

JOSEPH J. BENDERSKY

Carl Schmitt

Theorist for the Reich



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For Carmen, Karen, and Nicole

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PREFACE

THE life of Carl Schmitt has been marked by eminence and controversy. His public career has been distinguished by major intellectual accomplishments and recognition, but it has also been marred by political and personal crises. As a witness to some of the most decisive events in German history, Schmitt experienced the collapse of the monarchy in 1918, the turmoil of the Weimar Republic, the Nazi dictatorship, and the creation of the Federal Republic. And his writings have addressed the political and constitutional issues of each of these periods. An established scholar before World War I, Schmitt reached the peak of his intellectual creativity during the Weimar Republic and published his last article in 1978. In the 1920's he emerged as one of Weimar's most influential, as well as most widely read, political and legal theorists; at that time his writings played a prominent role in the intellectual and political debates over the viability of democracy in Germany. No student of Weimar can ignore his works on the crisis of liberalism and parliamentary government, his theory of constitutional dictatorship, or his interpretations of presidential emergency powers under Article 48 of the Weimar constitution. Schmitt's ideas took on particular significance when the republic faced its final crisis, brought on by the depression, a paralyzed Reichstag, and the threat of a Nazi seizure of power. As an adviser to the Hindenburg government, Schmitt provided the theoretical and legal justifications for the presidential system that ruled Germany through emergency decrees between 1930 and 1933. However, his active support for the presidential government, his subsequent compromises during the early phase of the Hitler regime, and his reputation as the "Crown Jurist" of the Third Reich have made Schmitt the subject of considerable debate for decades.

PREFACE

As the German historian Heinrich Muth noted, "He is one of the few really significant political theorists of our century, but without a doubt the most controversial." Often compared with such thinkers as Hobbes, Machiavelli, and Max Weber, Schmitt is considered by many as a man of brilliant intellect whose original ideas and incisive analyses have retained their significance in the contemporary world. In the opinion of others, however, Schmitt symbolizes the worst tendencies in German political thought. He has been described variously as a fascist, nihilist, or opportunist. Some argue that his writings were essentially nihilistic and contributed to the collapse of the Weimar Republic by creating an intellectual wasteland in which Nazism could flourish. Others go further, contending that he was a prophet of the totalitarian state whose ideas found their realization in Hitler's Third Reich. Not only has this controversy produced an extensive body of literature in Germany, but more recently scholars in England, Italy, Japan, and the United States have displayed an interest in this enigmatic jurist. Since World War II twenty books and more than three hundred articles have been published on Schmitt, and his works have been translated into nine different languages.

One of the most striking features of the literature on Schmitt is that no one has attempted a systematic examination of his life and political activity. Yet there is an important interrelationship between his ideas and the changing political circumstances he confronted. In the past most scholars have attempted to understand his political stances in Weimar and Nazi Germany by reading between the lines of his published works. This in turn has encouraged writers to make sweeping, unsubstantiated, and frequently misleading generalizations about Schmitt's character, political attitudes, and influence. Similarly, misunderstandings of his political philosophy and aims have tended to distort interpretations of Schmitt's writings. A detailed account of Schmitt's public life, based on unpublished as well as published sources, is obviously needed.

PREFACE

I have chosen Schmitt's politics as the focal point for the present study precisely because much of the controversy surrounding him is directly related to his political involvements. For it is quite evident that so long as crucial questions remain unanswered about Schmitt's political perspectives and activities, it will be difficult to determine his proper place in German intellectual history. From the beginning it has been my intention to clarify as many of these questions as possible and thereby provide a framework for a more detached evaluation of Schmitt and his ideas. Since these ends would not have been furthered by hagiography or vilification, I have tried to avoid both. I have attempted to represent Schmitt's ideas and political attitudes as accurately as possible, interpreting his life, work, and politics on the basis of what he actually stated in his writings and from the standpoint of what other available evidence indicated about his viewpoints and activities. Given the controversial nature of the subject, however, I remained ever aware of the need for critical evaluation of these sources. In assessing Schmitt's postwar statements and reflections, in particular, I devoted special attention to the problems presented by memory, bias, and Schmitt's desire for vindication. Consequently, in many important areas my interpretations contrast sharply with Schmitt's own self-image and his explanations for the political choices he made. Nonetheless, the evidence has also led me to draw conclusions differing significantly from those presented by writers who have allowed Schmitt's compromises with the Hitler regime to overshadow all other aspects of his life and work.

My approach to this subject was best summed up in the recent comment by Wilfried von Bredow—Schmitt's work is too intelligently written and too important to be left in the hands of apologists and anti-apologists.

