. The incident becomes significant only when it has become the occasion for a great experience, a genial apprehension, or some other romantic creation.<sup>125</sup>

Consequently, the satisfaction of the romantic's thirst for experience feeds the progress based on scientific-technical development. In the totally rationalized machinery of production, it functions as its irrational and consumptive pole. In Schmitt's view, however, consumption itself does not amount to a true activity, but merely to a kind of emotive responsiveness: "He has no other activity except that of mood."<sup>126</sup> Insofar as Schmitt regards this mood as purely passive, romantic activity becomes "a contradiction in terms".<sup>127</sup> Ultimately, Schmitt prefers even Don Quixote's absurd activity to the aesthetically meaningful passivity of the romantic. Unlike the latter, who overcomes all antitheses in higher synthesis and who therefore cannot hold fast "to an important political idea on the basis of a free decision",<sup>128</sup> Don Quixote was still "capable of seeing the difference between right and wrong" and of making a "definitive, disjunctive judgment" in favor of what seemed right to him.<sup>129</sup>

Perhaps it is not just a coincidence that Schmitt takes a stand on behalf of Don Quixote's absurd activity, since the concept of sovereignty that he formulates in the battle against his own windmills, against the "self-propelling machines" and their "satanic spirit", is itself quite absurd. For the authority – and thereby the legitimacy – of Schmitt's sovereign decision does not derive from any substantial concept of justice, either that of positive or that of natural law, but from the decision itself, from the decision in its absolute purity: "The decision becomes instantly independent of argumentative substantiation and receives an autonomous value."<sup>130</sup> The foundation of the legitimacy of the decision is the decision itself: "Every concrete juristic decision contains a moment of indifference from the perspective of content."<sup>131</sup> Schmitt's indifference for the content shows that he does not criticize the positivists' normative formalism from the point of view of content but from the point of view of form. At issue is not, however, the form of law but the form of decision, not normative formalism but, as Slavoj Žižek correctly suggests, *decisionist formalism*.<sup>132</sup> But why should one affirm the concrete form of the act instead of the concrete content of law? The explanation can be found, again, in Schmitt's diagnosis of late modernity. Schmitt sees late modernity as an epoch in which all traditional values and thereby all conditional authority – legitimacy that depends on a substantial concept of justice – face a fundamental crisis. For this reason, as Žižek points out, "there is no way of escaping formalism within the horizon of modernity".<sup>133</sup> Nevertheless, normative formalism cannot respond to this crisis because of its neglect of the concrete order. Decisionist formalism, on the contrary, can address it, not because it could offer a new substantial concept of justice, but because it is able to provide a concrete remedy for the decline of authority. Instead of conditional authority, decisionist formalism outlines a theoretical foundation for *unconditional* authority, for the sovereign decision in "absolute purity".<sup>134</sup> If "God is dead", as Nietzsche

had witnessed, we need an authority that is not dependent on God, in other words on Revelation, Nature, Reason, or Tradition. Schmitt's sovereign is such an authority, an absolutely independent authority: "Authority proves that to produce law it need not be based on law."<sup>135</sup> Like his Spanish fellow Donoso Cortés, Schmitt idealizes the moment of decision to such an extent that the notion of legitimacy finally dissolves.

Yet it is not only the notion of legitimacy, which becomes dissolved in Schmitt's case, but also the sovereign's person. In the last analysis, the decision has an independent and autonomous value also with respect to the sovereign himself. The decision creates, to the extent that it precedes all actual instances, the sovereign as sovereign. This is why the sovereign is not in fact anything but a name for the taking place of the absolute decision. In other words, the sovereign is never a given instance, a prince or a dictator, who decides on the state of exception but, on the contrary, the one who decides on the state of exception *is* the sovereign.<sup>136</sup> Therefore, it is not possible to identify Schmitt's sovereign with the person of the sovereign. It is not the sovereign as a person who is sovereign, but the sovereign decision: "The sovereign decision is an absolute beginning and the beginning is nothing else than a sovereign decision."<sup>137</sup> From this perspective, Schmitt's personalism appears to be a mere façade. The sovereign is *anyone* who is capable of deciding on the state of exception: "The sovereign is whoever decides what constitutes an exception."<sup>138</sup> Here the nihilism of normative formalism finally meets its Schmittian counterpart, the nihilism of the decision that "emanates from nothingness".

## *German stock*

It could be claimed that in National-Socialist Germany the place of the "sovereign nothingness" was occupied by Adolf Hitler. In Schmitt's view, however, this was not the case, because for him Hitler's decisions were acts which realized the German essence. And as we have seen, Schmitt's decisionist theory of sovereignty excludes all essentialism. A legal order is not valid because of some substantive criteria of legitimacy but because the sovereign decides on its validity: *Autoritas, non veritas facit legem*. Therefore, Schmitt could not regard Hitler as sovereign. Unlike sovereign decisions, his decisions did not spring out of "a normative nothingness and from a concrete disorder".<sup>139</sup> They were inseparable from the essence of the German people, an essence which could not be described as "concrete disorder". Besides, although Schmitt admitted that Hitler was the leader (*Führer*) of the German people, to lead in this case does not signify "to command, to dictate, to govern bureaucratically from the

center or any other kind of rule”.<sup>140</sup> *Führer* did not lead the Germans like a Platonic steersman steering his ship or a Christian shepherd leading his flock. The steersman and the shepherd transcend the crew and the flock, whilst the National-Socialist leader neither commands nor transcends the German people but immanently realizes its essence. For these reasons, Schmitt was forced to rethink the premises of his theory of law.

Schmitt was forced to rethink these premises also because in National-Socialist Germany, insofar as the Weimar Constitution was merely suspended but never formally abrogated, *the state of exception became the rule*. Although he used to criticize the normative bias of legal positivism, the concept of legal norm remained nevertheless a basic form-element of jurisprudence for him. To the extent that this element was permanently suspended in National-Socialist Germany, also the decision became unmoored, floating “freely in the air”.<sup>141</sup> Admittedly, the National-Socialist state continued to impose laws, but the “reliability and calculability” of laws presuppose a normal situation. Given that the state of exception had become the rule, also reliability and calculability vanished:

The fiction of the normativist commitment of the judge to a law has nowadays become theoretically and practically unsustainable in many essential spheres of the life of legal practice. On the whole, the law cannot any more find the calculability and reliability which were part of the definition of the law in the doctrine of the constitutional State (*Rechtsstaat*).<sup>142</sup>

“Nowadays”, Schmitt continues, “general clauses and vague concepts” have invaded all spheres of legal life.<sup>143</sup> However, all “legal life” presupposes a set of relatively stable rules to follow, a set of relatively firm signposts relying on which a jurist can orient himself. In National-Socialist Germany, Schmitt discovered such a signpost in the substantial concept of “German stock”. Throughout his life, he had sought for substance in jurisprudence, but his efforts had more or less failed, because the only alternatives had been legal positivism and natural law – and natural law was out of the question insofar as it was outmoded, that is, excluded from the “conceptually articulated social structure” of late modernity. In the era of absolute immanence, all efforts to erect new transcendent foundations would have been futile. Therefore, Schmitt was forced to remain within the framework of legal positivism – although his thought focused on the frames themselves, that is, on the very borders of this framework. However, the National-Socialist revolution did not hesitate to bring forth the substantial concept of “German stock”, which opened the way for substantial notions and thereby, concrete signposts also in jurisprudence.

Because of their substantiality, these signposts were, in fact, overwhelmingly superior to the formal signposts of legal positivism:

We seek a commitment which is deeper, more reliable and more imbued with life than the deceptive attachment to the distorted letter of thousands of paragraphs of the law. Where else can it rest but in ourselves, and in our kin.<sup>144</sup>

In Schmitt's view, it is the kin, and more specifically, the substantial notion of "an absolute ethnic identity between leader and following" that must "pervade all the judicial deliberations" and "dominate all public law" in National-Socialist Germany. Every legal scientist of "the new German jurisprudence" needed to become aware of the systematic force of this notion of ethnic identity, for without it "the National-Socialist state cannot exist, and its legal life would be unimaginable".<sup>145</sup> According to Montesquieu, the judge is only the mouth that pronounces the words of the law, but Schmitt points out that he failed to take into account the "diversity of mouths": "We hear how these same words are 'pronounced' very differently" depending on one's "people and race". An alien may read the same texts but he would understand them differently because "he is differently disposed, and remains, in every crucial train of thought, in the existential condition of his own kind".<sup>146</sup> For the Nazis this alien was first and foremost incarnated in the Jew. In 1935 also Schmitt came to this conclusion proclaiming that the Nuremberg Laws form the constitution of freedom. However, these laws did not form the constitution of freedom because they were enacted by the sovereign, but because the essence of the German people was realized in them.

The theory of "ethnic identity" in *State, Movement, People* (1933) was the first expression of a transformation in Schmitt's thought towards the thinking of "concrete order". According to this thinking, law is no longer understood as a decision and a command, but as emanating from the preexisting order of community.<sup>147</sup> In this book, however, this direction of his thought had not yet found its firm ground in the total concept of *nomos*, which started to dominate Schmitt's legal theorization from 1934 onwards, when he published a book titled *Über die drei Arten des rechtswissenschaftlichen Denkens*. And although it is impossible to understand the transformation in Schmitt's thought without the historical context of the National-Socialist revolution, Schmitt never totally abandoned the project of "concrete order thinking". On the contrary, a great deal of his post Second World War work is devoted to elaborating the thinking of concrete order and the organization (*Gestaltung*) of a particular community. However, before a more comprehensive analysis of the thinking of concrete order, we must return to Schmitt's decisionist phase and especially to his concept of the political.

## Footnotes

- <sup>1</sup> Max Weber, *The Protestant Ethic and the Spirit of Capitalism*. Unvin University Press 1970, p 181-182.
- <sup>2</sup> Martin Heidegger, "The Question Concerning Technology." In David Farrell Krell (ed.), *Basic Writings*. Routledge 1994, pp. 312-313.
- <sup>3</sup> Schmitt, "The Age of Neutralizations", p. 141.
- <sup>4</sup> Schmitt, "The Age of Neutralizations", p. 139.
- <sup>5</sup> Schmitt, "The Age of Neutralizations", p. 141.
- <sup>6</sup> Schmitt, "The Age of Neutralizations", p. 141.
- <sup>7</sup> Schmitt, "The Age of Neutralizations", p. 138.
- <sup>8</sup> Schmitt, "The Plight", p. 44.
- <sup>9</sup> Max Weber sums up the fundamental principles of this positivism in five postulates: "Firstly, every concrete legal decision is the 'application' of an abstract legal proposition to a concrete 'fact situation'; secondly, it must be possible in every concrete case to derive the decision from abstract legal propositions by means of legal logic; thirdly, the law must actually or virtually constitute a 'gapless' system of legal propositions or must at least be treated as if it were such a gapless system; fourthly, whatever cannot be 'construed' rationally in legal terms is also legally irrelevant; and fifthly, every social action of human beings must also be visualized as an 'application' or 'execution' of legal propositions or as an infringement thereof, since the 'gaplessness' of the legal system must result in a gapless legal ordering of all social action." Max Weber, *Economy and Society*. University of California Press 1978, p. 657. Quoted in Balakrishnan, *The Enemy*, p. 45.
- <sup>10</sup> Schmitt, *Verfassungslehre*, p. 9.
- <sup>11</sup> As Schmitt explains the difference: "Whereas the pure normativist thinks in terms of impersonal rules, the decisionist implements the good law of the correctly recognized political situation by means of a personal decision." Schmitt, *Political Theology*, p. 3.
- <sup>12</sup> Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen*. C. H. Beck 1914, p. 79. Quoted and translated in McCormick, *Carl Schmitt's Critique*, p. 220.
- <sup>13</sup> Kelsen was a leading neo-Kantian constitutional lawyer in the Weimar Republic and according to Schmitt the most logical representative of legal positivism and especially of its normative branch.
- <sup>14</sup> Hans Kelsen, *Hauptprobleme der Staatsrechtslehre entwickelt aus der Lehre vom Rechtssatze*. J.C.B. Mohr 1911, p. 8.
- <sup>15</sup> Hans Kelsen: *General Theory of Law and State*. Harvard University Press 1949, xiv
- <sup>16</sup> Kelsen, *General Theory of Law*, xiv.
- <sup>17</sup> Kelsen, *General Theory of Law*, p. 37.
- <sup>18</sup> Kelsen, *General Theory of Law*, xvi.

- <sup>19</sup> Kelsen, *General Theory of Law*, xvi.
- <sup>20</sup> Hans Kelsen, *Problem der Souveränität und die Theorie des Völkerrecht*. J.C.B. Mohr 1920, p. 330.
- <sup>21</sup> See for instance Kelsen, *General Theory of Law*, pp. 189-191.
- <sup>22</sup> Kelsen, *Problem der Souveränität*, p. 98.
- <sup>23</sup> Schmitt, *Political Theory*, p. 20.
- <sup>24</sup> Kelsen, *General Theory of Law*, p. 116.
- <sup>25</sup> Schmitt, *Political Theory*, p. 35.
- <sup>26</sup> Schmitt, *Verfassungslehre*, p. 7.
- <sup>27</sup> Schmitt, *Political Theory*, p. 29.
- <sup>28</sup> Schmitt, *Political Theory*, p. 34.
- <sup>29</sup> “The legal prescription only designates how decisions should be made, not who should decide.” Schmitt, *Political Theory*, p. 32-33.
- <sup>30</sup> See Schmitt, *Political Theory*, p. 32-33.
- <sup>31</sup> Schmitt, *The Concept of the Political*, p. 60.
- <sup>32</sup> On the historical context of and the relationship between Schmitt’s and Kelsen’s theories see Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law*. Duke University Press 1997, pp. 40-62, 85-119.
- <sup>33</sup> Schmitt, *Political Theory*, p. 34.
- <sup>34</sup> Schmitt, *Über die drei Arten*, p. 14.
- <sup>35</sup> Carl Schmitt, “Legalität und Legitimität” (1932). In *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954*. Duncker & Humblot 1958, p. 311.
- <sup>36</sup> Jean Bodin, *On Sovereignty. Four Chapters from the Six Books of the Commonwealth*. Cambridge University Press 1992, p. 1. Translation altered.
- <sup>37</sup> Schmitt, *Political Theory*, p. 17.
- <sup>38</sup> Schmitt argues that also for Bodin sovereignty is not only the “absolute and perpetual power”, insofar as in the tenth chapter of *Sovereignty* – when discussing the “true marks” of the sovereign – he defines sovereignty as the authority of a prince to suspend the law “in the condition of urgent necessity”. Schmitt claims that Bodin derives all other marks of sovereignty from this authority.
- <sup>39</sup> Schmitt, *Political Theory*, p. 6.
- <sup>40</sup> Schmitt, *Political Theory*, p. 13.
- <sup>41</sup> Schmitt, *Political Theory*, p. 13.
- <sup>42</sup> Schmitt, *Political Theory*, p. 15.
- <sup>43</sup> Schmitt, *Political Theory*, p. 13.
- <sup>44</sup> Schmitt, *Political Theory*, p. 13.
- <sup>45</sup> Schmitt, *Über die Drei Arten*, p. 23. See also Schmitt, *Political Theory*, p. 10.
- <sup>46</sup> Schmitt, *Über die Drei Arten*, p. 23. The German term, *Entscheidung*, as Giacomo Marramao points out, “indicates the same act of cutting expressed by the Latin *decaedere*, and of distinguishing in order to make a choice expressed by the Greek term *krisis*, from *krinein* – ‘to separate’, ‘to discern’, the meaning which underlines its derivatives ‘criticism’ and ‘criterion’.” Giacomo Marramao: “The Exile of the

- Nomos: for a Critical Profile of Carl Schmitt.” *Cardozo Law Review*. Vol. 21:1567, 2000, p. 1575.
- 47 Schmitt, *Political Theology*, p. 12.
- 48 Schmitt, *Political Theology*, p. 12-13.
- 49 Schmitt, *Political Theology*, p. 12.
- 50 Schmitt, *Über die Drei Arten*, p. 23.
- 51 Schmitt, *Roman Catholicism*, p. 25.
- 52 Giorgio Agamben is right in stating that “in the decision on the state of exception, the norm is suspended, but that what is in question in this suspension is the creation of a situation which renders possible the application of the norm”. Giorgio Agamben, *État d’exception*. Seuil 2003, p. 63-64. To my mind, however, it is not only a question of rendering possible the application of the norm, but also – and more profoundly – of disclosing the original existential character of law.
- 53 Schmitt, *Political Theology*, p. 32.
- 54 Schmitt, *Political Theology*, p. 31-32. Emphasis added.
- 55 Schmitt, *Political Theology*, p. 31.
- 56 See Schmitt, *Der Nomos der Erde*, p. 37.
- 57 Schmitt, *Political Theology*, p. 36.
- 58 Schmitt, *Political Theology*, p. 48.
- 59 Hannah Arendt, *The Human Condition*. The University of Chicago Press 1989, p. 45.
- 60 Arendt, *The Human Condition*, p. 180-181.
- 61 Arendt, *The Human Condition*, p. 40, 45.
- 62 On the administrative state see for instance Schmitt, “Legalität und Legitimität”, p. 266-268.
- 63 Arendt, *The Human Condition*, p. 40.
- 64 Arendt, *The Human Condition*, p. 41.
- 65 Arendt, *The Human Condition*, p. 45.
- 66 Arendt, *The Human Condition*, p. 44.
- 67 Arendt, *The Human Condition*, p. 177. See also Hannah Arendt, “What is Freedom.” In *Between Past and Future*. Penguin Books 1993, p. 166.
- 68 Arendt, “What is Freedom”, p. 169.
- 69 Arendt, “What is Freedom”, p. 169.
- 70 Arendt, *The Human Condition*, p. 178.
- 71 Arendt, “What is Freedom”, p. 170.
- 72 See Hannah Arendt, *The Origins of Totalitarianism*. A Harvest Book 1968, pp. 251, 266. In regard to Schmitt’s work as a whole, Arendt’s attitude seems to be quite positive. She speaks about Schmitt’s “very ingenious theories” on the end of democracy and legal government that still make “arresting reading”. Arendt, *The Origins*, p. 339, note 65.
- 73 Heidegger, *Being and Time*, p. 165.

- 74 Martin Heidegger, *Introduction to Metaphysics*. Yale University Press 2000, p. 66. Originally presented as a lecture course in 1935.
- 75 Heidegger, *Basic Concepts*, p. 5.
- 76 Heidegger, *Introduction to Metaphysics*, p. 65.
- 77 Heidegger, *Basic Concepts*, p. 17.
- 78 Heidegger, *Basic Concepts*, p. 12.
- 79 Heidegger, *Basic Concepts*, p. 35.
- 80 Heidegger, *Basic Concepts*, p. 12.
- 81 Arendt, *The Human Condition*, p. 9.
- 82 As far as I can see, one essential difference between Arendt and Schmitt concerns the distinction between private and public. They both recognize that the private and the public – life processes and political action, society and the state – enter into a zone of indistinction in modernity, but only Arendt replies to this confusion with an attempt to revitalize these distinctions: “The privately owned share of a common world”, that is, the autonomous private sphere, “is the most elementary political condition for man’s worldliness.” Arendt, *The Human Condition*, p. 253. Schmitt’s response, instead, is to adjust his concepts to reflect our epoch, that is to say, to create political concepts “out of immanence of a concrete legal and social order”. It is due to this immanent perspective that Schmitt came to the conclusion that today the political has become the total and any decision about whether something is unpolitical is always a political and thus a non-private decision. See Schmitt, *Political Theology*, p. 2.
- 83 Arendt, *The Human Condition*, p. 180-181.
- 84 Arendt, *The Human Condition*, p. 42-43.
- 85 Schmitt, *Roman Catholicism*, p. 14-15.
- 86 Schmitt, *Roman Catholicism*, p. 15.
- 87 Schmitt refers here to a famous passage in which Aristotle makes a distinction between a democracy governed by law and a democracy which is not governed by laws but by the voted resolutions or degrees (*psephismata*) of the people. Schmitt, *Verfassungslehre*, p. 139. According to Aristotle, the latter kind of democracy is not a “form of government” (*politeia*) at all: “For where the laws [*nomoi*] do not govern there is no form of government [*politeia*], as the law ought to govern all things while the magistrates control particulars, and we ought to judge this to be a form of government. If then democracy really is one of the forms of government, it is manifest that an organization of this kind, in which all things are administered by resolutions of the assembly, is not even a democracy in the proper sense, for it is impossible for a voted resolution [*psephisma*] to be general [*katholou*].” Aristotle, *Politics*. Harvard University Press 1990, 1292a, 30-38. Translation modified.
- 88 Schmitt, *Verfassungslehre*, p. 139.
- 89 Schmitt, *Verfassungslehre*, p. 146.
- 90 See for instance Schmitt, *Political Theology*, p. 33.

- <sup>91</sup> Schmitt, *Political Theology*, p. 47. On Leviathan as a “mythical totality composed of god, man, animal and machine”, see Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes* (1938). Greenwood Press 1996, p. 19.
- <sup>92</sup> See Schmitt, *Political Theology*, pp. 48-49.
- <sup>93</sup> Schmitt, *Verfassungslehre*, p. 238.
- <sup>94</sup> Schmitt, *Verfassungslehre*, p. 10.
- <sup>95</sup> Reciprocally, in Galli’s view, Schmitt’s interpretation of politics can be considered as genealogical: “It is neither rationalistic nor irrationalistic, nor essentialistic, nor immediately normative, but genealogical. It does not discover the eternal essence of politics, but rather the nonrational origin of modern political reason and of the modern necessity of establishing rational order.” Galli, “Carl Schmitt’s Anti-liberalism”, p. 1611.
- <sup>96</sup> Michel Foucault, *The History of Sexuality. Volume 1: An Introduction*. Vintage Books 1990, p. 137.
- <sup>97</sup> Foucault, *The History of Sexuality*, p. 141.
- <sup>98</sup> Michel Foucault, *Discipline and Punish*. Penguin Books 1979, p. 193.
- <sup>99</sup> Also for Schmitt, Bentham was a “fanatic of liberal rationality”, not because of his invention, but because of his fanatic belief in the freedom of the press. See Schmitt, *The Crisis*, pp. 38-39.
- <sup>100</sup> Foucault, *Discipline and Punish*, p. 200.
- <sup>101</sup> Schmitt, *Political Theology*, p. 19.
- <sup>102</sup> Foucault, *Discipline and Punish*, p. 207.
- <sup>103</sup> Foucault, *Discipline and Punish*, p. 208.
- <sup>104</sup> Schmitt, *Political Theology*, p. 41.
- <sup>105</sup> Foucault, *Discipline and Punish*, p. 208.
- <sup>106</sup> Schmitt, *Political Theology*, p. 29.
- <sup>107</sup> Foucault, *Discipline and Punish*, p. 202.
- <sup>108</sup> Foucault, *Discipline and Punish*, p. 202.
- <sup>109</sup> Foucault, *Discipline and Punish*, p. 207.
- <sup>110</sup> Foucault, *Discipline and Punish*, p. 205.
- <sup>111</sup> Foucault, *Discipline and Punish*, p. 205.
- <sup>112</sup> Foucault, *Discipline and Punish*, p. 202.
- <sup>113</sup> On the simultaneous death of God, man and author see Michel Foucault, “What is an Author.” In Paul Rabinow (ed.), *The Foucault Reader*. Penguin Books 1984, pp. 111-120.
- <sup>114</sup> Michel Foucault, “Truth and Power.” In Colin Gordon (ed.), *Power/Knowledge. Selected Interviews and Other Writings by Michel Foucault*. Pantheon Books 1980, p. 121.
- <sup>115</sup> For Foucault, the question of “how” is not only opposed to the question of “who” but to “what”: “what” is power? See for example Michel Foucault, “The Subject and Power.” Afterword in Hubert L. Dreyfus & Paul Rabinow, Michel Foucault.

- Beyond Structuralism and Hermeneutics*. The University of Chicago Press 1982, pp. 216-217.
- <sup>116</sup> Schmitt, *Political Theology*, p. 34. Even after the Second World War when the figure of the personal decision-maker was retreating more and more into the background of Schmitt's work, and the technological dream of world domination was reaching a deeper phase, he nevertheless believed that one has to pose the most significant questions in terms of a person: "Who is the great appropriator, the great divider and distributor of our planet, the manager and planner of unified world production?" Carl Schmitt, "Appropriation/Distribution/Production: Toward a Proper Formulation of Basic Questions of any Social and Economic Order" (1953). *Telos* No 95, Spring 1993, p. 64.
- <sup>117</sup> Schmitt, "Legalität und Legitimität", p. 87.
- <sup>118</sup> Michel Foucault, "Power and Strategies." In Colin Gordon (ed.), *Power/Knowledge. Selected Interviews and Other Writings by Michel Foucault*. Pantheon Books 1980, p. 139.
- <sup>119</sup> Foucault, "Power and Strategies", p. 138.
- <sup>120</sup> On resistance as a "chemical catalyst" of power relations see Foucault, "The Subject and Power", p. 211. Interestingly enough, in his analysis on the "obsessional subjective attitude", Slavoj Žižek develops an idea of a chemical catalyst which is equivalent to Schmitt's notion of sovereignty. In Žižek's view, the most succinct definition of the so-called "obsessional subjective attitude" is the formula "include me out", which implies in Lacanian parlance that the subject is not simply included into the signifier's network ("symbolic order"), but rather his very exclusion from it is "included" in it, marked and registered by it. In chemistry this position – "the position of a pure invisible mediator" – corresponds to that of a catalyst, that is to say, to a substance which speeds up or even sets in motion a process of chemical reactions without itself changing or being affected in any way. Žižek, *The Ticklish Subject*, p. 110.
- <sup>121</sup> Foucault, *The History of Sexuality*, p. 95.
- <sup>122</sup> Foucault, "What is an Author?" p. 107.
- <sup>123</sup> Schmitt, *Verfassungslehre*, p. 79.
- <sup>124</sup> Schmitt, *Political Romanticism*, p. 17.
- <sup>125</sup> Schmitt, *Political Romanticism*, p. 96-97.
- <sup>126</sup> Schmitt, *Political Romanticism*, p. 97.
- <sup>127</sup> Schmitt, *Political Romanticism*, p. 160.
- <sup>128</sup> Schmitt, *Political Romanticism*, p. 51.
- <sup>129</sup> Schmitt, *Political Romanticism*, 147.
- <sup>130</sup> Schmitt, *Political Theology*, p. 31.
- <sup>131</sup> Schmitt, *Political Theology*, p. 30.
- <sup>132</sup> Žižek, *The Ticklish Subject*, p. 113-115. However, Žižek emphasizes the formal character of the imposed order and not that of decision itself: "The decision which bridges this gap" – the gap between rule and actual life – "is not a decision for

- some concrete order, but primarily the decision for the formal principle of order as such". See also Slavoj Žižek, "Carl Schmitt in the Age of Post-Politics." In Chantal Mouffe (ed.), *The Challenge of Carl Schmitt*. Verso 1999, p. 19.
- 133 Žižek, "Carl Schmitt", p. 19.
- 134 Schmitt, *Political Theology*, p. 13.
- 135 Schmitt, *Political Theology*, p. 20.
- 136 "The sovereign is not a legitimate monarch or a competent instance but precisely the one who decides in a sovereign way." Schmitt, *Über die Drei Arten*, p. 23.
- 137 Schmitt, *Über die Drei Arten*, p. 23-24.
- 138 Schmitt, *The Crisis*, p. 43.
- 139 Schmitt, *Über die Drei Arten*, p. 24.
- 140 Schmitt, *State, Movement, People*, p. 46.
- 141 Schmitt, *Über die Drei Arten*, p. 23.
- 142 Schmitt, *State, Movement, People*, p. 48.
- 143 Schmitt, *State, Movement, People*, p. 49.
- 144 Schmitt, *State, Movement, People*, p. 52.
- 145 Schmitt, *State, Movement, People*, p. 48.
- 146 Schmitt, *State, Movement, People*, p. 51.
- 147 Schmitt, *Über die Drei Arten*, p. 23.

## 4 THE CONCEPT OF THE POLITICAL

Adam and Eve had two sons, Cain and Abel. This is how the history of humanity begins. This is what the father of all things looks like. Here is the dialectical tension that keeps world history in motion – and world history has not yet come to its end.

Carl Schmitt, *Ex Captivitate Salus*

If Schmitt's idea of sovereign intervention is a response to the rationalist schemes of legal and state theory, and if a moral decision is an answer to the immanence-based philosophy of life in which beautiful forms emanate from the absence of decision, then the concept of the political in *The Concept of the Political* (1932) is also a response to a specific political problem, namely the problem of what Schmitt calls the "unification of the world". If the sovereign guarantees that something "new and alien" will appear in the machine become torpid by repetition – the new and alien that is ultimately the precondition of every concrete order – then Schmitt's concept of the political, that is, the real possibility of war between organized political entities, between friends and enemies, is a guarantee that globalization, the worldwide enclosure of absolute immanence, will not reach its ultimate aim, the Babylonian unity of the world.<sup>1</sup>

Not unlike in his treatment of the concept of sovereignty, Schmitt begins by stating that the concept of the political is not a normative concept, that is, a conception of what should be included in the sphere of the political, but an existential one. Furthermore, he specifies that his intention is not to provide either an "exhaustive definition" or "one indicative of substantial content", but a definition in the sense of criterion.<sup>2</sup> For Schmitt, the criterion of the political, its concrete condition of possibility, is the *antithesis of friend and enemy*. It is only this antithesis which distinguishes the sphere of the political from other kinds of relatively autonomous spheres of human thought and action, such as ethics, aesthetics and economics. According to Schmitt, these relatively independent

spheres, like the political sphere, are also based on fundamental antitheses. The moral sphere is based on the antithesis of good and evil, the economic sphere on the antithesis of profitable and unprofitable and the aesthetic sphere on the antithesis of beautiful and ugly. Schmitt's point is that the distinction between friend and enemy cannot be reduced to any of these distinctions, or to any other distinction. Psychologically, Schmitt admits, the enemy is easily perceived as evil and ugly, but this fact neither abolishes the autonomy of the political distinction nor threatens the sphere determined by it. The reverse is also true. The morally evil is not necessarily the enemy, nor is the good or the beautiful necessarily the friend in the political sense of these terms.

