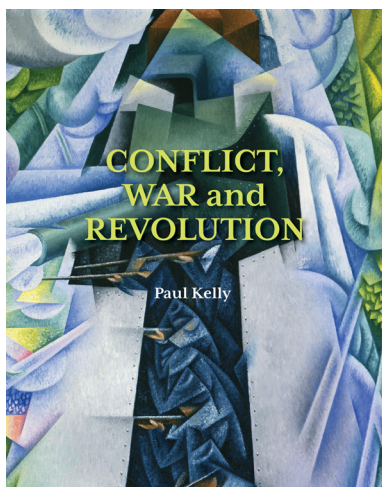


# Schmitt – The danger of the international liberal order

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## Chapter 10 from



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## CHAPTER 10

### Schmitt

## The danger of the international liberal order

Carl Schmitt rejects the optimism of the contemporary liberal internationalist view of the global order that has been dominant since 1945. Schmitt is an uncompromising conservative thinker who has influenced theorists of the left and right. He analyses the international state system as a bulwark against the violence and conflict that underlies the universalist and globalist tendencies of liberal and revolutionary politics. His ideas are a response to the decline of European power, the rise of Cold War ideological opposition, and the emergence of new global hegemonies such as the United States. Schmitt provides both a critique of liberal optimism and globalisation, and at the same time he attempts to salvage essential concepts such as sovereignty, war and enmity, as a way of disciplining politics and responding to the decline of state power. Schmitt is critical of liberal democracy. He sees the concept of 'the political' as centred on what sovereignty is and where it resides, following the abandonment of liberal popular sovereignty theories and nationalism. These views are the foundations for his critique of global liberalism and international law.

Sovereign is he who decides on the exception. (Carl Schmitt)

One way of writing a contemporary history of international political thought would see the progressive triumph of a broadly liberal and more internationalist global order liberating itself from the legacy of an increasingly outdated

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Westphalian world order centred around states. Increasingly porous economic borders and more pacific relations between political communities accentuate the forces of integration that follow from a globalised world and shared knowledge, leading to progress towards the universally desired goals of peace, stability and a reduction in violence. That, at least, is the ‘desire of the nations’ expressed by many political optimists and shared by commentators and opinion formers such as Francis Fukuyama and Stephen Pinker (Fukuyama 1992; Pinker 2011; 2018). In more theoretical realms, this narrative has been accompanied by the growth in philosophical cosmopolitanism that has challenged liberal theory for not being sufficiently radical in its individualism (Pogge 2007; Singer 2004). Key liberal theorists, such as John Rawls and Michael Walzer, have sought to rein in this overweening hubris, much to the disappointment of their followers. Yet, Rawls and Walzer still leave us with a more modest yet nevertheless broadly liberal ‘end of history’ including some version of a globally pacific society of states.

Beyond the realm of theory, the post-1989 world order has, however, been more complex. Patterns of development remain as uncertain as ever, with the Trumpist transition of the USA in 2016–2020 away from being an assertive but potentially benign liberal Leviathan, conferring international order in return for accommodation of its interests (Ikenberry 2012; Nye 2015). Even after Trump’s departure, the USA remains a more unpredictable and potentially more diffident international actor. A unipolar international system looks to be gone for good, given China’s rise, and, given the potential poles, multipolarity seems neither attractive nor problem-free. The prominence of nation states in responding to the global financial crisis of 2008–2010 and the Covid-19 crisis in 2020–2022 both suggest that the states system is not giving way to a new order. But nor is it being completed by any coherent new assertion of the logic of state sovereignty, despite the efforts of Britain to ‘take back control’ from the European Union.

Thinking beyond the state system has become a pressing task for many international political theorists, especially focusing on international society as a system built from pooled state sovereignty, and thinking beyond the boundaries of liberal ideas of individual rights, domestic and international legality, and free and open trade. The salience of these topics has reignited interest in thinkers who challenge the fundamental terms of contemporary political and international thinking. None is more challenging or more controversial than the German jurist and political thinker Carl Schmitt (1888–1985). His intellectual and political biography, as well as his practical judgement, makes him a difficult thinker to handle, let alone to learn from. Yet, his work is enjoying a major resurgence of interest precisely because of the radical way in which he critiques the fundamental terms of liberalism and the modern state order. He argues that these conceptual forms are not merely inadequate to the world we confront but, more importantly, that they are also a source of conflict, disorder and violence, rather than the solution to a disordered world. The trenchancy

of this argument takes Schmitt beyond the usual claim that liberal concepts are implicated in colonialism, patriarchy or other sources of oppression. For Schmitt, liberalism is not only conceptually inadequate; it is dangerous – liberalism is the enemy. Yet, whilst rejecting the domestic and global liberalism and the intellectual and political structures that underpin it, such as modern political economy, he seeks to retain and conserve important political ideas, such as sovereignty, but liberate them from false notions such as the nation state, the national economy and the people. That argument and his remarkable account of politics and international relations are the focus in this chapter.

### Schmitt: life and work

Carl Schmitt was born in 1888 in Plettenburg in Westphalia to a Catholic family living in a predominantly Protestant region of the newly united German Empire or Reich. The empire's set-up still retained some legacy of the patchwork of religiously divided principalities in Germany's post-Westphalian order, from which the Prussia-dominated empire emerged. His family's religion marked Schmitt out as an outsider in ways that shaped his subsequent intellectual development. Coming of age in the late Wilhelmine Empire, Schmitt graduated in law at what was then the German University of Strasbourg in 1915. During the 1914–1918 war he joined the general staff of the army in Munich, charged with implementing martial law. For much of the latter part of the war, Germany was effectively ruled by an authoritarian and military government under Hindenburg and Ludendorff. With the German army's collapse on the Western Front and the Armistice of November 1918 Germany was plunged into a period of political chaos and violence, as the new Weimar Republic, with its democratically elected political parties, struggled to survive and fill the space left by the demise of the imperial and military regimes.

