

Review Article

What About Schmitt? Translating Carl Schmitt's Theory of Sovereignty as Literary Concept

*Political Theology: Four Chapters on the
Concept of Sovereignty.*
Trans. George Schwab. Chicago:
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A loosely allegorical, albeit perhaps somewhat self-indulgent, reading of the hot tub scene in the 2002 movie *About Schmidt* might serve as a point of entry to the subject of this review. What about Schmitt? In other words, how did we ever find ourselves watching, with a mix of humor and perhaps a little unease, as a retired, conservative, obedient, flabby and grumpy old man (played by Jack Nicholson) suddenly finds himself propositioned in a hot tub by a topless, corpulent, new age liberal (played by Kathy Bates) who is the mother of the hapless dolt whom Schmidt's daughter is about to marry?

In other words, how did the recent fascination with Carl Schmitt come about? The explosion of scholarship and the courtship of Carl Schmitt over the last 15 years by the left and the right alike has been staggering. A bibliographical search on Schmitt carried out over ten years ago by Tracy B. Strong, the author of the

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forewords to the 1996 edition of Schmitt's *The Concept of the Political* and the December 2005 edition of *Political Theology*, comes up with "sixty-three journal articles in the last five years as well as thirty-six books published since 1980, most of them since 1990. By comparison, the search reveals 164 articles on Heidegger and twenty-six on Hitler" (*The Concept of the Political* xiii). The very selective bibliography contained in the foreword to *Political Theology* puts a conservative estimate of the rate of scholarly books published on Schmitt at over 1.5 per year since 1996 (xxxiv–xxxv).¹

Moreover, the interest in Schmitt's work is not confined to the current theoretical fashions of any one country. While German legal and critical circles continued to discuss Carl Schmitt's work long after World War II, the reception of Schmitt's work in English-language contexts starting with the rise of Hitler through to the 1970s was so hostile, for example, that George Schwab's dissertation on the critic of the Weimar Republic was rejected by Columbia University (*The Challenge of the Exception* v). Nearly four decades later, Columbia University and the Cardozo Law School sponsored a conference dedicated to Schmitt's work, "Carl Schmitt: Legacy and Prospects," whose proceedings would be published in the May 2000 issue of the *Cardozo Law Review* with contributions from scholars from Italy, Israel, the United States, England, Mexico, Germany, and Argentina. In Spain, where Jürgen Habermas's concept of "constitutional patriotism" has been taken up by many intellectuals on the left, and now the right due to the demands of the proposed Catalan Statute, the important philosophical journal *Daimon* followed up its inaugural issue devoted to Habermas with a 1996 issue dedicated to Schmitt entitled "Carl Schmitt: Entre teología y mitología política" ("Carl Schmitt: Between Theology and Political Mythology").²

It would be too hasty to conclude that Schmitt's current critical standing indicates any kind of resolution of the polemics between left and right regarding the legacy of his legal thought and his political association with the Nazi party. It almost goes without saying that the extreme right has taken pains to revive the friend-enemy distinction, developed in Schmitt's *The Concept of the Political* and, in many cases, has reduced it further to a friend-foe distinction in order to justify strategies of total war and cultural, religious, and ethnic cleansing.³

On the other side of the spectrum, Giorgio Agamben, in his *Homo Sacer* series argues that the possibly tyrannical consequences of Schmitt's thinking on the friend-enemy distinction and the sovereign decision are not isolated to the followers of the "Crown Jurist of the Third Reich," but rather are only too alive