However, we should not take the autonomous nature of the political too literally. Schmitt lays emphasis upon the impossibility of reducing the distinction between friend and enemy to other distinctions. In fact, the political is in a sense subjected to other spheres insofar as it has no substance of its own. It draws its contents and energies from these other spheres, from religion, ethics, economy, and so on. If these contents are removed, the political would amount to nothing at all.<sup>3</sup> Nevertheless, the other spheres are subjected to the political insofar as the criterion for the political forms the most extreme and intensive of the antitheses. Its ultimate manifestation is killing the opponent.<sup>4</sup> Because of this, it is also the most decisive distinction:

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 to the conditions and conclusions of the political situation at hand. In any event, that grouping is always political which orients itself toward this most extreme possibility.<sup>5</sup>

Hence, an ethical, economic or aesthetic antithesis becomes political at the moment when the real possibility of killing the adversary manifests itself. An antithesis becomes immediately political if it is intensive enough to divide a group of people into friends and enemies:

Because the political has no substance of its own, the point of the political can be reached from any terrain, and any social group, church, union, combine, nation, becomes political, and thereby of the state, as it approaches the point of highest intensity.<sup>6</sup>

For example, a class in the Marxian sense ceases to be an economic designator and becomes a political entity when it reaches this decisive point. At that

moment the bourgeoisie, the antithesis of the proletariat, is transformed from an economic competitor to a real political enemy.

If Schmitt thus emphasizes the foundational nature of the political, he also stresses the concreteness of the enemy at the foundation of the political. The enemy needs to be understood in its concrete and existential sense and not as a metaphor or a symbol. And least of all should the enemy be interpreted in an individualistic sense as a psychological expression of private emotions and tendencies. The enemy as the concrete condition of possibility of the political is a real enemy. He is existentially so “other and strange” that a conflict with him becomes a real possibility.<sup>7</sup> It is this “most extreme possibility” that constitutes the political. Nevertheless, Schmitt’s notion of the enemy does not apply to every antagonist, but only to a public enemy. Private individuals, associations and other such instances may have opponents but only political entities have real enemies: “For an individual as such there is no enemy.”<sup>8</sup> In this sense, Schmitt subscribes to Plato’s distinction between private (*ekhtros*) and public (*polemios*) enemies, corresponding to two forms of struggle, a dispute between the Hellenes (*stasis*) and a real war against barbarians (*polemos*).<sup>9</sup> However, Schmitt emphasizes that every private – religious, ethical, economic – dispute, every *stasis*, has the potential to become a struggle between friends and enemies and thus, a public war between public enemies. In other words, every private dispute leads potentially to the constitution of a separate political entity.<sup>10</sup> Tribes, cities, and Empires, for instance, have been such entities, but Schmitt emphasizes repeatedly that in the modern Europe they are above all states. Only the states – understood as “the political status of an organized people in an enclosed territorial entity”<sup>11</sup> – have enemies in modernity.

Despite this, Schmitt’s concept of the political cannot be reduced to the state. On the contrary, the state presupposes the concept of the political.<sup>12</sup> The antithesis of friend and enemy is historically and ontologically prior to the state. The state – as well as any other political entity – is merely a means of organizing this fundamental antithesis. It is a means of pacifying internally and controlling externally the original struggle between various groups of individuals. However, there exists no political entity, which could abolish the real possibility of this struggle: “Nothing can escape the conclusion of the political.”<sup>13</sup> For this reason, the primary concern of a political entity is to encounter this possibility, to orient itself “toward this most extreme possibility”. Encountering this possibility signifies in turn encountering a possible enemy. Therefore the primary question concerning the existence of a political entity is: “Who would be an enemy?”<sup>14</sup> Contrary to claims made by some,<sup>15</sup> the enemy is not a natural given in Schmitt’s theory. Admittedly, the enemy is, by definition, the “other and strange” who constitutes a threat to our way of life, to our art of existence.<sup>16</sup> However, this threatening otherness, “the most

extreme intensification of otherness”,<sup>17</sup> is thoroughly contingent in the sense that it cannot be determined beforehand. The enemy cannot be “decided by a previously determined general norm”.<sup>18</sup> The enemy may be to be another race, speak another language, confess another religion or represent another culture. Nevertheless, there exists no a priori criterion either for the enemy or for the friend in Schmitt’s theory. The enemy is *anyone* who is concretely disclosed, at the miraculous moment of revealing, as the other and hence, as a real threat to our existence. Respectively, friends – that is to say we – are all those who share the feeling of threat, that is to say, those who are shaken by the otherness of the other, and whose collective identity depends on its threat. In Schmitt’s view, it is precisely this moment of identification, which discloses the concrete enemy and constitutes the intensive sphere of the political: “The high points of politics are the moments in which the enemy comes into view, in concrete clarity, as the enemy.”<sup>19</sup>

To the extent that, according to Schmitt, what matters for the reality of legal and political life is who decides, the essential question becomes: Who identifies the enemy, who decides on the enemy? Firstly, he has to be someone who is involved in the situation. The enemy cannot be decided by the “judgment of a ‘non-involved’ and therefore ‘neutral’ third party”.<sup>20</sup> Secondly, he has to be someone who is capable of deciding, that is, of distinguishing between a friend and an enemy. Schmitt holds that this is not a question of mere authorization. He must have a real capacity to decide, he must be a subject “capable of action”.<sup>21</sup> And the one who has this capacity, the one who has the real capacity for political decision *par excellence*, is the sovereign. It is precisely this capacity which defines sovereignty, not vice versa. Anyone who really is capable of deciding on the – external or internal – enemy is the sovereign.

However, only a few have been capable of making this decision. In the modern world, only the state, the European political form which appeared in the late 16<sup>th</sup> century, has possessed the *jus belli*, the possibility of waging war and thus, of publicly disposing of the lives of men. Although the political precedes the state, the state – the status of the political entity of a people – has had, in this particular historical situation, the concrete power to decide: a monopoly on decision. According to Max Weber, the state can be defined in terms of its monopoly on violence, but Schmitt does not subscribe to this well-known definition. In his view, *jus vitae ac necis*, the verdict on life and death, can also belong to another instance within the state, for example, to the family or to the head of the household.<sup>22</sup> Instead, Schmitt defines the state by its monopoly on decision concerning the recognition of the enemy and the declaration of war with him. This decision suspends, at least temporarily, all other rights including the right of vendettas between families. This – and not the monopoly on violence – is the reason why the state transcends all other

associations, families and heads of households.<sup>23</sup> This decision is the “high point of politics”.

## *State-monster*

Although Schmitt considered the state to have the monopoly on decision, he was not blind to the decline of the state in the 20<sup>th</sup> century. In his view, the end of the “era of the states” was indeed at hand, especially because the *jus belli* as the criterion for statehood was moving beyond the reach of many states. This being the case, it is understandable that he delineated a concept of the political that was not dependent on the state and outlined new forms of political order which preceded the state (*nomos*) or went beyond its national boundaries (*Grossraum*). Despite this, Schmitt stressed the value of the juristically rationalized and sovereign state which emerged in the 16<sup>th</sup> century, throughout his career. The state commanded his respect, not because of inherent moral superiority but because it was capable of ending the European civil war – the chaotic Wars of Religion – and of establishing public order, safety and peace. It was capable of representing itself as neutral in relation to the religious sects, which made it an *imperium rationis* (Hobbes) and the realm of objective spirit (Hegel). This neutrality and above all sovereignty made possible, besides individual liberty,<sup>24</sup> a new form of international law between the states, *Ius publicum Europaeum*. From the perspective of world history, Schmitt regarded this order as unique, because it formed the precondition for what he called, following Proudhon and Vattel, “limited war” or “war in form”. As we shall see later, this resulted in Schmitt’s view in a juridical rationalization and humanization of warfare, which prevented the morality-based total destruction characteristic of antiquity and the Middle Ages. The enemy was no longer a barbarian, a pagan or a criminal, but a just enemy (*justus hostis*).

Nevertheless, it is precisely because of the rationality of the state – because of the fact that the state is “the product of human reason” and legitimated solely by this reason – why Schmitt sees in it, especially after his turn towards the thinking of “concrete order” in 1933, the cause for the decline of the state. The state is a remedy for civil and international disorder, but it is also at the same time a poison, the first step towards a *general technologization*. The state is the first modern machine and the concrete precondition for all future machines. The state is the “first product of the age of technology, the first modern mechanism in a grand style”, *machina machinarum*.<sup>25</sup> In Schmitt’s view, the first model of this machine was outlined by Thomas Hobbes. Despite the fact that Schmitt regarded Hobbes highly – for him Hobbes was “truly a power-

ful and systematic political thinker” – and that he has been called Thomas Hobbes of the 20<sup>th</sup> century, the intellectual origin of this machine was to be found precisely in Hobbes’ *Leviathan*. The reason for this is that in *Leviathan* Schmitt discovers the first thoroughly manmade political organization whose power and legitimacy are not derived from a divine sphere but is a product of human work, coming about because of a covenant entered into by man. It is true that, on the one hand, Schmitt admires the result of the covenant, namely the person of the sovereign-representative who is much more than the sum total of all the participating particular wills. On the other hand, however, the intrinsic logic of this manmade product does not culminate “in a person but in a machine”.<sup>26</sup> The personification does not arrest the process of mechanization; rather, it completes it. Schmitt admits that for Hobbes, mechanism and the image of a machine had, contrary to the intellectuals of the 19<sup>th</sup> and 20<sup>th</sup> century, thoroughly mythical meanings. However, the only meaning that this myth – mythical mechanism – has, is to guarantee the physical safety of its subjects: “Life is of interest only insofar as it concerns the here and the now, the physical existence of the individual, of actual living beings.”<sup>27</sup> For this reason, leviathan turns out to be, ultimately and out of necessity, a technical and thus, a neutral instrument, independent of all religious, metaphysical, juristic, or political considerations or aims. Its values, its truth and justice, reside in its technical perfection. Schmitt also admits that historically this leviathan does not come into being until the nineteenth century, when the most “nihilist” version of the bourgeois constitutional state (*Rechtsstaat*), namely the positivist law state (*Gesetzesstaat*), appears. However, the idea of the state as a technically complete machine was first grasped by Hobbes. For this reason, Hobbes was the first to start on the path to the general neutralization of every truth, which culminates in “general technologization”.<sup>28</sup>

In defense of Hobbes’ machine Schmitt states that it brings about the unity of religion and politics, *autoritas* and *potestas*, thereby retaining a non-mundane legitimacy even though the line of argument is inverse to that of a theological legitimation of politics. For Hobbes, it is politics which legitimates theology: *Cujus regio, ejus religio*. The result is nevertheless the same: “The state is God’s highest representative on earth.”<sup>29</sup> According to Schmitt, however, Hobbes fails in one decisive point. He differentiates inner faith from outer confession, the private from the public. Although the state decides on public confession – a miracle is what the sovereign state authorities command it to be – Hobbes nevertheless leaves it to the individual’s private judgment to believe or not to believe in his heart. In other words, one has to believe what the state commands, but only in public. Privately one can think whatever one wants. Schmitt perceives in this bifurcation “the seed of death” that destroyed the “mighty leviathan from within”.<sup>30</sup> It made the inroads to modern liberalism

and individualism. In Schmitt's assessment, however, this crack was barely visible in Hobbes' theoretical justification of the state. The appearance of one "liberal Jew" – Baruch Spinoza – was needed in order for this incipient form to emerge fully developed. Following Hobbes' argument, Spinoza affirmed that state power can regulate the external cult, but not the internal worship of God. But according to Schmitt Spinoza did not stop here. From this idea he derived a universal principle of freedom of thought, perception, and expression. For Spinoza, individual freedom of thought became thus the form-giving principle whilst the sovereign state was transformed into a mere supplement:

A small intellectual switch emanating from the nature of Jewish life accomplished, with the simplest logic and in the span of a few years, the decisive turn in the fate of the leviathan.<sup>31</sup>

Even though the state realizes the principle of *cujus regio, ejus religio, religio* – and thereby all issues of equal importance – is transformed into a private sphere of freedom for an absolutely free individual. Hence, the externally powerful state turns out to be absolutely powerless ("hollow and already dead") internally, as regards man's true "inner self".<sup>32</sup> Hobbes named his leviathan "mortal God", but in Schmitt's view it proves to be more mortal than God, because it has only the simulacra of divinity on its side. Therefore, the mythical forces embodied in the image of leviathan were easily demythologized already in the 18<sup>th</sup> century. The only image left was that of an externally driven lifeless mechanism. This image, with all its repercussions, was materialized in the 19<sup>th</sup> century liberal law state.

Even as a machine, Schmitt considers the state to be a valuable institution, but only if it can fulfill its ethical duty. Notwithstanding his extensive critique of ethics, the state has an ethical function for Schmitt, namely that of protecting its subjects against a "pre-political" condition of insecurity.<sup>33</sup> According to Schmitt, *protego ergo obligo* is the *cogito ergo sum* of the state.<sup>34</sup> However, the fulfilment of this duty presupposes that the state alone remain the decisive authority, the visible *potestas directa* to whom belongs the assumption of total political responsibility. According to Schmitt, it is precisely this ethical function that the positivist law state, resting on the institutions and concepts of liberalism, fails to fulfil. The positivist law state draws a sharp distinction between the state and "state-free society", thus opening the door for the free play of the indirect – "uncontrolled and invisible" – forces of society. In Schmitt's view, this signifies a kind of return of the medieval pluralism of powers, with the reservation that nowadays these "mutually heterogeneous" powers are political parties, trade unions and other social organizations instead of churches and religious sects. However, the end result is the same.

The unequivocal relationship between power and responsibility, protection and obedience has ceased to exist: “The absence of responsibility associated with indirect rule allows the indirect powers to enjoy all the advantages and suffer none of the risks.”<sup>35</sup> The decisive advantage is provided precisely by the liberal law state. Its institutions of individual freedom become weapons in the hands of the “most illiberal forces” which use them like knives “to cut up the leviathan and divide his flesh among themselves”.<sup>36</sup>

If we are to believe Schmitt’s post-war confessions, he considered as early as in 1938 the National-Socialists to be among these “most illiberal forces” who dismembered the leviathan. However, he did not blame the forces as such for its death. He blamed the leviathan. He blamed a “barely visible” crack in Hobbes’ theory. He blamed a Jew who noticed this crack. He blamed, in other words, Spinoza for being the one who opened the door to the most illiberal forces and thereby to National Socialism. Thus, even though it was not Spinoza but the “most illiberal forces” that finally killed the mortal god “for the second time,”<sup>37</sup> he nevertheless made it possible in the same way as the Jews made possible the death of a mortal god for the first time. It could be argued, of course, that the death of the first mortal god, namely Christ, was the precondition for the victorious Church which Schmitt praised. In the same vein, the death of the second mortal god, the state, can be seen as the precondition for the emergence of something new. In Schmitt’s view, something new was in fact taking place. The states would be replaced by what Schmitt calls “large spaces” (*Grossraum*), by blocs of semi-independent “states” under the political tutelage of one hegemonic power.

It is sometimes argued that Schmitt is an advocate of the state, but in reality he was an advocate of any political entity which is capable of deciding on the enemy and thereby, of guaranteeing security, order and peace. Also the state has to be measured against this criterion out of which, as we have already seen, Schmitt develops his own “ethic of state”, which aims to surpass the nihilistic agnosticism of the liberal law state (*stato agnostico*).<sup>38</sup> Schmitt’s ethic of the state is not, however, a Kantian ethics in which the state is subordinated to ethical norms. This would merely signify that the state is subordinated to those who create and sustain the norms. On the other hand, Schmitt’s ethic of the state is not a Hegelian ethics either, insofar as in the latter the state becomes an autonomous ethical subject, which creates the ethical norms. Schmitt’s ethic of the state is, instead, an ethics *for* the state defined by an individual’s duty to participate in the creation of the state: “The duty towards statehood.”<sup>39</sup> In Schmitt’s view, this duty is the supreme duty, because the existence of the political entity – in contemporary times the state – is the supreme value:

Every existing political entity finds its value and its ‘right to exist’, not in the normative justice or the utility of its content, but in its existence. From the juridical perspective, that which exists as a political power has a value because it exists.<sup>40</sup>

Although Schmitt argues against nihilism, his own ethics seems to be as nihilistic as the agnosticism of the liberal law state. Besides, it seems to be as tautological as legal positivism in which “something is valid if it is valid and because it is valid”. In positivism, however, nihilism concerns existence and tautology norms, whilst in Schmitt’s existentialism nihilism concerns norms and tautology existence. In other words, something is valid – valuable – if it exists and because it exists. Moreover, if the nihilism of legal positivism leads to the idea of a state without a people, the nihilism of Schmittian existentialism paves the way for the *necessity of the statehood of every people*. In fact, this is the cardinal point in Schmitt’s philosophy of the state. Only a people which has the energy to form a state will survive. It is true that he criticizes the modern state, but he criticizes it for not being state enough. It is merely a caricature of the state, because it has lost the monopoly on politics – because the people of this state have no energy to maintain itself in the sphere of politics and to face the real possibility of killing and being killed. In Schmitt’s worldview, there is no room for such a people. It will necessarily disappear:

If a people no longer possesses the energy or the will to maintain itself in the sphere of politics, the latter will not thereby vanish from the world. Only a weak people will disappear.<sup>41</sup>

The reason for this is not that such a people would have no value, but the iron necessity of the logic of the political, the eternal struggle of the peoples for survival.

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Although Schmitt defines the political in terms of a real *possibility* of killing – the real possibility of a politically existing people to kill or to be killed by another politically existing people – the core (*Kern*) of the political lies nevertheless in *real* killing. Real killing reveals the concrete core of the political: “The core of the matter lies in warfare.”<sup>42</sup> However, killing itself – the killing of a public enemy at war in contrast to killing in the private sphere, which is murder and therefore a mere crime – cannot be included in the sphere of the political. Killing at war is merely the ultimate *borderline* of politics, the extreme case. Just like the state of exception, war is a borderline concept (*Grenzbegriff*),

which belongs to the sphere of the political, but is not included in it. It belongs to it insofar as the real possibility of war and killing constitutes the sphere of the political, but it is not included in it insofar as the “political does not reside in the battle itself”.<sup>43</sup> War has its own essence, its own “rules and points of view”, which is why military action is not, for Schmitt, a “continuation of politics by other means”. In fact, an absolute war in its absolute lack of form would be potentially disastrous for the political sphere to the extent that it would totally annihilate the enemy, that is, its constitutive precondition. Moreover, war can be terminated. The real solution to war, which as such can be regarded as a kind of solution, lies in a peace treaty. But for the possibility of war and killing, that is, for the question of the political there is neither termination nor solution, be it political or apolitical.<sup>44</sup> In other words, war is not the aim or the purpose or even the content of politics for Schmitt. Nevertheless, as an ever-present possibility it is the ruling presupposition (*Voraussetzung*) of politics which “determines in a characteristic way human action and thinking and thereby creates a specifically political behavior (*Verhalten*)”.<sup>45</sup> It is the concrete regulative principle of politics – the constitutive extreme case, “the most extreme possibility”, which determines the rule.

### *Agon and tragedy*

For the reason given above, Schmitt does not share the agonistic view of the world of his friend Ernst Jünger, in which man becomes a warrior and war the highest value. It may be that today, as Schmitt writes, the “entire life of a human being is a ‘struggle’ and every human being symbolically a ‘combatant’”,<sup>46</sup> but this is not the reason why man is a political animal. Contrary to Jünger for whom it is not so much a question of the ends of war, but of the intrinsic value of war as an end in itself, Schmitt believes that war is always a means for attaining tranquility, security and order. Admittedly, also Jünger refers to war as a means, but the end for him is not security and order; it is the German people’s self-realization.<sup>47</sup> For Jünger, war becomes an aesthetic spectacle to be enjoyed for its own sake. From Schmitt’s perspective, this would merely amount to a transposition of the romantic – and shallow – thesis of *l’art pour l’art* into the sphere of warfare, the consequences of which would be drastic.

As we have seen, this does not imply that Schmitt would consider war as an antithesis of the political. Its possibility is the ruling presupposition of politics, which creates political behavior. Instead of war, for Schmitt the real antithesis of the political is *play* (*Spiel*). According to him, the political has

nothing to do with play since it consists necessarily of a serious (*ernst*) and a tragic dimension: “In play lies the fundamental negation of the serious situation [*Ernstfall*]”, he writes in his book on Shakespeare, *Hamlet oder Hekuba* (1954).<sup>48</sup> The tragic ends where play begins. The point here is not that Schmitt would not have been interested in art and drama, quite the contrary. His critical assessment was only directed at the modern conception of art and drama, at the tendency to interpret a work of art in terms of *l’art pour l’art*, that is, as the autonomous creation of an autonomous artistic genius unrelated to the historical and sociological reality. As an antithesis to this modern conception, Schmitt highlights the pre-modern – and tragic – concept of drama that, for instance, Shakespeare’s plays still represent in part. The modern image of a playwright draws from the “creative freedom” of the “sovereign genius”, who delivers polished manuscripts to a publisher for an honorarium. According to Schmitt, however, Shakespeare’s plays originated in a completely different manner: “He wrote them not for posterity but for his concrete and immediate London public.”<sup>49</sup> In Schmitt’s view, this radically limits the creative freedom of the playwright. Individual creativity is replaced with sensitivity for the historical situation out of which a play is born.

However, this is not the reason why Shakespeare’s plays include a tragic dimension. As such they are merely melancholic plays (*Trauerspiel*) for melancholic spectators with concrete historical and political implications. Although these implications show that “the play belonged to life itself”,<sup>50</sup> they do not yet elevate *Trauerspiel* to the level of tragedy. Something more has to be at stake. According to Schmitt, this “something more” is the objectivity of tragic action itself:

In relation to every other form, including *Trauerspiel*, genuine tragedy has a special and extraordinary quality, a kind of surplus value that no play, however perfect, can attain because a play, unless it misunderstands itself, does not even want to attain it. This surplus value lies in the objective reality of tragic action itself, in the enigmatic involvement and entanglement of indisputably real people in the unpredictable course of indisputable events.<sup>51</sup>

This is the basis, Schmitt continues, for the seriousness of tragic action which, “being impossible to fictionalize or relativize”, cannot be set to play. In a genuine tragedy, all participants are conscious of an ineluctable reality which “no human mind has conceived” – a reality externally given, imposed and unavoidable: “This reality is the mute rock upon which the play flounders and the foam of genuine tragedy rises to the surface.”<sup>52</sup> This is also the insurmountable limit of literary invention. A writer can invent a great deal, but he cannot invent the realistic core of tragic action: “The core of tragic action, the source

of genuine tragedy, is something so irrevocable that no mortal can invent it, no genius can compose it.”<sup>53</sup> Tragic action and invention are irreconcilable and mutually exclusive.

Although Schmitt regards Shakespeare’s plays as *Trauerspielen*, this does not imply that they would not have a tragic dimension in his view. In *Hamlet*, for instance, there are two main openings through which tragic seriousness breaks into the sphere of the play: the taboo which surrounds the guilt of the queen (in Gertrude’s ambiguous guilt Shakespeare raises the question of responsibility of Mary Queen Scots for the death of her husband) and the distortion of the avenger which leads to the hamletization of the hero (in Hamlet’s indecision, Shakespeare figures James I, caught between the Catholics and the Reformation).<sup>54</sup> From the perspective of the play, both openings are “shadows, two dark areas”.<sup>55</sup> They are something that intrudes, that cannot be integrated in the play itself. The tragic begins where the play ends: “We cannot ignore the unplayability of the tragic.”<sup>56</sup> These intrusions introduce an element of objective reality, “externally given, imposed and unavoidable”, at the heart of the play – a reality “around which the play timidly maneuvers”. They disturb the rigorous construction of the play, but at the same time they make it possible for the figure of Hamlet to become a myth: “They succeeded in elevating *Trauerspiel* to tragedy.”<sup>57</sup>

As a matter of fact, Schmitt distinguishes two sources of the tragic. In addition to the given historical circumstances, also myth, especially in Attic tragedy, is a source of tragedy. For Schmitt, however, it is not a question of a literary source of tragedy. A true myth is itself a part of the reality to “which all participants are bound by their historical existence”.<sup>58</sup> For this reason, the Attic tragedy is not simply play. An element of reality flows into the performance from the spectators’ actual knowledge of the myth. In both cases, it is therefore a given historical reality which constitutes the core of tragic action. Nevertheless, in Schmitt’s view a given historical reality becomes *effective* reality only insofar as it is elevated to the level of myth. Hence, the historical and political implications do not suffice by themselves. One has to make a myth from reality, as Shakespeare in Schmitt’s view does. Therefore, the opposition of tragedy and play is not that of reality and fiction but first and foremost, the opposition of the *mythic* reality of the political and the *shallow* reality of “culture, civilization, economics, morality, law, art, entertainment...”<sup>59</sup>

It has been argued that Schmitt aestheticizes politics and war in the same vein as Jünger.<sup>60</sup> Yet it seems to me that, on the contrary, Schmitt tries – almost like Walter Benjamin – to politicize aesthetics, to dissolve the boundary between art and life. Nevertheless, Schmitt’s purpose is not to disclose the potential of art for emancipation, but rather to renew the bond between art and *institutional power*. In his view, this bond is necessary, not primarily because

the artists must be controlled,<sup>61</sup> but because institutional power devoid of “aesthetic beauty of form”<sup>62</sup> would be a mere “lifeless mechanism”. In this sense, the interpretation according to which Schmitt attempts to aestheticize politics would seem to be correct and therefore the equation of Schmitt with Benjamin appears to be false. However, aestheticization in Schmitt’s case does not signify “revolutionary aesthetics of horror”.<sup>63</sup> For Schmitt, there exists no aesthetics of horror, but an aesthetics of *form*. “The ability to create form” is the aesthetic faculty par excellence.<sup>64</sup> As we will see later, the ability to create form signifies, in his view, the power to *represent*, to render the invisible visible and conceivable through something which is present in public. This invisible, which in Schmitt’s view is first and foremost an idea, must be something great, eminent, glorious and honorable, because something “dead, of little value or of no value” cannot be represented.<sup>65</sup> The problem of modern art is that it is not capable of such representation, primarily because art has become either snobbish and bohemian “art for art’s sake”, or a concern of “private producers of art for privately interested art consumers”.<sup>66</sup> Schmitt believes that modern art is an art without works, at least without works in a grand style, “an art without publicity and without representation”.<sup>67</sup> The modern artist, “if he represents anything, represents himself”.<sup>68</sup> This being the case, the politicization of aesthetics would imply art regaining its grandiosity, its public and representative character – its aura as Benjamin would put it.<sup>69</sup> However, this is not possible if the public sphere, that is to say, the state has become a machine: “Once the state becomes a leviathan, it disappears from the world of representations.”<sup>70</sup> Machines cannot represent or be represented. Therefore, politics must be aestheticized. But how to aestheticize politics if art is a private concern, a matter of self-expression? How to restore the representative character of a political entity? If we take literally Schmitt’s statement according to which “a myth arises only in the real war”,<sup>71</sup> we could imagine him to answer: by means of a grandiose war. For a genuine representation, that is to say, a real myth emerges only on the grounds of a serious situation. Perhaps it is exactly for this reason that Shakespeare could in Schmitt’s view still capture the mythical. The 16<sup>th</sup> century England was not yet a leviathan, a machine, conditioned by a “policed existence”.<sup>72</sup> It was still barbaric, in a pre-state condition in which “public peace, security and order” had not yet replaced the “heroic age” of feudal anarchy.<sup>73</sup> It was still in a state in which the *bellum omnium contra omnes* had not become totally extinct – and it is precisely this state whence genuine tragedies and living myths emerge.

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According to Schmitt, there is no end in view for the political and thus, serious (*ernst*), warlike state of affairs. The wish for the eternal peace of all humanity is utopian and will remain so as long as the category of the enemy exists. In Schmitt's view, such a destruction could not be a purely conceptual operation. A pacifist rhetoric cannot abolish the possibility of war. On the contrary, it presupposes an unusually intense and inhuman war, "the absolute last war of humanity".<sup>74</sup> It presupposes a war that terminates the very possibility of warfare – a war that destructs all the possible motives and means of warfare and transforms the existential condition of humankind into absolute passivity. In Schmitt's view, it is only in this condition that something like a universal society of unanimous humanity would emerge. However, this is not the condition of humankind at present. The decisive battle has not yet been fought and thus the present world is still a world of politics, that is to say, consisting of a plurality of political entities. It is not a universe, but a pluriverse: "As long as there is a state there is more than one state"<sup>75</sup> – and as long as there is more than one state, more than one political entity, nothing can escape the logic of the political.

Schmitt admits that those who speak on behalf of humanity seem to avoid the logic of the political to the extent that the concept of humanity is a genuinely nonpolitical concept. The concept of humanity excludes the concept of enemy, because humanity has no enemies – not at least human enemies: "Humanity as such cannot wage war because it has no enemy, at least not on this planet."<sup>76</sup> It does not follow, however, that such universal concepts as humanity could not be utilized politically. Even wars are waged in the name of humanity. However, as soon as one brings up the idea of humanity, arguing against someone, that is, in a polemical and political sense, the concept loses its universalistic character and becomes a weapon in the hands of particular peoples and social groups:

When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity but a war wherein a particular state seeks to usurp a universal concept against its military opponent.<sup>77</sup>

Universalistic concepts can be put, in other words, to intensive political use. In the case of humanity – that is "no less abused than the name of God"<sup>78</sup> – the consequences of political utilization of a nonpolitical term can be particularly dangerous. In Schmitt's view, the enemy is easily expropriated of his human quality. He is declared an outlaw of humanity. A war against this kind of "absolute enemy", as Schmitt calls him, is necessarily unusually intense and inhuman because, "by transcending the limits of the political framework," it reduces the enemy into moral and other value categories, turning him into

a monster that must not only be defeated but also “utterly destroyed”.<sup>79</sup> The absolute enemy encounters an undivided humanity that regards him as already always proscribed by God or by nature – like, for instance, the American Indians, because they supposedly ate human flesh. Yet the final extermination of the Indians was not, as Schmitt points out, the work of God or of nature but of the European peoples. As “civilization progresses and morality rises”, Schmitt writes, even acts less harmful than devouring human flesh could qualify as criteria for outlawing somebody: “Maybe one day it will be enough if a people were unable to pay its debts.”<sup>80</sup>

### *The enemy within us*

What about the Jews? What kind of enemies were they for Schmitt? Or were they his enemies at all? It is said that Schmitt opposed the discriminating concept of absolute enemy, because in his opinion an enemy must be regarded as equal in standing to a friend: “The enemy stands at the same level as me.”<sup>81</sup> If the Jews were Schmitt’s enemies – and as we shall see they were indeed – were they standing at the same level as him? Did Schmitt, who had warned against the dangers of reducing the enemy into moral and other non-political categories, degrade the Jews precisely in this way? Or was the issue about something else?

As far as the Nazis in general are concerned, a degradation of the Jews was certainly taking place. The basis for this degradation was not, however, moral or aesthetic but scientific, the biological theory of race. The Jews were inferior to Germans, because the biological constitution of the Jewish race was inferior. This, of course, does not explain why the Nazis considered the Jews as enemies – not at least if we take Schmitt’s own perspective seriously. According to him, there exists no rational reason, no norm however true, no program however exemplary, no social ideal however beautiful, no legitimacy nor legality – and no scientific theory – which could justify the declaration of an enemy and thus men killing each other: “If such physical destruction of human life is not motivated by an existential threat to one’s way of life, then it cannot be justified.”<sup>82</sup> For the Nazis, however, a biological theory became also a political theory, insofar as the biological antithesis of the Jew and the German accrued immediately a political meaning. The Jews as the domestic enemy were declared to present an “existential threat” to the way of life of the German people. The Jews were marked by the Nazis, not merely as biologically but as existentially different and alien. Therefore, it was justified, even from Schmitt’s perspective, to declare them as the enemy.