ACKNOWLEDGMENTS

DURING the years of researching and writing a book an author incurs many more debts than he can ever hope to repay. At best he can acknowledge the contributions of others and express his gratitude. In this regard, I would like to thank Paul R. Duggan and Paul R. Sweet of Michigan State University for their assistance during an earlier phase of my work when I was establishing the foundations for the present study. They were demanding, as well as open-minded, in providing constructive criticism and I benefited greatly from their guidance and comments. I owe a special debt to Paul Sweet for originally suggesting Carl Schmitt as a subject for research and for his kind help in a variety of ways over the years. George Schwab of the Graduate Center of the City University of New York and Helmut Rumpf of the German Foreign Office deserve equal acknowledgment for their encouragement and for sharing with me their extensive knowledge in the field of Schmitt studies. It is my hope that when they finally have the opportunity to read this book, they will feel that their efforts were worthwhile. The assistance of Gary Ulmen of Columbia University was crucial in bringing this work to fruition and for this I am especially grateful. Well-deserved recognition also belongs to my friend and colleague James T. Moore, who read major segments of the manuscript and was perhaps my most demanding and helpful critic. Throughout the years that I imposed so often upon his time and patience he demonstrated the endurance of Job; he certainly listened to more about Carl Schmitt than anyone would care to hear.

I am also indebted to the following individuals for granting interviews and providing information: Carl Schmitt, Rüdiger Altmann, Mrs. Edith Gurian, Robert M. W. Kempner, Heinrich Popitz, Charles Robson, and Ulrich Scheu-

ACKNOWLEDGMENTS

ner. On several occasions Piet Tommissen of the Economische Hogeschool Sint-Aloysius, Brussels, furnished copies of important documents and publications I was unable to locate elsewhere.

This book could not have been written without the assistance of several institutions. Support for extensive research in Germany was provided by a Fulbright scholarship and the Alexander von Humboldt Foundation. My work was facilitated by various archivists in the Bundesarchiv, Koblenz; the Institut für Zeitgeschichte, Munich; the Geheimen Staatsarchiv, Berlin; and the Document Center, Berlin. A research grant from Virginia Commonwealth University allowed me time to write part of the manuscript. Particular acknowledgment must be given to members of the Inter-Library Loan Department of the James Branch Cabell Library at Virginia Commonwealth University for their outstanding work over a period of years. It would be difficult to find a more competent, efficient, and helpful staff.

I would like to express my sincere appreciation to Miriam Brokaw of Princeton University Press for the professional attitude she displayed in dealing with this work. A note of thanks should also go to my colleagues in the History Department of Virginia Commonwealth University for their moral support, and to Wanda Clary, who did such an excellent job of typing the manuscript.

From the very beginning my wife, Carmen, played a decisive role in this study and she deserves much of the credit for its completion. Her technical assistance with proofreading and corrections, and more importantly her patience, understanding, and encouragement were only a small part of her actual contribution. My most personal expression of gratitude is reserved for her and my daughters, Karen and Nicole. While I did the researching and writing, they really made all the sacrifices.

PART I
EARLY YEARS, 1888–1921:
FROM APOLITICAL SCHOLAR TO
POLITICAL THEORIST

ONE

CATHOLIC HERITAGE, EDUCATION, AND THE STATE

THE tranquil setting of Carl Schmitt's birth revealed little of what the future held for the man and his country. When Carl was born on July 11, 1888, the seemingly incessant process of German industrialization had just begun to make its mark on his birthplace of Plettenberg, a small town in the heart of the Sauerland. With the Rhine valley to the west and the highly industrialized Ruhr Basin to the north, the Sauerland protected its small towns and villages within the bosom of its mountain forests. A glance at the beautiful countryside in which Plettenberg is situated would prompt the most convinced materialist to reflect upon the romantic perception of life. Even today the town's halcyon environs instill a sense of nostalgia for a simpler age.

Although nature had been beneficent, history would not be so kind. The first sixty years of Schmitt's life were turbulent ones. In retrospect, he would write: "I have experienced the jolts and slashes of the reins of fate / Triumph and defeat, revolution and restoration."¹ It would be a fate inextricably tied to the most volatile period in German history. For behind the idyllic facade of its natural beauty the germ of future upheaval was already planted in the Germany of Schmitt's youth. The nationalistic zeal of the age, permeating the minds of a majority of Germans, was counterbalanced by the disruptive effects of new and age-old diversities. Germany had reached the zenith of her power and prosperity; most Germans took pride in the great accomplishments of the nation; they were easily seduced by

¹ Carl Schmitt, "Gesang des Sechzigjährigen," in "Der Fall Carl Schmitt: Charaktermord," *Der Fortschritt*, 4 (January 25, 1952).

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chauvinistic slogans. With the exception of the socialists and the more progressive-minded in the liberal and Catholic parties, the authoritarian state was accepted as almost a natural condition. But this nationalism and respect for the state did not eradicate the traditional sectarian and regional antagonisms which for generations had separated Catholic from Protestant, and Prussia from the rest of Germany. Recent political developments following unification and industrialization had only contributed further to this divisiveness. The new forces of liberalism and socialism now challenged not only conservatism and Christianity, but each other as well. The homogeneity Schmitt would later view as essential to any democracy was absent in the Wilhelmine Reich, while the same pluralistic forces he would criticize in Weimar had become firmly entrenched.