The fledgling republic's struggle for legitimacy was not simply against the real threat of communist revolution but also from conservatives and Catholic conservatives, who were deeply suspicious of liberal and democratic government. The Weimar Republic's strongest opponents were also the remnants of the army and irregular anti-communist militias (the Freikorps), from which the Nazi Party was to emerge over subsequent decades. In this context, Schmitt began his first public career as a leading academic public lawyer and author. He championed the critique of constitutional liberalism through a number of books such as *Political Romanticism* (1919), *Political Theology* (1922) and *The Crisis of Parliamentary Democracy* (1923). In these rhetorically sparkling, incisive and provocative essays, Schmitt established his credentials as a major theorist of the Weimar Constitution. What particularly marked out his contribution was his profound scepticism and hostility to liberal constitutionalism and his assertion of the centrality of politics to public law and the constitution, in opposition to the normativism of liberal positivists such as Hans Kelsen. Schmitt's

fundamental objection to liberal constitutionalism was not simply a technical issue of jurisprudence but rested on its failure to take seriously the politics of constitutionalism such that it undermined its own ability to protect itself from threats and challenges. This was an acute weakness in the context of the deeply divided Weimar state, which faced a punitive and destabilising Versailles Treaty with multiple adverse economic and political consequences for Germany (Keynes 1919). These threats and challenges finally manifested themselves in the rise of the NSDAP, or Nazi Party, which took power with conservatives' connivance in 1933.

Throughout the 1920s, Schmitt was a leading figure in the political debates of late Weimar and an increasingly important political theorist, publishing his seminal *The Concept of the Political* in 1932. Although he was not himself a Nazi at this time, he was associated with the right-wing conservative government of Franz von Papen, who brought Hitler into government. The forcing through of the 1933 Enabling Act that effectively did away with the Weimar Constitution and gave dictatorial powers to Hitler and the Nazis marked a turning point in Schmitt's life and career. Schmitt joined the Nazi Party in May 1933 after it had already taken power, and was quickly rewarded with an appointment as state councillor for Prussia and to a prestigious professorship at the University of Berlin. This was the high point of Schmitt's public legal and political career as he became what was referred to as 'the crown jurist' of the Reich.

Schmitt's association with Nazism is a complex matter. He was certainly a party member and directly participated in the assertion of Nazi control over society, including the burning of law books by Jewish scholars and the harassment or isolation of Jewish academics. Like the philosopher Martin Heidegger, who also threw in his lot with the Nazis in 1933 as the rector of Freiburg University, Schmitt's reputation is permanently coloured by this association. Yet, more than Heidegger, Schmitt's association was directly political. The question of whether or not he was a Nazi in terms of a full intellectual engagement with that ideology is less clear. Indeed, as early as 1936 he aroused the suspicions of the SS, who accused him of being an opportunist Catholic thinker who was insincere about his racial anti-Semitism. Schmitt was protected from the full implications of this suspicion, but he withdrew into academic writing for the remainder of the war. In particular, he began his writings on international politics, which was to mark his second major career in the late Nazi and post-war period.

With the defeat of the Nazis, Schmitt was arrested and interned but released without charge in 1947. His own reflections on that period, such as *Ex Captivitate Salus* (1947), present him as someone wronged by victor's justice. Schmitt refused de-Nazification and was thus barred from returning to university teaching. The remaining decades of his long life nevertheless allowed him to exert a considerable influence over young German scholars of history and politics as well as a wide range of international thinkers, who disseminated his ideas on

the Cold War and international politics. Although a non-person in anglophone academia, he continued to lecture in Francoist Spain, where the lectures that formed his late work *The Partisan* (1963) were first delivered. Yet, it would be seriously misleading to see his influence as enduring only in the remaining fascist states. Although his name was rarely mentioned, students of his work in political science, history and international relations (such as Raymond Aron, Hans Morgenthau, Reinhart Koselleck and Hannah Arendt) extended his influence across the modern social sciences. At the time of his death in 1985, Schmitt had become a revered thinker for both the political hard left and hard right, both of which shared his hostility to constitutional liberalism and the political and economic order that went with it. This response has only grown stronger in recent years.

### *The dark legacy of Schmitt's anti-Semitism*

As anglophone scholars began to recover Schmitt's ideas from the 1970s onwards, a frisson of transgressive excitement was associated with someone who had come so close to one of the darkest manifestations of political power. This no doubt helped encourage many students bored by triumphalist liberalism or the collapse of 'really existing Marxism' to turn to his writings. For others, such as Stephen Holmes, Schmitt's legacy and teaching are fatally undermined by the enormous lapse of political judgement demonstrated by his engagement with Nazism (Holmes 1993). A debate has raged over whether Schmitt was merely an opportunistic lawyer who feigned Nazism for professional preferment and a quiet life, or whether he is someone whose ideas must be infected by their association with one of the vilest regimes in history with its legacy of murderous anti-Semitism. Perhaps even more than with Heidegger, whose philosophy is metaphysical and more remote from practical affairs, the question of whether Schmitt's writings are implicated in the evil of holocaust is a serious question. Surely someone who has shown such a failure of practical judgement can hardly be a guide to the failings of liberalism (Kelly 2005, p. 6).

However, many Schmitt scholars have dismissed simplistic denunciations of his work and legacy by showing how he was accused by the SS of not being a real Nazi and failing to demonstrate a commitment to racialist anti-Semitism (Bendersky 2014). Similarly, Schmitt personally did help Jewish scholars (such as Leo Strauss) and he had Jewish friends, albeit that they seem to have been abandoned during the Nazi period. After the war he also sustained a philosophical and theological correspondence with the Jewish theologian Jacob Taubes. All of this, along with an impatience with drawing simplistic moral judgements about those who had to live with the Nazi regime and not just read about it, somewhat limited the adverse effect of Schmitt's past on the appraisal of his work, as with Heidegger.