and well within the practices of present day liberal democratic states.⁴ Let me give one quick example of Agamben's line of thought in the form of biopolitics and the sovereign decision. In *Homo Sacer: Sovereign Power and Bare Life* Agamben argues that the state of exception is fast becoming the rule, with the consequence that the state of nature and the state of law are nearly indistinguishable (38). Rather than a pure Hobbesian state of nature of all against all, the sovereign state maintains the monopoly over violence and yet the demand for obedience is no longer contingent upon the guarantee of protection. In *Remnants of Auschwitz*, the Nazi concentration camp is shown to be the end result of a legal process which produces a separation between the living being (*zoe*) and the speaking being (*bios*) with the aim "no longer to make die or to make live, but to survive" (155). Agamben then seeks to illustrate how states of exception have played out in American history by following the sovereign decisions of presidents Abraham Lincoln, Woodrow Wilson, Franklin D. Roosevelt, and George W. Bush. In the last case, he states that as a result of September 11 "Bush is attempting to produce a situation in which the emergency becomes the rule, and the very distinction between peace and war (and between foreign and civil war) becomes impossible" (*State of Exception* 22). Evidence for Agamben's claims would appear to be provided externally by the suspended legal status of the Guantánamo prisoners; and internally by the recent ethical and legal battles over the coma case of Terri Schiavo (whose last name happens to mean slave in Italian), along with the present debates between the legislative and the executive branches in which Attorney General Alberto Gonzales has defended the constitutional legality of President Bush's decision to not fully disclose matters regarding domestic spying.⁵

Both visions share an apocalyptic tone. Many European and American parties of the right are afraid that the failure to distinguish between political friend and enemy will ultimately lead to the death of democracy, and offer as an example the anti-democratic Islamic Salvation Front's attempt to gain control of Algiers by democratic means. Meanwhile, many intellectuals from the left consider the declaration of the state of exception to be not a mechanism that protects democracy and the rights of man from external threats, but a tool which has become such a part of state procedure that it threatens the very rights of the citizens who live within the democratic state.

Some of the most productive scholarship on Schmitt attempts a more radical critique of his juridical-philosophical thought, not by clothing a supposedly fascist wolf in softer liberal sheep's

clothes, nor by the outright eradication of his writings through (at times understandably) emotional arguments made ad hominem, but rather by studying how Schmitt's work "sits at the intersection of three central questions which any contemporary political theorist must consider": the relation between liberalism and democracy, between politics and ethics, and the role of the friend-enemy distinction (*The Concept of the Political* xiii). Examples of this kind of critical engagement, which at times goes both with and against the grain of Schmitt's thought, include the work of Chantal Mouffe and Jacques Derrida. Through the notion of radical democracy, Mouffe argues for modifying the friend-enemy distinction to a controlled, internal adversarial position which would better address the challenges of the reemergence of the political. That is to say, Mouffe agrees with Schmitt that antagonism plays a constitutive role in the modern democratic state and can never be completely eradicated through the rule of law or the imposition of a "single, moral good" such as that proposed by liberal communitarians (*The Return of the Political* 33). Against Schmitt, however, she does not look to solve these antagonisms by the mythical and probably violent ordering of a state free from the enemy, but rather argues that a pluralistic democracy does indeed have the tools to provide the non-bellucose outlet for the expression of difference (5).⁶

The work of Jacques Derrida seems to enjoy a much more complex, if not incestuous, relationship with that of Schmitt. Derrida's more explicit writings on politics have shown how Schmitt's work is often clearly in line with the history of Western political thought. In *Politics of Friendship*, Derrida relates Schmitt's friend-enemy distinction to the work of Aristotle, Kant, and Nietzsche in order to ask about the possibility of a democracy-to-come that engages with the secularized theological concepts and the homosocial genealogy on which current democracies still depend. In *Rogues: Two Essays on Reason*, Derrida ties Kant to Schmitt and reason to sovereignty to show that the rogue state is not limited to the oppositional role of the irrational, but plays a fundamental role in the juridical and political ordering of international relations. In Derridean shorthand, a sovereign state worthy of its name must always possibly be a rogue state. One of Derrida's answers to the problem of the rogue state, i.e., all nation-states, can only be understood by furthering Schmitt's own thought by making both the friend-enemy distinction of the *Concept of the Political* and the concept of sovereignty borderline concepts.

Given the fact that a large portion of important recent scholarly work examines the problems, crises, and repercussions of sovereignty on international affairs and on those of the state citizen,

the 2005 edition of Carl Schmitt's *Political Theology* is a welcome addition to speakers of English who want to examine where the ramifications of the sovereign decision over the state of exception are first rigorously examined.