Schmitt himself was a child of these conflicting currents. Although he became a nationalist who always displayed considerable deference for the authority of the state, his identity was conditioned by a distinct sectarian and regional heritage. Born into a lower-middle-class Catholic family of modest means, Schmitt had little in common with the Protestant Prussian ruling class. By tradition and temperament he was a Rhinelander. Introducing himself to Ernst Niekisch, Schmitt remarked, "I am Roman by origin, tradition, and right."² Indeed, there was an element of truth in this self-characterization. Short and vivacious, he appeared far more Latin than Germanic. His close friend Franz Blei was impressed by the French air about Schmitt.³ Both branches of Schmitt's family had, in fact, recently migrated from the Moselle valley. The maiden name of his mother, Louise, was Steinlein, a name indigenous to that region; the family still had French-speaking relatives in

² Ernst Niekisch, *Gewagtes Leben: Begegnungen und Begebnisse* (Cologne, 1958), p. 242.

³ Franz Blei, "Der Fall Carl Schmitt, Von einem, der ihn kannte," *Der Christliche Ständestaat* (December 25, 1936), p. 1220, and "Ein deutsches Gespräch," *Neue Schweizer Rundschau* (July 1931), p. 519.

Lorraine. Over the years, Schmitt would speak of the Moselle valley as though he had been reared in that setting. Moselle wine was always his favorite, and he would make references such as "my nature is slow, silent, and easy-going, like a still river, like the Moselle."⁴ Perhaps this cultural identification also accounted for his ability to feel at home in Italy and Spain, to which he paid visits throughout his life.

Ever since their incorporation into Prussia in 1815, Rhenish Catholics had resisted assimilation. Suffering various forms of discrimination throughout the nineteenth century, culminating in the *Kulturkampf*, Catholics continued to view themselves as an oppressed minority. They jealously defended their cultural and religious autonomy against the power of the Prussian state.⁵ And family tradition had kept the Schmitts at the heart of the sectarian struggle. For generations they had been staunch defenders of the faith, with close ties to the clergy. Carl's father, Johann, remained an earnestly loyal and lifelong member of the Catholic Center Party. Three of Carl's great-uncles were priests who had been involved in the *Kulturkampf*, and at one time the family expected the young Carl to enter the priesthood. Reinforcing this alienation was the numerical preponderance of Protestants in Schmitt's birthplace. The parochial clannishness of Protestants and Catholics alike, occasionally resulting in sectarian violence, left an indelible mark on Schmitt's outlook.⁶ He would defend the Catholic cause into the mid-1920's; in later life he would draw distinctions

⁴ Carl Schmitt, *Ex Captivitate Salus—Erfahrungen der Zeit 1945/47* (Cologne, 1950), p. 10.

⁵ Alfred Apfel, *Behind the Scenes of German Justice: Reminiscences of a German Barrister 1882-1933* (London, 1935), pp. 2-5; Ronald J. Ross, *Beleaguered Tower: The Dilemma of Political Catholicism in Wilhelmine Germany* (Notre Dame, 1976), pp. 8-17.

⁶ "Carl Schmitt in Gespräch mit Dieter Groh und Klaus Figge," *Overen in Zake Carl Schmitt*, ed. Piet Tommissen (Brussels, 1975), p. 92; George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin, 1970), pp. 18-23.

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between religious groups as if the intensity of animosity had not diminished since his youth. His tendency to view politics in terms of friend and enemy was no doubt greatly influenced by his youthful identity as part of a minority caught in a confessional struggle.

During Schmitt's youth Catholicism, and religion in general, was besieged from another quarter. The materialistic interpretation of life, buttressed by the growing scientific achievements of the nineteenth century, threatened the very nature of religious belief. Monism, Darwinism, naturalism, and scientism all indicated an increasing skepticism about the existence of a spiritual realm.⁷ Technology and industry had shifted societal emphasis away from traditional spiritual values and toward power and wealth. To the religious-minded this meant moral relativism and atheism, with the danger of replacing universal moral values with brute force and of relegating man to the status of a machine. Schmitt's co-religionists in Germany saw these insidious doctrines represented most clearly by socialism and liberalism, two inherently anti-clerical movements founded upon materialistic philosophies. German Catholics were caught between the rising tide of secularism, the ossified anti-clericalism of Prussian Protestantism, and the patriotic pressures of a nationalistic age.

These pressures became quite apparent to the young Carl when he encountered the Prussian public educational system. In 1900, after several years in a Catholic grammar school, he entered the public humanistic Gymnasium in Attendorn. Aside from the humanistic disciplines, with the traditional emphasis on Greek and Latin designed to cultivate character and intellect, he was taught mathematics and natural science by a teacher who stressed Darwinism.⁸ One of his instructors, a freethinker, went so far as to introduce him to David Friedrich Strauss's *Life of Jesus*, a book anathema to devout Christians because it challenged

⁷ Gordon A. Craig, *Germany, 1866-1945* (New York, 1980), pp. 181-183.