Yet the recent publication of Heidegger's *Black Notebooks*, Schmitt's *Glossarium* (a sort of commonplace book) and his diaries have all shown a more deeply problematic aspect of his attitude to Jews, as something that went beyond an ultra-traditionalist Johannine Catholic Christianity (see Ratzinger 2018). (Johannine Christianity gives a central place to the Gospel of John with its particularly hostile account of the Jewish authorities). In the case for the prosecution, Raphael Gross's detailed discussion of Schmitt's private intellectual world shows a person with deeply questionable animosities towards Jews, including those of his own association. These attitudes cast a darker shadow over his thought and legacy. Gross is careful to avoid the charge that Schmitt was a Nazi thinker in any formal sense, and he acknowledges that Schmitt would have had nothing but contempt for the biologically reductionist components of Nazi race theory. Yet, it remains the case that, in light of the substance and the language of the diaries, it is hard to find any way of describing Schmitt other than as an unrepentant anti-Semite. Gross continues:

Without a doubt, Schmitt's many layered and deeply rooted antisemitism also intensified his alignment with Nazism in 1933 in an essential way. In 1932 it was not at all clear whether Schmitt would emerge as a radical National Socialist. But his antisemitism – we see this precisely in the diaries – was already very radical long before 1932; it was hatred, a daily obsession with what he considered the true enemy ... Against this backdrop, I find it difficult ... to imagine how contemporary political theory could profit from Schmitt's work. Continuing to assimilate and use ideas without an acknowledgement of the strong role antisemitism played in them means passing on elements of that same conceptual substance – albeit for the most part in encoded form. (Gross 2016, p. 111)

In this book I do not mean to celebrate the arguments of any of the thinkers discussed. So, in that sense, I could attempt to avoid Gross's charge. Yet, even adding Schmitt to the canon of international political thought undoubtedly gives some form of intellectual respectability to his thought, and thus risks the 'passing on of that conceptual substance'. In light of Gross's comprehensive indictment, I do not seek to explain away this dark legacy of Schmitt's life and thought. He was an anti-Semite and, whilst that does not follow logically from his conceptual distinctions and dichotomies, it is hard not to read many of them without hearing echoes of his anti-Semitism. Similarly, he may not have been a Nazi in a racial-ideological sense, but he was still an active member of the Nazi Party and remained active for longer than Heidegger. These facts need to be constantly borne in mind, whilst recognising at the same time that Schmitt raises important and complex challenges for both liberal legal and political philosophy and for international relations. These challenges do not disappear just because of his deeply flawed character. We do not gain greater

insight into those arguments by downplaying the character of the author, just as we cannot understand them better by reducing their discussion to a moral judgement about the character of their author.

### **Anti-liberalism**

Throughout Schmitt's career, one constant thread in his philosophical work and his career as a public lawyer was his critique of, and contempt for, liberalism as a political ideology, and liberal constitutionalism as a jurisprudential philosophy. This aspect of his thought has attracted adherents on the political left as much as the right, but it has also attracted the attention of political liberals themselves, because of its force and incisiveness. A number of his early works bring together both his jurisprudential and his political arguments and provide an important context for his subsequent major works *The Concept of the Political*, *The Nomos of the Earth* and *The Partisan*.

### *Bourgeois parliamentarism*

As a public lawyer, Schmitt's understanding of liberalism is derived from an historical and sociological understanding of its key institutions in the practice of liberal constitutional states. He does not begin with philosophical speculations about the abstract moral foundations of liberalism. In his later speculations on Hobbes's philosophy, written during his fall from grace under the Nazis, Schmitt emphasises the methodological individualism of liberalism and therefore places Hobbes as one of its founding thinkers. Yet, Schmitt is generally sceptical and dismissive of the claims of morality as a foundation for law and political science. He begins his critique of liberal constitutionalism as part of his response to the 1919 Weimar Constitution with a focus on the central institutions of liberal politics. *The Crisis of Parliamentary Democracy* (1923) provides a forceful analysis and critique of the internal contradictions at the heart of liberal politics: he sums up the critique in a way that will be familiar to many conservative critics of parliamentary or congressional politics today:

There are certainly not many people today who want to renounce the old liberal freedoms particularly freedom of speech and the press. But on the European continent there are not many more who believe that these freedoms still exist where they could endanger the real holders of power. And the smallest number still believe that just laws and the right politics can be achieved through newspaper articles, speeches at demonstrations, and parliamentary debates. But this is the very belief in parliament. If in the actual circumstances of parliamentary business, openness and discussion have become an empty and trivial formality,



then parliament, as it developed in the nineteenth century, has also lost its previous foundation and meaning. (Schmitt 1988, p. 50)

The fundamental problem of parliamentarism is twofold: firstly, the claim to achieve democratic representation, and, secondly, the epistemic effectiveness of parliamentary politics in the process of policy- and lawmaking. Parliaments developed from being advisory councils to a sovereign monarch into an authoritative source of legislation. The challenge to them has grown since the 19th-century expansion of the franchise along democratic principles, such as equal representation and equal voice in legislation. Institutionalising these principles in any effective way is deeply problematic, because the possibility of direct inclusion of citizens has to give way to some form of representation. In turn, this opens the Rousseauian challenges around the general will being represented by a particular minority group (parliamentarians and ministers) forcing the majority to be free. The idea of democracy as 'an assertion of an identity between law and the peoples will' (Schmitt 1988, p. 35) is essential for the democratic legitimacy of legislation, but it presupposes a unitary concept of the people that can be said to have a single will.