Of course, the declaration of an enemy does not perforce lead to “utter destruction”. At first, the enemy must be absolutized. Therefore, the Nazis were forced to interpret racial inferiority in terms of a general worthlessness. This was something that Schmitt refused to do. On the one hand, he refused to interpret the biological difference in terms of a political antithesis, because he did not recognize a mere biological difference as a sufficient condition for a political enemy. On the other hand, Schmitt refused to accept that even a total worthlessness of the enemy could justify an utter annihilation. However, this is not to say that he considered a Jew as an equal. What is known is that from 1933 onwards, he indeed saw the Jew as the absolute enemy. But Schmitt’s opinion of Jews was not based on a presumption of moral baseness, racial inferiority or general worthlessness. The Jew was the absolute enemy because Schmitt saw in him *an enemy of the political*. But why is the enemy of the political the absolute enemy? In order to answer to this question, we must take a closer look at the political function of the enemy in Schmitt’s theory.

For Schmitt, the enemy is not only a criterion for the political, but also the constitutive presupposition for the existence of friends, that is, for the political *identity* of a community. A community emerges in the political sense at the moment it identifies (*erkennen*) its enemies. Identification and the subsequent exclusion of the enemy constitute the community as a political community. For, at the same moment when the people identify the enemy, they also identify themselves as the enemy of the enemy. Identification of the self as the enemy of the enemy – as the other of the other – is, in turn, the precondition of “existential affinity” and independent identity.<sup>83</sup> Only through this state of independence, the community reaches “a more sublime and a more intensified mode of being” over and against the “natural existence of groups of individuals who just happen to live together”,<sup>84</sup> a meaningful political existence over and against an indifferent natural existence.

It should be noted that this theory of the political is purely formal. It is possible for the enemy to be another race, to speak another language and to represent another culture, but as we have already seen, it is insignificant in the final analysis in what respects he is the “other”. The enemy can be anyone who threatens my way of life: “An enemy is whoever calls me in question.”<sup>85</sup> The precondition for the existence of a political community is that he is identified and excluded. On the other hand, “anyone” – not in principle but concretely – is a figure which cannot occupy the place of the enemy, since one cannot identify him and therefore, one cannot exclude him either. In fact, the real enemies of Schmitt’s political community are not the enemies denoted by the friend-enemy distinction, since these latter enemies are the necessary precondition for this community and therefore they are, in a sense, its friends. The enemy grounds the political community of friends. For this reason, the real enemies – enemies

in the fundamental sense of the word – of Schmitt’s political community are those “groups of individuals who just happen to live together”, that is, those who fail to distinguish friends from enemies and who therefore have no political existence of their own. These non-identified groups of individuals are never the constitutive enemies of Schmitt’s political community. Instead, they are the enemies of the political as such and, therefore, the most dangerous enemies of all. They are the real enemies, because only the absolute enemies are, in the final analysis, a real threat to the way of life of friends.

From 1933 onwards, Schmitt conceived the Jews as the enemy of the political, that is, as an absolute enemy, as absolutely “other and strange”. In his view, the *ordinary* otherness of the Jews became manifest already in the existential “condition and attitude” of the Jewish people. According to him, in contrast to the Germans and other Christian peoples, the condition and the attitude of the Jewish people are “totally abnormal”.<sup>86</sup> Referring to the cabbalist interpretations of world history as a battle among heathens he writes: “The Jews stand by and watch how the people of the world kill one another.”<sup>87</sup> They refuse to exist politically, that is to say, to distinguish friends from enemies. They merely “stand by and watch”. However, this ordinary otherness of the Jew is not the reason why he becomes the absolute enemy for Schmitt. In fact, the Jew with an identifiable “condition and attitude” is, in a sense, a friend insofar as the unity of the German and especially of the European Christian spiritual community is constituted by his exclusion.<sup>88</sup> The real reason why Schmitt identifies the absolute enemy in a Jew is, paradoxically, that *one cannot identify the Jew*.

For Schmitt, the unidentifiability of the Jew is based on the essence of Diaspora Judaism. In his view, this essence is *assimilation*. The Jew is the other and thereby the enemy, but because one cannot identify him as the other, he must be the absolute other, the enemy in its absolute formlessness. For this reason Schmitt writes: “The real enemy is the assimilated Jew.”<sup>89</sup> In other words, Schmitt believes that the Jew is not the real enemy, that is, the absolute enemy or the “ultimate enemy”, as Jacques Derrida expresses it,<sup>90</sup> on account of his moral, aesthetic or scientific degradation or because his human worth would be denied. He is the absolute enemy because it is impossible to identify him – *because the Jew has no form of life of his own in the first place*. He is like me, he lives like me, but he cannot be my friend – why? For the reason that Schmitt’s identity *as a Christian* is constituted by the fact that the Jew is the enemy, that the Jew, regardless of his contemporary “virtuosity of mimicry”, is the murderer of Christ. Here, political theology, which traces analogies between theological and political concepts, is transformed into a theological politics, which aims at a religious justification, if not of war and killing, then at least of personal hatred.

Although Schmitt's political concepts have quite strong religious underpinnings, as we shall see below, this does not imply that he believed theologians to make good politicians. On the contrary, his severe critique of the reappearance of the medieval theological concept of just war in modernity suggests that he opposes rather than approves the theologization of politics. The fact that he emphasized the similarity between the medieval, theologically justified wars of destruction and the ethically justified military interventions – “police bombings” – in late modernity does not mean, however, that he would have identified these epochs as the same. On the contrary, he was careful to distinguish medieval anarchism from modern nihilism.<sup>91</sup> Even a struggle between pluralistic powers in the framework of a political unity is more desirable in Schmitt's view than a worldwide “Babylonian unity”, since the precondition for the latter is either the absolute passivity of humankind or the overwhelming control by the world police. It is precisely this police and the “nihilistic centralization” presupposed by it, rather than any anarchism, which is the real focus of Schmitt's criticism in the sphere of international law and politics – but also that of theology: “Every functional, centralized organization is not perforce, simply because it is ‘unitary’, an ideal organization of human relations. The kingdom of Satan is also a unity.”<sup>92</sup> Schmitt has been accused of being irrational, but for him it is exactly this nihilistic centralization, the technological indifference of one-dimensional world domination – and not for instance the possibility of war – that is irrational. From the perspective of Schmitt's metaphysical conviction according to which order is created out of disorder, the real possibility of war exists as the necessary precondition for every effective peace. His philosophy of concrete life, including his concept of the political, is perhaps best understood in relation to this concept of peace and to its enemy: “Anarchistic chaos is better than nihilistic centralization. *Katechon*” – the restrainer of the Antichrist – “becomes conceivable in him who does not stand for the unity of the world.”<sup>93</sup>

According to Schmitt, the police controlling the centralized world order are not civil servants of the state, because an organization whose sovereignty encompasses the whole humankind cannot be called a state. The idea of a world-state contains an insuperable conceptual contradiction. The sovereignty of the state is a relational concept which expresses its essence only in relation to other sovereign states.<sup>94</sup> The world-state can be realized merely as an economic-technical organization. For Schmitt, this does not signify the end of all governing but only the end of the “responsibility and visibility” of governing.<sup>95</sup> There are still those who rule and those who are ruled but this ruling takes place without a recognized reciprocal relationship between protection and obedience.

For this reason, those in power in economic-technical organizations appear in public as critics of political power. They speak on behalf of a free society, in which the only power relationship is the – seemingly voluntary – relationship of exchange. Together with the political anarchists, they speak on behalf of a society in which man would be absolutely free. However, Schmitt’s question is: free from what? According to him, the question can be answered either from a pessimistic or an optimistic point of view, and this will ultimately lead him to an *anthropological confession of faith*.

## Footnotes

- <sup>1</sup> See for instance Carl Schmitt, “Die Einheit der Welt” (1952). In *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916-1969*. Duncker & Humblot 1995, pp. 496-505.
- <sup>2</sup> Schmitt, *The Concept of the Political*, p. 26.
- <sup>3</sup> Schmitt, “Ethic of State”, p. 203.
- <sup>4</sup> Schmitt, *The Concept of the Political*, p. 33.
- <sup>5</sup> Schmitt, *The Concept of the Political*, p. 38.
- <sup>6</sup> Schmitt, “Ethic of State”, p. 203.
- <sup>7</sup> Schmitt, *The Concept of the Political*, p. 27.
- <sup>8</sup> Schmitt, *The Concept of the Political*, p. 71.
- <sup>9</sup> “Then when Greeks do battle with barbarians or barbarians with Greeks, we’ll say that they’re natural enemies and that such hostilities are to be called war [*polemos*]. But when Greeks fight with Greeks, we’ll say that they are natural friends and that in such circumstances Greece is sick and divided into factions and that such hostilities are to be called civil war [*stasis*].” Plato, *Republic*. In John M. Cooper (ed.), *Complete Works*. Hackett Publishing Company 1997, 470c.
- <sup>10</sup> For this reason it is possible for Schmitt to speak of a domestic enemy (*innern Feind*) as a real political enemy. Schmitt, *The Concept of the Political*, p. 46.
- <sup>11</sup> Schmitt, *The Concept of the Political*, p. 19.
- <sup>12</sup> Schmitt, *The Concept of the Political*, p. 19.
- <sup>13</sup> Schmitt, *The Concept of the Political*, p. 36.
- <sup>14</sup> See Carl Schmitt, *Ex Captivitate Salus*. Greven Verlag 1950, p. 89.
- <sup>15</sup> See for instance Jürgen Habermas, *The Inclusion of the Other*. The MIT Press 1999, pp. 134-142. Habermas regards Schmitt’s concept of the political as the basis for an ethnic theory of the state and democracy.
- <sup>16</sup> Schmitt, *The Concept of the Political*, p. 27.
- <sup>17</sup> Carl Schmitt, “The Constitutional Theory of Federation” (1928). *Telos* No 91, Spring 92, p. 38.
- <sup>18</sup> Schmitt, *The Concept of the Political*, p. 27.
- <sup>19</sup> Schmitt, *The Concept of the Political*, p. 67. Translation modified.

- 20 Schmitt, *The Concept of the Political*, p. 27.
- 21 Schmitt, *Verfassungslehre*, p. 152. Here the point of reference is the constitution, but it also applies in the case of the enemy to the extent that a decision on the constitution signifies for Schmitt a decision on the enemy: “The people have a political consciousness, that is to say, it can distinguish friend and enemy.” Schmitt, *Verfassungslehre*, p. 247.
- 22 See Schmitt, *The Concept of the Political*, p. 48.
- 23 On this basis Schmitt criticizes Harold Laski’s and G.D.H. Cole’s “pluralist theories” of the state and society. These theories deny the sovereignty of the state by stressing that the individual lives partaking in numerous different social entities and associations. All these associations control him to differing degrees and impose upon him, according to Schmitt’s interpretation, “a cluster of obligations in such a way that no one of these associations can be said to be decisive and sovereign”. The state is thus placed at the same level with the religious and economic associations. According to Schmitt, however, it is untenable to claim that the power of these associations equals the power of the state. It is possible for them to intervene in the lives of the people, but only the state, the political entity, can decide on the enemy. Schmitt, *The Concept of the Political*, pp. 40-45. In contrast to this false pluralism, which is after all, in Schmitt’s view, monistic in nature insofar as its ultimate point of reference is a monistic concept of humanity, he posits the plurality of political unities.
- 24 “In the case of the single individual, experience tells us that there is no space for his freedom other than what a strong state guarantees.” On the mutual relationship between the strong state and individual freedom see Schmitt, “Ethic of State”, pp. 200-201.
- 25 Schmitt, *The Leviathan*, p. 42.
- 26 Schmitt, *The Leviathan*, p. 34.
- 27 Schmitt, *The Leviathan*, p. 35.
- 28 Schmitt, *The Leviathan*, p. 42.
- 29 Schmitt, *The Leviathan*, p. 55.
- 30 Schmitt, *The Leviathan*, p. 57.
- 31 Schmitt, *The Leviathan*, p. 58.
- 32 Schmitt, *The Leviathan*, p. 61.
- 33 Schmitt, *The Leviathan*, p. 45.
- 34 Schmitt, *The Concept of the Political*, p. 53. According to Schmitt there is no form of order, no reasonable legitimacy or legality without the “eternal combination” of protection and obedience. In practice this means that the state first protects the physical existence of man, subsequently demanding an unconditional obedience of its laws: “All additional discussion leads to the ‘prepolitical’ condition of insecurity.” Schmitt, *The Leviathan*, p. 45.
- 35 Schmitt, *The Leviathan*, p. 74.
- 36 Schmitt, *The Leviathan*, p. 74.

- 37 Schmitt, *The Leviathan*, p. 74.
- 38 Schmitt, "Ethic of State", p. 198.
- 39 See Schmitt, "Ethic of State", p. 206-208
- 40 Schmitt, *Verfassungslehre*, p. 22.
- 41 Schmitt, *The Concept of the Political*, p. 53.
- 42 Schmitt, "Total War", p. 31.
- 43 Schmitt, *The Concept of the Political*, p. 37.
- 44 Besides, as Schmitt emphasizes in the preface to the second edition of *Political Theology*, "any decision about whether something is unpolitical is always a political decision, irrespective of who decides and what reasons are advanced". Schmitt, *Political Theology*, p. 2.
- 45 Schmitt, *The Concept of the Political*, p. 34.
- 46 Schmitt, *The Concept of the Political*, p. 34.
- 47 Jünger, "Total Mobilization", p. 139.
- 48 Carl Schmitt, "The Source of the Tragic" (1956). *Telos* 72, Summer 1987, p. 139. Translation in *Telos* includes chapter 3 of Schmitt, *Hamlet oder Hecuba. Der Einbruch der Zeit in das Spiel* (1956). Klett-Cotta 1993.
- 49 Schmitt, "The Source", p. 135.
- 50 Schmitt, "The Source", p. 144.
- 51 Schmitt, "The Source", p. 143.
- 52 Schmitt, "The Source", p. 143.
- 53 Schmitt, "The Source", p. 143.
- 54 See also Victoria Kahn, "Hamlet or Hecuba: Carl Schmitt's Decision." *Representations* 83, Summer 2003, p. 83.
- 55 Schmitt, "The Source", p. 142.
- 56 Schmitt, "The Source", p. 139.
- 57 Schmitt, "The Source", p. 142.
- 58 Schmitt, "The Source", p. 143.
- 59 Schmitt, *The Concept of the Political*, p. 53.
- 60 According to Richard Wolin, for instance, it is in his description of war "qua existential, ultimate instance of politics" that Schmitt exposes most clearly his intellectual affinity with Jünger's "aesthetics of horror". Richard Wolin, "Carl Schmitt: The Conservative Revolutionary Habitus and the Aesthetics of Horror." *Political Theory*. Vol. 20, Issue 3, 1992, p. 257. On this issue, I rather agree with Gary Ulmen, who states that Schmitt is "neither promoting war nor enmity but attempting to answer a very real question raised by the decline of the state". G. L. Ulmen, "Return of the Foe." *Telos* No 72, Summer 1987, p. 189.
- 61 See David Pan, "Political Aesthetics: Carl Schmitt on Hamlet." *Telos* 72, Summer 1987, p. 156: "Schmitt rejects the establishment of the autonomy of art in the bourgeois private sphere, because both the autonomy of art and the bourgeois private sphere provide the haven for ideas to develop independent of institutional control."

- 62 Schmitt, *Roman Catholicism*, p. 22.
- 63 Wolin, “Carl Schmitt”, p. 253.
- 64 Schmitt, *Roman Catholicism*, p. 22.
- 65 Schmitt, *Verfassungslehre*, p. 210.
- 66 Schmitt, *Political Romanticism*, p. 15.
- 67 Schmitt, *Political Romanticism*, p. 15.
- 68 Schmitt, *Roman Catholicism*, p. 20.
- 69 Also for Benjamin the loss of the aura in the “age of mechanical reproduction” was a matter of fact, but contrary to Schmitt he did not long for its return. Instead, he argued that the disappearance of the aura provides a source of political emancipation. See Walter Benjamin, “The Artwork in the Age of Its Technological Reproducibility.” In *Selected Writings*. Volume 4, 1938-1940. The Belknap Press of Harvard University Press 2003, pp. 251-270.
- 70 Schmitt, *Roman Catholicism*, p. 21.
- 71 Schmitt, *Political Romanticism*, p. 160.
- 72 Carl Schmitt, “On the Barbaric Character of Shakespearean Drama: A Response to Walter Benjamin.” (1956). *Telos* 72, Summer 1987, p. 146. Translation in *Telos* includes excursus 2 of Schmitt, *Hamlet oder Hecuba*.
- 73 Schmitt, “On the Barbaric Character”, p. 146.
- 74 Schmitt, *The Concept of the Political*, p. 36.
- 75 Schmitt, *The Concept of the Political*, p. 53. In this sense, Schmitt is a pluralist. His pluralism is not, however, pluralism of men and cultures but a pluralism of political entities. In themselves, these entities need not be plural – democracy, for instance, is based, according to Schmitt, on a total homogeneity of men and presupposes the “elimination or eradication of heterogeneity”. Schmitt, *The Crisis*, p. 9. In other words, Schmitt is a pluralist, but his pluralism presupposes a “correct placing of pluralism”. Schmitt, “Ethic of State”, p. 204.
- 76 Schmitt, *The Concept of the Political*, p. 54.
- 77 Schmitt, *The Concept of the Political*, p. 54.
- 78 Schmitt, “Ethic of State”, p. 205.
- 79 Schmitt, *The Concept of the Political*, p. 36.
- 80 Schmitt, *The Concept of the Political*, pp. 54-55.
- 81 Carl Schmitt, *Theorie des Partisanen zum Begriff des politischen* (1963). Duncker & Humblot 1975, p. 87.
- 82 Schmitt, *The Concept of the Political*, p. 49.
- 83 “The enemy is the gestalt of our self-questioning.” Schmitt, *Ex Captivitate Salus*, p. 90.
- 84 Schmitt, *Verfassungslehre*, p. 210.
- 85 Schmitt, *Glossarium*, p. 217.
- 86 See Schmitt, *The Leviathan*, p. 8.
- 87 Schmitt, *The Leviathan*, p. 9.

- <sup>88</sup> This is also a reason why Schmitt emphasizes that “we have to determine as exactly as possible who is the Jew and who is not”. Carl Schmitt, “Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist.” *Deutsche Juristen-Zeitung*. Heft 20, 15 October 1936, p. 1194.
- <sup>89</sup> Schmitt, *Glossarium*, p. 199.
- <sup>90</sup> “It is indeed nothing more and nothing less than the political as such which would no longer exist without the figure of the enemy. Losing the enemy would simply be the loss of the political itself.” Therefore, “the ultimate enemies, the worst of them all, enemies worse than enemies” are – at least “perhaps”, as Derrida is forced to add because of the methodological and, perhaps, moral necessities of his approach – “the enemies of the political”. Jacques Derrida, *Politics of Friendship*. Verso 1997, p. 84.
- <sup>91</sup> See for instance Schmitt, *Der Nomos der Erde*, p. 26: “The Medieval order of Europe was not nihilistic to the extent that it had not lost its fundamental unity of order and localization.”
- <sup>92</sup> Schmitt, “Die Einheit der Welt”, p. 496.
- <sup>93</sup> Carl Schmitt, *Glossarium*, p. 165.
- <sup>94</sup> “The Political entity presupposes the real existence of an enemy and therefore coexistence with another political entity.” Schmitt, *The Concept of the Political*, p. 53.
- <sup>95</sup> Schmitt, *The Concept of the Political*, p. 77.



## 5. LIBERAL PATHOS

We have come to recognize that the political is the total, and as a result we know that any decision about whether something is unpolitical is always a political decision, irrespective of who decides and what reasons are advanced.

Carl Schmitt, *Political Theology*

In Schmitt's view, all theories of state and political ideas can be tested on the basis of their anthropology and thereby classified according to whether they – consciously or unconsciously – presuppose man to be good or evil by nature. As for Schmitt's own view, he asserts that no theory which holds man to be good is genuinely political: "All genuine political theories presuppose man to be evil, i.e., by no means an unproblematic but a 'dangerous' and dynamic being."<sup>1</sup> This "anthropological confession of faith" discloses a second presupposition of Schmittian politics, in addition to the real possibility of the enemy: the hierarchical relation of power. The sphere of the political does not exist without power and without man's "dangerous" nature there would be no motivation for power. According to Schmitt, it is impossible to legitimize power except by means of the potential threat that man presents and the security that power provides: "From the purely human point of view, the relationship of protection and obedience remains the only explanation for the existence of power."<sup>2</sup> In other words, if man was good and docile in every respect and therefore, did not need order or protection, power would have no legitimacy. In Schmitt's view, the disappearance of power would also signal the disappearance of politics. For this reason anarchism, whose point of departure is the absolute evilness of power opposed by the goodness of man, cannot articulate its own political theory. Schmitt passes the same judgment on liberalism.

All theorists of liberalism have certainly not considered man to be good, but according to Schmitt the doctrine of liberalism, in which society determines its own order which the state is subordinated to serve, assumes an unproblematic conception of man. Schmitt acknowledges that liberalism has

never been politically radical like anarchism, but for him it is also evident that liberalism's neutralizations, depoliticizations and declarations of freedom have a certain political meaning. They are polemically directed against a specific state and its political power on behalf of individual freedom, private property and economic competition:

All liberal pathos turns against repression and lack of freedom. Every encroachment, every threat to individual freedom and private property and free competition is called repression and is *eo ipso* something evil.<sup>3</sup>

Although Schmitt admits that liberalism has not radically rejected politics or the state, he also points out that neither has it advanced a positive theory of the state nor delineated how the state should be reformed. By connecting the political with the ethical and subjugating it to economics, it has only managed to neutralize the state, to reduce it to a mere servant of society.<sup>4</sup> According to Schmitt, these operations are understandable if one believes that our destiny today is not politics but economy, which he refuses to believe. Politics is still our destiny, because economy has become entirely politicized. Besides, argues Schmitt, it is a mistake to believe that a society based on economic interaction or exchange would be "essentially unwarlike", as Joseph Schumpeter suggests. In Schmitt's view, only the terminology used in liberal ideology is unwarlike whilst concrete practice turns out to be less unwarlike. Wars have perhaps been condemned but sanctions, punitive expeditions, pacifications, protection of treaties, measures to assure peace and the international police remain. In other words, a system based on exchange does not exclude the possibility of the worst kind of repression and exploitation. When the exploited attempt to defend themselves in such a situation, it is obvious that they cannot do so by economic means. Moreover, those who possess the economic power would interpret every attempt to change power relations by extra-economic means as violence and crime.<sup>5</sup> Thus, Schmitt concludes that economic power is as repressive as political power, but unlike political power, which in Schmittian terms is based on responsibility and visibility, economic power tends to conceal itself and to avoid the question of responsibility.

## 5.1 TOTAL STATE

In Schmitt's view, the twentieth-century reaction to the liberal neutralization and depoliticization of all the spheres in the 19<sup>th</sup> century is a total politicization. As a result, the nineteenth century neutral state is replaced with a *total state*. According to Schmitt, one should not confuse the total state with the

absolute state of the 18<sup>th</sup> century, which stood above society as a stable and a distinctive force. Moreover, it is not the universal state, outlined by Hegel and his followers, which stands above society because of its moral superiority. The total state is first and foremost a state in which state (*Staat*) and society (*Gesellschaft*) penetrate each other. In contrast to the liberal, non-interventionist state, there is no sphere in the total state “which should be considered as absolutely neutral in the sense of non-intervention by the state”.<sup>6</sup> The total state intervenes “in all possible matters, in economy and in all the other spheres of human existence”.<sup>7</sup> As a consequence, everything becomes at least potentially political and formerly social matters become affairs of the state but also, reciprocally, the affairs of the state themselves become social matters.

According to Schmitt, the appearance of the total state is above all a consequence of the democratic development in the West. For him, it is precisely democracy which does away with all the typical distinctions and depoliticizations characteristic of the liberal 19<sup>th</sup> century. In democracy, there exists no antithesis between the state and society. The same applies to the other antitheses of the 19<sup>th</sup> century – including the antitheses between religion and politics, culture and politics, economy and politics, law and politics and so on. In other words, if liberalism believes in the exclusion of the state-free society from the sphere of the political, the 20<sup>th</sup> century democratic movement believes that nothing, by necessity, remains outside the political. In democracy, all those spheres of society which were previously identified with the private sphere and thus, outside the public and the political are politicized. In Schmitt’s view, this politicization is a logical consequence of the fundamental principle of democracy, namely of the *identity of those who rule and those who are ruled*, of government and people. Out of this identity the total state is born.

Schmitt’s notion of total state has been interpreted as an indication of his tendency towards totalitarianism, but he himself thought of it as a concept that corresponded to the concrete reality of the West. According to Schmitt, the total state is not a utopia of a state to come but a description of the twentieth century European democratic state: “One may dismiss the ‘total state’ with any kind of shouts of outrage and indignation as barbaric, servile, un-German or un-Christian, but the thing remains that one does not get rid of it in that way.”<sup>8</sup> The total state exists. Even liberalism cannot remain faithful to its nineteenth century principles, but enters, as a consequence, into a practical alliance with the total state. In Schmitt’s view, this is necessary for liberalism, insofar as to survive it has to ally itself with those powerful democratic forces, which dominate all political thinking in modernity.<sup>9</sup> According to Schmitt, however, the liberal total state represents only one of the two existing types of total states, namely the *quantitative* type. The quantitative total state penetrates all the domains of human affairs, because it bows to everybody’s wishes, trying

to please everyone, to subsidize everyone and be at the beck and call of conflicting interests all at once: “Its expansion is the result not of its strength but of its weakness.”<sup>10</sup>

The quantitative total state is total because of its weakness, but there also exists, according to Schmitt, a *qualitative* total state. This state is total because of its force.<sup>11</sup> It does not try to satisfy all the demands of society, insofar as this would pave the way to an assimilation of the state power with the interests of social organizations – parties and corporations – leading ultimately to the destruction of state authority. Rather, like the seventeenth century absolute state, it transcends society by means of a new monopoly on politics. On the one hand, this makes it possible to distinguish between friend and enemy; on the other hand, between the political issues and the non-political ones. Yet, this kind of depoliticization does not indicate a weakness of the state, insofar as “only a strong state can remove itself from non-state affairs”.<sup>12</sup> In Schmitt’s view, the act of depoliticization is, at least today, a particularly intense political act.<sup>13</sup> If the quantitative total state does not designate any domain as free from state intervention, this is only because it can no longer make “any distinctions”.<sup>14</sup> And if the faculty of distinction and discrimination – judgment – is the political faculty par excellence, as Schmitt at times believes, then the quantitative total state, despite its totality, is not a state at all.

Schmitt sees Mussolini’s Italy as a kind of qualitative total state.<sup>15</sup> The fact that the total state arises from an identity of the rulers and the ruled does not contradict this view. For Schmitt, the fact that Fascism abolishes elections and despises all *elezionismo* does not indicate an antidemocratic but only an anti-liberal attitude. In a specific sense, Schmitt considers Fascism to be even more democratic than the liberal practice, because liberalism removes a politically united people (*Volk*) from the public sphere, transforming it into a culturally interested public (*Publicum*) and reducing the political formation of will to the calculation of privately cast votes.<sup>16</sup> In his view, however, the core of democracy is not to be found in the counting of secretly cast votes in complete isolation but in the will of a people, which is expressed above all in a public acclamation: “The natural form of the direct manifestation of the people’s will is the howl of approval or refusal of the assembled crowd, the *acclamation*.”<sup>17</sup> This is why he concludes that dictatorial and Caesaristic methods are not necessarily antidemocratic. Not only can they evoke acclamation, but they can also be “a direct expression of democratic substance and power”.<sup>18</sup> They are just anti-liberal. It may be the case that the fascist state, which as a party state resembles the quantitative total state,<sup>19</sup> does not fulfill all the requirements of democracy or democratic legitimacy. However, Schmitt argues that those societies which try to combine liberal and democratic principles do not fulfill these requirements either. According to Schmitt, it is precisely this

failed reconciliation between the principles of liberalism and democracy in the practice of modern mass democracy that has paved the way for the crisis of parliamentary democracy.

## 5.2 PARLIAMENTARISM AND DEMOCRACY

Like every great institution, Schmitt argues in *The Crisis of Parliamentary Democracy* (1924), also parliament presupposes certain fundamental principles and ideas. However, Schmitt refuses to subscribe to the familiar conception according to which parliament is seen above all as a committee of the people. Already the fact that the members of parliament are independent of the people during the electoral period contradicts this definition. He also regards as illusory the claim that parliament should be considered a means for selecting political leaders – suggested for instance by Max Weber and Hugo Preuss: “Politics, far from being the concern of an elite, has become the despised business of a rather dubious class of persons.”<sup>20</sup> If we want to discover the authentic principles of parliamentarism, Schmitt argues, we must return to Burke, Bentham, Guizot and John Stuart Mill. In their writings Schmitt discovers the essence – the “ultimate intellectual foundation” – of parliamentarism. It lies in openness and discussion, that is, in a process of confrontation of differences and opinions, from which the real political will results. According to Schmitt, open discussion as the principle of parliamentarism does not stand only for deliberation and negotiation since even tyrants negotiate. Open discussion signifies “an exchange of opinions that is governed by the purpose of persuading one’s opponent by arguing the truth or justice of something, or allowing oneself to be persuaded”.<sup>21</sup> In Schmitt’s view, the demand for open discussion as the principle of ruling was born in the struggle against the theory of state secrets and Machiavellian power politics. The Machiavellian use of power was countered with a moral ethos, according to which might should be replaced with right. However, in contrast to the absolute rationalism and the absolute concept of right which characterizes Enlightenment, the rationality of open discussion and thereby of parliament is relative: “Neither state power nor any kind of metaphysical conviction is allowed to appear immediately within its sphere.”<sup>22</sup> In Schmitt’s view, the disbelief in absolute truths does not manifest itself only in the principle of open discussion but also in the principle of division of powers. It is not only opinions which must be balanced with competing opinions – also institutions must be balanced with competing institutions. According to him, all this depends on a way of thinking that “creates multiplicity everywhere

so that an equilibrium created from the immanent dynamics of a system of negotiations replaces absolute unity”.<sup>23</sup>

### *Either/or or And*

A growing number of liberal thinkers have emphasized the importance of political perspective in social theory. Among these are the German sociologist Ulrich Beck and the others who have spoken of so-called “reflexive modernity”.<sup>24</sup> According to Beck, in the age of reflexive modernity, the political cannot be reduced to what he describes as the binary system of Either-or proposed by Schmitt in particular (“either Christ-friend or Barabbas-enemy”), but characteristic of the so-called “simple modernity” in general. Instead of the Either-or experience, which is “becoming false”,<sup>25</sup> reflexive modernity and thereby, a reflexive society can be defined in terms of a so-called *And* experience: “The ‘age of *And*’ is destroying and replacing the ‘age of *Either-or*’.”<sup>26</sup> Beck disagrees with Schmitt’s view that the *And* experience, thinking “beyond Either-or”, would negate the political. According to Beck, it just paves the way for a new kind of political rationality. At the core of this rationality lies the concept of ambivalence: “The striking point is the ambivalence.”<sup>27</sup> The political does not originate with the recognition of an enemy, with the antithesis of friend and enemy, but with the ambivalent position of *in-between* – not only in-between Either-or but in-between “multiple perspectives” and “multiple voices”. If certitude, conviction and commitment to truth constituted the political attitude of simple modernity, the attitude of political man in reflexive modernity is, argues Beck, that of *doubt*. In his view, *dubito ergo sum* is the *cogito ergo sum* of the reflexive society.<sup>28</sup> This is the case because only the “art of doubt” enables man to remain in-between and to pursue the politics of *And*. It could be argued that the ambivalent position of in-between presupposes also an exclusive choice between concrete alternatives. In Beck’s view, however, this is not the case. The art of doubt “prevents nothing, but makes many things possible”.<sup>29</sup> The reflexive artist of doubt has to doubt even himself as a doubting being. He must realize that doubts themselves are “thoroughly doubtful”,<sup>30</sup> because self-doubt is the precondition for all doubt. In Schmitt’s view, this kind of doubtful ambiguity and ambivalence, eternal swinging between alternative choices and ironic suspicion – ultimately suspicion of suspicion – would amount to nothing but a peculiarly romantic and thus, an apolitical attitude.<sup>31</sup> In Beck’s view, however, it is precisely the Either-or experience that brings politics to an end.