⁸ Tommissen, *Over*, pp. 93-94.

the gospel accounts of Christ. His parochial views were disturbed further by the prevailing nationalist interpretations of history. Previously his historical consciousness had been based upon books written from the Catholic standpoint; now he confronted the Prussian nationalism of Treitschke's historical thought.⁹ But Schmitt completed his studies with his faith undaunted and he never lost his deeply rooted aversion to materialistic philosophies. Like every German Catholic, however, Schmitt would still have to find some accommodation between his religious and his national identity.

Family acquaintances were astonished when Schmitt entered the University of Berlin in 1907, since it was highly unusual for someone of such modest economic background to study at a university. In making this choice, it seems that the wishes of Frau Schmitt prevailed over those of his father, who would have preferred more practical training than that offered by a university education.¹⁰ In the changing society of Wilhelmine Germany, however, a university degree opened the door to social mobility and a respected station in life for those lacking noble titles or wealth.¹¹ And as the future would show, Schmitt was ambitious; he would try to compensate for his humble origins by winning public recognition of his achievements. The search for social distinction later led him to add the more exotic name of his first wife to his own. Several of his early publications thus bear the name Carl Schmitt-Dorotić.¹² Gradually his own very common name became one of distinction in intellectual circles, but his ambition would often cloud the judgments of an otherwise acute mind.

⁹ Schmitt, *Ex Captivitate*, p. 25.

¹⁰ Tommissen, *Over*, pp. 93-94.

¹¹ Fritz Ringer, *The Decline of the German Mandarins: The German Academic Community, 1890-1933* (Cambridge, Mass., 1969), pp. 47-48, 69.

¹² See Carl Schmitt-Dorotić; *Politische Romantik* (Munich, 1919), and *Die Diktatur-Von den Anfängen des Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Munich, 1921).

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Like countless members of his peer group, Schmitt arrived at the university with no precise career in mind; originally he intended to study philology. As he approached the staircase of Friedrich Wilhelm University, he noticed the sign for the law faculty. He remembered the advice of a highly successful uncle who, degrading philology as a very unpromising profession, had suggested jurisprudence. With casual indifference Schmitt registered with the law faculty, unaware that this would be the beginning of a fascinating, yet tragic, career. Later in life Schmitt said that if his critics knew of this rather nonchalant choice of a field of study, they would probably exclaim, "What misery we would have been spared, if this man had only walked into another area."¹³

During his first course in Roman law Schmitt became thoroughly fascinated with jurisprudence; but he would never abandon his deep interest in art, philosophy, and literature. As Franz Blei later observed, Schmitt's learning extended far beyond his specialization; his broad intellect enabled him to recognize and grasp the essence of remote subjects, for which he had a penchant.¹⁴ He could discuss poetry or drama with the same degree of enthusiasm he displayed when debating a pressing legal issue; frequently he invoked an allegory to explain a political phenomenon. Shakespeare was a favorite and he eventually published a book on *Hamlet*.¹⁵ The poet Theodor Däubler and such prominent writers as Robert Musil, Ernst Jünger, and Hugo Ball were among his close friends and acquaintances. That such intellectual diversity enhanced the creativity and originality found in his legal and political studies is often acknowledged.¹⁶

¹³ Tommussen, *Over*, pp 94-95

¹⁴ Blei, "Gesprach," pp 518-519

¹⁵ Carl Schmitt, *Hamlet oder Hekuba Der Einbruch der Zeit in das Spiel* (Cologne, 1954).

¹⁶ Heinrich Muth, "Carl Schmitt in der deutschen Innenpolitik des Sommers 1932," *Historische Zeitschrift*, Beiheft 1 (1971), p 77

After two semesters in Berlin, Schmitt transferred to Munich, then to Strassburg.¹⁷ Such movement was typical for German undergraduates, but Schmitt's preference for the Southwest was indicative of his Rhenish disposition and his selection of Strassburg was important. Like Heidelberg and Freiburg, the University of Strassburg was becoming a center of anti-positivist and neo-Kantian thought, intellectual currents far more compatible with Schmitt's own spiritual predilections than the materialistic and positivistic thinking of the late nineteenth century. The rector of the University of Strassburg was Wilhelm Windelband, an exponent of neo-Kantian philosophy who represented the strong anti-positivist attitude spreading throughout various academic disciplines from history to science; jurisprudence was no exception.¹⁸ Whether Strassburg attracted Schmitt precisely for this reason is unknown. Unquestionably that institution exerted a substantial influence on his intellectual development, as he would always be noted for his uncompromising stand against the positivist school of law.