Liberal parliamentarism is an institutional response to that democratic challenge. The general will or the authority of law and policy can be justified if it emerges from an institutional process that approximates free and uncorrupted democratic deliberation. Such a process is characterised by features such as the election of representatives, open public deliberation on the floor of Parliament, and the separation of powers between legislation (which requires careful deliberation) and the executive (which needs to be able to act promptly in the face of pressing political issues). A free press that reports these deliberations to the electorate allows them to hold the representative legislators to account. 'Parliament is accordingly the place in which particles of reason that are strewn unequally among human beings gather themselves and bring public power under control' (Schmitt 1988, p. 35). Schmitt clearly interprets liberal democracy as having an epistemic (or knowledge-generating) function, as well as a legitimating function, in a way that is similar to leading 19th-century defenders of liberal democracy, such as John Stuart Mill. Yet, for Schmitt, this liberal optimism masks the reality of parliamentary politics in modern states and exposes the weakness of liberalism as a basis of constitutional politics. His critique is obviously coloured by the difficulties of the early Weimar period, but it remains a familiar feature of realist political science and the critique of liberal democracy.

Liberal parliamentarism requires that individual voters are 'particles of reason', so that their pooling together and sorting into sets with shared views combines to reveal the truth about politics and law. Similarly, representatives within the parliamentary chambers are also individual 'particles of reason'. However, for Schmitt the reality of politics is that it has become distorted by economic interests and the emergence of political parties that coalesce around interest groups in society. Far from being a world of discrete individuals bearing their

own partial share of the general will, the preferences and cognitions of individuals are now shaped by conflicting social and political interests, which configure public policy through bargaining and temporary coalition-forming. Similarly, the press, rather than being the 'tribunal of public opinion' (as thinkers such as Jeremy Bentham had hoped) has become just another vehicle through which party and sectional interests are combined and compete.

In the earlier 21st century, one might think that this realist account of parliamentary politics is actually familiar, and we should just abandon the hubris of liberal democracy and accept the institutions we have as they are – because, for all their manifest flaws, they are preferable to much else on offer. But Schmitt's argument is subtler than simply exposing the hollowed-out reality of contemporary parliamentary politics. For him, what it actually exposes is the way in which 'technology,' by which he means the manipulation of interest and experience, has taken over political action. Manipulative politics allows expert practitioners to exploit institutional processes and rules to win in controlling legislation and policymaking. But, whilst game-playing can make for successful political actions (in terms of getting laws passed), it creates precisely the sort of scepticism and denigration of politics that populists criticise. And it raises questions about the legitimacy of all legislation that emerges from such factionalised politics. For Schmitt, this manipulative politics undermines political unity because it opens up deep fissures within political society, creating instability and insecurity, and undermines any idea of a public interest.

### *Dictatorship and decisionism*

The essay on *Dictatorship* [1921] grew out of an earlier legal brief that Schmitt had written on the scope of emergency powers embodied in Article 48 of the 1919 Weimar Constitution – which conferred powers upon the Reich president to act in the case of an emergency, including the suspension of the constitution and rule of law. Schmitt's longer work is a history of the political idea of dictatorship in European political thought from the Roman law to the present. Unlike many of Schmitt's other works, it is not polemical, and it subordinates rhetorical flourishes to scholarly arguments. The main body of the text develops the distinction between the commissarial and sovereign conceptions of dictatorships (discussed below). In light of the subsequent collapse of the Weimar Republic in 1933, and fascist and later Nazi regimes operating as dictatorships from the 1920s through to 1945, the text is prescient and controversial. Yet, Schmitt's argument suggests that the concept of the dictator and dictatorial powers are actually central to constitutionalism and state theory in order to address the importance of emergencies. The concept of 'emergency', and who decides what it is and when it arises, is for Schmitt the central political challenge facing constitutionalism and the central defect in liberal thinking.

Liberal theory since the time of Locke had sought to constrain the arbitrary exercise of political power through the concept of law. Law specifies what it is permissible for individuals to do with their liberties, but, more importantly, it sets the limits of executive political power, in reaction to monarchical absolutism. Subsequent liberal theory developed and extended this legal limitation of the political through its emphasis on the separation of powers and the rule of law. In the context of the republican overthrow of the military-monarchical order of the Wilhelmine Reich following the end of World War I, the debate between constitutionalists and absolutists coincided with the division between the Lockean emphasis on freedom and the Hobbesian emphasis on order. Yet, Schmitt's argument is no mere preference for order and Hobbes over Locke and freedom. Rather, it is an account of the conceptual incoherence at the heart of liberal constitutionalism, because of its attempts to eradicate politics from constitutionalism and law.

The historical narrative of *Dictatorship* demonstrates that the idea of extra-constitutional powers has been recognised within conceptions of the state or political unit going back to the Roman Empire. *Commissarial* dictatorships refer to the specific powers conferred on a figure to suspend the constitution or regular functioning of political and legal power in order to defend that power against potentially overwhelming threats. This commonly arises in circumstances of civil war or protracted external war, where the normal functioning of legally constituted powers is confronted by exceptional challenges. Central to the idea of the commissarial dictator is the specific recognition of the sorts of emergency that the dictator's powers are required to address, and in consequence the circumstances in which those powers cease and return to the constitution.

In practice [*in concreto*] the commissary dictatorship suspends the constitution in order to protect it – the very same one – in concrete form. The argument has been repeated ever since – first and foremost by Abraham Lincoln: when the body of the constitution is under threat, it must be safeguarded through a temporary suspension of the constitution. Dictatorship protects a specific constitution against an attack that threatens to abolish this constitution. (Schmitt 2014, p. 118)

This suspension of law and the constitution nevertheless remains part of the concrete reality of a legal system, because all legal systems presuppose the idea of a normal condition in a homogenous society in which it is valid. Exceptions from that normal condition require the powers needed to return to the normal condition. Consequently, the idea of an exception is central to (helps to define) the idea of a normal constitutional order. This entails that no normative system can be fully specified so that the law applies in all possible circumstances. There is always an element of decision about the implementation of any norm that cannot be specified by that norm. So formalistic accounts of legal validity, such as that of Hans Kelsen, leave out of the account the irreducibly political

role within the law that determines the nature and scope of its implementation. That power is primarily exercised by judges in normal circumstances. Yet, at the most fundamental constitutional level, determining what counts as an emergency and what counts as 'normal' conditions can only be a political act, located outside the constitution in order to protect the constitution itself. This is what Schmitt means when he argues in *Political Theology* that 'the Sovereign is he who decides on the exception' (Schmitt 1988, p. 5).