Nonetheless, Beck does not claim naïvely that we would have surpassed the Either-or experience, emphasizing instead that in reflexive modernity these two ways of experience are present simultaneously. Both of them are included in the process of modernization inasmuch as modernization must be understood in Beck's view as an "unfinished and unfinishable dialectic or modernization and counter-modernization".<sup>32</sup> In other words, this simultaneity of modernity and counter-modernity is not an accident, but "caused by the system and systematically linked to it".<sup>33</sup> Besides, the And experience which permeates the Either-or experience actually facilitates a renaissance of the latter. The process of modernization itself produces counter-modernity, which in turn aims at reinforcing certitude in contrast to the ambivalences of modernity: "Counter-modernity transforms doubt into certitude."<sup>34</sup> Moreover, Beck defines the relationship between the reflexive modernity and counter-modernity in terms of opposition and even of antithesis. Does this mean that the Schmittian notion of the political hence returns? Beck rejects this implication. The opposition between reflexive modernity and counter-modernity is not a binary antagonism between friend and enemy. In a thoroughly reflexive society, there exists no such antagonism:

A thoroughly doubtful society, beset by productive self-doubt, and therefore incapable of truth, strictly speaking, cannot develop or uphold any construction of an enemy.<sup>35</sup>

In other words, the representatives of counter-modernity cannot be political enemies, because Beck recognizes very well that this would entail a return to the logic of Either-or of simple modernity. Therefore, Beck locates the representatives of counter-modernity elsewhere.

According to Schmitt, it was characteristic for the theorists of the Enlightenment to seek and find universal morality as a neutral solution to the "evil" politics of the Either-or. Also Beck pursues neutralization, but he goes further than the Enlightenment moralists. Admittedly, he defines the opposition between reflexive modernity and counter-modernity in terms of different attitudes and worldviews, that is to say, in terms of ethics. In his view, there exists, on the one hand, an attitude and ethics characterizing a proponent of reflexive modernity. His attitude can be described as thoroughly liberal. He favors reasonable discussion to violence and action, tolerates different ways of life, supports human rights and the equality of the sexes, favors peace to war, and so on. It is true that he also doubts, but his doubt is "kind and deeply human",<sup>36</sup> because he first and foremost doubts all dogmatism, all "black-white thinking". On the other hand, there exists an attitude and ethics belonging to a proponent of counter-modernity. He is the one who still believes in certitudes and ab-

solute truths. He *constructs* these certitudes and absolutes – paradoxically by means of modern technology. Inasmuch as he has been able to construct these certitudes and absolutes, he has no reason for discussion. Therefore, he favors violence and action. He “floats on action, washing away the questions in the stream of action”.<sup>37</sup> His action, in turn, is not based on reason but on emotion, on “the orphaned and dried-up emotions” like hate, love, fear and mistrust.<sup>38</sup> Hence, the proponent of counter-modernity is an emotive person, who absorbs questions into violent action. But what does he act for? In Beck’s view, he acts for his own emotive truth and dogma, for his sacred beliefs including tradition, nature, religion, nationhood, the distinction between ourselves and strangers, and so on. Out of this sanctification “nationalism, ethnocentrism, xenophobia and violence” are born.<sup>39</sup>

Presumably, for a liberal such a person is more or less “evil”. However, Beck does not subscribe to this view. According to him, as already mentioned, counter-modernity is included in the process of modernization. It is true that counter-modernity is only capable of limiting the “autonomous course of modernity”.<sup>40</sup> Nevertheless, it is also itself irrevocably modern: “Nationalism, ethnocentrism, xenophobia and violence are not the expression or eruption of suppressed atavism continuing to be a potent force behind the façades of civilization.”<sup>41</sup> Counter-modernity is a *response* to the fundamental experience of uncertainty and ambivalence of And. Therefore, a proponent of counter-modernity cannot be viewed as evil in himself. But if he is neither a political enemy nor an evil person, who is he? Presumably, his interests are diametrically opposed to those of the liberal reflexive individual. Therefore, he cannot be a like-minded peer. Nor can he be an “opposing doubter”, as Beck calls the political opponent in a reflexive society, because believing in certainties, he does not doubt. The only alternative left, it seems to me, is to suppose that Beck’s proponent of counter-modernity suffers from a kind of mental disability. He is a person who is not capable of standing the modern ambivalence of And. Beck acknowledges that the growing ambivalence can lead to “intolerable conditions” that disturb everybody. In the case of the proponent of counter-modernity, however, this disturbance is especially dangerous, because his response to the intolerable conditions is emotive action and violence.

How then, in Beck’s view, must the proponent of reflexive modernity relate to his counter-modern counterpart? Insofar as he does not regard him as a political enemy but as a disturbed person, his task is to outline *acceptable* certainties and limits for him.<sup>42</sup> In other words, his task seems to be inventing therapeutic means capable of holding in check the worst psycho-pathological effects – ethnocentrism, xenophobia, fundamentalism, violence – caused by the inevitable and irrevocable process of modernization. Hence, even if Beck attempts to rethink politics beyond friend and enemy distinctions, the way in

which he neutralizes the opponent, treating him as if he was a psycho-pathological case, points to an apolitical way of thinking rather than to a rediscovery of politics. In the final analysis, his “And experience” seems to signify nothing more than a peculiar way of finding *Aufhebung*, and thus reducing politics to insignificance. However, Beck did not take into account the possibility that with the “And experience” a new antithesis comes into being, the antithesis between the “Either-or experience” and the “And experience” (Either-or *or* And).

\* \* \*

For Schmitt, Ulrich Beck’s “thoroughly doubtful” society of reflexive modernity would probably represent a society in which the premises of parliamentarism have been transformed into premises of the whole society. The relative rationality of doubt incapable of truth has displaced everywhere the absolute rationality of absolute truths; open discussion has displaced emotive convictions and commitments. Even the metaphysics of doubt is challenged by the ever-lasting self-doubt. In Schmitt’s view, however, one should doubt the idea of the “thoroughly doubtful” society of openly discussing doubters, not because it would be malicious in principle but because the concrete practice of modern mass society and mass democracy seem to function in a completely different manner. This practice has made the premises of parliamentarism and simultaneously, the whole idea of argumentative discussion an “empty formality”:

Many norms of contemporary parliamentary law, above all provisions concerning the independence of representatives and the openness of sessions, function as a result like a superfluous decoration, useless and even embarrassing, as though someone had painted the radiator of a modern central heating system with red flames in order to give it the appearance of a blazing fire.<sup>43</sup>

The important political and economic decisions on which the fate of mankind rests today, no longer result from balancing opinions in a public debate but from other instances altogether:

Small and exclusive committees of parties or of party coalitions make their decisions behind closed doors, and what representatives of the big capitalist interest groups agree to in the smallest committees is more important for the fate of millions of people, perhaps, than any political decision.<sup>44</sup>

Parties do not approach each other as groups exchanging opinions in the open arena, but as social and economic power-groups calculating their mutual interests and opportunities for power. It is no longer a question of persuading one's opponent of the truth or justice of one's opinion but rather of winning the majority in order to rule. The masses are in turn won over through a propaganda apparatus which relies on an appeal to immediate interests and passions for maximum effect. The way of argumentation characteristic of real discussion ceases and becomes replaced by a conscious reckoning of interests and chances for power in party negotiations, while the non-argumentative slogan is addressed to the masses.<sup>45</sup> In Schmitt's view, all this contradicts the principles of parliamentarism but it does not necessarily contradict the principles of democracy. The crisis of parliamentary democracy is therefore a crisis of parliamentarism, not a crisis of democracy.

Schmitt holds that parliamentarism – ruling by discussion – belongs to the world of liberal ideas. Yet, it does not necessarily belong to democracy. In a democracy, an “institution based on discussion by independent representatives has no autonomous justification for its existence”.<sup>46</sup> He admits that at first democracy appeared in an obvious alliance, even identity, with liberalism. However, it has been allied with almost all political movements in the 20<sup>th</sup> century – for instance, in social democracy it was merged with socialism. In Schmitt's view, democracy can in fact be absolutist as well as liberal, centralized as well as decentralized, progressive as well as reactionary. Nevertheless, it is not a form without substance since the essence of democracy lies, as mentioned above, in the identity of governing and the governed. Schmitt's point of reference here is, as almost always when he attempts to define democracy, Jean Jacques Rousseau. It was precisely Rousseau who established that in a democracy, the sovereign and the subject are “identical correlatives”.<sup>47</sup> According to Schmitt, it is possible to distinguish a whole series of identities:

All democratic arguments rest logically on a series of identities. In this series belong the identity of governing and governed or sovereign and subject, the identity of the subject and the object of state authority, the identity of the people with their representatives in parliament, the identity of the state and the current voting population, the identity of the state and law, and finally the identity of the quantitative (the numerical majority or unanimity) and the qualitative (the justice of the laws).<sup>48</sup>

In Schmitt's view, the democratic identity of those who rule and those who are ruled arises from the democratic principle of homogeneity. In contrast to the liberal idea of multiplicity, democracy presupposes unity: “Democracy requires first homogeneity and second – if the need arises – elimination or

eradication of heterogeneity.”<sup>49</sup> The homogeneity of the people corresponds in turn to the democratic concept of equality, that is to say, to the equality of equals. Therefore, the question of equality is not one of abstract, “logical-arithmetical games” for Schmitt. Rather, it concerns the substance of equality. It can be found in certain physical and moral qualities, for example, in civic virtue, in *arête*, the classical democracy of *virtus*, and so on. What matters, however, is that such a substantial foundation of equality exists – equality which contains a possibility of inequality:

One has to say that a democracy – because inequality always belongs to equality – can exclude on part of those governed without ceasing to be a democracy, that until now people who in some way were completely or partially without rights and who were restricted from the exercise of political power, let them be called barbarians, uncivilized, atheists, aristocrats, counterrevolutionaries, or even slaves, have belonged to a democracy.<sup>50</sup>

This equality can be racial or ethical, religious or national but above all it is restricted and restrictive for Schmitt: “Equality without the possibility of inequality, equality which it is impossible to lose, is worthless and inconsequential.”<sup>51</sup> In his view, absolute human equality is conceptually and practically meaningless, an indifferent equality without substance. Besides, in the condition of a superficial political equality of man, another sphere – the economic for instance – in which substantial inequalities prevail will dominate politics, transforming the economic inequalities into political inequalities. According to Schmitt, the equality of all persons as persons is therefore an empty formality – and the demand for this equality belongs to the world-view of liberalism, not that of democracy.

Schmitt acknowledges, as mentioned above, that democracy first allied itself with liberalism and that even Rousseau, whose *Social Contract* is one of the most coherent presentations of democratic principles, starts with a concept of contract characteristic of liberalism. According to Schmitt, however, it is liberal only on the surface to the extent that the state’s legitimacy is justified by a free contract but the essential content refers to the democratic principle of identity and thus of equality as homogeneity. The central concept of general will does not tolerate different opinions, and those opinions and votes which differ from the general will, in other words from the “voice of majority”, are simply wrong.<sup>52</sup> Thus, a citizen who disobeys the majority decision cannot be a citizen and an equal in this sense. He remains, as Rousseau writes, a “foreigner among the citizens”.<sup>53</sup> In Schmitt’s view, however, Rousseau did not realize that his point of departure, namely the contract, contradicted the concept of homogenous general will: “Where it exists a contract is meaningless. Where

it does not exist, a contract does not help.”<sup>54</sup> In this issue Schmitt sides with Pufendorf according to whom a mutual contract is an impossibility in a democracy, because not only would such a contract presuppose a difference between those who command and those who obey, but it would also imply a limitation of state power. In a democracy, there is no such difference, which also implies that the state power is unlimited.<sup>55</sup> The sovereign’s will becomes immediately the law in a democracy, and insofar as the people are the sovereign, their power is without limits: *lex est quod populus jussit*.<sup>56</sup> Schmitt understands this to entail that all efforts to limit the expressions of this will, such as the division of power, are undemocratic.<sup>57</sup> In a democracy, people’s will is simultaneously the “supreme judge” and the “supreme legislator”.<sup>58</sup>

Yet, according to Schmitt, as already mentioned, a people does not express its will necessarily by means of an individual and secret ballot. For him, the idea that the people can express its will only when each citizen votes in deepest secrecy and complete isolation is not a democratic but, again, a liberal idea. It transforms a uniquely “democratic and political” citizen into a private man.

The individual and secret ballot transforms a citizen – this uniquely democratic and political figure – into a private man of the private sphere, who by voting expresses only his individual opinion.<sup>59</sup>

According to Schmitt, the individual and secret ballot which relieves a person from all responsibility contradicts the whole concept of the people: “The people exists only in the sphere of publicity.”<sup>60</sup> The counting of votes does not express a public or general opinion (*volonté générale*),<sup>61</sup> but only the opinion of millions of private individuals.<sup>62</sup> Besides, Schmitt adds that one person can express the people’s will as well as a group of secretly elected parliamentary representatives. In his view, this is the case because the democratic principle of identity can and must be defined in terms of *identification*, insofar as the absolute identity and homogeneity of a people are impossible. In other words, democratic equality rests on a *recognition* of identity, not on actual reality: “A distance always remains between real equality and the result of identification.”<sup>63</sup> This being the case, the decisive question in a democracy concerns the formation of the people’s will, that is, how can those who rule represent their will as the will of those who are ruled? For Schmitt, “everything depends on how the will of the people is formed”.<sup>64</sup> In the concrete life of a democracy, the most crucial question is therefore to establish who governs the propaganda machinery, that is to say, the “methods of psycho-technical manipulation of the great masses” with which the will of the people is to be constructed.<sup>65</sup> According to Schmitt, those who have control over this machinery – the military, the police force, the press, the party organizations, the schools and so on – form

a new aristocracy. Democracy, however, is not necessarily destroyed. Rather, this phenomenon simply demonstrates that even dictatorship is not antithetical to democracy. Instead, Schmitt believes that democracy can well dispense of parliamentarism and its principles of openness and discussion.

### *Between identity and representation*

For Schmitt, the crisis of parliamentary democracy is not only a crisis of parliamentary principles. It is also a crisis of the modern state. The reason for this is that Schmitt holds every political entity – at the moment the state – to be based on *representation*: “There is no state without representation”, writes Schmitt in his magnum opus of the Weimar period, *Vefassungslehre* (1928).<sup>66</sup> The modern democratic state, however, is losing its power to represent. This is partly due to the democratic principles of identity and homogeneity. They contradict the idea of representation, because representation implies an element of transcendence which Schmitt always interprets to mean “authority from above”.<sup>67</sup> In the final analysis this is not dangerous to the existence of the state, insofar as one realizes that concrete masses are always heterogeneous and that “nowhere at any point of history has there existed a total and perfect identity of a people present to itself as a political unity”.<sup>68</sup> According to Schmitt, every effort to realize immediate democracy has to take this limitation into consideration, which is also the reason why he claims that in the concrete life of the state the principle of identity must be replaced with that of identification. The democratic principle of identity is realized when the masses identify themselves with a certain representation. Regarding the principle of representation the representative practice of the modern parliamentary system is in fact more fateful than the democratic principle of identity.

Why, then, are the modern parliamentary system and the representative democracy practiced by it, not representative according to Schmitt? Firstly, he argues that representation belongs to the public sphere and has nothing to do with secret ballots, mandates, or other equivalent concepts, which originally belonged to the sphere of private law: “To represent signifies rendering the invisible visible and conceivable through something which is present in public.”<sup>69</sup> Secondly, representation is “something existential” in contrast to the normative processes and procedures of contemporary parliamentary practice and thought.<sup>70</sup> And thirdly, everything that a modern representative represents is linked with party programs, material interests and a quantitative notion of the electorate. Schmitt, on the contrary, holds that instead of something partial, material and quantitative, real representation presupposes something

comprehensive, ideal and qualitative: “The political entity is represented as a whole.”<sup>71</sup> In fact, he does not call the representation of interests representation – *Repräsentation* – at all, but prefers to use the term *Vertretung*. However, Schmitt does not claim that this “inauthentic representation” would necessarily destroy democracy. A democracy can dispense with representation, but it would lose its status as a democratic state, because there is no state without representation.

In Schmitt’s view, it is possible to classify every political entity by determining the extent to which it is dominated by the idea of identity on the one hand and its opposite, the idea of representation, on the other. The form of government (*Staatsformen*) based on absolute identity is democracy – “all democratic thinking is erected on the idea of immanence”<sup>72</sup> – whilst the form of government based on absolute representation is monarchy. Yet Schmitt holds that these absolute forms exist only in principle, since every concrete form of government, and thereby of state, presupposes aspects from both of them. It could be argued that Schmitt thus returns to the Platonic idea according to which there are two basic forms of government, kingship and democracy, from which all other forms are derived. In Plato’s view, in every well-ruled state in which “freedom, accordance and prudence” prevail, there are elements from both of them.<sup>73</sup> Schmitt, however, goes even further, for according to him, there does not exist a single state without elements from both of these basic forms. For him, pure democracy without any monarchical elements – without representation – is as impossible as pure monarchy without any democratic elements, in other words, without identity.

It has been claimed that Schmitt introduced the radical democratic concept of the people into the debate about the state and the constitution of the Weimar republic.<sup>74</sup> In a sense, this is true. For him, the people is the “supreme judge” and the “supreme legislator” in a democracy. In a democracy, only the people may decide on the type and the form of its political organization and this organization is legitimate only if based on the immediate will of the people. In itself, however, the people has no form or organization. It is the unformed and unorganized origin of all forms and organizations, the unrepresented foundation of all representations. In a word, the people is the *constituent power* (*verfassunggebende Gewalt*) of the nation. The idea of the people as the constituent power of the nation and the anarchistic *arkhe* of the state is not new. It can be traced back to the conceptual distinction between *pouvoir constituant* and *pouvoir constitué* first made by a French theorist of the Revolution, Emmanuel Sieyès. Like Schmitt, Sieyès attributes constituent power to the people and more explicitly, to the nation, whose will is “the origin of all legality”. According to him, constituent power is power which is not defined by a constitution but which is presupposed by it. We must notice, however, that Schmitt uses

Sieyès' distinction for his own purposes, specifically abolishing limits that Sieyès sets to constituent power. According to the latter, constituent power is not limitless but limited by natural law, which stands "prior to and above the nation".<sup>75</sup> For Schmitt, nothing stands prior to and above the constituent power of the people. It precedes natural law and transcends it as it "precedes the constitution and is above it".<sup>76</sup> As a matter of fact, Schmitt defines the concept of the constituent power of the people in *Verfassungslehre* in the same way as he defined sovereignty in *Political Theology*. From the point of view of constitution, it emanates from nothingness. In *Political Theology* Schmitt had refused to recognize the people as sovereign because the decisionist and personalistic elements of the concept of sovereignty were thus lost. In *Verfassungslehre*, however, he assigns all the properties of sovereignty precisely to the people. Like the sovereign, the people belongs to a constitution as its constituent instance, but cannot be included in it. The people is the founding rupture of the constitution. Its will founds the constitution of the state, but the constitution does not exhaust the people. The people remains "outside and above" it. In Schmitt's view, the ground of the Weimar Constitution, for instance, cannot be found in any article of the constitutional law. It is found in the political existence and will of the German people. The Weimar constitution and thereby the form of government of the German democratic state is an "existential total-decision" of the German people.

Schmitt argues, however, that there is no state without representation and that the people itself does not have the power of representation. The radicalism of Schmitt's radical theory of democracy ends here: The people is merely the instance of the creation (*Herstellung*) of the state, not the instance of its exposition (*Darstellung*). It creates but does not sustain the political form, the state: "The procedures and methods of the creation of the political entity are not sufficient to establish a form of government."<sup>77</sup> The existence of the state presupposes a power, which shapes the political decision of the people. According to Schmitt, this power belongs to the political authority. Inasmuch as the form contains above all the "exposition of the political entity",<sup>78</sup> to shape signifies representation. The political authority is therefore the instance of representation. It brings a fragment of transcendence into the immanence of identity: "No democratic state can renounce absolutely all representation."<sup>79</sup> But what does this authority represent? It represents an idea, that is, an ethical foundation of the state.<sup>80</sup> Being present in public, it renders the invisible visible and conceivable through its own existence. The political authority is in turn possessed by those who govern. Only they can expose the ethical foundation of the state through representation: "In every state there must be those who can say: *L'Etat c'est nous*."<sup>81</sup> In principle, the people is identical with the state in a democracy, but in Schmitt's view this is not the case in

practice. The people in its totality is not the state because it cannot govern, or even administrate. After the people has decided on the type and form of constitution, it can only say yes or no to a question posed to it by those who have political authority. Schmitt believes that, in normal political conditions, the only mode of expression for the immediate will of the people is the acclamation.<sup>82</sup> In acclamation the people expresses its accord or discord through a simple exclamation: crying “viva!” or “down with it”, applauding a chief or a proposal, shouting long live the King or somebody else – or refusing to acclaim, murmuring or staying quiet.<sup>83</sup>

Yet it seems to me that in Schmitt’s theory, paradoxically, even the people as the constituent power would disappear without the act of representation. Although Schmitt repeatedly emphasizes that the people is the form-giving, but in itself unformed, form of all forms, and that its will is always a direct will and therefore impossible to represent, his theory of the state in *Verfassungslehre* nevertheless seems to contradict this definition. This is the case since in Schmitt’s view “the natural presence of groups of individuals who just happen to live together” does not constitute a people. The existence of a people presupposes a “more sublime and more intensive mode of being”.<sup>84</sup> It presupposes a political mode of being, which means that a people must become conscious of its political identity. As already said, the people becomes conscious of this identity at the moment it identifies its enemy.<sup>85</sup> However, concrete masses – “individuals who just happen to live together” – are always heterogeneous: “*In concreto* the masses are sociologically and psychologically heterogeneous.”<sup>86</sup> For this reason, they are not, *as such*, capable of identifying a common enemy. Therefore, Schmitt replaces the principle of identity with that of identification. The people becomes conscious of a common enemy by identifying itself with a representation that is given to it from above. For Schmitt, it is precisely the representation, which “produces a concrete manifestation of a sublime mode of being.”<sup>87</sup> Only at that instance does the will of the people become the constituent will of the nation. Otherwise, the people remains in its natural and non-political condition.

In other words, the revolutionary force of an unorganized and unrepresented people seems to me only virtual. In a democracy, the people is the supreme judge and the supreme legislator, but in order to become a people, natural groups of individuals must be elevated to a political existence. This presupposes representation, that is to say, authority from above. It is precisely for this reason that ultimately Schmitt’s sovereignty of the people in *Verfassungslehre* does not coincide with the concept of the sovereign in *Political Theology*. Although the sovereign, who decides on the state of exception, occupies in *Political Theology* the same metaphysical place (“outside and above”) as the people in *Verfassungslehre*, only the people needs to be represented. Only the

act of representation brings about the political will of the people. In the political reality of Weimar Germany, the one who in Schmitt's view represented the people was in fact the one who also decided on the state of exception, the *Reichspräsident*. Only the *Reichspräsident* had the possibility to represent "the political total will of the German nation".<sup>88</sup> Only the *Reichspräsident* had the capacity for *myth*.

### 5.3 DICTATORSHIP AND MYTH

In Schmitt's view, the 19<sup>th</sup> century experienced the emergence of two mediating ideas from the rift between the principles of parliamentarism and the real fate of the people: democracy and dictatorship. Both democracy and dictatorship opposed bourgeois liberalism and parliamentarism. Discussing, balancing, and engaging in public life – all this stood in the way of these two adversaries, who opposed them with such force that the very idea of a mediating discussion appeared to be only an interim between bloody battles: "Both opponents answered with a destruction of balance, with an immediacy and absolute certainty – with dictatorship."<sup>89</sup> The counterrevolutionaries, such as Donoso Cortés, had defined this dictatorship in traditional terms as the diametrical opposite of democracy. The socialist revolutionaries sought instead to combine these principles. Out of this combination emerged the Marxist idea of the revolutionary dictatorship of the proletariat. Schmitt considers this to be also one of the secrets of Marxism's political success. According to him, however, the Marxist revolutionary dictatorship of the proletariat cannot be conceived as a genuine revolution and dictatorship, because Marxism upholds the Enlightenment tyranny of science and reason, whilst a genuine revolution and dictatorship presuppose a more or less irrational foundation:

Only when it was scientifically formulated did socialism believe itself in possession of an essentially infallible truth, and just at that moment it claimed the right to use force.<sup>90</sup>

Although Marxism thus relies on the primacy of science, science in this case should not be confused with the concept of science in the abstract Enlightenment rationalism and which culminates in the concept of natural science. The philosophy of natural science, Schmitt argues, cannot provide a foundation either for a dictatorship or for any other political institution or authority. It can only provide a foundation for a technocracy. On the one hand, Schmitt admits that also Marxism, at least vulgar Marxism, claims a natural-scientific exact-

ness for its theory, believing in the “iron necessity” of the laws of historical materialism. On the other hand, the Marxist theory has another side:

The philosophically and metaphysically fascinating aspect of Marxist historical philosophy and sociology is not its similarity to natural science, but the way that Marx retains the concept of a dialectical development of human history and observes this development as a concrete, unique antithetical process, producing itself through an immanent, organic power.<sup>91</sup>

Without the consciousness of this development, without the true knowledge of social and historical reality, Marxist revolution would amount to inventing new machines instead of political action. In Schmitt’s interpretation, the strength of Marxist thought lies in this idea of consciousness. Its weakness lies, instead, in the fact that the Marxist consciousness is dependent upon an intellectual construction, in other words, upon the Hegelian philosophy of history. To the extent that it only recognizes “evolution”, Schmitt perceives an antithesis of revolution and dictatorship in this philosophy. From the perspective of “evolution”, from the perspective of “the continual series of development”, revolution and dictatorship are inconceivable. In his view, the essence of a true dictatorship – as well as of revolution – lies in *immediate interruption*, in a “decisive and deciding disjunction”, whilst the unending process of the Hegelian world spirit absorbs all interruptions and disjunctions into itself as immanent negations: “The essential point is that an exception never comes from outside into the immanence of development.”<sup>92</sup> The only possible dictatorship which this logic can comprehend is the old Enlightenment idea of educational tyranny.

In Schmitt’s view, this interpretation also holds true for Marx. Nevertheless, Marx introduces a new element into the picture. He radically simplifies and thereby intensifies the process of dialectical development.

What was new and fascinating in *The Communist Manifesto* was the systematic concentration of class struggle into a single, final struggle of human history, into the dialectical peak of tension between bourgeoisie and proletariat.<sup>93</sup>

Herein lies the originality of Marx as a political thinker, as Schmitt reads him, and not in his program of “scientific socialism”. Humanity is reduced to the friend and the enemy, to the proletariat and the bourgeoisie. This is the critical moment in the dialectical process. Yet, one problem remains. On what basis Marx claim that the moment has arrived and that this is the last hour of the bourgeoisie? According to Schmitt, Marx himself is unable to answer this question because of the reasons inherent in his theory. In this theory,

the bourgeois epoch comes to its historical end at the moment in which it is disclosed in human consciousness.<sup>94</sup> However, to the extent that it is grasped fully in human consciousness, the epoch must already have ended because a historical dialectic knows only the past positively, but the future merely in the negative.<sup>95</sup> In other words, had Marx succeeded in fully comprehending the bourgeoisie, it would have proved that the era of bourgeoisie was over. But Marx could not become fully conscious of the bourgeoisie, because a full consciousness of the last hour of the bourgeoisie would have presupposed that its epoch had already come to its end: “The tautology of Hegelian as well as of Marxist certainty moves in such circles.”<sup>96</sup>

The above notwithstanding, Schmitt notes that contemporary Marxism includes forces, which emphatically dismiss these rationalist arguments and affirm the antithesis of the proletariat and the bourgeoisie as the fundamental point of departure: “The bourgeois is not to be educated, but eliminated.”<sup>97</sup> Here it is no longer a question of evolving consciousness, but of a “real and bloody struggle” between concrete groups of people. Schmitt recognizes that Marx’s rationalist philosophy offered an intellectual instrument for this “real and bloody struggle”, but the path to action was not opened until the intellectual complexities inherent in the dialectical development had been pushed aside in favor of the immediate necessities of political reality. In Schmitt’s view, the concrete action of the Bolshevik regime is a proof of this. The anarchists, for instance, were destroyed although they hardly represented the Marxian bourgeoisie. In fact, Schmitt argues that Marxism advanced on the Russian soil almost without restraint, because the proletarian thought there was free of all the constructions of the Western European tradition and from all “the moral and educational notions with which Marx and Engels themselves still quite obviously lived”.<sup>98</sup> But what, then, was the essence of the proletarian thought in Russia? According to Schmitt, it was a “theory of the direct use of force”.<sup>99</sup> This theory is no longer a rationalist construction because it is based more or less consciously on an irrational foundation. Instinct and intuition replace rational development. The unconscious displaces consciousness.