The main change between this edition, published by the University of Chicago Press, and MIT Press's 1985 edition is Tracy B. Strong's 28-page foreword. Strong picks up in the first few pages from where he left off in his foreword to the *Concept of the Political* with the question of Schmitt's involvement with Nazism, and its possible ties to his work. Here Strong condemns extremist positions from both sides which either attempt to completely divorce Schmitt's political choices from his theoretical positions or chain the exegesis of his work to a strictly autobiographical reading. A tie to the autobiographical remains, nonetheless, through a quick reading of Schmitt's identification with the doomed prisoner captain of Melville's novel *Benito Cereno*, whereby Strong argues two points: first, that Schmitt viewed himself as being caught between a rock and a hard place, and, more important, that the decision to join the Nazi party was neither completely innocent nor merely self-ambitious but also reflected a logically perceived need for a strong state building mechanism (x-xi).

The next seventeen pages of the foreword move clearly and quickly to summarize the major passages and clear up a few points of possible misunderstanding. Strong's explanation of the first and most famous sentence of the *Political Theology* (if not of Schmitt's whole corpus) is particularly valuable: "The sovereign is he who decides on the exception" (5). As Strong points out, the German original, "Soverän ist, wer über den Ausnahmezustand entscheidet," and Schwab's translation retain an important ambiguity that allows Schmitt to say that "it is the essence of sovereignty to *both* decide what is an exception *and* to make the decision appropriate to that exception" (xii, emphasis in the original). This does bring up a related point regarding editions and translations. Even though Strong's commentary is insightful and George Schwab's translations have been the English standard for Schmitt's work over the past few decades, I still wonder why the editors did not include the original German *Politisches Theologie*. While the structure of Wittgenstein's writing, for example, may lend itself more easily to side-by-side translations, Schmitt's text is in fact only sixty-six pages (making up little more than half of the edition), and the University of Chicago Press has done side-by-side translations in the past, e.g., Jacques Derrida's *Spurs: Nietzsche's Styles/Éperons: Les Styles de Nietzsche*.

The foreword then summarizes Schmitt's conceptions of the exception, the decision, rule of law vs. situational law, and the mechanization of the political and its relation to the other oft-quoted line, "All significant concepts of modern theory of the state are secularized theological concepts," to finally return to the question of Schmitt's attraction to Hitler and that attraction's relation to the tragic end of Melville's story of a mutinied ship (36). This sequence mirrors in many ways Schmitt's own rhetorical structure in *Political Theology* of first offering an answer in response to a current crisis that, in turn, is the result of a historical misinterpretation/deviation.

The summary of Schmitt's argument goes something like the following: The crisis of current parliamentary democracies is due to the progressive mechanization of the political in which the sixteenth-century's theological and transcendent understanding of the world gives way to the seventeenth-century's rationalists, followed by eighteenth-century ethical humanism, culminating in positivist economic and scientific models of understanding in the nineteenth and twentieth centuries whereby "conceptions of immanence" have carried out the "battle against God" and replaced him with a materialist mankind (1-2, 36-52). The resulting mechanistic application of the rule of law seeks to handle the threat of the exceptional case by inscribing it within law itself. However, the exception is a situation that puts the very existence of the state in danger, and is, by definition, that which can neither be foreseen nor "circumscribed factually and made to conform to a preformed law" (6). A state chained to the rule of law cannot adequately respond to the threats of an enemy who does not respect the law, or who may even use the law as a means to achieve an undemocratic end. As the counterrevolutionaries have shown, parliamentary democracy hides unrealistically behind the hope that the dispute with the enemy can be "suspended forever in an everlasting discussion" (63, 65).⁷ The current moment is characterized by an onslaught against the political (the exacting moral and metaphysical decision over whether the other is friend or enemy), to be replaced by the economical-technical thinking of immanence from all spheres (capitalism, socialism, and anarchism), which results from the elimination of all theistic and transcendental conceptions (51, 65). According to Schmitt's logic, the only possible answer is an indivisible sovereign with unconditional powers to decide whether or not there is an extreme emergency. If there is not, he remains within the normally valid legal system. If there is, however, then he must decide which actions to take in order to eliminate the exception, even if that means stepping outside the

law (e.g., suspending the constitution) until the normal situation can be restored (4–8).