In the constitutional debates over the scope of emergency powers, Schmitt also advances the more radical idea of a sovereign dictator. The sovereign dictator differs from the commissarial dictator because they are not confined to the protection of a specific constitution that must at some point be reinstated at the end of the emergency. The sovereign dictator draws their authority not from the terms of the actual constitution but from some future constitution that will come into effect:

sovereign dictatorship ... does not *suspend* an existing constitution through a law based on the constitution – a constitutional law; rather it seeks to create conditions in which a constitution – a constitution that regards itself as the true one – is made possible. Therefore dictatorship does not appeal [for its justification] to an existing constitution, but one that is still to come. (Schmitt 2014, p. 119)

This might seem an abandonment of legality and the assertion of pure power, something that is captured in the negative connotation of dictatorship following the experience of the Nazis. But Schmitt insists that the idea can nevertheless be considered constitutionally valid, if it is exercised in respect of a constitutional power that is immanent in a foundational political power within society.

The theory of *Dictatorship* is central to Schmitt's critique of liberalism because it emphasises the primacy of politics, including the fundamental political act of deciding the exception to the constitution and rule of law in the face of emergencies. Doing so also decides the scope of the limits of constitutional powers over the attempts of liberalism to subordinate political power to regulation and the law. In asserting the primacy of the political over law, rights and private interests, Schmitt does not fall back on a crass realism of power politics. But, if the political is not merely power, what is it?

### *Political theology*

The most contested and complex element of Schmitt's critique of liberalism concerns the status of political theology. He published a book entitled *Political Theology* (1922) and returned to the subject again towards the end of his life. In the early work, which contributes to his account of sovereignty, he asserts that '[a]ll significant concepts of the modern theory of the state are secularised

theological concepts' (Schmitt 1988, p. 36) but he leaves this idea unexplained. As an historical claim, it has an obvious appeal. It draws attention to the problem of secularisation (unlinking from a religious basis) as the undermining of the motivational power of those theory of the state concepts. It is also worth debating his proposition as an explanatory historical thesis. Yet, his claim does not have an obvious normative force. It does not entail that we should return to those religious theological premises, but neither does it clearly state that we can rethink politics without acknowledging that source. He does not offer a theological reading of those political concepts in the way that Hobbes or some contemporary political theologians do (O'Donovan 1996). It is important also to emphasise that Schmitt never claims to be a Catholic political theorist, unlike the French philosopher Jacques Maritain (who influenced papal policies). Nor does he write from a Catholic political perspective in his major writings, despite his early association with the Catholic Centre Party in the early years of Weimar. Schmitt's own relationship to Roman Catholicism is highly particularistic (Mehring 2017) and not much can be inferred from it. Despite this ambiguity, the idea of Schmitt's theory as a political theology has gained much prominence, especially following the work of Heinrich Meier (1995; 1998).

Central to Meier's thesis is a claim about the form of Schmitt's theory and not its confessional content. The contrast between a political theologian and political philosopher concerns the fundamental approach to the idea of truth and the task of the theorist. The philosopher, as represented by the character of Socrates, seeks human wisdom in the world through the exercise of critical reason. All knowledge claims are subject to this critical challenge. In consequence, knowledge and wisdom are hard to come by, except in the negative sense of knowing the limitations of reason and the elusiveness of truth. The political theologian starts with the priority of faith in a revealed truth and their task is to defend and explicate that truth, and to criticise beliefs opposed to it. In contrast to the philosopher's ideal, a political theologian is always engaged within the struggle of truth for acceptance. This has an important impact on the way in which theoretical arguments are to be understood. The open quest for knowledge through enlightenment, debate and deliberation is only going to be a qualified and limited good for the political theologian, since it can prove useful to the dissemination of truth. But the discovery made by this method and its authority is always qualified. A political theologian will always be sceptical and dismissive of liberal philosophers with conducting an impartial quest for the truth. For the political theologian, the truth is a given, and its authority is independent of the individual reason and mind.

This reading of Schmitt helps explain his approach to liberal argument, which is one of dismissal and derision, but it also explains his own non-liberal conservatism. Schmitt is not merely a liberal conservative with a scepticism about rapid change (like Edmund Burke). He is, as he constantly claims, more in sympathy with Catholic reactionaries such as Louis de Bonald (a philosopher

counter-revolutionary during the French Revolution), Juan Donoso Cortés (a 19th-century Spanish aristocrat who defended dictatorship) and Joseph de Maistre (a defender of monarchy as divinely sanctioned). These latter writers all defend revealed truth and its concrete instantiation within the Roman Catholic Church in the face of individualism and liberalism following the French Revolution. The truth of revelation is already there and does not need explication, but the opponents of that truth need to be politically confronted and their ideas defeated, by whatever means.