Beginning with German unification, positivism became the prevailing form of German legal thought, and it remained so for the latter part of the nineteenth century.¹⁹ In law, as with other disciplines, this meant an increasing emphasis on observation and analysis in lieu of idealist metaphysics or philosophical speculation. It signified a departure from the universalism of natural-law theory in favor of the idea that law was the creation of the sovereign state. This new trend stemmed directly from the scientific empiricism of a materialistic, positivistic era and was rein-

¹⁷ Carl Schmitt, "Lebenslauf," Akademie für Deutsches Recht, R-61, Band 65, Bundesarchiv, Koblenz (hereafter BA).

¹⁸ H. Stuart Hughes, *Consciousness and Society: The Reorientation of European Social Thought, 1890-1930* (New York, 1958), pp. 47-48, 189-191; Ringer, *Mandarins*, p. 310.

¹⁹ Rupert Emerson, *State and Sovereignty in Modern Germany* (New Haven, 1928), pp. 47, 56.

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forced by the new emphasis on German national sovereignty and power that accompanied unification. German legal positivists such as Paul Laband argued that law was granted by the sovereign state; it was the responsibility of jurists merely to develop an empirical and systematic analysis of legal norms as they existed in statutes, decisions, and practice. Positivist law consisted of the norms created by the power of a state which recognized no higher authority. The universal ethical principles embodied in natural-law theories, which might conflict with these norms or with the power of the state, were disregarded.²⁰

By the early twentieth century, Rudolf Stammler and other neo-Kantian jurists disputed the absolute power of the state in establishing "law" or "right."²¹ The neo-Kantians contended that a "higher law" existed above the norms created by the state. This idea of higher law was not a return to natural-law theory; in fact, the concept always remained vague. Yet, it did contain the precept that right law existed prior to its establishment by the state and was not dependent upon state power.

Neo-Kantianism offered Schmitt a means of synthesizing the dichotomous sympathies he felt as a German nationalist and as a Catholic. The dictates of universal moral principles could be reconciled with the authority of the state; morality and power, religious conviction and nationalism, could be harmoniously integrated. It is not surprising therefore that neo-Kantian thought pervaded his early works. On the eve of World War I he wrote that the incontestable value of the state emanated, not from power, but from its relationship to a "higher law."²² It was the function of the state to transform this higher law into a wordly phenomenon.²³

²⁰ Carl J. Friedrich, *The Philosophy of Law in Historical Perspective* (2nd ed., Chicago, 1963), pp. 165, 173; W. Friedmann, *Legal Theory* (3rd ed., London, 1953), pp. 150-151, 159-161.

²¹ Emerson, *State*, pp. 159-167, 207-208.

²² Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen* (Tübingen, 1914), p. 69.

²³ *Ibid.*, pp. 10, 52.

But neo-Kantian philosophy did not entirely overshadow his sectarianism. For Schmitt also noted that in doubtful cases the Catholic Church could decide what constituted right, because it embodied universal ethical norms.²⁴

Beyond these basic attitudes toward law, the state, and religion little is known of Schmitt's university studies and early years. But he must have excelled, since he graduated from Strassburg *summa cum laude* with a law degree in June of 1910. Whereupon he entered the Prussian civil service as a junior barrister in Düsseldorf, occupying that position until he passed his state assessor's examination in 1915. This routine service as a law clerk, intended to provide practical legal experience, was required before aspiring jurists were admitted into the profession. Schmitt made the expected advances while accumulating an impressive list of legal publications. By 1915 he had written three books and four articles, each well received by legal scholars.²⁵ Walter Jellinek, a dean among German jurists, remarked that Schmitt's book on law and judgment "towered far above" the cross-section of countless works on the subject.²⁶ Apparently a bright future was awaiting the young Schmitt.

Aspiring lawyers of Schmitt's calibre were usually des-

²⁴ *Ibid.*, pp. 44-45, 81-83. See also Helmut Rumpf, *Carl Schmitt und Thomas Hobbes: Ideelle Beziehungen und aktuelle Bedeutung mit einer Abhandlung über: Die Frühschriften Carl Schmitts* (Berlin, 1972), pp. 13-17.

²⁵ In addition to *Der Wert*, Schmitt's most important publications of this period are *Über Schuld und Schuldarten: Eine terminologische Untersuchung* (Breslau, 1910); *Gesetz und Urteil: Eine Untersuchung zum Problem der Rechtspraxis* (Berlin, 1912); "Über Tatbestandsmässigkeit und Rechtswidrigkeit des kunstgerechten operativen Eingriffs," *Zeitschrift für die gesamte Strafrechtswissenschaft*, Band 31 (1910), pp. 467-478; "Der Wahnmonolog und eine Philosophie des Als-Ob," *Bayreuther Blätter* (June 1912); "Schopenhauers Rechtsphilosophie ausserhalb seines philosophischen Systems," *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, Jg. 10, Heft 1 (April 1913), pp. 27-31; "Juristische Fiktionen (über Vaihinger und die Philosophie des Als-Ob)," *Deutsche Juristen-Zeitung*, Jg. 18, Heft 12 (1913), pp. 804-806.