Schmitt points out that already Bakunin had opposed Marx and Engels because of the “abstract method” by through which they approached revolution – or as Bakunin himself writes:

In conformity to their [German] nature, they proceeded not from life to thought but from thought to life. But anyone who takes abstract thought as his starting point will never make it to life, for there is no road leading from metaphysics to life.<sup>100</sup>

Anyone who relies on abstraction, Bakunin continues, will die of it. The force of his criticism, however, is not directed only at Marx and Engels but at all those “knights of science and thought”, metaphysicians as well as positivists, who attempt to prescribe the laws of life with these means. Science has no right to rule since it is not life, it does not create anything and it can only conceive the general and the abstract, thereby sacrificing the singular fullness of life at the altar of abstractions. Life engenders abstract reflections, but these reflections can never engender life: “Woe to mankind if thought ever became the source and sole guide of life.”<sup>101</sup> Furthermore, science is for the privileged few, whilst the people remain indifferent to it. In addition to the primacy of the abstract and the general, the rule of science entails the rule of a small minority of scientists: “If science is to prescribe the laws of life, then the great majority of mankind, millions of people, must be governed by one or two hundred scholars.”<sup>102</sup> For these reasons, the Marxist dictatorship of the proletariat is, in Bakunin’s view, nothing but a highly despotic domination of the masses by a new and small aristocracy of scholars. Although Bakunin admits that the Marxists envision a people’s state in which the proletariat will be raised to the level of a ruling class, he asks whom it will rule, answering the question himself: “There must be yet another proletariat which will be subjected to this new rule, this new state.”<sup>103</sup> For Bakunin, every state, even a people’s state, implies slavery. If there is a state, there will also be those who are ruled, there will be slaves. He acknowledges that according to Marxists the dictatorship of the proletariat will be temporary and brief, only an interim on the way towards the authentic liberation of the people. However, he does not underwrite this idea either. If the ultimate aim is liberty, why must people be enslaved in the first place?<sup>104</sup> Therefore, instead of a dictatorship of the proletariat or any other form of government and state, Bakunin speaks of behalf of masses and their instincts, their “everyday needs and their conscious and unconscious desires”:

We believe that the people can be happy and free only when they create their own life, organizing themselves from below upward by means of independent and completely free associations, subject to no official tutelage but open to the free and diverse influence of individuals and parties.<sup>105</sup>

In Schmitt’s view, however, it was not until Georges Sorel’s syndicalism that the theory of direct action was crystallized, because only then was it raised to the level of *myth*. According to Sorel, men who participate in great social movements always imagine the approaching action as a battle in which their cause is certain to triumph. Sorel calls these imaginative constructions myths. According to him, all great world-historical acts rely on the power of myth. Examples of such myths are the Greeks’ conceptions of fame and of the great

name, the anticipation of the Last Judgment in ancient Christianity, the belief in *vertu* and revolutionary freedom during the French Revolution and the national enthusiasm of the German war of liberation in 1813. For Sorel, a mere instinct is thus not enough. As long as there are no myths, genuinely revolutionary action is unimaginable. Admittedly, it is only from the depths of a genuine life instinct and not from reason or from pragmatic calculations that a myth can emanate. However, the myth itself is, simultaneously, a force which evokes instincts and motivates action. Moreover, it is a force which organizes action, representing it in a “coordinated picture” and giving it “maximum intensity”.<sup>106</sup> In Sorel’s view, asking who has the power to create myths today becomes the decisive political question. According to him, only the socialist masses, the industrial proletariat, have a myth in which they believe. This myth is the general strike. It is through the mythical general strike – which does not signify a temporary rupture of commercial relations but is itself a “phenomenon of war”<sup>107</sup> – that the proletariat asserts its existence.

Although a myth is a means of “framing the future”,<sup>108</sup> it should not be confused with utopia. Sorel holds that myth is indeed the complete opposite of utopia, because utopia is always an intellectual achievement, a rationalistic illusion, whilst myth refers to the instinctual immediacy of life. The effect of utopias has always been, argues Sorel, merely to direct men’s mind towards reforms, whilst myths have the power to lead men to prepare themselves for revolutionary action. As a product of the intellect, a utopia can be discussed, it can be accepted or refuted on intellectual grounds, but a myth is an indivisible totality of profound convictions. It is not accepted or refuted in a judgment of the intellect, but instinctually lived.<sup>109</sup> Moreover, a myth should not be judged by the future it portrays but as a “means of acting on the present”.<sup>110</sup> The only effective myths are only those which beget action immediately, encouraging great and heroic deeds.

In Sorel’s view, the outcome of this action is very different from a Marxist dictatorship. In the dictatorship of the proletariat Sorel sees merely a “harking back to the *ancien régime*”.<sup>111</sup> Although he begins almost always with Marx, as Schmitt observes, he does not follow the Marxists in this matter. Like Bakunin, he opposes hierarchies and centralization. The task of the revolution is not to change the state functionaries but to abolish the state and to diffuse authority throughout the workers’ own organizations. Contrary to Bakunin, however, Sorel does little to provide a post-revolutionary vision of society. For him, present action evoked by the revolutionary myths is more important than future visions. What matters is the revolution itself, not the state of affairs after it. The proletariat has, Sorel writes, “no need to make plans for utilizing its victories”.<sup>112</sup>

As already mentioned, Schmitt discovers in the Russian Revolution a concrete expression of the theory of the direct use of force based on myth. In his view, however, the mythical element in the Revolution is not only the class struggle, but also the nation. Socialism triumphed in Russia because it managed to combine the class struggle with the sentiments of national enthusiasm and resentment, directed not so much at the propertied classes as at Western intellectualism. After the Revolution, Schmitt remarks, Russia became Muscovite again. In his estimation, Lenin's greatest achievement was the interruption of the Europeanization of Russia started by Peter the Great. According to him, this shows that nationalism is a greater myth than the class struggle:

The more naturalistic conceptions of race and descent, the apparently more typical *terrisme* of the Celtic and Romance peoples, the speech, tradition, and consciousness of a shared culture and education, the awareness of belonging to a community with a common fate or destiny, a sensibility of being different from other nations – all of that tends toward national rather than a class consciousness today.<sup>113</sup>

For this reason Schmitt sees that Mussolini is stronger than Lenin. He does not need to combine the international class struggle with a nationalistic sentiment. He can appeal straight to the myth of the nation. For as much as the foundation of syndicalism outlined by Sorel is grounded in myth, so too is Fascism. In his speech of October 1922 in Naples before the March to Rome, Mussolini declared: "We have created a myth. This myth is a belief, a noble enthusiasm. Our myth is the nation, the great nation which we want to make into a concrete reality for ourselves."<sup>114</sup> In this myth, the anarchistic myth which resists all authority and unity is opposed by a new desire for order, discipline and hierarchy. For Schmitt, the winner of this battle was not without significance – he definitely preferred the desire for order, discipline and hierarchy. Nevertheless, he recognized in both of these myths a most powerful symptom of decline, not only of the absolute rationalism and the educational tyranny of the Enlightenment, but also of the relative rationalism of parliamentary thought. This is not to say that he would have perceived no danger in the irrationality inherent in mythical thought: "The last remnants of solidarity and a feeling of belonging together will be destroyed in the pluralism of an unforeseeable number of myths."<sup>115</sup> However, given that it was in Schmitt's view the "strongest political tendency today", one could not simply ignore it. And Schmitt doubtlessly belonged to those who did not.

## Footnotes

- <sup>1</sup> Schmitt, *The Concept of the Political*, p. 61. In holding this view, Schmitt agrees not only with Hobbes, de Maistre and Donoso Cortés, but of course also with Machiavelli according to whom, whoever desires to found a state (*republica*) and give it laws, must start with assuming “that all men are bad and ever ready to display their vicious nature, whenever they may find occasion for it”. Niccolò Machiavelli, *The Discourses*. In *The Prince and The Discourses*. The Modern Library 1950, p. 117.
- <sup>2</sup> Carl Schmitt, *Gespräch über die Macht und den Zugang zum Machthaber* (1954). Akademie Verlag 1994, p. 14.
- <sup>3</sup> Schmitt, *The Concept of the Political*, p. 71.
- <sup>4</sup> Schmitt, *The Concept of the Political*, p. 61.
- <sup>5</sup> Schmitt, *The Concept of the Political*, p. 77.
- <sup>6</sup> Carl Schmitt, *Der Hüter der Verfassung* (1931). J. C. B. Mohr 1931, p. 79.
- <sup>7</sup> Carl Schmitt, “Further Development of the Total State in Germany.” In Simona Draghici (ed.), *Four Articles 1931-1938*. Plutarch Press 1999, p. 22.
- <sup>8</sup> Schmitt, “Further Development”, p. 20.
- <sup>9</sup> According to Schmitt, every epoch of political thought has conceptions which almost self-evident, and in our epoch this evident conception is the superiority of democracy in comparison to other forms of state: “The history of political and state theory in the nineteenth century could be summarized with a single phrase: the triumphal march of democracy.” Schmitt, *The Crisis*, p. 22. For Schmitt, it is democracy rather than communism, as suggested by Sartre, which defines the insuperable horizon of our time.
- <sup>10</sup> Schmitt, “Further Development”, p. 23. Schmitt considered the German state a quantitative total state at the beginning of the 1930s: “The present German state is total due to weakness and lack of resistance, due to its incapacity to resist the onslaught of parties and organized interests.” Schmitt, “Further Development”, p. 23.
- <sup>11</sup> Schmitt, “Further Development”, p. 21.
- <sup>12</sup> Carl Schmitt, “Strong State and Sound Economy” (1932). Appendix in Renato Cristi, *Carl Schmitt and Authoritarian Liberalism*. University of Wales Press 1998, p. 213.
- <sup>13</sup> Schmitt, “Strong State”, p. 227.
- <sup>14</sup> Schmitt, “Further Development”, p. 22.
- <sup>15</sup> “The fascist state will again be a state of ancient probity, with visible leaders and representatives, and not the façade and antechamber of invisible and irresponsible rulers and financiers.” Carl Schmitt, “Wesen und Werden des faschistischen Staates” (1929). In *Positionen und Begriffe im Kampf mit Weimar, Genf, Versailles 1923-1939*. Duncker & Humblot 1985, p. 114.

- 16 Schmitt, “Wesen und Werden”, p. 111. Whilst admitting that universal suffrage is a part of democracy, Schmitt does not consider it the content of democratic equality but its consequence. Schmitt, *Verfassungslehre*, p. 227.
- 17 Schmitt, *Verfassungslehre*, pp. 83-84.
- 18 Schmitt, *The Crisis*, p. 17.
- 19 On Schmitt’s critique of the party state (“we do not have a total state but a plurality of total parties”) see Schmitt, “Further Development”, pp. 23-24. See also Carl Schmitt, “Das Problem der innerpolitischen Neutralität der Staates” (1930). In *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954. Materialien zu einer Verfassungslehre*. Duncker & Humblot 1958. In contrast to the party state, Schmitt defends the neutrality of the state. However, the neutrality of Schmitt’s state – or its matter-of-factness (*Sachlichkeit*) – is not, as he writes in the article mentioned second, an apolitical indifference in relation to the social groups nor a neutrality which mediates conflicts between them, but a specific political attitude. Its aim is the “interest of the whole”. Schmitt, “Das Problem”, p. 57.
- 20 Schmitt, *The Crisis*, p. 4.
- 21 Schmitt, *The Crisis*, p. 5.
- 22 Schmitt, *The Crisis*, p. 46.
- 23 Schmitt, *The Crisis*, p. 40.
- 24 See Ulrich Beck, *The Reinvention of Politics*. Polity Press 1997.
- 25 Beck, *The Reinvention*, p. 2.
- 26 Beck, *The Reinvention*, p. 3.
- 27 Beck, *The Reinvention*, p. 11.
- 28 Beck, *The Reinvention*, p. 162.
- 29 Beck, *The Reinvention*, p. 173.
- 30 Beck, *The Reinvention*, p. 165.
- 31 In romanticism, “every event is transformed into a fantastic and dreamlike ambiguity” in which “blending of every imaginable ‘antitheses’ is justified” and “everything can be substituted for everything else”. To the romantic, “there are no limits to the possibility of interpretation”. He “ironically avoids the constraints of objectivity and guards himself against becoming committed to anything”. And so on. Schmitt, *Political Romanticism*, pp. 72, 76, 77, 105, 138.
- 32 Beck, *The Reinvention*, p. 35.
- 33 Beck, *The Reinvention*, p. 35.
- 34 Beck, *The Reinvention*, p. 63.
- 35 Beck, *The Reinvention*, p. 169.
- 36 Beck, *The Reinvention*, p. 171.
- 37 Beck, *The Reinvention*, p. 65.
- 38 Beck, *The Reinvention*, p. 65.
- 39 Beck, *The Reinvention*, pp. 6, 66.
- 40 Beck, *The Reinvention*, p. 67.
- 41 Beck, *The Reinvention*, p. 6.

- 42 Beck, *The Reinvention*, p. 6.
- 43 Schmitt, *The Crisis*, p. 6.
- 44 Schmitt, *The Crisis*, p. 49-50.
- 45 Schmitt, *The Crisis*, p. 6.
- 46 Schmitt, *The Crisis*, p. 15.
- 47 Rousseau, *The Social Contract*, p. 138.
- 48 Schmitt, *The Crisis*, p. 26.
- 49 Schmitt, *The Crisis*, p. 9.
- 50 Schmitt, *The Crisis*, p. 10.
- 51 Schmitt, *Verfassungslehre*, p. 227.
- 52 “When the opinion contrary to my own prevails, this proves only that I have made a mistake, and that what I believed to be the general will was not so.” Rousseau, *The Social Contract*, p. 153.
- 53 Rousseau, *The Social Contract*, p. 153.
- 54 Schmitt, *The Crisis*, p. 14.
- 55 See Samuel Pufendorf, *Le Droit de la nature et des Gens*. E & J.R. Hourneisen 1793, book VII, chap. VI, § 8. Pufendorf thought that the same person cannot both command and obey at the same time but Rousseau, as is known, posits a divided person at the foundation of his state. The contract is still possible but this time it takes place within the person himself: the citizen as a subject obeys the citizen as sovereign, who protects him as a person (human being). Commanding and obeying do not disappear, but each commands and “obeys no one but himself”. See Rousseau, *The Social Contract*, pp. 59-62
- 56 Schmitt, *Verfassungslehre*, p. 258.
- 57 Schmitt, *The Crisis*, p. 14-15.
- 58 Schmitt, *Verfassungslehre*, p. 274.
- 59 Schmitt, *Verfassungslehre*, p. 245.
- 60 Schmitt, *Verfassungslehre*, p. 243. Even Montesquieu, whose division of power was incomprehensible to Schmitt, considered the principle of publicity and democracy inseparable from each other: “When the people cast votes, their votes should no doubt be public; and this should be regarded as a fundamental law of democracy.” Montesquieu, *The Spirit of the Laws*. Cambridge University Press 1989, p. 14.
- 61 Schmitt defines democracy as a “domination of public opinion” and emphasizes that the political nature of democracy is based on the primacy of the public over the private sphere. Schmitt, *Verfassungslehre*, p. 246-255.
- 62 Schmitt, *Verfassungslehre*, p. 245-246. According to Schmitt, the origin of this privatization has to be sought in religion, since the rise of Protestantism paved the way for the decline of the political (representative) function of the Church and for the rise of a private – immediate – relationship with God: “If religion is a private matter, it also follows that privacy is revered.” Schmitt, *Roman Catholicism*, p. 28.
- 63 Schmitt, *The Crisis*, p. 27.

- 64 Schmitt, *The Crisis*, p. 27
- 65 Schmitt, *The Crisis*, p. 28-29.
- 66 Schmitt, *Verfassungslehre*, pp. 206-207, 214.
- 67 Schmitt, *Roman Catholicism*, p. 27.
- 68 Schmitt, *Verfassungslehre*, p. 207.
- 69 Schmitt, *Verfassungslehre*, p. 209.
- 70 Schmitt, *Verfassungslehre*, p. 210.
- 71 Schmitt, *Verfassungslehre*, pp. 208-216. In *The Roman Catholicism and Political Form* Schmitt had argued that today the only truly representative institution left is not the state but the Roman Church. That which is represented by the Church is, of course, Jesus Christ, whose “revolutionary” idea is thus given a visible and stable form and institution. See Schmitt, *Roman Catholicism*, pp. 18-26.
- 72 Schmitt, *Verfassungslehre*, p. 237.
- 73 Plato, *Laws*. In John M. Cooper (ed.), *Complete Works*. Hackett Publishing Company 1997, 693d-e.
- 74 See for instance Andreas Kalyvas, “Carl Schmitt and the Three Moments of Democracy.” *Cardozo Law Review*. Vol. 21:1597, 2000, pp. 1525-1565. The problem in Kalyvas’ analysis is that he identifies Schmitt’s concept of *Volk* with that of multitude. In reality, *Volk* and multitude are, as we will see below, opposites in Schmitt’s theory. Where *Volk* appears, multitude disappears.
- 75 Emmanuel Sieyès, *Qu’est-ce que le tiers-état*. Flammarion 1988, chap. 5. In Schmitt’s view an analogical distinction can be found in metaphysics in the work of Baruch Spinoza, whose thought is based on the distinction between creative nature (*natura naturans*), consisting of the attributes of substance expressing God, and created nature (*natura naturata*), consisting of the modi of God’s attributes. See Spinoza, *Ethics*, pp. 25-26. However, the analogy is only apparent, because Schmitt’s constituent power is transcendent in relation to constituted power, whilst the relationship between *natura naturans* and *natura naturata* is absolutely immanent.
- 76 Schmitt, *Verfassungslehre*, p. 238.
- 77 Schmitt, *Verfassungslehre*, p. 207.
- 78 Schmitt, *Verfassungslehre*, p. 207.
- 79 Schmitt, *Verfassungslehre*, p. 276-277.
- 80 In *Roman Catholicism and Political Form* Schmitt writes: “To the political belongs the idea, because there is no politics without authority and no authority without an ethos of belief.” Schmitt, *Roman Catholicism*, p. 17.
- 81 Schmitt, *Verfassungslehre*, p. 207.
- 82 Schmitt, *Verfassungslehre*, p. 83.
- 83 Schmitt, *Verfassungslehre*, p. 243-244.
- 84 Schmitt, *Verfassungslehre*, p. 210.
- 85 Schmitt, *Verfassungslehre*, p. 247.
- 86 Schmitt, *The Crisis*, p. 25.

- 87 Schmitt, *Verfassungslehre*, p. 210.
- 88 Schmitt, *Der Hüter der Verfassung*, p. 159.
- 89 Schmitt, *The Crisis*, p. 52.
- 90 Schmitt, *The Crisis*, p. 53.
- 91 Schmitt, *The Crisis*, p. 54.
- 92 Schmitt, *The Crisis*, p. 56.
- 93 Schmitt, *The Crisis*, p. 59.
- 94 For this reason, argues Schmitt, Marx continued to look for positive determinations of the bourgeoisie. The bourgeoisie must be properly known, because a full consciousness is the criterion for the beginning of a new stage of development. It is also for this reason, and not because he would have been trapped in a classical and therefore bourgeois political economy, that Marx had to concentrate his analysis on economy. Because the essence of the bourgeoisie lies in the economic, “Marx has to follow it into the economic realm in order to understand it fully and in its essence”. Schmitt, *The Crisis*, p. 62.
- 95 Schmitt, *The Crisis*, p. 61.
- 96 Schmitt, *The Crisis*, p. 63.
- 97 Schmitt, *The Crisis*, p. 63.
- 98 Schmitt, *The Crisis*, p. 66.
- 99 Schmitt, *The Crisis*, p. 64.
- 100 Mikhail Bakunin, *Statism and Anarchy*. Cambridge University Press 1990, p. 133.
- 101 Bakunin, *Statism and Anarchy*, p. 135.
- 102 Bakunin, *Statism and Anarchy*, p. 134.
- 103 Bakunin, *Statism and Anarchy*, p. 177.
- 104 Bakunin, *Statism and Anarchy*, p. 179.
- 105 Bakunin, *Statism and Anarchy*, p. 136.
- 106 Georges Sorel, *Reflections on Violence*. Cambridge University Press 1999, p. 118.
- 107 Sorel, *Reflections*, p. 279.
- 108 Sorel, *Reflections*, p. 116.
- 109 Sorel, *Reflections*, p. 28-29.
- 110 Sorel, *Reflections*, p. 116.
- 111 Sorel, *Reflections*, p. 162.
- 112 Sorel, *Reflections*, p. 161.
- 113 Schmitt, *The Crisis*, p. 75.
- 114 Schmitt, *The Crisis*, p. 76.
- 115 Schmitt, *The Crisis*, p. 76.



## 6. THE *NOMOS* OF THE EARTH

Once again men have to orient thinking towards the elementary order of their terrestrial being. We are seeking for the meaning (*Sinnreich*) of the earth.

Carl Schmitt, *Der Nomos der Erde*

Usually Schmitt's thought is divided into two phases, the decisionist phase and the phase which begins approximately in 1933, called "thinking of the concrete order". However, we must remember that Schmitt had attempted to think about concrete order from the very beginning of his career. Already in *Political Theology*, he has called his decisionist approach a philosophy of concrete life. In 1934 he merely reached the conclusion that reflection which overemphasizes the act of decision does not fulfill the precondition of concreteness in the philosophy of concrete life but, on the contrary, floats like the normativist norm, "freely in the air".<sup>1</sup> Therefore, he replaces both of these approaches with a supra-personal perspective. Its point of departure is neither the personal decision nor the impersonal and objective norm, but the concrete institutional order and its historical development.<sup>2</sup> For Schmitt, institutionalism now becomes the third and the superior form of juridical thought, and Maurice Hauriou, instead of Kelsen and Hobbes, its most typical representative.

Schmitt's institutionalism is not only a counter-concept to decisionism and normativism. It also implies a form of juridical and political thinking whose point of departure is no longer the state and its monopoly on politics. Right from the start in the 1930's, Schmitt saw that the "epoch of the states" was coming to an end. On the one hand, this decline was linked with the democratic principle of identity that led to the blurring of the state and society and to the appearance of the quantitative total state.<sup>3</sup> On the other hand, its root could be found in the rising National-Socialist movement. It was, as we have already seen, the triumph of National-Socialism, which alienated Schmitt from decisionism. For him, the type of juridical thought which is dominated by the opposition between norm and command, between *Lex* and *Rex*, cannot comprehend the

idea of *Führer*.<sup>4</sup> Schmitt sometimes perceived a possibility for the revival of the traditional state in Italian fascism. For the fascistic qualitative total state was still, in Schmitt's view, the constitutive instance of the political insofar as it was capable of genuine representation. Nevertheless, the triumph of the national-socialist idea of the Leader and the Movement was a strong indication that the state was becoming a receding form: "The state – as a specific order within the political unity – no longer has a monopoly on politics. It is nothing but an organ in the service of the Leader of the Movement."<sup>5</sup> When Hitler became chancellor Schmitt wrote: "One can say that on that day 'Hegel died'."<sup>6</sup> Hitler's death, however, did not entail a rebirth of the state. In the preface to the fourth edition of *The Concept of the Political* written in 1963 Schmitt still emphasizes that the state, "the paradigm of political unity, the possessor of an unbelievable monopoly, namely the monopoly on the political decision, this masterpiece of European form and Western rationalism", has been dethroned.<sup>7</sup> As a result, Schmitt sought to outline an approach which would have no connection with the modern state. According to him, this could not signify the exclusion of the concept of the state only, but also of all the secularized political concepts linked with it, and created by the European tradition of thought and international law during the last four centuries.<sup>8</sup>

It is not clear whether Schmitt regarded the concept of institution as a concept which does not belong to this tradition. In any case, it was in the idea of supra-personal institution that he rediscovered the concreteness lacking in normativism and decisionism. If decisionism emphasized the momentary strike of the concrete, the absolute moment of the concrete decision, which bestowed the necessary materiality upon the abstract and pure norm, the emphasis in the institutional reflection is on the historical continuity of the concrete. A dead, abstract norm does not require the life and concreteness provided by decision, since they can both be replaced by the concept of institution, and more precisely, by the total concept of *nomos*, which consists of the concrete order and the concrete organization of a community.<sup>9</sup> *Nomos* is not imposed by decisions and norms. In fact, it is not imposed at all but "arises from unintentional developments".<sup>10</sup> *Nomos* is a product of a long historical development and hence it "must not be separated from its history".<sup>11</sup> In contrast to normativist interpretation of law, *nomos* does not denote something that should be (*Sollen*), but something that is (*Sein*). In Schmitt's view, *nomos* is the totality of the conditions prevailing in a political, social and religious order. *Nomos* is, as Aristotle says when he reflects on it, the entire order (*axis*) of polis.<sup>12</sup> It is an immediate (*unmittelbar*) expression of the existing state of things. Admittedly, also decisionism emphasizes the world of *Sein*. However, in the decisionist approach the world of *Sein* is defined by the real possibility of *bellum omnium contra omnes* and by the sovereign decision, which creates

order out of this chaos. In the concrete order thinking of *nomos* the world of *Sein* is defined, instead, by the unity of the spatial order (*Ordnung*) and the localization (*Ortung*) of a particular community: “*Nomos* is the immediate figure [*die unmittelbare Gestalt*] in which the political and social order of a people becomes spatially visible.”<sup>13</sup>

Every fundamental order [*Grundordnung*] is a spatial order [*Raumordnung*]. To talk of the constitution of a country or continent is to talk of its fundamental order, of its *nomos*.<sup>14</sup>

At the first sight, this turn towards *nomos* would seem to signify that Schmitt is abandoning the idea of the openness of order towards transcendence and moving instead in the direction of a more or even completely immanent approach. On the other hand, it should be remembered that although institutionalism based on a philosophy of *nomos* does not emphasize a constitutive act or a founding instance of a system of norms, but the historical continuity of the concrete, Schmitt does not abandon the search for the origins. All continuity presupposes an origin, and in the case of *nomos* this origin is the original act (*Ur-akt*) of land-appropriation (*Landnahme*). In other words, the order closing upon itself finds a new opening in appropriation, in this new “state of exception” which interrupts the absolutization of immanence. Hence, land-appropriation becomes a new decisionist moment and simultaneously the *constitutive* act of a concrete spatial order (*Raumordnungsakt*): “The grand original acts of law [*Recht*] are the settlements [*Ortungen*] tied to the land. These are: land-appropriations, the founding of cities and colonies.”<sup>15</sup>

For Schmitt, land-appropriation is the “original constitutive act which organizes a space”.<sup>16</sup> It is *ordo ordinans*, the first measure which includes all the subsequent measures. The very possibility of juridical relations is dependent upon this original act and determined by this original measure (*Ur-Mass*): “Every ontological judgment arises from the land.”<sup>17</sup> Land-appropriation is the most radical legal title there is, the radical title in all possible senses of the term. It is the original legal type (*Ur-typus*), which founds all subsequent law.<sup>18</sup> Hence, it is also the constitutive historical act of *legitimacy*, without which the legality of law would be senseless. It precedes all the fundamental distinctions of law, such as the distinction between public and private law, even the distinction between public power (*imperium*) and private property (*dominium*). In fact, it is the first historical condition of possibility of property as such to the extent that all property presupposes that land has been appropriated, which establishes a kind of supreme property of the community: “Every appropriation establishes on the inside a kind of supreme property (*Obereigentum*) of the community as a whole.”<sup>19</sup> However, land-appropriation

tion is not the historical condition of possibility of law only with respect to the inside of the community. It establishes the law beyond its borders as well, that is, with respect to other peoples. It establishes the historical condition of possibility of the law of nations.

Schmitt does not claim to be alone in referring to land in his search for the foundation of law. For instance Locke, who is usually regarded as a modern rationalist, also saw the law as land-bound: “The Government has a direct Jurisdiction only over the land.”<sup>20</sup> Similarly Kant, who is considered one of the intellectual fathers of legal positivism, holds land to be the concrete origin of law.<sup>21</sup> According to Schmitt, the historical destiny of law nevertheless shows that in being transformed into mere rules (*Gesetz*), it has gradually become detached from this original and legitimating element. In addition to its meaning as a concrete order, it has lost the power that makes human *orientation* possible – since, for Schmitt, *Ortung* does not mean only localization, but also the possibility of orientation in the world. Consequently, the state whose legitimacy is based on the validity of these rules, on abstract legality, has become a centralized and nihilistic apparatus of power. According to Schmitt, not even *Lebensgesetz*, that is, the norm of life, which appeared as a critique of the formal law at the beginning of the 20<sup>th</sup> century, can capture the original meaning.<sup>22</sup> It is based on a combination of life and law in which the biological process of life expresses the real content of law. Instead of life, the point of reference of Schmitt’s *nomos* is land (“*Das Recht* is land-bound and refers to land”<sup>23</sup>). More precisely, it refers to the appropriation of land, to the measure that this land appropriation makes possible, to the order created by this measure, and to the form of this “political, social and religious order”.<sup>24</sup> “Land, measure, order and form”, for Schmitt these are the four founding elements of any concrete spatial entity.

In Schmitt’s view, the greatest historical-intellectual mistake of Western civilization is that it substituted law as concrete order (*nomos*) with law as a mere rule (*Gesetz*).<sup>25</sup> Although this substitution becomes explicitly manifest in modern legal positivism and normativism, the decline of law is tied to a long historical continuum. Already the Sophists, Schmitt observes, invited the confusion in opposing *physis* to *nomos*. They interpreted *nomos* to as something external and opposed to nature and life. It thus lost the character of a concrete order, becoming a kind of unnatural rule; not a fact of life (*Sein*) but a prescription of how things should be (*Sollen*). And although Plato, for one, criticized the Sophists, he nevertheless shared their concept of *nomos* as a mere rule (*schedon*). It did not designate the concrete order of men but an artificial rule above them. For Plato, *nomos* is like

a self-willed and ignorant person, who allows no one to do anything contrary to what he orders, not to ask any questions about it, not even if, after all, something new turns out for someone which is better, contrary to the prescription which he himself has laid down.<sup>26</sup>

Only a person is capable of deciding wisely, whilst *nomos* is “torpid by repetition”, as Schmitt might have remarked in the 1920’s. However, since his turn towards the thinking of concrete order means that *nomos* is no longer a rule but an order, he turns from Plato to Aristotle. In Aristotle’s political thought Schmitt finds a more original definition of *nomos*, according to which *nomos* is the concrete spatial order (*taxis*) of a community. Given that Schmitt also approves of Aristotle’s juxtaposition of *nomos* with the voted resolution (*psaphisma*),<sup>27</sup> it is obvious that he has abandoned the people’s will as the foundation of constitution. As explained above, Schmitt had thought in *Verfassungslehre* that acclamation produces the law (*lex est quod populus jussit*) in democracy. However, in *Der Nomos der Erde* he seems to have retracted this view, arguing now that acclamation is the very opposite of law. True law, that is to say *nomos*, is not the result of acclamation, but of the concrete order of a community, and more originally, of the appropriation of land.