As a conservative, Schmitt opposes the optimism and progressivism of liberalism. For him, the idea of history as progressive is one of the liberal doctrines that is most subject to challenge from a political-theological perspective. For liberals (from Hegel through Mill to Stephen Pinker), history is the unfolding of human progress and enlightenment in opposition to religion and superstition. But for Schmitt this is just hubris. History is simply a period of change and passing away. It has no purpose or end, and no triumph of any particular political order can be inferred from it. In this respect, Schmitt's philosophy of history is similar to that of post-Augustinian Christianity. The truth of revelation is complete and fulfilled and secular history is simply the period of change preceding the second coming or Parousia. He emphasises this interpretation of his thought by alluding to the character of the Katechon (from 2 Thessalonians 2). The Katechon (restrainer) is a figure who emerges to preserve the Christian age by challenging those forces that seek to accelerate the end of time through the offer of utopianism. The Katechon struggles with the Antichrist as a force that seeks to usurp Christ's role as arbiter of the end of time. Whether Schmitt genuinely believed what underlies this mystical and apocalyptic language, it does serve as a metaphor that makes sense of an anti-teleological view of history, with its frequent but dangerous and violent attempts to bring it to an end in a utopian final political order. The obvious candidate for the 'end of history' in Schmitt's lifetime was that offered by Bolshevik revolution, but Schmitt also saw this threat of a dystopian 'end of history' as being implicit in the liberal faith in progress. As an extended metaphor for the challenge of history in liberal modernity, political theology and the recovery of secularised theological concepts are essential to understand the character and tragic risks of utopian schemes. Progress is the enemy in political theology and progress is a permanent danger. The apocalyptic language of the Antichrist is perhaps the only way of recovering the violence and evil that is unleashed by revolution, whether that be in 1789 or 1917 – liberalism or Bolshevism.

### *The Concept of the Political*

Central to Schmitt's critique of liberal politics is his assertion of the fundamental role of political decisions: something that is often described as 'decisionism'.

He does not want to replace the liberal rule of law and rights with pure power, but that leaves open the question of what 'the political' is, if not unrestricted power and the pursuit of interest. How do we make sense of ideas such as sovereignty in a world in which traditional contract theories or theories of popular sovereignty are shown to be self-defeating? It is in answer to this question that he develops his famous argument about the concept of the political.

### *Friends and enemies*

Adjectival nouns such as 'the political' are a scourge of academic prose – the political what? But, for Schmitt, the choice is important and specific. He begins his important short work *The Concept of the Political* (1932) by distinguishing between the political and the state. The state is an institutional structure that has emerged in European history, but it is not definitive of the political, although it may well be the site for most political action. The substance of that political action is the usual source of accounts of the political, whereby politics is reduced to something else such as class interests, economic power, national culture, or in the contemporary world gender or other identity categories. For Schmitt, the challenge of liberalism is its reduction of politics to something more important, which in turn creates the weaknesses of liberal constitutions in recognising and confronting existential challenges. The question of 'the political' arises in the context of what Schmitt calls an age of neutralisation, that is, an age in which an underlying conceptual scheme is giving way to a new one, in which important concepts become detached from their origins. This is most obviously the case with respect to secularisation, which undercuts the foundations of concepts of political authority and order.

However, the issue is not simply the rise of secularisation but rather the competition between different alternative conceptual schemes for making sense of human experience. These might be 'morality', 'economy' or 'technology', by which Schmitt thinks of the recasting of fundamental authority in terms of technocratic and scientific domination and elitism. The analysis of bourgeois parliamentarism shows how liberal parliamentary politics is consumed by economics and morality. Economic interests both fuel liberal globalisation and the class conflict theories that are at the heart of Marxism and social democracy. Moralism is the implication of the individualist reductionism of liberalism, translating every struggle into a conflict of individual rights. Ultimately, this must diminish political power and relationships, by creating conflicts between individuals with rights and state power that seeks to curtail those rights. For Schmitt, liberalism tends to collapse into libertarianism, with its identification of the state as the greatest threat to individual freedom and standing.

In contrast to this tendency to economic or moral reductionism, Schmitt offers a non-reductive account of the relationship of the political in terms of the 'friend/enemy' distinction: 'The specific political distinction to which

political actions and motives can be reduced is that between friend and enemy' (Schmitt 1996, p. 25). The distinction is not a definition and it remains open to others to challenge his identification of politics with another criterion. But it is offered as a criterion for identifying the specifically political features of human experience and for contrasting those with others, in the same way that the opposition between good and evil provides the ultimate criteria in the moral sphere or mode of experience, or the opposition of beauty and ugliness operates in aesthetics. In this respect the political appears as one criterion amongst many, and Schmitt even concedes that it can manifest itself with respect to the substance of economics or art or morality. Yet there remains something distinctive about the political, in that its objective autonomy 'becomes evident by virtue of its being able to treat, distinguish, and comprehend the friend-enemy antithesis independently of other antitheses' (Schmitt 1996, p. 27). It is important not to be misled by this into thinking that Schmitt is merely offering a further distinction to add to those of good versus evil, or beautiful versus ugly, so that one could subordinate the political to the moral. For Schmitt, the challenge of liberalism or romanticism (with its aesthetic view of the world) is not that it makes a different philosophical choice but that it denies the political altogether, or tries to discipline it out of existence with moral constraints and legal regulations. The priority of the political is boldly asserted over other such distinctions on the grounds of the intensity of the friend versus enemy distinction:

The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. (Schmitt 1996, p. 29)

... The friend, enemy ... concepts receive their real meaning precisely because they refer to the real possibility of physical killing. War follows from enmity. War is the existential negation of the enemy. It is the most extreme consequence of enmity. It does not have to be common, normal, something ideal, or desirable. But it must nevertheless remain a real possibility for as long as the concept of enmity remains valid. (Schmitt 1996, p. 33)

The priority of the political is that it is existential and it threatens the possibility of killing and not just violent death. No other distinction has this priority. For instance, once economic competition develops to the point of the threat of killing, it has ceased to be economic and has become political. The defence of trade, markets or resources is no longer an economic matter if it becomes the basis of a friend/enemy opposition. The same argument applies to religion. Once a faith turns the distinction between the elect and the non-elect, Christian and non-Christian, damned and saved, into one of mortal enmity, it ceases to be religious and theological but is political. It is precisely the recognition of



this transition that led to the subordination of questions of faith to the claims of the political state following the European wars of religion.