²⁶ See Walter Jellinek's review of *Gesetz und Urteil*, *Archiv für öffentliches Recht*, XXXII (1912), pp. 296-299.

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tined for careers in either the bureaucracy or the university, two quite conservative institutions. The federal and Prussian bureaucracies, dominated by Prussian aristocrats, acted as the servants of the monarchy rather than as the executors of the will of the people as it was manifested in the Reichstag. By the end of the nineteenth century most German academicians had also become committed to the authoritarian state, paying homage to the Kaiser even in the university lecture halls.²⁷ Many professors had also succumbed to the lure of chauvinistic nationalism and lent their support to the Pan-German League's clamor for German world-power status. Even among those who avoided such crude nationalistic expressions, there was a general consensus about the central importance of the state. Law professors debated whether the state was essentially power or imbued with a moral purpose, but the authority of the state was rarely questioned.

Although Schmitt never displayed any vulgar nationalistic sentiments, he did share the exalted view of the state so prevalent among his future colleagues. And his concept of the moral purpose of the state had no relationship to the liberal doctrine of individualism. From his perspective the freedom of the individual was secondary to the grandiose task allotted to the state. In fulfilling its function of establishing right law, the state could not tolerate opposition and consequently "no individual can have autonomy within the state."²⁸ Schmitt believed that he was living in an anti-individualistic age, yet a great age.²⁹ And it was precisely on the point of authoritarianism vs. liberal individualism that the views of many Catholics and those of non-Catholic conservatives coincided. For alongside many

²⁷ George Iggers, *The German Conception of History: The National Tradition of Historical Thought from Herder to the Present* (Middletown, Conn., 1968), pp. 146-147; Walter Laqueur, *Weimar: A Cultural History, 1918-1933* (New York, 1974), p. 184; Ringer, *Mandarins*, pp. 114, 127, 139.

²⁸ Schmitt, *Der Wert*, p. 101.

²⁹ *Ibid.*, p. 6.

of the reformist tendencies within German political Catholicism there stood strains of authoritarianism. Since the Middle Ages the Catholic Church has fostered the notion of a hierarchy of authority descending from God. In Germany the right wing of the Catholic Center Party remained authoritarian from the late nineteenth century through the Weimar Republic. Within this faction Franz von Papen eventually rose to political prominence while trying to unite the Christian, national, and conservative forces against socialism.³⁰ The more progressive wing of the party had also harbored similar attitudes before 1914. Matthias Erzberger, the spokesman for this faction and later a party leader, saw the Center as reformist, yet authoritarian. He wrote that an authoritarian party's "highest call is not freedom . . . but natural and divine law."³¹ Such attitudes obviously made it easier for Schmitt to adjust to the bureaucratic and academic professions of Wilhelmine Germany.

Still, Catholicism always remained a potential obstacle to Schmitt's advancement. Authoritarianism aside, Catholics continued to be viewed as outsiders, suspect in the eyes of non-Catholic professors and bureaucrats. Schmitt's deference to the state, and to authority in general, might mollify some of this distrust, as his exceptional talents might compensate for his social origins. But he still had to confront the traditional anti-clericalism of the bureaucratic and university elites. Catholics were often excluded from the most important administrative positions; a future career in government might actually be jeopardized by membership in a Catholic organization.³² In the prejudiced atmosphere of Wilhelmine Germany it was not unusual for promising scholars to be denied academic chairs for religious or po-

³⁰ Jürgen A. Bach, *Franz von Papen in der Weimarer Republik: Aktivitäten in Politik und Presse, 1918-1932* (Düsseldorf, 1977), pp. 21-22; Klaus Epstein, *Matthias Erzberger and the Dilemma of German Democracy* (New York, 1971), p. 34.

³¹ Epstein, *Erzberger*, pp. 91-92.

³² *Ibid.*, p. 69; Ross, *Beleaguered Tower*, pp. 30-32.

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litical reasons, as was the case with Georg Simmel and Robert Michels, a Jew and a socialist.³³ The memory of the dispute over the appointment of Martin Spahn to a Catholic chair of history at Strassburg, a *cause célèbre* in 1901, was still very much alive when Schmitt studied at that institution.³⁴ For someone in Schmitt's situation it was wise to proceed cautiously, which partially explains why a political thinker of Schmitt's later stature did not address specific issues concerning German domestic politics and foreign policy in his youthful writings. The wrong political attitude could compromise a career.