Schmitt believes “every political idea [. . .] takes a position on the ‘nature’ of man and presupposes that he is either ‘by nature good’ or ‘by nature evil’” (56). The German legal theorist clearly sides with the latter and, following Donoso Cortés and Thomas Hobbes, looks to the sovereign dictator as the only one capable of protecting the people from the enemy, whether external or internal, i.e., themselves. In the name of protection and security, the *Political Theology* fails to address, and consequently ends up reinforcing, a major weak point in the history of political theory which threatens the guarantee of the well-being of the populace in exchange for total obedience. The flaw might be best summed up through the Sixth Proposition of Kant’s “Idea for a Universal History”: “This problem is both the most difficult and the last to be solved by the human race. [. . .] if he lives among others of his own species, man is an animal who needs a master. [. . .] Yet the highest authority has to be just in itself and yet also a man” (*Political Writings* 46). Furthering Strong’s argument near the end of the foreword, Schmitt himself made a transcendental mistake in the form of a theological miracle in trying to bridge the antinomy by locating the idea in itself in the immanence of Hitler. This flaw also touches upon a problem that has plagued social contract theory as well: the right of secession. Even more than the Hobbesian subject, who still maintains certain inalienable rights, Schmitt’s conception of the sovereign carries with it the possibility that a subject or group may always be obligated to obey the decision of the sovereign since in such a case the recourse to law has been suspended.⁸ While Schmitt’s critique of liberalism’s blindness to the inevitability of the exception and its inability to respond due to the structural manifolds of the rule of law was extremely accurate, as Oren Gross has demonstrated, Schmitt’s answer to the problem in the form of unmediated decisionism carries with it the necessary possibility that decisionism may make all normal laws redundant and put total, unmediated power in the hands of one person (1849–50).

I agree with many Schmitt scholars that in the realm of political and juridical theory Carl Schmitt’s *Political Theology* succeeds as an incisive descriptive study of the conceptual and structural flaws of liberal democracy in the early twentieth century. It is also evident that Schmitt’s prescriptive answer to the crisis in the form of a sovereign dictatorship can and did lead to the abolition of the very laws and individual rights that the sovereign was entrusted to protect. I’d like to conclude, however, by entertaining the possibility that Schmitt’s conceptions of sovereignty, the exception, and

the decision may offer both descriptive and prescriptive insights into the status and direction of literary studies and critical theory.

In his non-regulative idea of the democracy to come, Derrida at first sides with Schmitt's seemingly paradoxical view that sovereignty belongs to the rational without being "made to conform to a preformed law" (*Political Theology* 6). In *Rogues* the called-for shift is from sovereignty viewed through the state to deconstruction as sovereignty in the name of unconditionality (143). Here, calculative reason (Kantian Understanding) guarantees deconstruction's sovereign right to suspend reason. While in Hobbes, the individual does not have to be obedient to the point of causing his own death, Schmitt and Derrida's view of sovereignty is that it must be unconditional. What is the difference? To respond to this question, I would go to Derrida's writings on literature and attempt to engage them along the lines of sovereignty and the exception.

The translation from political concept to literary theory would serve to highlight the dangers of scholarship which attempts to reduce and define the literary event as an entity foreseeable and already codified by a rigid set of laws and rules. The analogy would place literature as institution in the role of the sovereign and the literary in that of the exception. Like the legal idea in Schmitt, the literary itself does not exist but as a kind of "idea [that] cannot realize itself, it needs a particular organization and form before it can be transformed into reality" (*Political Theology* 28). This presents the problematic intersection between exception and norm. The translation of the literary into literature is the process whereby a sovereign decision is first made regarding the exception, which is only then transformed into a new norm for the institution of literature. The literary itself is necessarily lost in the translation until its next unforeseeable interruption of the norm, and the process is repeated but can never be systematically exhausted.

That would mean that any encounter with the literary would entail a decision as to whether or not it threatens the preexisting rules due to its singularity. Schmitt argues that the theories of Krabbe, Preuss, and Kelsen aim to make the decision regarding the exception absolutely calculable beforehand. In effect, Schmitt and Derrida share the same conception of the decision in that a decision worthy of its name cannot be knowable or calculable in advance. A calculable decision is not really a decision at all, but rather the causal result of the mechanical application of rules. In Schmitt's words: ". . . [what is inherent in the idea of the decision is that there can never be absolutely declaratory decisions. That constitutive, specific element of a decision is, from the perspective

of the content of the underlying norm, new and alien. Looked at normatively, the decision emanates from nothingness" (31).