Although the threat of war and killing is potential and not always actual, echoing Hobbes's account of the state of nature, Schmitt is clear to distinguish his dichotomous friend/enemy opposition from the Hegelian dialectical opposition between the master and slave, which results in an overcoming of negation in a higher mode of being and experience. The struggle with enemies is not a metaphor for identity formation: it is not part of a dialectical process leading to reconciliation. For Schmitt, the threat of war and the requirement of killing one's enemy is not a philosophical dialectic of history. It is an existential opposition that leads nowhere, beyond the defeat of one's enemy or the enemy's triumph. Schmitt rejects historical teleology and the friend/enemy distinction is not an attempt to explain historical political change, although relationships of enmity will certainly be part of descriptive history.

Having identified the relationship of friend/enemy, Schmitt devotes much of *The Concept of the Political* to explaining the precise significance of the distinction. As Gabriella Slomp (2009) points out, there is little discussion of the concept of friendship, which is an irreducible part of the distinction, despite the fact that friendship has been central to understanding political society from the time of Cicero. For Schmitt, though, the relation of political friendship is something that has to be inferred from that of political enmity. It is, however, clear that the relationship distinguishes the internal perspective (friends) from the external (enemies). Consequently, Schmitt gives a very specific and public account of the relationship of enmity. As part of his rejection of the reductionist individualism of liberalism, he denies that enmity is a psychological relationship between individuals. Nor is it reducible to the economic category of competitor in market relations. 'The enemy is not merely any competitor or just any partner in a conflict in general. He is not the private adversary whom one hates' (Schmitt 1996, p. 28). It might well be the case that feelings of hatred follow from the relationship of enmity, but it is not essential to that relationship. Nor does it follow that hatred is always associated with enmity. For all the examples of hatred of the enemy that is found in accounts of the war against Japan, or by veterans of Vietnam, there are many examples of respect for the enemy in even the most brutal and bloody battles of World War I. The enemy is a distinctly public category, that Schmitt identifies using a Latin distinction between *hostis* and *imicus*. The *hostis* is an adversary with whom one can face mortal struggle without the feeling of hatred; the *imicus* is a hated and personal adversary. Whilst it is difficult to keep these ideas apart in the human psyche, it is easier to see distinction empirically, especially when the relationship is distinguished from morality with its necessity of characterising the friend as good and the enemy as evil. Indeed, for Schmitt it is one of the achievements of the modern idea of politics that it can separate itself from this sort of moral reductionism.

### *The state and war*

Although the concept of the political is prior to the idea of the state, the state is the primary vehicle through which that relationship is realised in the world. Much of *The Concept of the Political* is a continuation of Schmitt's critique of theories and ideologies that weaken the state by denying the distinction between friend and enemy, and failing to see the state as the place within which friendship is defined through confrontation with external enemies. The most important consequence of this insight is that it challenges the liberal constitutional prejudice that the state or political power is the enemy that needs to be contained by the rule of law or by the internal balance of factions within a liberal party system. As these threats are primarily ideological creations of liberals, or of Marxists (with their conception of class conflict), the primary political task is that of building a unity around a concrete version of the friend/enemy distinction by holding to the irreducibility of this relationship as an existential challenge for a political community. In this respect, identification of an external enemy is a unifying feature of a community as a political community. By this Schmitt does not mean that enmity with the French is essential or definitional for being British or German. But he does mean that having a mortal external opponent is what makes a community into a political community. And, where that political community has achieved statehood, it is what sustains it as a community.

For this reason, Schmitt (like Hobbes) is sympathetic to authoritarian and unified government. It is also why he is so critical of pluralism as a threat to, or denial of, the state. In a critique of the English pluralists G.D.H. Cole and Harold Laski, Schmitt argues that pluralist theories do not have a theory of the state because they reduce the political community to a set of overlapping plural communities with conflicting claims to authority. Hence, they deny the idea of unitary political authority. Cole and Laski saw the primary political threat as coming from the modern authoritarian state, as opposed to an external enemy. But in so doing they undermined the possibility of an ordered arbitration of the claims of these different communities, which is to invite chaos and disorder. At its worst, this disorder can result in civil war, a concept that Schmitt does not like – because war ought to be an extension of politics, and therefore presuppose a state or a new emergent state distinguishing itself through the political criterion of friendship and enmity. By contrast, a civil war is a 'dissolution of the state as a political entity' (Schmitt 1996, p. 46). The problem of pluralism is not simply theoretical incoherence but political risk, because a pluralist state would be subject to constant external threat without having the coherence needed to defend and assert itself.

The demand for unitary decision and unity in the community at the heart of a political theory of the state manifests itself clearly in the political decision to identify *domestic enemies* of the friendship that binds a state together as a political community. This fundamental power of decision is obscured by

pluralist and liberal theories, which see the political threat in the state itself. By contrast, Schmitt concludes that the fundamental political criterion of friend/enemy must underlie a constitution in order to answer the fundamental question of when an exception to constitutional rule arises and what counts as an emergency. The criterion of the political explains the priority of that sovereign decision, and also gives it content within a particular political community. Here the relationship identifies the nature, boundary and membership of the political community, or who is subject to defence through the use of violence and who is the enemy that must be confronted through the use of violence and war.