Although one could argue that Schmitt's work on the relationship between the state and the individual was political in nature, it was not necessarily viewed as such by his peers. When most German academics thought of politics, they envisioned not the authoritarian institutions of the monarchy, army, and bureaucracy, but rather the more popularly based political parties in the Reichstag. By keeping his discourses on the state on a very abstract philosophical level and by avoiding a stand on any particular political question, Schmitt was reflecting this general attitude toward politics held by the academic elite. It was the era of the so-called apolitical professor, typified by the argument that professors must stand above politics. Professors supposedly discharged their academic duties as the highly revered defenders of pure *Wissenschaft*; they were not to meddle in the vulgarity and partisanship of politics, which might compromise their alleged objectivity.³⁵ Many professors were repulsed by the petty, often irresponsible partisanship of parties representing special socioeconomic, ideological, and religious interests. From the narrow viewpoint of such academicians, this party bickering was enough to condemn democracy itself; it threatened the unity of the

³³ Ringer, *Mandarins*, pp. 135-137, 141-143.

³⁴ Ross, *Beleaguered Tower*, pp. 26-28.

³⁵ Hans Bleuel, *Deutschlands Bekenner: Professoren zwischen Kaiserreich und Diktatur* (Bern/Munich, 1968), pp. 54-55, 65-66.

nation and undermined the authority of the established order to which they were totally committed. It also confirmed their belief that a strong state must stand above parties and represent the interests of the nation as a whole. Professors could expound upon the "national cause" and the significance of the state, but other opinions were frowned upon as "political."³⁶ Convinced of the unsavory nature of politics, Schmitt and his peers, like large segments of the German population, were ill prepared for the rise of parliamentary democracy in 1918. Schmitt never lost his antipathy for party politics and throughout the Weimar Republic he refused to join a political party.

Nothing existed in Schmitt's prewar writings to indicate the very broad interest in various aspects of political thought he would show in the future. To the extent that he had a perspective on government it was colored by his naive confidence in the moral purpose of the state and his disdain for party politics. Most of his efforts were devoted to obtaining his professional credentials and establishing a career. His life at this time was rather uneventful, though the quality of his legal writings was a sign of the stimulating works he would produce over the next several decades. By World War I he was one promising young scholar among many.

When Schmitt's generation went forth to the battlefields in August 1914, he was not among them. The man who later theorized that the state had "the right to demand from its own members the readiness to die and unhesitatingly to kill enemies" never served at the front.³⁷ Schmitt managed to delay his entry into the military until he passed his final assessor's examination in Berlin on February 15, 1915. The following day he enlisted as a volunteer in the reserve infantry, but a vertebra injury during basic training left him unfit for combat duty. In March he was transferred

³⁶ Ringer, *Mandarins*, pp. 121, 139.

³⁷ Carl Schmitt, *Der Begriff des Politischen* (4th ed., Berlin, 1963), p. 46.

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to the service of the general staff in Munich, where he spent most of the war. And military service by no means completely interrupted his progress in the academic world. On February 16, 1916, he received his *Habilitation*, or formal inauguration as a lecturer, at the University of Strassburg. While the battle of Verdun was being fought, Schmitt was granted an extended leave of absence between May and August of 1916 to lecture at Strassburg.³⁸ In that same year he married Pawla Dorotić, of whom little is known.

Four years of conflict and slaughter, climaxed by the utter defeat and collapse of the old order in Germany, would lead a maturing Schmitt to a new recognition of the realities of power. The stability provided by the authoritarian state of the Wilhelmine era would contrast sharply with the upheavals and perennial crises of the next half century of German history. To a large degree, this loss of stability accounts for Schmitt's future preoccupation with the themes of order, peace, and stability. His youthful neo-Kantianism was abandoned in the process. What remained was a fundamental antipathy toward liberalism and materialism, as well as a belief in the primacy of the state, all of which had been firmly engrained in his mind by his religious, national, and academic heritage. In the midst of the war he more clearly articulated these basic feelings about the state and society, and his writings began to reflect a sense of cultural pessimism similar to that expressed by many conservative German thinkers since the 1880's.

To such writers, the rise of a materialistic culture, the scientific interpretation of man and nature, and the growth of liberal political ideas had destroyed traditional cultural values.³⁹ Life was left devoid of any meaning, except perchance that provided by bourgeois hedonism. This malaise extended from reputable intellectuals such as Thomas Mann

³⁸ Schmitt, "Lebenslauf."