I agree with Sam Weber in his study of sovereignty in Benjamin and Schmitt where he calls the sovereign decision "a pure act, somewhat akin to the act of creation except that what it does is not so much to create as to interrupt and to suspend" (10). However, I'd like to posit that the application of the sovereign decision to the literary may give rise to an event that is both "creation" and interruption; primarily an act of radical creation that cannot be predetermined or foreseen, and as such, an act that threatens the norms, i.e., rules of genre and the borders created for it by the institution of literature. Weber will continue by stating that the sovereign decision is not arbitrary since it is viewed as necessary to preserve the state. If we follow Derrida's comments in his interview, "This Strange Institution Called Literature" (*Acts of Literature*), this makes perfect sense. Literature, as a democratically guaranteed institution, has as its end to protect the autonomous and undeterminable space of literature. This space consists precisely in its possibility of being open to the encounter with the exceptional. The literary does not have to say anything. Its responsibility may even be that of being irresponsible so that it doesn't subjugate itself to the hegemony of another field. For example, if literature always must have a critical function, then this would chain it to philosophy (*Acts of Literature* 38).

A possible rejoinder against the apparently circular logic of sovereignty is in fact an important insight into the very mechanics of sovereignty as it is traditionally conceived. For the sovereign to exist as such there must always be an outside—threatening and non-totalizable—over which the sovereign must attempt to exert its influence in order to protect the inside. A "Derridean" move would then show how the sovereign is in fact dependent upon the very outside it wishes to exclude (as outside) or incorporate, i.e., a seemingly paradoxical exclusion through inclusion or treating the other as the same. The radicalness of Schmitt's conception is the warning that a purely mechanical application of law is blind to the fact that an exception can and always will appear. For Schmitt this exception is almost always threatening, but I do not see why in the case of the relationship between literature and the literary that this threat cannot also be viewed as an opportunity for an ethical response akin to Levinas's conception of the relationship between the Saying and the Said. Juxtaposing Schmitt with Levinas would force the former to acknowledge the impossibility of ever totally assimilating or excluding the other through a rigid, impermeable friend-enemy binary distinction.

Just as the Levinasian subject is always already traversed by the other, Democracy itself cannot normatively decide what is literary since it has handed over to the institution of literature (therein the paradox) the right of sovereign power to decide on what is a literary exception. By doing so, democracy might immunize itself from its own conceptual limitations and structural weakness. As opposed to Schmitt's conception of the political sovereign, however, this unconditional right of literature has been guaranteed through a consensual process of institutionalization and therefore is protected by Western democracy. Here the literary and its passing through the walls of literature would serve as a check on the excesses and blind spots of democracy, reason, facile empiricism, etc. precisely when it goes against democracy or reason by saying anything or something that might not be democratic or even reasonable. As in Chantal Mouffe's political formulations, antagonism cannot be eliminated since by definition it is the excess or that which cannot be superseded. Why the need for this guarantee which can unconditionally suspend reason, or even the tenets of democracy? Simply put, reason which does not admit the realm of the irrational or a democracy which does not admit the possibly undemocratic is not only irrational or undemocratic but also tyrannical. In the case of liberal democracy, admitting the possibly contentious other in the same by creating and guaranteeing a possibly irrational and undemocratic space known as literature would give the other an outlet for expression, rather than attempting to exorcise the other and consequently put it into a violent, external opposition. In other words, literature can be thought of as critical, irrational or undemocratic, or anything, and yet not be the enemy (e.g., a threat to democracy or only a cultural manifestation of an elite social class). Rather, as a sovereign adversary it could be the guarantor of democracy by allowing the exceptional to be said and read.

Notes

¹ For example, while Strong does cite Giorgio Agamben's *State of Exception* (2003; 2005 in English), Agamben's seminal work on sovereignty, *Homo Sacer: Sovereign Power and Bare Life* (1995; 1998 in English) and Derrida's important reading of the Schmittian friend-enemy distinction in *Politics of Friendship* (1994; 1997 in English) are conspicuously absent from Strong's bibliography.