In fact, Schmitt claims that the principal literal meaning of the Greek *nomos* is appropriation. He correctly notes that the noun *nomos* derives from the verb *nemein*, proposing that *nomos* is a *nomen actionis* of *nemein* in the same sense as *logos* is a *nomen actionis* of the verb *legein*. However, this does not explain why appropriation is the principal meaning of *nomos* given that usually *nemein* is translated as division or distribution. In his explanation, Schmitt detects a linguistic relationship between the Greek verb *nemein* and the German verb *nehmen*: “Nemein’ is the equivalent of the German ‘nehmen’, to take.”<sup>28</sup> As the Greek “legein-logos”, that is, “to speak-speech”, corresponds to the German “sprechen-Sprache”, so too, argues Schmitt, the German “nehmen-Nahme” corresponds to the Greek “nemein-nomos”.<sup>29</sup> On the other hand, although Schmitt considers appropriation to be the principle meaning of *nomos*, it retains in his view as its secondary meaning that which is usually understood by *nemein*, namely to distribute. In other words, *nomos* signifies to divide (*teilen*) – to distribute that which has been appropriated. After the land has been appropriated, it is divided and distributed. Its concrete result is the *Ur-teil*, the original part and share: “Hence also the second sense of ‘nomos’, the basic division and repartition of the soil and the resulting ownership order.”<sup>30</sup> *Nomos* is a decision or a judgment (*Urteil*) in which every member of a community gets his share. Or, as for instance Hobbes was still able to assert in the 17<sup>th</sup> century:

Seeing therefore the Introduction of Propriety is an effect of Common-wealth; which can do nothing but by the Person that Represents it, it is the act only of the Sovereign; and consisteth in the Lawes, which none can make that have not the Sovereign Power. And this they well knew of old, who called that *Nomos*, (that is to say, *Distribution*), which we call Law; and defined Justice, by *distributing* to every man *his own*.<sup>31</sup>

Schmitt does not stop here. In addition to appropriation and distribution, *nemein* contains a third meaning, to pasture (*weiden*). After the land has been appropriated and divided, it has to be cultivated and made to bear fruit. In this case *nomos* receives its content from the manner of production of goods:

The search for pasture and the tending of animals, which nomads like Abraham and Lot pursued; Cincinnatus ploughing his field; the shoemaker Hans Sachs at work in his shop; the industrial work of Friederich von Krupp in his factory – all this is *nemein* in the third sense of our word: to pasture, to run a household, to use, to produce.<sup>32</sup>

In other words, even though land-appropriation is the original act of *nomos*, one should not consider the way of production – or even the consumption of the produced goods – as insignificant in relation to the concrete order. In every stage of social life, in every economic order, in every period of legal and political history until now, things have somehow been appropriated, distributed and produced. Therefore, Schmitt states that in order to grasp the meaning of a certain historical *nomos*, of a certain social, political and legal order, we only need to ask a simple question: “Where and how was it appropriated? Where and how was it divided? Where and how was it produced?”<sup>33</sup>

Yet in the sequence of events of *nomos*, production is merely the final one. It follows the more primary acts of appropriation and distribution. Prior to production and consumption, there has to be an act by means of which land – or whichever of the other classical elements, insofar as in modernity land is first replaced by the appropriation of the sea, then of the air space and finally of “fire” (“appropriation of industry”) – is appropriated, and subsequently, the division of that which has been seized. After that comes production. According to Schmitt, precisely the sequence of these processes is crucial. He criticizes specifically the socialist theorists for having forgotten this order of priority inasmuch as they focus merely on distribution and production. Yet Schmitt sees in socialism still a doctrine of distribution, whilst many non-socialist “doctrinaire thinkers” have abandoned even the problem of distribution altogether, regarding it as “too difficult” to solve.<sup>34</sup> For the latter, there remains

only production. In Schmitt's view, however, it would be utopian to construe social and economic systems solely in terms of production:

If there were only problems of production and if mere production created such wealth and unlimited possibilities of consumption that appropriation as well as distribution were no longer problematic, then economic systems would cease to exist because they always presuppose a certain scarcity.<sup>35</sup>

The French Hegelian Alexander Kojève, who believed that we are witnessing the end of history, considered modern enlightened capitalism a “bestowing capitalism”. Schmitt's critical response to Kojève was that only God can genuinely bestow, that is to say, “to give without appropriating”.<sup>36</sup> For Schmitt, like for Marx, capitalism is necessarily exploitative, but this exploitation is not a contingent element that we can rid ourselves of in an earthly paradise to come. All economic systems are based on “exploitation”, in other words, on the original act of appropriation – although in the late modern capitalism the target of appropriation is not primarily land but, as already said, industry (*Industrienahme*).

### *Smooth and striated*

For Schmitt, *nomos* signifies above all delimitation, setting of boundaries. There is no *nomos* in the sense of a meaningful concrete order without boundaries, without a ring drawn in the soil. A spatial enclosure, a sort of fence, is in the foundation of every *nomos*: “The enclosing ring, the fence formed by men, the men-ring, is the original meaning of the cultic, juridical and political living together.”<sup>37</sup> Without the enclosure there would be no order, since there would be no distinction between inside and outside, between private and public, *imperium* and *dominium* – no guideline, which would make meaning and orientation possible, but only *nomos*-inimical nothingness. Schmitt quotes Nietzsche: “With strong shoulders space [*Raum*] opposes the *nothingness* [*Nichts*]. Where there is space [*Raum*], there is being [*Sein*].”<sup>38</sup> If *nomos* means the dividing of space, the space itself is already always a divided space: “True and authentic fundamental order”, that is to say *nomos*, “is based, at its essential core, on certain spatial limits and delimitations, on certain measures and a certain partitioning up of the earth.”<sup>39</sup> From this perspective it is conceivable that, for Schmitt, a limitless domination by a Superpower would be as dangerous as total chaos and limitless anarchy. In both cases the delimitation as a precondition of order and consequently, of orientation, disappears. Then all peoples would live like the Jews, who “without land, without the state and

without the church exist only through ‘law’ [*Gesetz*]”.<sup>40</sup> The decision of the Jewish people to believe in its existence also in the framework of soil and the state of Israel, whose constitution was apparently planned on the basis of Schmitt’s *Verfassungslehre*,<sup>41</sup> does not, however, change the fact that there are and always have been communities whose way of life has not depended on spatial delineations and limits and whose principles of localization and orientation have been different.

From the perspective of the philosophy of concrete life, the originality of Gilles Deleuze’s political thought is obvious in this respect. According to him, a measured and delimited space within enclosed borders – a striated space (*l’espace strié*) – is merely one way of being possible for collective human existence. He considers this way of being typical of the Western political tradition in particular, of the tradition dominated by the idea and practice of the “State”: “One of the fundamental tasks of the State is to striate the space over which it reigns.”<sup>42</sup> For him, the notion of the State does not designate merely the historical form of the state, which emerged in the 16<sup>th</sup> century, but first and foremost a specific principle of order, materialized in the ancient *polis* and the Oriental despotic regimes, as well as in the modern states. In Deleuze’s view, in addition to the tradition of the State, however, there exists also another tradition. His focus here is not the Jewish tradition, which represents the paradigmatic case of stateless existence for Schmitt,<sup>43</sup> but the tradition of the *nomadic* way of life. For Deleuze, a nomad is not someone who has not yet assumed the State-form but, on the contrary, someone who ceaselessly resists it.<sup>44</sup> Instead of the striated space, a nomad inhabits a smooth space (*l’espace lissé*), where orientation takes place according to *events*, *intensities* and *relations* instead of measures and delimitations. For Deleuze, the smooth space is in fact the original space of *nomos*. It is only in relation to this space that the enclosed State space and the State law can develop.

In other words, Deleuze distinguishes, like Schmitt, *nomos* from the modern law. *Nomos* is neither a rule nor a command – it is an immediate spatial order. In fact, Schmitt’s formulation according to which *nomos* is an “immediate plenitude, which does not pass through the mediation of the law [*Gesetz*]”,<sup>45</sup> sounds perfectly Deleuzian.<sup>46</sup> However, Deleuze would not agree with Schmitt that *nomos* as an immediate plenitude is the original juridical force, which legitimates the legality of law in the enclosed space of a political entity. His *nomos* eschews enclosed spaces. Admittedly, also Schmitt emphasizes every now and then that his concept of space must not be understood as an enclosed ring. According to him, space signifies neither an enclosed ring nor a district but a *world* – and this world is not an empty space or in an empty space. It is a world “fulfilled by the tension between different elements”, that is, between land, sea, air, and fire.<sup>47</sup> Nevertheless, for him, there exists no *nomos* without

a delimitation of this worldly space, without a distinction between inside (order and localization) and outside (disorder and delocalization). *Nomos* is precisely the result of this distinction, the result of the act of demarcation. It does not undo the tension between the elements but on the contrary, it is the precondition for the latter, and therefore, for the existence of a world.

In Deleuze's view, the Schmittian order of *nomos* would perhaps correspond to what he calls "an archaic imperial State apparatus" to the extent that this State is based on an act of appropriation – or of capture, as Deleuze has it. Moreover, like Schmitt, who considers the original order of *nomos* to be almost diametrically opposed to the modern law state, also Deleuze contrasts the "archaic imperial State" with another, historically more recent State-form. In this case, political sovereignty is not exercised by means of capture, but by means of treaties, pacts and contracts. Contrary to Schmitt, however, Deleuze does not consider these two types of States antithetical but emphasizes that every concrete State has always been a combination of both, that is, of the "fearsome magician-emperor" operating by capture and of the "jurist-king" proceeding by treaties and contracts.<sup>48</sup> Deleuze acknowledges that historically the magician-emperor is an earlier figure and consequently, the archaic imperial State apparatus of capture becomes a certain kind of an *Urstaat*. In Schmittian terms, it is a State which precedes all the fundamental distinctions of law, such as the distinction between public and private law and even the distinction between public power (*imperium*) and private property (*dominium*): "For private property cannot arise on the side of the emperor-despot."<sup>49</sup> In an imperial regime, everything is public. But this does not imply that the archaic imperial State would exhaust the original meaning of *nomos*, whilst the subsequent contract-and-law State of the jurist-king would be alienated from it. For Deleuze, *nomos* is not the order (*taxis*) of the *Urstaat* or that of the ancient polis or finally, the order of the modern *Rechtsstaat*. It is an order outside the *polis* and all the other State-forms. If Schmitt shared the Aristotelian view, according to which man outside an enclosed political community (*polis*) is either a beast or a God,<sup>50</sup> Deleuze outlines another kind of political form of being together starting from the outside.

Although the archaic imperial State apparatus of capture represents a certain kind of *Urstaat* for Deleuze, in his view there exists no State which would not require appropriation. But unlike for Schmitt, for Deleuze appropriation does signify the original historical event founding the State, because he argues that there have been States always and everywhere. Appropriation is not the original *Ur-akt*, but a functional necessity in order for the State apparatus to operate.<sup>51</sup> However, the State is not only an apparatus of appropriation but, just like Schmitt's *nomos*, one of distribution as well. Moreover, the State distributes in the same way as Schmitt's distributing *nomos*, that is, by means

of measure: “A distribution of this type proceeds by fixed and proportional determinations which may be assimilated to ‘properties’ or limited territories within representation.”<sup>52</sup> The State measures land – or sea, or outer space – and divides it according to measure. In Schmitt’s view, measure is the means by which that which is appropriated can be distributed, and therefore it is indispensable for the coming into being of *nomos*. As for Deleuze, measure – and distribution according to measure – is again a principle of order of the *nomos*-opposed State.

This is not to say that the Deleuzean order of *nomos* would abolish dwelling. Also a nomad dwells and inhabits, but he does not inhabit by measuring out a closed space. He “fills a space”, that is, he inhabits it by distributing and disseminating *himself* over an open space just like a herd distributes itself over a pasture without borders: “It is a very special kind of distribution, one without division into shares, in a space without borders or enclosure.”<sup>53</sup> As mentioned, Deleuze calls this space smooth. For Schmitt, such a space would not be a space at all, but a meaningless nothingness without the possibility of orientation. Deleuze agrees that there are no visible and disjunctive borderlines in such a space. But in his view this does not signify that orientation would be impossible. In a smooth space, orientation is based on a totality of visually limited non-disjunctive relations:

There is no line separating earth and sky; there is no intermediate distance, no perspective or contour; visibility is limited; and yet there is an extraordinarily fine topology that relies not on points or objects but rather on *haecceities*, on sets of relations – winds, undulations of snow or sand, the song of the sand or the creaking of ice.<sup>54</sup>

Smooth space is directional rather than dimensional, an intensive rather than an extensive space, a space of distances, not of measures and properties. It is a tactile and sonorous rather than a visual space. Naturally, this does not mean that visual perception would become impossible, only that it is not based on measures and properties but on “symptoms and evaluations”. Whilst striated space is canopied by the sky as measure and by the measurable visual qualities deriving from it, smooth space, on the contrary, is inhabited by measureless events and intensities, perceived to the extent that one affects them, is in “touch” with them.<sup>55</sup>

Schmitt’s attitude towards the non-delimited space can be illuminated through the example of the high seas. Schmitt perceives the high seas as a meaningless chaos of non-spatial emptiness, because “in the high seas there are no barriers, no frontiers, no sacred places, no sacral localization [*sakrale Ortung*], neither law nor property”.<sup>56</sup> The sea has no character in the original

sense of the word, which derives from the Greek *charassein*: to engrave, to inscribe: “The sea is free.”<sup>57</sup> It does not follow from this that Schmitt would consider the high seas impossible to appropriate. On the contrary, he emphasizes that they were appropriated in the Age of Discovery – although in his view the result of this act was a system of commerce, not the birth of a new political order. According to Deleuze, however, the sea was not “free” even before its appropriation. It was inhabited, but not by means of striation. In the same vein as Schmitt, Deleuze locates the origin of the maritime striation in the Age of Discovery, emphasizing in particular the role of the modern techniques of navigation:

Maritime space was striated as a function of two astronomical and geographical gains: bearings, obtained by a set of calculations based on exact observations of the stars and the sun; and the map, which intertwines meridians and parallels, longitudes and latitudes, plotting regions known and unknown onto a grid.<sup>58</sup>

Before its striation, however, the sea was already inhabited by means of a nomadic system of navigation based on the immanent determinations of the sea itself, that is to say, by means of evaluations concerning the intensities of the sea: “The wind and noise, the colors and sounds of the seas.”<sup>59</sup> It was occupied in the nomadic way and not in that of the State. The world history is not, therefore, a history of land – sea, outer space – appropriations for Deleuze. Rather, it is the history of a battle between two forms of life, between State-existence and nomad-existence, between appropriation and distribution by measure and a very special kind of distribution: “One without division into shares, in a space without borders or enclosure.”<sup>60</sup>

Of course, the whole picture is much more complex insofar as also Schmitt distinguishes between two types of powers, the terrestrial powers and the maritime powers. Terrestrial powers – corresponding to the Deleuzian States – striate the seas, but only in order to appropriate overseas lands. Maritime powers, instead, appropriate overseas lands in order to control the seas. For Schmitt, the imperial England is a paradigmatic case of a maritime power, because it turned its whole collective existence seawards and centered it on the element of sea.<sup>61</sup> It did not striate the sea like a State but inhabited it smoothly like a nomad. It did not work like a net (“apparatus of capture”) for catching fish, but it became a fish itself: “Like a fish, it was able to swim to another point of the globe.”<sup>62</sup> It was not, however, the endpoint which mattered but the route between the points, not the lands which were appropriated but the smooth spaces between the lands. England began to think, as Schmitt writes, in terms of “lines of communication”.<sup>63</sup> According to Deleuze, it is precisely in the relation between the point and the line where the difference between

the smooth and the striated can be seen: “In the case of the striated, the line is between two points, while in the smooth the point is between two lines.”<sup>64</sup> Hence England became, from Schmitt’s perspective, a perfect nomadic tribe, a nomadic “war machine”, and the more nomadic it became, the less it remained an enclosed political entity, becoming finally a global nomadic Empire.

Moreover, also Deleuze emphasizes that in addition to the tendency to striate smooth space, for instance “as a means of communication in the service of striated space”,<sup>65</sup> the State has a tendency to occupy and even to *produce* the smooth space. Instead of striating space, the State, especially the contemporary technological state, occupies it – like Schmitt’s imperial England – in perpetual motion: “One no longer goes from one point to another, but rather holds space beginning from any point.”<sup>66</sup> However, Deleuze refuses to see this as a victory for the nomadic way of life, insisting that the State produces the smooth space “for the purpose of controlling striated space more completely”.<sup>67</sup> The State cannot be nomadic. It can only use the nomadic tactics as a means of striation in the same way as it uses the nomadic “war machines” as a means of land appropriation. It does not matter whether the State is a global Empire, because Empires are also States even though their form of striating space is different, for instance, from that of the modern states. In other words, the difference between Schmitt and Deleuze remains, and it remains primarily because in Schmitt’s view human existence presupposes a delimited state, the space of a walled *polis*. Where there is spatial enclosure, there is being. In the absence of enclosure there is nothingness. Of course Schmitt holds that there are many methods of building a “wall” and many different forms of organizing political and even commercial communities. From Deleuze’s perspective, however, Schmitt’s reasoning is flawed. Also Deleuze distinguishes Empires from the ancient *poleis*, the modern states, the archaic imperial states and the law states, but there exists also a form of life that is not destined to become included in the series of State-forms, namely the nomadic form of life. It may be a violent one, as his allusions to war machines suggest, and it may be without delimitations, but it is not merely a chaotic precondition for the formation of the State. The nomadic form of life is not an “extreme case”, confirming the rule, that is, the State-form. Neither is the nomadic space an empty space, which legitimates spatial delimitation. The nomadic form of life is a rule, but another rule. Its space is furnished, but with other elements. From Schmitt’s perspective – from the perspective of the State – it might seem that orientation would be impossible here, but it is impossible only for someone who identifies the possibility of orientation with spatial limits and delimitations, with certain measures and a certain partitioning of the earth.

## 6.1 JUS PUBLICUM EUROPAEUM

For Schmitt, the world history is a history of land appropriations. The first stage of this history lasted until the 16<sup>th</sup> century when the concrete, purely terrestrial and land-bound *nomos* began to decline. Before that, every great empire conceived of itself as the center of the world, as the *kosmos*, and perceived its own space as a room of peace while the outside world was either considered a “strange curiosity” or identified with war and chaos. According to Schmitt, this was the case in Classical and Hellenistic Greece, the Roman republic and Empire, and the Medieval Christian world. The first *nomos* was therefore not genuinely global but rather what the Greeks called *oikoumene* (the Greek world as opposed to barbarian lands).<sup>68</sup> The decline of this land-bound *nomos* was linked to the Age of Discovery and the appropriation of the seas. Until the end of the Middle Ages the world ended where the sea began. Now the sea became an essential element in the *nomos* of the earth. However, the new *nomos* was not based on the sea. Rather, it was based on a new kind of equilibrium between the closed land and the open sea – an equilibrium that became a fundamental characteristic of *Ius publicum Europaeum*, the international law of the European states from the end of the 16<sup>th</sup> until the beginning of the 20<sup>th</sup> century.

According to Schmitt, *Ius publicum Europaeum* was essentially linked with the emergence of the juristically rationalized and sovereign territorial state. First, it created coherent international jurisdictions by placing feudal, territorial, estate and church rights under the centralized legislation, administration and judiciary of a territorial ruler. Second, it put an end to the European civil war between churches and religious parties, thereby neutralizing confessional conflicts within the state through a centralized political unity. Third, on the basis of the internal political unity, the state constituted within and of itself a closed area with fixed borders, allowing a specific type of foreign relations with other similarly organized territorial orders to emerge.<sup>69</sup> Thus arose, writes Schmitt, “the spatially self-contained – unburdened with the problems of estates, church and religious civil wars – impermeable territorial order of the ‘state’.”<sup>70</sup>

The state became the agency of a new order in international law, whose spatial structure was determined by and referred to the state. International law became the law between states. The law between states created new frameworks for peace and war. The Medieval limitless war of annihilation based on the principle of *justa causa* – justified cause to wage war – was replaced with what Schmitt describes as a rationalized and humanized, juristically limited warfare.<sup>71</sup> According to him, the first presupposition of the rationalized and regularized warfare was that the right to warfare was restricted to the sovereign

states: “Only states as self-contained units face one another as enemies.”<sup>72</sup> The second was that this right could be applied upon without any restrictions – without a demand that a war be just: “Regular war, as to its effects, is to be accounted just on both sides”, as Emmerich de Vattel, a prominent theorist of *Ius publicum* wrote in *The Law of Nations* (1758).<sup>73</sup> In a regular war, whatever is permitted to one party is permitted to the other: “Wars between states cannot be measured with the yardstick of truth and justice.”<sup>74</sup> With the mutual recognition of this right (*jus ad bellum*), the emphasis shifted from the issue of the justness of war to law in war (*jus in bello*). In the framework of *Ius publicum Europeum*, law in war signified, on the one hand, that the in-between situation of neither war nor peace was excluded and the state of war was distinguished from the state of peace by the declaration of war and the peace treaty. On the other hand, it signified that only the armed soldiers of sovereign states – understood as public persons (*personae publicae*) – waged war, whereas civilians remained outside of it. The uniform distinguished the soldiers from the civilians, and the enemy soldier was no longer considered as a heathen whose killing was a moral duty. In other words, like the Medieval idea of a just cause to wage war, which was replaced with the right of a sovereign state to warfare – and with the right not to wage war to the extent that the “war in form” made it possible for a third party to remain neutral – the discriminatory concept of the enemy without rights (*hostis criminalis*) was replaced with the indiscriminating concept of the just enemy (*justus hostis*). Or, as Schmitt himself writes:

Post-medieval European international law from the 16<sup>th</sup> to the 20<sup>th</sup> century sought to repress the *justa causa*. The formal reference point for the determination of a just was no longer the authority of the Church in international law but rather the equal sovereignty of states. Instead of *justa causa*, the order of international law between states was based on *justus hostis*. Any war between states, between equal sovereigns, was legitimate. On the basis of this juridical formalization, a rationalization and humanization – a bracketing – of war was achieved for 200 years.<sup>75</sup>

The concept of war in form characteristic of *Ius publicum* included, however, only the land and the wars which were waged on land. The sea, which was nevertheless a part of the global *nomos*, was considered to be a sphere outside the law: no-one’s space (*res nullius*) or everyone’s space (*res omnium*). Hence the international law of the European states had two spatial orders, a land-bound and a maritime order. These orders corresponded to the two types of warfare and enemy. Only land war was a war in form, that is to say, a controlled conflict between equally sovereign states, between *justi hostes*.

The naval war was instead a war without such rules, and it was based on the concept of *hostis generis humani*, the enemy of humankind.

### *Pirates and partisans*

For Schmitt, man is above all a “terrestrial, a groundling”.<sup>76</sup> Even though the majority of our planet is covered by water, we call it earth. The thought of a maritime globe sounds strange to our ears. Despite this, there has been a tendency, if not at the level of terminology, at least in practice, towards the formation of a maritime globe. According to Schmitt, already the appearance of the first maritime power, Venice, implied a long journey from land and terrestrial existence to the sea. For the people of Venice, the sea no longer signified a dangerous route; it became the foundation of their politics and wealth. However, Venice is only the first step in the history of the appropriation of the seas. In fact, the first worldwide maritime power was England: “England became the heiress, the universal heiress of the great change in the existence of the European nations.”<sup>77</sup> In Schmitt’s view, the spiritual strength of England was based on the most revolutionary form of Protestantism, namely on Calvinism, which became the religion of the English puritans. For him, Calvinism was a militant religion, perfectly adapted to inspire the elemental thrust seawards. Schmitt goes as far as to intention a “historical brotherhood” between politicized Calvinism and the maritime energies which were released in Europe.<sup>78</sup>

There have, of course, been maritime powers throughout the ages: besides Venice, Athens and Carthage can be considered as such. Spain and Portugal also conquered lands overseas. According to Schmitt, however, the English domination of the seas was a totally different phenomenon. Its merit was not only the conquest of the lands across the seas, but first and foremost the conquest of the seas themselves, the worldwide domination of connections: “She truly turned her collective existence seawards and centered it on the sea element.”<sup>79</sup> In this purely maritime existence it found the means of establishing a world power extending over the entire globe. Schmitt considers all criteria of English politics, its entire logic, to be incommensurable with the politics of the other European nations. What to other nations is soil (*Boden*) and homeland (*Heimat*) signifies for England a mere Hinterland. The English world power – which culminated in the period of total and uncontested supremacy after Waterloo – was the result of its power to embark, its capability for absolute deterritorialisation. Like a fish, as already said, “it was able to swim from one spot of the globe to another.”<sup>80</sup> It was no more and no less than the

mobile center of a world empire. The English way of thought, Schmitt says, is not land-bound and it is not rooted in a place. It is based on the connections between places, on the channels of communication.

In Schmitt's view, the appropriation of land refers to the founding of a political order, whereas the conquest of the seas has always entailed governance through trade.<sup>81</sup> He quotes Sir Walter Raleigh, this "typical English pirate": "Whoever controls the seas controls the world trade; whoever controls world trade holds all the treasures of the world in his possession, and in fact, the whole world."<sup>82</sup> Schmitt stresses Raleigh's role as a pirate, because he believes that the origin of the English world power lies precisely in piracy. In his opinion, the fact that the question did not concern private piracy but privateers who held a legal title, a commission from the government, does not change anything, because the distinction between a pirate and a privateer, so clear in theory, was quickly blurred in practice. Schmitt also adds that all naval warfare follows the rules of piracy in one way or another. Firstly, its purpose is not to defend the borders of one's country but to pursue commercial and economic interests. Secondly, whilst the paradigmatic combat of land warfare is an open and public confrontation – a kind of duel – of the armies of two states understood as "public persons",<sup>83</sup> the tactics of maritime war are, instead, more or less concealed attacks from afar: bombardments, blockades of enemy shores, captures of merchant marines. This being the case, the enemy is not only a public soldier in uniform, but all the resources and among them all the private individuals of the hostile nation. A blockade, for instance, indiscriminately affects the entire population of the involved territory: soldiers, civilians, men and women, children and old people.<sup>84</sup> Ultimately, even neutral states trading with the enemy are counted as enemies.

In Schmitt's view, the means and aims of naval warfare were not only the reason of success of the British world power, but signified also the beginning of the end of *Ius publicum Europaeum*, the international order of the European states. However, in the end of the 19<sup>th</sup> century, when the United States overtook the British world dominion, a fish was turning into a machine. "The industrial revolution transformed the children of the sea into machine-builders and servants of the machine."<sup>85</sup> As a result, the distinction between land and sea, on which the dominion of the oceans and the world supremacy rested, became redundant, because the machine was capable of lifting man high above the plains and the waves. Then a fierce battle about the domination of a third element – the air space – began. In war, the infantry and the ship were replaced with the plane and respectively, the duel and the blockade with the rocket darting through the air. In addition to the methods, also the aims and the interests changed. The means and methods of land warfare had served primarily the aim of occupying the enemy territory, which also implied an

interest in maintaining peace and order in that territory. In the case of maritime war, the aim of occupation and the interest in the maintenance of peace and order were replaced with an interest in the spoils of war. However, the means and methods of aerial warfare, argues Schmitt, could only serve the interest of annihilation. As a result of this development, every corner of the world was submitted, not to the real possibility of being occupied by the enemy troops or to the real possibility of being plundered, but to the real possibility of immediate and total annihilation.<sup>86</sup> For this reason, the most total war not only erases the distinction between civilians and soldiers but also deprives the enemy, whoever it is, of the slightest possibility of resistance. Yet according to Schmitt, it was precisely the appearance of a new kind of resistance and specifically, the appearance of the resistance movement as such in the beginning of the 19<sup>th</sup> century that, besides the spatial revolutions, heralded the end of the international order between the European sovereign states.

The secret weapon and simultaneously, the foundation of all resistance movements is the “unorganized combatant”, the *partisan*. Like the pirate, the partisan – the “privateer of firm land” – is not an enemy who fights in the open but a secret enemy. According to Schmitt, this figure appeared for the first time when the Spanish nationalists fought against Napoleon’s forces during 1808-1813 in the name of national self-determination. Schmitt describes this partisan as land-bound and above all as homeland-bound, *autochthon*, because his aim is to defend the traditional form of life of his people.<sup>87</sup> The aim of the land-bound partisan is, in other words, the same as that of an adversary in war during *Ius publicum* in general: to compel the enemy to retreat beyond the borders of one’s own country. However, there exists another kind of partisan as well. His aim is to bring about a world revolution. His point of departure is not the traditional form of life of his people, but a universal philosophical idea, which legitimates his commitment to “world-wide aggression”. For him, like for V. I. Lenin, whom Schmitt appoints as the paradigmatic figure of the “absolute partisan”,<sup>88</sup> the liberation of one’s own country is not enough. A total operation of purification is required. His aim is to destroy the enemy completely, including all the supporters of the wrong ideology. If the land-bound partisan does not follow the traditional rules of war, including the decisive distinctions between the state and its army and the society and its members, between the state of war and the state of peace, this cosmopolitan partisan, the “Jesuit of war”, in the words of Che Guevara, abandons all the limitations of war: “The modern partisan does not expect from his enemy either law or mercy.”<sup>89</sup> Despite this, the absolute partisan is not a criminal for Schmitt. The absolute partisan is a political figure in a particularly intense way. The object of his commitment is not, however, the state but the party. Even though the state became total in the 20<sup>th</sup> century, it has never demanded of its people

such commitment as the modern revolutionary party does. For a total state to become totalitarian presupposes precisely the domination of the party and not that of the state. In totalitarianism the state becomes, as Schmitt emphasizes, an instrument of the party.<sup>90</sup> This happened in Russia in 1917 and similarly in Germany in 1933, after which Schmitt, previously a citizen of a quantitative total state, became a member of a totalitarian party.