³⁹ Klemens von Klemperer, *Germany's New Conservatism: Its History and Dilemma in the Twentieth Century* (Princeton, 1972), pp. 6-7, 47-69; Laqueur, *Weimar*, p. 79.

and the philosopher Ernst Troeltsch to popularizers such as the anti-Semitic Paul de Lagarde. The reaction against this alleged cultural decay reached new heights during the war, when many conservatives expounded upon the “ideas of 1914.” Johann Plenge, the Münster sociologist who coined the phrase, claimed that Germany was waging a war against the Enlightenment of the eighteenth century and the liberal ideas of 1789. For those conservative intellectuals who accepted Plenge’s concept, the war took on the nature of a struggle between conservatism and liberalism, spirituality and materialism, traditional values and bourgeois modernity. Some saw the struggle in moral terms; Thomas Mann viewed the rejuvenation of conservatism as a spiritual quest for absolute values. Others, particularly Max Scheler, and later Ernst Jünger, placed a value on the conflict itself as an inner experience that would revitalize the nation. Schmitt’s own orientation, however, remained primarily religious and philosophical. He avoided the ethnocentric political pronouncements which characterized the wartime publications of so many conservatives. Schmitt never even alluded to the popular notion of a higher German *Kultur* in conflict against the mechanistic-materialistic civilizations of Germany’s enemies in the West, and he saw no redeeming aspect to the war whatever. From his perspective, all of Europe, including Germany, suffered from the spiritless mechanization of life.

In the midst of this mass destruction and cultural crisis, Schmitt found solace and relevance in the poetry of his friend Theodor Däubler, a man whose life and art had been decisively influenced by an inner personal conflict between liberal Enlightenment values and Catholicism.⁴⁰ The tension between materialism and spirituality was the motif of a series of poems Däubler published under the heading *Nordlicht* (Northern Lights). Schmitt interpreted *Nordlicht*

⁴⁰ Carl Schmitt, *Theodor Däublers “Nordlicht”: Drei Studien über die Elemente, die Geist und die Aktualität des Werkes* (Munich, 1916).

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as an indictment of the Occident, exposing a crude, spiritless, inartistic world which "has designated itself as capitalistic, mechanistic, relativistic; a world of traffic, technique, and organization."⁴¹ Function, Schmitt wrote, rather than spirit or meaning was the key to the age, with "function as some grand means to some miserable and senseless goal."⁴² Despite enormous material prosperity, men had become poor devils. They knew everything, but believed in nothing; they were interested in everything, but enthusiastic about nothing. Their heaven on earth was one of commerce and industry; they discounted a loving and merciful God, for they had accomplished such astonishing things.⁴³ "An eschatological dread had seized many even before the horrors of the World War became a reality," as the last and most important things were secularized. "Right was transformed into power, faith into calculation, truth into a general recognition of accuracy, beauty became good taste. . . . In place of the distinction between good and evil there appeared a sublime difference between usefulness and destructiveness."⁴⁴ The essential problem, Schmitt concluded, was that the age lacked a soul.

While burdened with this metaphysical pessimism, Schmitt nonetheless continued to perform the worldly functions demanded of him by the state. Among Schmitt's peers the state had usually been exempt from the same criticism applied to other political institutions and segments of society. To the conservative cultural critics, the authoritarian state, a paradigm of traditionalism, stood as one of the last bulwarks against the wave of spiritless liberalism and socialism. It also symbolized a familiar sense of order and stability for those who looked with dread upon an unknown future. After 1914, with national survival at stake, the state assumed even greater significance.

⁴¹ *Ibid.*, pp. 63, 69.

⁴² *Ibid.*

⁴³ *Ibid.*, pp. 64-65.

⁴⁴ *Ibid.*

The dictates of total war had necessitated an expanded role for the state in the lives of the German people. To facilitate the war effort martial law had been declared immediately upon the outbreak of hostilities in accordance with the Prussian state-of-siege law of 1851 and the Bavarian state-of-war law of 1912. And Schmitt had firsthand knowledge of the increased exercise of state power. At the general staff headquarters in Munich he had been assigned to the state-of-war section involved in administering martial law. The practical and legal problems this entailed stirred within him an abiding interest in dictatorship and in the *Ausnahmezustand* (the state of exception). He soon published two articles on the legal implications of the state-of-siege condition in Germany.⁴⁵ This experience also led him further away from neo-Kantianism. Instead of moral purpose, he now emphasized concrete danger, or what he later termed the "concrete situation," as dictating the actions of the state.⁴⁶

The basic tenor of Schmitt's future work on constitutional law was already inherent in these wartime articles. At the core of his legal thought was the security of the state and the preservation of the existing constitutional order. As would be the case with his more influential Weimar publications, these early works concerned the extent to which constitutional laws could be suspended in order to meet a present danger and to reestablish a normal state of affairs. With regard to martial law, he argued that a threat to the state required that a military commander retain a certain degree of flexibility unhindered by normal legal restrictions.⁴⁷ To meet an impending danger a commander could

⁴⁵ Carl Schmitt, "Diktatur und Belagerungszustand: Eine staatsrechtliche Studie," *Zeitschrift für die gesamte Strafrechtswissenschaft*, XXXVIII (1916), pp. 138-161; and "Die Einwirkungen des Kriegszustandes auf das ordentliche strafprozessuale Verfahren," *Zeitschrift für die gesamte Strafrechtswissenschaft*, XXXVIII (1917), pp. 783-797.

⁴⁶ Schmitt, "Diktatur," pp. 147, 159.

⁴⁷ *Ibid.*, pp. 158-159.