² For an introduction to the relationship between Habermas's project for a universally valid constitution and the left's conception of Spanish

nationalism (i.e., loyalty to the Spanish state as opposed to the various regional nationalisms), see Xosé-Manole Núñez's "What is Spanish nationalism today? From Legitimacy Crisis to Unfulfilled Renovation" in *Ethnic and Racial Studies*. Vol. 24, No. 5, September 2001, 719–752.

³ As George Schwab has already noted, "The German term *Feind* can be translated as enemy or foe" (53). Schwab goes on to say that Schmitt became aware of the ambiguity in his later writings, and that the friend-enemy pairing is the better translation in that it avoids the religious connotations of the term foe. See Schwab's *The Challenge of the Exception* (51–55).

⁴ The English titles of Agamben's homo sacer trilogy are *Homo Sacer: Sovereign Power and Bare Life*, *State of Exception*, and *Remnants of Auschwitz: The Witness and the Archive*.

⁵ In *Hamdan v. Rumsfeld*, the Supreme Court's ruling that "the military commission convened to try Hamdan lacks power to proceed because its structure and procedures violate both the UCMJ and the Geneva Conventions" would appear to place a check on the Bush government's use of the November 13 Order regarding the "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," in order to skirt around the rule of law in its suspension of basic legal rights of Guantánamo detainees (10–11).

⁶ That is not to say that Mouffe forgoes the friend-enemy distinction completely, but rather that she aims to offer a more inclusive model by transforming an antagonistic friend-enemy model where they "do not share any common ground" into an agonistic, adversarial model "where the conflicting parties, although acknowledging that there is no rational solution to their conflict, nevertheless recognize the legitimacy of their opponents" (*On the Political* 20). She notes, however, that there are limits to democratic pluralist politics which still must be drawn since a "democratic society cannot treat those who put its basic institutions into question as legitimate adversaries," i.e., enemies of democracy (120). Strictly speaking then, she does believe in the necessity that a pluralist democracy exclude the enemy, but through her definition and inclusion of the term adversary the enemy is more strictly defined than the far-reaching scope it had for Schmitt. Mouffe's concerns still echo those of Schmitt that anti-constitutional parties (i.e., domestic enemies of the state) could use the legitimate legal processes to gain power, only to then suspend, if not end, the rights guaranteed by the constitution. In the case of Schmitt's political relations, Schwab sees this as evidence of Schmitt's fear of the Nazis and Communists, and the justification of an indivisible sovereign. See Schwab's intro to *Political Theology* (xlv–xlix).

⁷ In *Political Romanticism*, Schmitt sees this tendency towards "everlasting discussion" as the deleterious byproduct of Romanticism's entrance into politics. For Schmitt, the romantics are little more than spoiled, inconstant bourgeoisie brats and dreamers who forever negate the present

by privileging the unlimited realm of possibility over the specificity of reality. Consequently, when the romantics necessarily leave the realm of the aesthetic and enter the political as a result of their "subjectified occasionalism," they suspend the constitutive act of the political: the necessity to make the either-or decision whereby something or someone will be excluded (17, 65, 117). In Schmitt's words, "The root of romantic sublimity is the inability to decide, the 'higher third' factor they are always talking about, which is not a higher factor but a different third factor: in other words, it is always a way out of the either-or" (117). For Schmitt, then, it would appear that literature should remain safely cordoned off from the more serious business of politics.

⁸ Schmitt considered his conception of the sovereign a corrective to the successive weakening of Hobbes's leviathan in which private interests may ultimately empty the ruler's power over public interests:

But when public power wants to be only public, when state and confession drive inner belief into the private domain, then the soul of a people betakes itself on the 'secret road' that leads inward. [...] At precisely the moment when the distinction between inner and outer is recognized, the superiority of the inner over the outer and thereby that of the private over the public is resolved. Public power and force may be ever so completely and emphatically recognized and ever so loyally respected, but only as a public and only an external power, it is hollow and already dead from within (*The Leviathan in the State Theory of Thomas Hobbes* 61).

⁹ This move to admit the other in the same should not be equated with Habermas's universalizing position in, for example, *The Inclusion of the Other*, which risks collapsing the radical, ethical other into the order of the political. In this respect, Lyotard is right to maintain the difference between a *différend* and a wrong, although not, as Mouffe points out, at the expense of denying "a chain of equivalence among different democratic struggles" (*The Return of the Political* 77).

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