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The Second World War proved that it does not matter whether the state is total in the qualitative or the quantitative sense, whether it is ruled by a totalitarian party acting in the name of the people or governed by a liberal elite elected democratically. *Total war* resulted in both cases. If *Ius publicum* set visible boundaries on war, total war did not recognize any limits. It was directed against both civilians and soldiers and a state of war was became indistinguishable from state of peace. In the framework of *Ius publicum* the states recognized the sovereignty of the opponent regardless of the state of war. According to Hegel, the bond of mutual recognition was a sign of the possibility of peace.<sup>91</sup> Now this bond had vanished. The recognized just enemy (*justus hostis*) had become once again a non-recognizable criminal (*hostis criminalis*). This is not considered at all strange in the case of a totalitarian state. Nevertheless, the total war can also be seen as a logical conclusion of the democratic development of Western countries. In a democracy, every citizen is a soldier or at least a military resource and thus nobody can be considered to remain outside the military operations. Immanuel Kant had said that the peoples do not wage war, the states do.<sup>92</sup> From Schmitt's perspective, such a formulation which corresponds to *Ius publicum*, belongs to the epoch of monarchs, of the conventional wars and "war plays" (*Kriegsspiel*) between princes. In these wars, the confrontation takes place as a duel between representative states understood as public persons (*magni homines*), whereas the non-political private individuals remain outside the battle. In democracies, in which the duel becomes *hubris* and the idea of personal honor and defamation peculiar to monarchs is replaced with the virtue of modesty and the idea of equality – when the state and the public sphere are identified with society and the private sphere – the antagonists are instead the depersonalized peoples consisting of every individual. As Ernst Jünger points out, only monarchs resort to partial mobilization, a democracy demands a total mobilization.<sup>93</sup> Rousseau still thought that the state, even a democratic one, can be destroyed "without killing a single one of its members",<sup>94</sup> but the epoch of democratic nation-states has proved that to destroy a state presupposes that all of its citizens are killed.

According to Schmitt, however, the criminalization of the enemy and the ensuing total war are not due only to democracy, but also and primarily to the criminalization of a certain kind of warfare, namely the so-called “unjust war”, in the international law since the Treaty of Versailles. Schmitt’s genealogy of total war recognizes admittedly several origins, for instance, the Anglo-Saxon conception of international law derived from the war at sea (“it is the English sea warfare that generated the kernel of a total world view”<sup>95</sup>) and the ideological justification of war in the case of a partisan. In both of these cases, the principles defined by the juridical founders of modern international law – Ayala, Gentili and Zouche – who divorced the question of *bellum justum* proper from the problem of *justa causa belli*, thus turning war into a mutual relation between sovereign states in which *justi et aequales hostes* confronted each other indiscriminately, are called in question.<sup>96</sup> In Schmitt view, however, it was above all the attitude of the victors, especially of the United States, in 1918 and the subsequent evolution of international law under the auspices of the League of Nations that brought about the demise of these aspects in international law. Firstly, the Treaty of Versailles broke with the tradition of direct negotiations between the victors and the vanquished. The result of war was no longer a peace treaty but a mere suspension of military operations. Secondly, the League of Nations renewed the distinction between just and unjust wars, condemning especially the declaration of war as an unjust act of “aggression”. Thereby, and especially as a consequence of the Kellogg-Briand Pact (1928), wars became either criminal acts against the international law and morality or police measures implementing them. As a result, war as such became criminalized and dehumanized and thus abolished as a legitimate means of politics. This did not signify, of course, that killing, plundering and annihilation came to an end. Because killing now took place under the auspices of justice it even intensified.<sup>97</sup> The symmetrical confrontation between “just and equal enemies” was replaced with an asymmetrical relationship between the international police and the international criminals, between “police bombing” and “illegal and immoral resistance of a few delinquents, troublemakers, pirates, and gangsters”.<sup>98</sup> This being the case, war was deprived, in Schmitt’s view, of its dignity and honor. Respectively, the enemy lost its status as legitimate and respected. He became a felon in the most extreme criminal sense, the enemy of humanity – humanity as defined by those states which were authorized to enforce their notions of the human and the inhuman.

However, even if the introduction of a distinction between just and unjust wars, between criminal acts of “international troublemakers” and “police measures” taken by “defenders of peace”, signified a reintroduction of the medieval concept of *justa causa belli*, the justness of the cause was no longer backed by Christian theological doctrine or defended by medieval means

– even though modern bombers use their arms against a hostile population vertically “as did St George when using his lance against the dragon”.<sup>99</sup> Theological arguments were replaced with “humanitarian-ideological” ones, with the consequence that the perception of the enemy changed from a heathen to be converted to a subhuman to be destroyed by the modern means of total annihilation.<sup>100</sup> According to Schmitt, however, universalism is not merely a dangerous weapon in the hands of those who rule, equipped with modern means of mass destruction. It is also a source of a widespread human delocalization and disorientation (*Entortnung*). It evades positive determination and orientation to the extent that these presuppose concrete topoi, that is to say, concrete land-locked spaces with internal borders and boundaries. Perhaps it is possible to think in universal terms, but it is impossible to act in those terms because “action is inevitably inscribed in a determinate time and space”, as Julien Freund writes in his interpretation on Schmitt.<sup>101</sup> From the perspective of action, universal concepts are mere abstractions located in a void. The appropriation of air space had already displaced the idea of horizon, but only abstract universalism paves the way for the total disorientation which pushes humanity towards “international civil war”, that is, towards a *continuous state of exception at the zone of indiscrimination between war and peace*. Since disorientation, however, contains a possibility of orientation, Schmitt believed in the possibility of a new order instead of total disorder. This did not signify the return of *Ius publicum* and the recovery of the state, but a new *nomos* of the earth:

Undoubtedly the old *nomos* disappears and with it is left behind the whole system of measures, norms and relations. Yet the consequence of this is not the non-measure or *nomos*-inimical nothingness. Righteous measures are born and meaningful relations are formed even on the grounds of the fiercest battle of the new and the old forces.<sup>102</sup>

According to Schmitt, the foundation of this measure, of the new *nomos* of the earth, can be provided either by the worldwide domination of one great power, presumably the United States, or by a plurality of so-called large spaces (*Grossräume*). Schmitt approved only the latter alternative, which had the Monroe doctrine as its model. In this order resembling *Ius publicum*, the earth is still divided into autonomous political entities but these entities, including their central areas and spheres of interests, are larger than the individual states.<sup>103</sup> Moreover, this order is no longer Eurocentric but a genuine global plurality.

## Footnotes

- <sup>1</sup> Schmitt, *Über die Drei Arten*, p. 23.
- <sup>2</sup> Schmitt, *Über die Drei Arten*, p. 12.
- <sup>3</sup> In *The Concept of the Political* Schmitt writes: “The equation state = politics becomes erroneous and deceptive at exactly the moment when state and society penetrate each other.” Schmitt, *The Concept of the Political*, p. 22.
- <sup>4</sup> Schmitt, *Über die Drei Arten*, p. 42.
- <sup>5</sup> Schmitt, *Über die Drei Arten*, p. 44.
- <sup>6</sup> Schmitt, *State, Movement, People*, p. 35.
- <sup>7</sup> Schmitt, *Der Begriff des Politischen*, p. 10.
- <sup>8</sup> Schmitt, *Der Begriff des Politischen*, p. 10.
- <sup>9</sup> Schmitt, *Über die Drei Arten*, p. 55.
- <sup>10</sup> Schmitt, “The Plight”, p. 56. In *Political Romanticism* Schmitt’s attitude towards conservatism was still ironic, insofar as it revered tradition and durability as its “household god”. Now the essence and the value of the law lie precisely in its “stability and durability”. Schmitt, “The Plight”, p. 57.
- <sup>11</sup> Schmitt, “The Plight”, p. 56. Schmitt refers here, approvingly, to Savigny’s theory of the sources of law.
- <sup>12</sup> According to Aristotle, the law (*nomos*) is the order (*taxis*) of the city-state (*polis*). Aristoteles, *Politics*, 1253a39.
- <sup>13</sup> Schmitt, *Der Nomos der Erde*, p. 39-40.
- <sup>14</sup> Carl Schmitt, *Land and Sea* (1942). Plutarch Press 1997, p. 37. Translation altered.
- <sup>15</sup> Schmitt, *Der Nomos der Erde*, p. 15.
- <sup>16</sup> Schmitt, *Der Nomos der Erde*, p. 47.
- <sup>17</sup> Schmitt, *Der Nomos der Erde*, p. 18.
- <sup>18</sup> Schmitt, *Der Nomos der Erde*, p. 16.
- <sup>19</sup> Schmitt, *Der Nomos der Erde*, p. 16.
- <sup>20</sup> John Locke, *Two Treatises of Government. An Essay Concerning The True Original, Extent, and End of Civil-Government*. Cambridge University Press 1960, p. 393.
- <sup>21</sup> “The first object of appropriation cannot be anything but land.” It is the substance of *Recht*. Immanuel Kant, *Rechtslehre. Schriften zur Rechtsphilosophie*. Akademie-Verlag 1988, p. 71.
- <sup>22</sup> Schmitt, *Der Nomos der Erde*, p. 39.
- <sup>23</sup> Schmitt, *Der Nomos der Erde*, p. 13.
- <sup>24</sup> Schmitt, *Der Nomos der Erde*, p. 40. “Before what has been appropriated through conquest, discovery, expropriation or some other way can be distributed, it must be numbered and weighted, as in the ancient sequence: numbered/weighted/divided.” Schmitt, “Appropriation”, p. 57.
- <sup>25</sup> See Schmitt, *Der Nomos der Erde*, p. 44-45.

- <sup>26</sup> Plato, *Statesman*. In John M. Cooper (ed.), *Complete Works*. Hackett Publishing Company 1997, 294c.
- <sup>27</sup> See Schmitt, *Der Nomos der Erde*, p. 37-38. Thus, diametrically opposed to Rousseau, who thought that an outcome voted by the people is always general, Aristotle states that it is impossible for a “voted resolution to be general”. Only nomos, understood as a concrete order, is general (katholou). See Aristotle, *Politics*, 1292a, 36-37.
- <sup>28</sup> Schmitt, *Land and Sea*, p. 37.
- <sup>29</sup> See Schmitt, “Appropriation”, p. 55.
- <sup>30</sup> Schmitt, *Land and Sea*, p. 37.
- <sup>31</sup> Thomas Hobbes, *Leviathan*. Cambridge University Press 1991, p. 171. Even though Schmitt does not, after shifting to “concrete order thinking”, agree with Hobbes’ idea of the sovereign’s monopoly concerning laws, he nevertheless, like Hobbes, emphasizes that in addition to land appropriation nomos is linked with property, with a share of the land and its products. Concretely speaking, nomos is, for instance, the chicken every peasant “living under a good king has in his pot every Sunday, or the car every worker in the US has parked in front of his house”. Schmitt, “Appropriation”, p. 55.
- <sup>32</sup> Schmitt, “Appropriation”, p. 55.
- <sup>33</sup> Schmitt, “Appropriation”, p. 56.
- <sup>34</sup> Schmitt, “Appropriation”, p. 63.
- <sup>35</sup> Schmitt, “Appropriation”, p. 63.
- <sup>36</sup> Schmitt, “Appropriation”, p. 63.
- <sup>37</sup> Schmitt, *Der Nomos der Erde*, p. 44.
- <sup>38</sup> Carl Schmitt, “Raum und Rom. Zur Phonetik des Wortes Raum” (1951). In *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916-1969*. Duncker & Humblot 1995, p. 494.
- <sup>39</sup> Schmitt, *Land and Sea*, p. 37-38. Translation altered.
- <sup>40</sup> Schmitt, *Über die Drei Arten*, p. 9.
- <sup>41</sup> See Jacob Taubes, *Ad Carl Schmitt*. Merve Verlag 1987.
- <sup>42</sup> Gilles Deleuze & Felix Guattari, *A Thousand Plateaus. Capitalism and Schizophrenia*. Athlone Press 1987, p. 385.
- <sup>43</sup> In fact, Deleuze sees the monotheistic religion as the *origin* of the universal State-form. See Deleuze & Guattari, *Thousand Plateaus*, 383.
- <sup>44</sup> Deleuze calls nomadic societies “counter-State societies”. Deleuze & Guattari, *Thousand Plateaus*, p. 429.
- <sup>45</sup> Schmitt, *Der Nomos der Erde*, p. 42.
- <sup>46</sup> The proximity of Schmitt’s and Deleuze’s nomoi probably derives from the fact that they both rely more or less on Emmanuel Laroche’s classical study on the linguistic history of nomos, *Histoire de la racine “Nem” en grec ancien*. Klincksieck 1949. However, whilst Deleuze emphasizes Laroche’s view according to which “the occupation of shepherd [to take to pasture, i.e., *nemô*], in the Homeric age, had

- nothing to do with the parceling of land”, Schmitt stresses Laroche’s observation concerning the gesture of the Sophists by which they distinguished *nomos* from *physis*: “The reality (*physis*) was opposed to the habitual (*nomos*) in the same way as subject and object are opposed in the modern ways of speaking” – as if people’s actions in relation to nature were always and in every case contingent, changing and antagonistic. See Laroche, *Histoire*, p. 192-195.
- 47 Schmitt, “Raum und Rom”, p. 492-493.
- 48 Deleuze & Guattari, *Thousand Plateaus*, p. 424-427.
- 49 Deleuze & Guattari, *Thousand Plateaus*, p. 449.
- 50 In a famous passage in *Politics* Aristotle writes: “A man who is incapable of entering into partnership, or who is so self-sufficing that he has no need to do so, is no part of a state, so that he must be either a lower animal or a god.” Aristotle, *Politics*, 1253a, 27-29.
- 51 Deleuze & Guattari, *Thousand Plateaus*, p. 447.
- 52 Gilles Deleuze, *Difference and Repetition*. The Athlone Press 1994, p. 36.
- 53 Deleuze & Guattari, *Thousand Plateaus*, p. 380.
- 54 Deleuze & Guattari, *Thousand Plateaus*, p. 382.
- 55 Deleuze & Guattari, *Thousand Plateaus*, p. 479. Unlike Schmitt, who tried to resist technologization by means of a more sublime juridical and political rationality, Deleuze discovers the point of resistance to the State technology – to the “art of the State” – in technology itself. The issue here is not the original meaning of *tekhne*, but the technology of the nomads. The paradigm of this technology is felting. It was precisely felting that Plato had disqualified in *Statesman* as a technological paradigm for the art of *polis*. Instead of felting, the proper skill of a statesman could be compared to the weaving of woollen robes, that is, to the interlacing of weft and warp, or in less concrete terms, to the interspersing of horizontal and vertical threads: to the striation of a closed space. See Plato, *Statesman*, 279a-. According to Deleuze, however, the disqualification of felting as a paradigm does not signify that there would exist no political space corresponding to the metaphor of felt. Felt is like the stateless space of the nomadic peoples. The nomadic space is not striated like a woven fabric but open and smooth like felt. This does not mean, however, that it would be homogenous and therefore without means of orientation. Like felt, the nomadic space is just amorphous, “non-formal space prefiguring op art”. Deleuze & Guattari, *Thousand Plateaus*, p. 477.
- 56 Schmitt, *Der Nomos der Erde*, p. 14.
- 57 Schmitt, *Der Nomos der Erde*, p. 14.
- 58 Deleuze & Guattari, *Thousand Plateaus*, p. 479.
- 59 Deleuze & Guattari, *Thousand Plateaus*, p. 479.
- 60 Deleuze & Guattari, *Thousand Plateaus*, p. 380.
- 61 Schmitt, *Land and Sea*, p. 28.
- 62 Schmitt, *Land and Sea*, p. 51.
- 63 Schmitt, *Land and Sea*, p. 51.

- 64 Deleuze & Guattari, *Thousand Plateaus*, p. 480.
- 65 Deleuze & Guattari, *Thousand Plateaus*, p. 385.
- 66 Deleuze & Guattari, *Thousand Plateaus*, p. 387.
- 67 Deleuze & Guattari, *Thousand Plateaus*, p. 480.
- 68 Schmitt, *Der Nomos der Erde*, p. 21. See also G. L. Ulmen, “The Concept of Nomos: Introduction to Schmitt’s ‘Appropriation/Distribution/Production’.” *Telos* No 95, Spring 1993, p. 41.
- 69 See Schmitt, *Der Nomos der Erde*, p. 112-115.
- 70 Schmitt, *Der Nomos der Erde*, p. 99. I have used here and below the English translation of the pages 54-109 of *Der Nomos der Erde* (“The Land Appropriation of a New World”) published in *Telos* No 109, Fall 1996.
- 71 Schmitt, *Der Nomos der Erde*, p. 113.
- 72 Schmitt, *The Leviathan*, p. 47.
- 73 Quoted in Schmitt, *Der Nomos der Erde*, p. 138.
- 74 Schmitt, *The Leviathan*, p. 47.
- 75 Schmitt, *Der Nomos der Erde*, p. 91.
- 76 Schmitt, *Land and Sea*, p. 1.
- 77 Schmitt, *Land and Sea*, p. 27.
- 78 Schmitt, *Land and Sea*, p. 45.
- 79 Schmitt, *Land and Sea*, p. 28.
- 80 Schmitt, *Land and Sea*, p. 51.
- 81 In this context, it can be pointed out that Schmitt sees more than an etymological connection (Latin *tradere*) between trade and betrayal. See Schmitt, *The Concept of the Political*, p. 77.
- 82 Schmitt, *Land and Sea*, p. 47.
- 83 “As in a legal order that recognizes the duel as a legal right, such a duel has its intrinsic legal guarantees to the extent that certain qualities are possessed by each duelist. In other words, only men who are capable of engaging in duels can do so, and every duel, as such, can be considered neither just nor unjust. In the same vein, it is equally impossible to speak in the international law of just or unjust wars between states as long as the law is essentially that which is ‘valid between states’.” Schmitt, *The Leviathan*, p. 48.
- 84 Schmitt, *Land and Sea*, p. 48.
- 85 Schmitt, *Land and Sea*, p. 54.
- 86 “One pole of humanity is taken hostage by those who rule the other pole due to atomic weapons.” Schmitt, *Theorie des Partisanen*, p. 94. On the “purely annihilating nature” of aerial warfare see also Schmitt, *Der Nomos der Erde*, p. 293-298.
- 87 Schmitt’s “hero” in this respect was General Raoul Salan, “a courageous and intelligent man”. As a commander of the French army in Algeria 1957-1959, Salan fought terrorism with terrorism. For instance, he ruthlessly applied the principle of collective responsibility to villages suspected of sheltering, supplying, or in any way cooperating with the guerrillas. Villages that could not be reached by mobile

units were subjected to aerial bombardment. He also initiated a program for concentrating large segments of the rural population, including whole villages, into camps under military supervision to prevent them from aiding the rebels. When de Gaulle gradually reversed his stand on the war and on Alger's self-determination at the end of the 50's, Salan started to fight on two fronts, against both the African-Algerians and the pro-government Europeans. In 1961 he led a failed army revolt in Algeria and then fled abroad, continuing to direct the terrorist attacks of the Secret Army Organization (OAS) at both the French and the Algerian governments and civilians. In 1962 he was arrested and transported to France. On Salan, see Schmitt, *Theorie des Partisanen*, p. 65-70.

<sup>88</sup> In Lenin's background, Schmitt perceives a Hegelian philosophy of history, which he considers even more dangerous as an ideological weapon in the hands of such a "professional revolutionary" like Lenin than Rousseau's philosophy in the hands of the Jacobins: "This is precisely the weapon forged by the philosophy of history that dropped into the hands of Karl Marx and Friedrich Engels. However, these two revolutionary Germans were thinkers rather than activists of the revolutionary war. It is not until Lenin, this Russian professional revolutionary that Marxism as a doctrine gains the world historical force which it nowadays represents." Schmitt, *Theorie des Partisanen*, p. 52.

<sup>89</sup> Schmitt, *Theorie des Partisanen*, p. 17. In *The Concept of the Political* (1932), Schmitt had distinguished between two enemies, a political and an absolute. In *Theorie des Partisanen* (1963), he makes a distinction between as many as three kinds of enemies. Firstly, there exists a conventional enemy. He belongs to the epoch of cabinet wars between princes and their mercenaries. Of these wars Schmitt uses the term of war play (*Kriegsspiel*). In contrast to war play, there appears the real enemy of a serious war ("the Spanish partisan restored the seriousness of war"), which signifies warfare between peoples and their citizen-armies: "The enemy becomes a real enemy and the war a real war." Schmitt, *Theorie des Partisanen*, pp. 90-91. The absolute enemy – a world revolutionary – surpasses even this framework but at the cost of becoming abstract beyond recognition.

<sup>90</sup> Schmitt, *Theorie des Partisanen*, p. 21.

<sup>91</sup> Or as Hegel wrote: "States reciprocally recognize each other as states also in war, i.e., in the state of affairs when rights disappear and force and chance hold sway, and this recognition remains a bond wherein they esteem each other in and for itself, so that in war, war itself is determined as passing away. It implies therefore the proviso of the international law according to which the possibility of peace must be retained during it (and so, for example, that envoys must be respected), and, in general, that war should be not waged against domestic institutions or against the peaceful private and family life, i.e., against private persons." G. W. F. Hegel, *Elements of the Philosophy of Right*. Cambridge University Press 1991, § 338.

<sup>92</sup> See Kant, *Rechtslehre*, p. 164-165.

- <sup>93</sup> It is precisely this involvement that according to Ernst Jünger distinguished the partial mobilization peculiar to monarchies from the modern total mobilization: “There is no longer any movement whatsoever – be it that of the homework at her sewing machine – without at least indirect use for the battlefield.” Jünger, “Total Mobilization”, p. 126.
- <sup>94</sup> This was possible for the reason that Rousseau, despite his democratic mind, made a clear distinction between the citizens of the state who carry weapons – those who kill and can be killed – and the mere human beings whose life “no one has any longer the right to take”. For the war “is not a relation between men, but between states”. Rousseau, *The Social Contract*, p. 56-57.
- <sup>95</sup> Schmitt, “Total Enemy”, p. 33.
- <sup>96</sup> Schmitt, *Der Nomos der Erde*, p. 94.
- <sup>97</sup> See Schmitt, *Der Nomos der Erde*, p. 232-255.
- <sup>98</sup> Carl Schmitt, *Die Wendung zum diskriminierenden Kriegsbegriff* (1938). Duncker & Humblot 1988, p. 40.
- <sup>99</sup> Schmitt, *Der Nomos der Erde*, p. 299.
- <sup>100</sup> See Schmitt, *Der Nomos der Erde*, p. 298-299.
- <sup>101</sup> Freund, “Schmitt’s Political Thought”, p. 34
- <sup>102</sup> Schmitt, *Land and Sea*, p. 59. Translation altered.
- <sup>103</sup> On the large spaces see for instance Carl Schmitt, “Völkerrechtliche Grossraumordnung mit Interventionsverbot für raumfremde Mächte” (1941). In *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916-1969*. Duncker & Humblot 1995, pp. 269-371. Schmitt admits that the Monroe doctrine includes universalistic claims, especially after Wilson’s and Roosevelt’s reinterpretation that justifies “pan-interventionist world ideology” and “capitalist imperialism”. But Schmitt rejects these claims, affirming instead the original principle of non-interference by the European states in the affairs of the American continent – but merely inasmuch as the United States likewise refrains from interference in the affairs of the European continent.

## 7. POLITICAL THEOLOGY

All significant concepts of the modern theory of the state are secularized theological concepts

Carl Schmitt, *Political Theology*

All of Schmitt's central political concepts designate the constitutive outside, the founding other. His concept of the political explicates it, but also his other political concepts indicate it, including decision, people's will and appropriation. This fact, together with Schmitt's thesis of secularization according to which all significant concepts of the modern theory of the state are secularized theological concepts,<sup>1</sup> has apparently caused a great deal of confusion. According to Heinrich Meier, for instance, understanding Schmitt presupposes that his political thought has to be reduced to the theological dogma of divine Revelation. Meier sees divine Revelation as constituting the "ultimate authority" and "absolute foundation" of Schmitt's thought: "There can be no doubt of the fundamental precedence of the theological for Schmitt."<sup>2</sup> If Schmitt is an anti-immanent thinker, as Meier believes, it is because of his ultimate belief in divine Revelation. All metaphysics of immanence – like Hegel's, for whom the other never enters from the outside into the immanence of development – would entail the denial of God's sovereignty. In the same manner, the denial of the figure of the enemy, says Meier, assumes that one must forget the fundamental theological dogma of the sinfulness of the world and of man.<sup>3</sup> Evil and enmity enter the world along with original sin – and the belief that a human being could independently destroy all evil and create a paradise-like world by means of his natural reason and his own judgment is nothing but antichristian *hubris*. For this reason, the existence of the enemy is not in Meier's view primarily the precondition of the so-called pluriversum.<sup>4</sup> Rather, it is the state of things in the world as ordained by God in the beginning. To deny this fact would mean that one sets himself against Him and on the side of the Antichrist.

Meier is right perhaps concerning Schmitt's innermost intentions – at least in part. Schmitt does not understand Hegel's metaphysical immanentism, which is not capable of definite “disjunctive judgment” but always returns, after some dialectical tricks, to the endless logic of conjunction. I must also admit that Schmitt's insistence concerning the necessity of the enemy seems to be somewhat incomprehensible without reference to the Revelation, in which history is identified with the deferral of Satan's rule until the Judgment Day. If the enemy is absent, then the world has either already ended – which is an absurdity – or it is totally dominated by Satan. Moreover, the fact that Schmitt questions all neutralizations can be nicely understood precisely from this perspective, since they presumably refer only to the Devil's tricks. By means of neutralization, evil masks its evilness and poses as the good, whereas the real good – the political figure of Jesus Christ – loses its strength in this historical battle. Besides, also Schmitt himself frequently identifies in man's belief in his limitless capacity to dominate and master nature and himself the work of the Antichrist. As early as in his book *Nordlicht* (1916) on the poet Theodor Däubler Schmitt writes:

The uncanny [*unheimlich*] magician creates the world anew, he changes the appearance of the earth and dominates nature. Nature serves him for whatever reason – for the reason of the satisfaction of any artificial needs, for the reason of ease and comfort. Those who let him deceive them see only the magnificent effects; nature seems to be vanquished, the age of security brought in; everything has been taken care of; cunning prediction and planning replace Providence; the Antichrist ‘makes’ Providence as he makes any other institution.<sup>5</sup>

The Antichrist wins if he is able to convince the people that the moral distinction between good and evil and finally, the political distinction of friend and enemy have been surpassed. After that, there will be no more real differences – and because of total neutralization, a complete value-freedom will prevail. Everything will have the same measure of non-measure. For Schmitt, the slogan of the Antichrist is precisely commensurability. In commensurability all meaningful existence ends and indifference begins. Ultimately, even reality as real is called in question and the confusion becomes insurmountable.<sup>6</sup>

### *Christ, antichrist and history*

In the context of modern secularized thought, Friedrich Nietzsche was perhaps the first to create the Antichrist as a real philosophical concept. But contrary to Schmitt, for Nietzsche this figure represents the very counter-force of com-

measurability and indifference. Nietzsche sees in Christianity itself the force that paves the way for the death of God and for the birth of the last man, who levels all differences and destroys all meaningful existence. For Nietzsche, it is precisely Christianity, and not the Antichrist, that is to be conceived as instinctive hatred of every reality,

as flight into the ‘ungraspable’, into the ‘inconceivable’, as antipathy towards every form, every special and temporal concept, towards everything firm, all that is custom, institution, Church, as being at home in a world undisturbed by reality of any kind.<sup>7</sup>

Of course, it must be acknowledged that unlike Schmitt, Nietzsche does not identify Christianity with the Church. On the contrary, he considers them, at least to a certain degree, antithetical: “Precisely that which is Christian in the ecclesiastical sense is anti-Christian in essence.”<sup>8</sup> In Nietzsche’s view, true Christianity is that of the Gospel and the whole doctrine of the Church is denied in it.<sup>9</sup> True Christianity does not erect institutions or form hierarchies. Instead, it believes in the redemptive power of evangelical practice. Ultimately, it is not even faith that is at stake,<sup>10</sup> since the “glad tidings” can be reduced to one formula: *eine neue Praktik*, a new practice in which the Kingdom of God is realized on earth.<sup>11</sup> However, the secret of the power of this “new practice”, as Nietzsche understood it, does not lie in its power but rather in its *powerlessness*: “Not to defend one’s self, not to show anger, not to lay blames... On the contrary, to submit even to the Evil One – to love him...”<sup>12</sup> It is precisely this powerlessness (*die Unfähigkeit*), understood as the most extreme form of nihilism, and not the power of the Church, which forced him to re-evaluate the Christian values.

However, in the last analysis it is quite obvious that Nietzsche does not wage war against Christ and the primitive Christianity in the name of priests and the Church. Although the Church is not powerless, its power is purely negative – it is based on resentment. It cannot but judge existence. Instead of the negative power of the Church and the powerless practice of Christ, Nietzsche speaks on behalf of another martyr, Dionysus. Dionysus does not judge existence but redeems it like Christ. But contrary to Christ whose redemption comprises only the decadent and powerless forms of life, Dionysus redeems life in its totality. Dionysus does not deny any dimension of life, not even its thoroughly violent nature. In Dionysus, Nietzsche sees the redeemer of existence *in toto*:

Dionysus versus the “Crucified”: there you have the antithesis. It is not a difference in regard to their martyrdom – it is a difference in the meaning of it. Life itself, its eternal fruitfulness and recurrence, creates torment, destruction, the

will to annihilation. In the other case, suffering – the “Crucified as the innocent one” – counts as an objection to this life, as a formula for its condemnation. – One will see that the problem is that of the meaning of suffering: whether a Christian meaning or a tragic meaning. In the former case, it is supposed to be a path to a holy existence; in the latter case, being is counted as *holy enough* to justify even a monstrous amount of suffering.<sup>13</sup>

Neither the crucified Jesus (“God on the cross is a curse to life”), nor the Church, the antithesis of Christ, but the dismembered Dionysus is the promise of life: “It will be eternally reborn and return again from destruction.”<sup>14</sup> Only this return, *the eternal recurrence of the same*, can provide life with meaning again – the meaning destroyed by Christianity.

Although Schmitt was a Christian, he nevertheless seems to share some of Nietzsche’s views. Firstly, he juxtaposes Church and Christ, praising the former and maintaining that we should make Christ’s “influence harmless in the social and political spheres”.<sup>15</sup> Secondly, he speaks about the repetitive nature of violence and emphasizes the violent origin of all human order.<sup>16</sup> However, for him the violent origin of order does not signify an eternal recurrence of the same but the recurrence of *difference* and thereby of history:

Adam and Eve had two sons, Cain and Abel. This is how the history of humanity begins. This is what the father of all things looks like. Here is the dialectical tension that keeps world history in motion – and world history is not yet come to its end.<sup>17</sup>

In fact, all of Schmitt’s conceptual configurations from sovereign and enemy to appropriation can be conceived as representatives of this dialectical tension, as engines of historical motion. This also explains why the influence of Christ should be made harmless in the social and political spheres. Schmitt understands that Christ’s message is pacifist and universalistic in nature. However, both pacifism and universalism lead towards the end of all battles, that is to say, towards the disappearance of dialectical tension and thereby towards the end of history. Are we thus forced to conclude that Schmitt himself is antichristian? This does not follow, because for him Christianity is not a religion which would imitate a powerless Christ but a religion of the victorious Church, which transforms the powerlessness of Christ into a form of power representing Him as “reigning, ruling and conquering”.<sup>18</sup>

This being the case, Schmitt’s Christianity resembles in Nietzsche’s interpretation that of the Church and especially that of St Paul. For Nietzsche, it was precisely Paul who transformed the powerlessness of the “glad tidings” into a form of power and doctrine of judgment – into the form of the Church.

In his view, Paul re-erected on a grand scale that which Christ had annulled through his way of living: “The attempt to destroy priests and theologians culminated, thanks to Paul, in a new priesthood and theology – in a new ruling order and a church.”<sup>19</sup> Admittedly, Schmitt reads even the Gospel as if it were a testimony of the necessity of violence and of history. For instance, Schmitt claims that the word enemy (*ekhtrōs*) in the famous phrase from the Sermon on the Mount “love your enemies, and pray for them that persecute you” refers only to a private foe and not to a real enemy:

The often quoted ‘Love your enemies’ (Matt. 5:44; Luke 6:27) reads “diligite inimico vestros”, *agapate tous ekhtrōs umōn*, and not “diligite hostes vestros”. No mention is made of the political enemy. Never in the thousand-year struggle between Christians and Moslems did it occur to a Christian to surrender rather than defend Europe out of love toward the Saracens or Turks.<sup>20</sup>

In the seventh *nomos*-corollary to *Der Nomos der Erde*, Schmitt again refers to the Sermon on the Mount, in order to disclose the violent origin of the Christian world: “Blessed are the meek: for they shall inherit the earth” (Matt. 5:5). For Schmitt, important here is not that the meek and humble are those who inherit the earth but that they inherit (*kleronomesousin*) it, which in Schmitt’s view is a mode of appropriation.<sup>21</sup>

The above notwithstanding, it is Paul to whom Schmitt repeatedly returns, in particular to his Second Letter to Thessalonians. In Meier’s view, Schmitt’s entire spiritual existence can be understood in the light of this Letter. It explains his insistence on the motion of history and the fear of its end. In Nietzsche’s view, the end of history – the death of God – signifies the end of meaning and the triumph of the “most despicable man”, a man “who has invented happiness”, the last man.<sup>22</sup> As we have seen, also Schmitt warns us about the false belief in mundane happiness. According to Meier, however, Schmitt’s battle against the end of history has to be examined, not in light of the meaningfulness of human existence as such, but in light of the eschatological struggle against the *anomos* – “the lawless one” – of the Second Letter to Thessalonians. In Meier’s view, in order to understand this struggle, three suppositions concerning history have to be taken into consideration: Resurrection, historical interim, and the Day of Judgment. Because the Day of Judgment, that is to say, the final triumph of *anomos* – Schmitt’s Antichrist – and the second *parousia* of Christ are not yet at hand, mankind lives in the era of the interim, and more precisely, in the era of a battle between so-called *katechon* and *anomos*.<sup>23</sup> Also *katechon* is a figure of the Second Thessalonians (2:3-11) and its function is to restrain (*katheon*) the “lawless one” before the second coming of Christ. At that time *anomos* will appear in its final form and the Lord will extinguish it by

the manifestation of his coming. Until that happens, however, *anomos*, “whose coming is according to the working of Satan”, performs deceitful wonders that mislead people from the truth. Nevertheless, all this is part of God’s great plan: “God sendeth them a working of error.” Its purpose is to try people’s belief and to separate the wheat from the chaff in order to judge the latter.

For Schmitt, argues Meier, the greatest swindle of *anomos* and thereby also the greatest test of God, is that history would have already ended – and that from now on all battles against *anomos* would be useless and superfluous. This cannot be true, however, because the second coming of Christ would also mean the end of the world, but the end of the world is not yet at hand. *Katechon* must exist. In his diary Schmitt in fact notes: “One must be able to name *katechon* for every epoch of the past 1932 years. The position has never gone unoccupied otherwise we would no longer exist.”<sup>24</sup> It is the faith in *katechon*, says Meier, which helps Schmitt to preserve his faith in the truth of the Revelation and to remain in harmony with himself.<sup>25</sup> It does not offer only an answer to the question as to why there is still history – a delay of *parousia* – but it also protects the meaningfulness of historical action inasmuch as the interim is simultaneously the era of a great test. In it the real believer is distinguished from those who have chosen unrighteousness – and doubtlessly Schmitt wanted to be counted amidst the righteous. From this perspective, Schmitt’s skepticism of Christ’s pacifism and universalism become even more understandable. Both pacifism and universalism imply a destruction of the difference between *katechon* and *anomos* in history. However, it is not possible for Christ to have won given that *parousia* takes place only in the end of history. Therefore both pacifism and universalism must be, in the final analysis, clever tricks of the Antichrist by means of which he pursues a total domination of the historical world. For this reason, everything that opposes the coming of this worldly Messianic kingdom, this “new practice”, in which the Kingdom of God is realized on earth, represents *katechon* for Schmitt. In his view, for instance the Holy Roman Empire, as well as Emperor Rudolph II and Emperor Franz Joseph have been such restrainers. The greatest *katechon* in the history of Christianity, however, has been the Catholic Church, the “Bride of Christ”. It has not only restrained the impact of *anomos* and thereby of the Antichrist, but also neutralized Christ’s influence in the social and political spheres. It has done it by *representing* Christ – by giving His idea form and visibility.<sup>26</sup>

Are we thus forced to conclude that Schmitt is a Christian through and through – a Catholic in the ecclesiastical sense – and Nietzsche antichristian in pagan sense? Are we forced to conclude that Schmitt affirms history, because he believes in the Revelation according to which the end of history without the end of the world can be nothing but a clever trick of the Antichrist – whilst

Nietzsche affirms eternal recurrence, because he sees the seed of the end of history and thereby, the death of God and the birth of the meaningless existence of the last man in the Christian concept of history? Not necessarily. As far as I can see, Nietzsche's return to the pagan conception of eternal recurrence is not entirely faithful to its pagan sources. For the Greeks, the eternal recurrence denoted the supreme and objective order of things, in nature as well as in history, but for Nietzsche, as already Karl Löwith pointed out, it must be willed and its task is to impose on man the ethical principle of absolute responsibility. The whole concept of will is rather un-Greek, but it becomes even more so if it is interpreted, like Nietzsche does, in terms of creative willing. Creative willing derives from the Judeo-Christian tradition, from the belief that the world and man are created by God's creative will.<sup>27</sup> Moreover, Nietzsche's continuous emphasis on the distant future was alien to the Greeks – but not at all to the Christians who have been waiting for *parousia* since the end of the first century. In addition, for Nietzsche, Dionysus represents above all a figure of redemption, which reveals that he is pagan only in appearance, whilst the core is purely Judeo-Christian. Nietzsche's Dionysus is even more Christian than Christ Himself insofar as Dionysus redeems the whole of existence, not only its decadent manifestations.

What about Schmitt, then? Is he as traditional a Catholic as Meier claims? As far as I can see, at least his late work alludes to another direction. Throughout his career, Schmitt had criticized the modern law (*Gesetz*) for being a mere artefact without substance. In the twenties he had criticized the Enlightenment and in the thirties, Judaic thought for providing the intellectual origins of this modern and nihilistic conception of law. However, in *Der Nomos der Erde* (1950) Schmitt extended his criticism to the Judeo-Christian tradition as a whole. He discovers in this tradition the true origin of the law without substance inasmuch as he conceives it as the result of a “theological tension between Judaic law and Christian grace”.<sup>28</sup> Actually, this attitude becomes manifest already in *The Leviathan* (1938). It is not only Judaism but the Judeo-Christian tradition as a whole, which has paved the way for the law without substance and consequently, for the decline of Western political rationality, because this tradition has destroyed the “original and natural unity” of the secular and the spiritual.<sup>29</sup> Therefore, instead of the Judeo-Christian tradition, he turns in his late work to Greek and Roman sources in which the original natural unity – the total concept of *nomos* – has not yet been obliterated. This does not signify, however, that Schmitt had lost his faith in the Revelation and that Meier's interpretation is thoroughly incorrect. Rather, it could mean that Schmitt wanted to direct Christianity towards paganism, towards the total concept of *nomos* – the *nomos* that already St Paul had inactivated (*katargeo*),

thus opening the door to the neutralization of every law: “We have been inactivated [*katargethemen*] in relation to *nomos*” (Romans 7:6).<sup>30</sup>

\* \* \*

From the perspective of the sociology of concepts it is insignificant whether Schmitt uses biblical symbolism or thinks in terms of a real believer – whether he was a genuine Christian or a Roman Catholic who wanted to introduce pagan elements into Christianity. Perhaps a completely non-antagonistic, technological world characterized by a “Babylonian unity”, where things govern themselves without visible authorities, is not only metaphorically but also *de facto* dominated by the Antichrist. Be it as it may, all of Schmitt’s central concepts – the sovereign decision, the constituent will of the people, the friend-enemy distinction and the real possibility of war as the criterion of the political, land-appropriation as the concrete condition of possibility of the spatial social, political and theological order (*nomos*) – can be understood, in my opinion, without any reference to a transcendent command of God coming from the absolute outside. Meier states repeatedly that only the “one thing is important” for Schmitt, but it was precisely Schmitt who, like Gentile, frequently asserted: *Silete theologi in munere alieno!* In Meier’s view, Schmitt’s political thought has a theological foundation, but he does not take into account that Schmitt’s theology is profoundly *political*.

## Footnotes

- <sup>1</sup> In Schmitt’s view, all significant concepts of the modern theory of the state are secularized theological concepts “not only because of their historical development – in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver – but also because of their systematic structure”. Schmitt, *Political Theology*, p. 36.
- <sup>2</sup> Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*. The University of Chicago Press 1988, p. 77.
- <sup>3</sup> Meier, *The Lesson*, p. 78.
- <sup>4</sup> For Meier, Schmitt is certainly not the “last conscious representative of *Ius publicum Europaeum*” as Schmitt said of himself. See Schmitt, *Ex Captivitate Salus*, p. 79.
- <sup>5</sup> Carl Schmitt, *Theodor Däublers ‘Nordlicht’ . Drei Studien über die Elemente, den Geist und die Aktualität des Werkes* (1914). Duncker & Humblot 1991, p. 62.

- 6 On the relationship between the domination of nature, meaninglessness and the Antichrist, see McCormick, *Carl Schmitt's Critique*, p. 85-89.
- 7 Friedrich Nietzsche, *The Anti-Christ*. In *Twilight of the Idols and The Anti-Christ*. Penguin Books 1972, § 29.
- 8 Friedrich Nietzsche, *The Will to Power*. Vintage Books 1968, § 159.
- 9 Nietzsche, *The Anti-Christ* § 33.
- 10 Christianity requires “neither the doctrine of a personal God, nor that of sin, nor that of immorality, nor that of redemption, nor that of faith...” Nietzsche, *The Will to Power* § 211.
- 11 “The Gospels had been, in fact, the incarnation, the fulfilment, the realization of this ‘kingdom of God’.” Nietzsche, *The Anti-Christ* § 40.
- 12 Nietzsche, *The Anti-Christ* § 35.
- 13 Nietzsche, *The Will to Power* § 1052.
- 14 Nietzsche, *The Will to Power* § 1052.
- 15 Schmitt, *Glossarium*, p. 243
- 16 “Heracles is the mythical foundation of order. ‘By taking’ [nehmen] the oxen from the three-bodied giant he creates the law; taking away [Nahme] (nomos) transforms violence into the law.” Carl Schmitt, “Nomos-Nahme-Name” (1959). In *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*. Duncker & Humblot 1995, p. 578. See also Schmitt, *Der Nomos der Erde*, p. 42.
- 17 Schmitt, *Ex Captivitate Salus*, p. 89-90.
- 18 Schmitt, *Roman Catholicism*, p. 31.
- 19 Nietzsche, *The Will to Power* § 167.
- 20 Schmitt, *The Concept of the Political*, p. 29.
- 21 See Schmitt, “Appropriation”, p. 56, note 9.
- 22 Friedrich Nietzsche, *Thus Spoke Zarathustra*. Modern Library 1995, I § 5.
- 23 See Meier, *The Lesson*, p. 161-163.
- 24 Quoted in Meier, *The Lesson*, p. 161.
- 25 Meier, *The Lesson*, p. 162.
- 26 See Schmitt, *Roman Catholicism*, p. 18-19.
- 27 Karl Löwith, *Meaning in History*. The University of Chicago Press 1949, p. 221-222.
- 28 See Schmitt, *Der Nomos der Erde*, p. 39.
- 29 Schmitt, *The Leviathan*, p. 10-11.
- 30 On the messianic suspension and inactivation (katargesis) of the law in Paul, see Giorgio Agamben, *Le temps qui reste. Un commentaire de l'Épître aux Romains*. Payot & Rivages 2000. pp. 152-155. In Agamben's view, the messianic suspension of the law is the complete opposite of Schmitt's sovereign suspension. In both cases the law is suspended, but in the sovereign state of exception the suspended law is still active (although without significance, without content), whereas in the messianic state of exception the suspension of the law signifies its fulfilment at the moment the inactivation (*katargesis*) of the law. (According to Agamben, the

law is fulfilled in *katargesis* in the same manner as potency, *dunamis*, for Paul, is perfected in weakness, *astheneia*). All in all, this means that Paul radicalizes the condition of the state of exception: “The messianic fulfilment of the law is an *Aufhebung* of the [*sovereign*] state of exception, an absolutization of the *katargesis*.” Agamben, *Le temps*, p. 169. On Schmitt’s position between Christianity and paganism see Wolfgang Palaver, “Carl Schmitt on Nomos and Space.” *Telos* No 106, Winter 1996, p. 124: “Schmitt’s thinking represents a kind of sacrificial Christianity, between paganism and the true biblical spirit.”

## 8. A PHILOSOPHY OF CONCRETE LIFE

The exceptional case has an especially decisive meaning which exposes the core of the matter.

Carl Schmitt, *The Concept of the Political*

It is time to return to our initial question concerning the metaphysical character of Schmitt's thought. As we saw in the beginning of the book, Schmitt's metaphysics is based on a conviction that the modern *Weltanschauung* entails the absolutization of immanence. Given that this tendency is, for Schmitt, *eo ipso* evil – inasmuch as it dissolves all moral and political dualisms – it is at least conceivable that his central concepts can be described as counter-concepts to this tendency. Against it, Schmitt poses transcendence, not in the sense of a substantial foundation of order but in the sense of *openness* of every order. For Schmitt, concrete political acts and events are the instances of this openness. As long as they exist – and Schmitt believes that they exist as long as human being exists – they ceaselessly resist the closure of immanence. However, these acts and events are not only events of resistance but also *constitutive* events, that is to say, founding moments of order. This is why Schmitt's central political concepts are not only counter-concepts, signifying the entry of the outside, but simultaneously ground concepts. For Schmitt, it is the moment of the opening up of order which constitutes order. From the perspective of the closure of immanence, as Schmitt perceives it, these moments appear as impossible exceptions and unreal miracles but for him it is precisely these – by no means impossible and unreal – exceptions and miracles which constitute the order of human things.

In *Political Theology* this real miracle – the miracle of the real – is the sovereign decision. Through it, the “new and alien” interrupts the gapless unity of the positivist legal system as well as the endless parliamentary discussion based on the “metaphysics of indecision”. The sovereign decision comes from the outside, but so does the constituent act of the people and the enemy, this

“other and strange” of the self-enclosed humanity in a completely uniform world. The enemy brings back the dynamic tension to where history seems to end and where the banal factuality of being alive (a “mere dynamic” of life) has replaced all meaningful existence. Moreover, although it was published after Schmitt’s turn towards the thinking of “concrete order” and, as I would like to say, towards a more immanent orientation, we can also find a concept which can be defined in terms of the outside in *Der Nomos der Erde*. This time the event – the constitutive exteriority – is land-appropriation, the *Ur-akt* of every social and political order. It is not solely a reminder of the fact that only God can give without appropriating. It is also a reminder of the fact that “the universal history is not concluded”, as Kojève had proposed, but remains “open and in movement”. It is a remainder that things are not yet set in stone, that men and peoples still have a future and not only a past, and that, as long as man exists, new forms of *nomos* will be born in the course of history.<sup>1</sup>

It is this event of the outside, this constitutive other that is Schmitt’s concrete. Perhaps it is “always exceeded and overtaken by the abstraction of its specter”, as Jacques Derrida points out. Perhaps every appeal to the concrete event of the outside is in vain. Inasmuch as one *conceptualizes* the concrete, one always speculates on it – thus losing the concreteness of the concrete.<sup>2</sup> As Hegelian as Derrida’s critique of Schmitt’s philosophy of concrete life is, it at least forces to pay attention to the relationship between the concrete and the concept in Schmitt’s thinking. One way to elucidate this problem is, of course, to return to Schmitt’s rejection of Hegel’s philosophy. In Meier’s view, as we have seen, Schmitt rejects Hegel’s philosophy, because it does not recognize the “commandment that is given him from outside”, that is to say, by God.<sup>3</sup> In my view, however, Schmitt rejects Hegel’s philosophy because for the latter that which remains outside the concept – outside objective knowledge – is identical to nothing. For Hegel, whatever does not make a difference in terms of objective knowledge makes no difference at all.<sup>4</sup> In Schmitt’s view, however, that which is outside objective knowledge is identical to nothing only from the perspective of “rationalist schemes”. From the perspective of the philosophy of concrete life, that which comes from the outside constitutes the foundation of the collective existence of human beings. Therefore, Schmitt’s notion of the concrete is not, in a Hegelian sense, a concept at all. Rather, it is a name, perhaps an “impossible” one, for *pure actuality* outside all conceptualizations.<sup>5</sup> It is a concrete rupture in and a foundation of a universe of abstract ideas and general concepts. Life produces abstract reflections, but abstract reflections can never produce life, as Schmitt would state it in the vein of Bakunin.

Perhaps, all concepts and reflections are powerless in the face of the concrete. No abstraction can comprehend the concrete. It can only be *experienced*. This is not to say that Schmitt would prefer “lived experience” to concepts and

conceptual thinking. On the contrary, for him lived experience is as empty as it is for Hegel. In Schmitt's view, lived experience is the subjectivist response of a romantic to the tyranny of objective reason. Schmitt's response consists instead of a *concrete event* outside both "lived experience" and objective reason. This event can and presumably must be experienced, but it cannot be reduced to subjective experience. It has an objective existence outside the subject. Admittedly, especially in the case of the enemy, Schmitt appears to have an inclination to nullify this non-conceptual objective existence. For instance, in the end of *Ex Captivitate Salus* he seems to affirm the Hegelian characterization of the concept absolutely: "In the reciprocity of recognition of recognition lies the greatness of the concept."<sup>6</sup> Had this been Schmitt's last word, the enemy would be nothing but a reflected image of the real enemy, a mere simulacrum. However, Schmitt immediately adds that the objectivity of the enemy is not objectivity of a concept but that of *force*: "The enemy is an objective force [*objective Macht*]"<sup>7</sup> The enemy is a force, a concrete and a miraculous force, not a "metaphor or symbol"<sup>8</sup> As a concrete force, the enemy precedes reflection. It perturbs the world of the reflecting self – its otherness and strangeness calls the self into question.<sup>9</sup> The force of the enemy disrupts my identity and no amount of reflection can reduce its difference into an immanence of the same.<sup>10</sup> Certainly, this force – as every political force – can and must become an object of reflection, but this can occur only after the event of the political has taken place. Even then the intellect is not capable of exhausting it completely, because the event is not prior to reflection merely in a temporal sense but also and above all ontologically. The event precedes and is above reflection in the same way as the people's constituent will precedes and is above constitution. The event of the concrete is the objective but "un-reflective" and "irrational" foundation of all reflections and rationalizations. According to Schmitt, the only means of "taming" the "irrationality" of the foundation is representation understood in terms of *myth*. Nevertheless, insofar as myth itself is "irrational", it does not rationalize the concrete but merely exposes it in a "meaningful" form – in the same vein as the "rational" Roman Church exposes in a "meaningful" form the "irrationality" of Christ.<sup>11</sup>

We should not, however, confuse that which Schmitt calls the concrete with the empirical reality of classical empiricism in which reality is understood to be a discrete given revealed in sensation. Schmitt's event of the concrete – a "constitutive historical event [*Ereignis*]"<sup>12</sup> – is not something given in ordinary circumstances but something which disrupts the ordinary. The event is a concrete event only if it is an exception, an extreme case. Moreover, the event of the concrete is not something given but something to be *produced*. Inasmuch as reason is not capable of producing but only of reflecting, it is not reason which produces the event. Rather, it is will, the sovereign's pure

and “irrational” will to decide. It is presumably for this reason that Schmitt’s philosophy of concrete life has been described as voluntarist and irrationalist. Nonetheless, its voluntarism is only apparent insofar as for him the “will” is not a subjective faculty, but merely a conceptual substitute for the *void* at the foundation of the event. It is the event which reveals the subject of the event, and not the other way round: “The sovereign is whoever decides what constitutes an exception.”<sup>13</sup> Moreover, although the event of the concrete negates and exceeds reason, Schmitt’s philosophy of concrete life is not without certain rationality. As argued in the beginning of the book, it contains a specific rationality, namely that of the extreme: “Everything must be forced to the extreme.” This is not only because the extreme case, the event of the concrete, is more interesting than the rule, but also because it is the concrete condition of possibility of every rule and order and thereby the ultimate foundation of all rationality. It is the “event that founds an order”, not the other way round. Besides, as all rationality, also the rationality of the extreme is based on the exclusion of certain irrationality. In Schmitt’s view, all thought, which does not recognize that order is created out of disorder and that rationality is based on an “irrational” foundation, is itself irrational. Only thought which does not eschew the exception and the extreme case is genuinely rational. For this reason, it can be argued that Schmitt’s philosophy of concrete life aims at an even more subtle form of rationality than that represented by abstract rationalism. In Schmitt’s view, it is more subtle because its rationality is “human in the deepest sense”.<sup>14</sup> The event of the outside, for instance a “definitive, disjunctive decision”, is not an irrational miracle but a real fact of human life. Genuine rationality consists of the recognition of this fact.

This is not to say that the event is after all included in the “rationalist schemes” as a negation resulting in a higher rationalist synthesis. The concrete event is and remains outside all “rationalist schemes”. The sovereign decision, the people’s constituent act, the enemy, as well as land-appropriation – all these events stay “outside and above” the immanence of reason. In other words, there exists an insurmountable gap between the “irrational” foundation of order and the established order. Nevertheless, unlike for instance in the work of Georges Bataille, negativity is not unbound in Schmitt’s thinking, because in the final analysis it is subordinated to positive results, that is to say, to the service of order, tranquility, and peace. Bataille’s sovereignty refuses to submit to any ends: “What is sovereign has no other end than itself.”<sup>15</sup> Schmitt’s sovereignty, instead, produces and guarantees a situation in its totality. Hence, in place of Bataille’s free negativity there emerges Schmitt’s subordinated negativity – although from Schmitt’s perspective it would be precisely Bataille’s negativity that is not free but tainted by romanticism and as a consequence, thoroughly servile.<sup>16</sup> The people’s constituent act does not merely negate the existing

constitution, it also creates a new one and furthermore, it even legitimates its existence. The enemy does not only perturb our existing collective identity, it is also the concrete precondition for the formation of a new identity. Land-appropriation does not merely negate the existing *nomos*, it also renders possible the creation of a new *nomos*. However, the subordination of negativity at the service of order, security, and peace does not signify that Schmitt's negativity could be included within order. In fact, the event of the concrete can serve order only to the extent that it *is and remains exterior to it*. The issue is not about a higher synthesis but about the *insurmountable togetherness* of the founding event and the established order, that is to say, the insurmountable togetherness of the decision and the legal order, the constituent act and the constitution, the friend and the enemy, land-appropriation and *nomos*.<sup>17</sup> The decision creates the legal order, but it does not cease to operate even after the order has been created: "That constitutive power has once been exercised does not abrogate or eliminate it."<sup>18</sup> It is always effectively present, resembling thus the psycho-analytical notion of trauma in the origin of the ego, insofar as trauma goes on marking the ego even after its formation. Besides, even though the event is put into the service of norm and order, there exists no – previous or subsequent – norm or order that could determine the nature of the event: "Righteous measures are born and meaningful relations are formed", but only on the grounds of the "unrighteous" and "meaningless" event.<sup>19</sup> There exists no measure, which could determine the nature of the event of the concrete, because the event is the measureless original measure (*Ur-Mass*) of all measures. The event is the extreme case, which determines all other cases – including itself.

All this is not to say, however, that Schmitt's thought would represent an extreme point of view in relation to the political thought of the late modernity in general. On the contrary, it is, as already noted, precisely because of this rationality that Schmitt's thinking seems to fit in perfectly with the radical political thought of late modernity, as well as with the conceptually articulated social structure of the 20<sup>th</sup> century in which the state of exception (contingency) has increasingly become the rule (machine). In fact, Schmitt's thinking can be considered a crystallization of this structure, if not the finest, then certainly one of its sharpest expressions in the sphere of political theory. For this reason, if one wants to question Schmitt's political thought, then one should question the extremism of political thought of late modernity in general, and if one wants to go beyond the extremism of this thought, erected on the irreconcilable dialectics of the rule and exception, *norma* and *extremitas*, yet without returning to classical political thought, one should concentrate, perhaps, on the deconstruction of Schmitt's thought.<sup>20</sup>

## Footnotes

- <sup>1</sup> Schmitt, *Der Nomos der Erde*, p. 48. Admittedly, Schmitt, like Kojève, thought that the end of history is a real possibility today, but contrary to Kojève, Schmitt did not perceive this end in the satisfaction of the human desire for recognition. He perceived it in the real possibility of humanity to commit a suicide by means of the developed techniques of total annihilation: “This death would be the culmination of universal history, a collective reality analogous to the Stoic conception according to which the suicide of an individual represents the culmination of his liberty.” Carl Schmitt, “L’unité du monde II” (1956). In *Du politique: “légalité et légitimité” et autres essais*. Pardès 1990, p. 246.
- <sup>2</sup> Derrida, *Politics of Friendship*, p. 117.
- <sup>3</sup> Meier, *The Lesson*, p. 16.
- <sup>4</sup> See especially Hegel’s critique of immediacy in G. W. F. Hegel, *Phenomenology of Spirit*. Oxford University Press 1977, pp. 58-66.
- <sup>5</sup> In this sense, Carlo Galli’s remark that Schmitt “tries to think the unthinkable” is correct. Galli, “Carl Schmitt’s Anti-liberalism”, p. 1611.
- <sup>6</sup> Schmitt, *Ex Captivitate Salus*, p. 89.
- <sup>7</sup> Schmitt, *Ex Captivitate Salus*, p. 89.
- <sup>8</sup> Schmitt, *The Concept of the Political*, p. 27.
- <sup>9</sup> “The enemy is a figure of our self-questioning.” Schmitt, *Ex Captivitate Salus*, p. 90.
- <sup>10</sup> For this reason, it could be argued that Schmitt’s enemy occupies structurally the same place as the “other” in Emmanuel Levinas’ ethics in which the other, the concrete face of the other, calls me in question, paving the way, not for hostility as Schmitt would maintain, but for responsibility. However, unlike Levinas, Schmitt wants to see the relationship between the self and the other as symmetrical. He wants that, firstly, because a symmetrical relationship is not something natural but something that must be wanted, something that must be produced by a political will, and, secondly, because an asymmetrical relationship, which Levinas sees as the precondition of responsibility, opens the door to absolute hostility. On Levinas’ ethics of the other see for instance, Emmanuel Levinas, *Totality and Infinity*. Duquesne University Press 1969.
- <sup>11</sup> Therefore Philippe Lacoue-Labarthe’s and Jean-Luc Nancy’s general statement, according to which the search for myth and the desire for an event go hand in hand, applies well also to Schmitt. See Philippe Lacoue-Labarthe and Jean-Luc Nancy, *Le myth nazi*. Editions de l’Aube 2003, p. 15.
- <sup>12</sup> Schmitt, *Der Nomos der Erde*, p. 42.
- <sup>13</sup> For this reason I cannot subscribe to Renato Cristi’s claim that the continuity of Schmitt’s thought before and after 1933 is due to his “substantivist way of thinking” and “metaphysics of substance” in which the “metaphysical core” of his “meta-legal” thought can be found. See Renato Cristi, *Carl Schmitt and Authoritarian*

*Liberalism*. University of Wales Press 1998, pp. 144-145. I admit that Schmitt might have longed for substance and substantive grounds, but he fully realized that modernity is marked by a fundamental loss of such grounds. I also admit that Schmitt's turn to "concrete order thinking" entails a turn to a more "substativist way of thinking", but even in this latter phase the metaphysical core of his "meta-legal" thought does not lie there. Instead, it lies in the founding event of the concrete without a foundation, without substance.\_

<sup>14</sup> Schmitt, *Roman Catholicism*, p. 33.

<sup>15</sup> Georges Bataille, *Sovereignty*. In *The Accursed Share. Vol. 3*. Zone Books 1993, p. 382.

<sup>16</sup> In Schmitt's view, Bataille's unbound sovereignty would be absolutely bound – or rather servile – inasmuch as Bataille defines sovereignty in terms of irrational and immediate moments of consumption: "The sovereign individual consumes and does not labor." Bataille, *Sovereignty*, p. 198. Although Bataille states that such moments are nonproductive, miraculous and remain outside "all knowledge", from Schmitt's perspective there would be nothing miraculous in such a moment, because the individual who irrationally and immediately consumes – "truly enjoys the products of this life" – is not free from the system of production. On the contrary, he is an indispensable part of it, even though he can subjectively have whatever experiences he likes and even ultimately "dissolve into NOTHING", as Bataille maintains. Only a romantic, this "metaphysical narcissist", confuses his moods – whether or not they have content – with reality and transforms it into a source for his imagination and satisfaction. For Schmitt, it would not have been a surprise that Bataille identifies sovereignty and sovereign consumption with the moments of laughter, tears, death, eroticism, and war – even war becomes a mere stimulant of imagination for Bataille – in addition to celebrating chance (*occassio*) and preferring play to seriousness in general. On the other hand, it would have been a surprise for Schmitt if Bataille had not withdrawn from political action into the sphere of the mystical precisely at the moment when the times – World War II – would have required the firmest of commitments. In Schmitt's view, romanticism and political activity are mutually exclusive: "Where political activity begins, political romanticism ends." Schmitt, *Political Romanticism*, p. 160.

<sup>17</sup> Admittedly, this last dichotomy is in a sense spurious inasmuch as Schmitt argues that *nomos* itself is a constitutive historical event (*Ereignis*). Schmitt, *Der Nomos der Erde*, p. 42.

<sup>18</sup> Schmitt, *Verfassungslehre*, p. 77.

<sup>19</sup> Schmitt, *Land and Sea*, p. 59. Translation altered.

<sup>20</sup> This critique is not the task of this little book. Those who are interested in such an effort in its preliminary form, see Mika Ojakangas: "Carl Schmitt's Real Enemy: The Citizen of the Non-exclusive Democratic Community?" *European Legacy*. Vol 8, No 4, 2003.



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