Schmitt's *The Concept of the Political* is a critique of political pluralism as an account of the state and of domestic politics (to the extent that he argues pluralist theories do not really have a theory of the state). But, whilst he opposes pluralism within the political community or state, he defends pluralism as characteristic of international relations. This is in contrast to liberalism, which defends pluralism at the state level but favours universalism at the level of the international and global. In order for there to be political friends, there cannot be permanent enemies within a state and consequently there must be unity. But, in order for such unity to exist, there must be external enemies, and therefore at least one other political community. Pluralism at the international level is a consequence of the concept of the political. The logic of the state system is a world of particular states or international pluralism. This necessity of international enmity is what is misunderstood by pacifists following World War I and the attempts of the League of Nations to eradicate war between nations in favour of a humanitarian world order. The termination of a war between different states would not lead to world peace but to a peculiar kind of war:

Humanity as such cannot wage war because it has no enemy, at least on this planet. The concept of humanity excludes the concept of the enemy, because the enemy does not cease to be a human being – and hence there is no specific differentiation in that concept. That wars are waged in the name of humanity is not a contradiction of the simple truth: quite the contrary, it has an especially intensive political meaning. 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. At the expense of its opponent it tries to identify itself with humanity in the same way as one can misuse peace, justice, progress, and civilisation in order to claim these as one's own and to deny the same to the enemy. (Schmitt 1996, p. 54)

The argument here is twofold. In practice, a war for humanity would not be between the universal category of humanity and its enemy but merely a disguised form of regular warfare, with a political community using the category

of humanity to demonise its enemy. Global or humanitarian wars are just a cover for the imperial ambitions of particularly strong states. Schmitt notes that imperial expansion has been defended in terms of defending humanitarian or universal or civilisational values from the time of the Romans. However, the use of the universal category of humanity changes the character of the war, precisely by demonising the enemy, who by definition cannot now be 'human' and does not merit the respect of fellow human adversaries. This dehumanisation of the enemy raises the prospect of the wars of annihilation that characterised imperial expansion in North and South America and more recently Africa, as well as the European wars of religion.

Whilst the book is primarily focused on the need to sustain a strong and decisive conception of the state, and to defend it from internal weakness of the sort that blighted the Weimar Constitution, it concludes with a pessimistic view of international politics and the rise of a new imperialism, emerging under the guise of liberal economic globalisation. The themes of this pessimism came to form the basis of his last major works written following his fall from grace with the Nazis after 1936 and in the face of Nazism's ultimate defeat by the Allied powers, especially the United States and the USSR. These replaced the old imperial European great powers in shaping a new world order, or what Schmitt describes as a new *nomos* of the earth.

### *The Nomos of the Earth and International Law*

*The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* was written between 1942 and 1945 (*nomos* is an ancient Greek term for a body of law or convention governing human behaviour). Schmitt drew on material on the concept of *Großraum* (literally 'great spaces') written in the late 1930s and on the discriminating concept of war. His book was published in 1950 at the height of the Cold War. It can be seen as a continuation of the *Concept of the Political* since it does not repudiate the friend/enemy criterion of politics. Yet, it is also a development of his ideas in the face of the continuing challenge of universalism (in the form of international law) and the new ideological confrontation of the capitalist versus the communist world. This polarity threatens the stability of enmity as focusing on an adversary, as opposed to a hated opponent. Schmitt makes a change of style or methodology in the face of the abstract universalism that was shaping the new liberal world order, now placing emphasis on the idea of a 'concrete order' as the site of theorising international law. This brings out his stress on territoriality and situatedness in understanding the idea of a concrete order that alone makes sense of the concept of law. Schmitt remains a jurist and, whilst he is a critic of the direction of modern international law, he is not a crude sceptic, nor even a positivist who argues that without a legislator there is no law. That said, the peculiarity of international

law only works within a domain of international politics that must have some boundaries between those within and those without. The book is an attempt to situate the idea of international law within a concrete order, and to analyse the challenges that arise from the transformation of that order – which Schmitt thinks are exemplified by the retreat of the European state system, which he describes as the *jus publicum Europaeum*.

### *Territoriality and conquest and law*

*The Nomos of the Earth* is a form of history of the idea of an international or global law and the conception of order that it emerges from. It is a ‘form’ of history because Schmitt is offering an interpretation of concept formation, one that ranges widely over sources and subject fields in a way that a traditional history of a legal or political concepts would find challenging. His intention is to problematise the perspective that sees law either solely as the authoritative norms of a sovereign lawgiver or (as in natural law) as the implications of a moral or ethical conception of human nature. In a striking statement he claims:

the earth is bound to law in three ways. She contains law within herself, as a reward of labour; she manifests law upon herself, as fixed boundaries; and she sustains law above herself, as a public sign of order. (Schmitt 2006, p. 42)

His history begins with a controversial account of the meaning of the Greek term *nomos*. This is usually interpreted as law or convention, in contrast to the rival idea of *physis* as nature. For Schmitt, the idea is however connected to the ‘taking’ or appropriation of land in a way that reinforces his claim about the earth containing law within itself: ‘land appropriation [is] the primeval act in founding law’ (Schmitt 2006, p. 45). This founding act has an internal and an external perspective: firstly, it creates claims of ownership with attendant ideas of distribution over how much an appropriative act can claim, and on what terms against whom within a community. This claim is originally a communal one, even if the subsequent distribution is individualised. Individual claims always follow from a prior communal claim.

This is an interesting inversion of the Lockean account of colonial acquisition. For Schmitt, the English settler could only ‘take’ land in North America because the English power had defined the site of taking as *terra nullius*. Externally, the community’s act of appropriation makes claims about what is free to be appropriated and what is owned, against those who make rival claims. Appropriation or taking brings with it ideas of what land can be acquired, owned and ordered. A history of international law is therefore ultimately a history of land appropriations within which this fundamental source of law is based, and in which conceptions of territoriality and geography are

essential and not accidental. Order or *nomos* is therefore always territorially bounded, and international law develops from the problems of determining boundaries and overlapping claims amongst appropriator jurisdictions. It also presupposes those outside of these orders, who are within the realm open to taking, or who place limitation on takings. It is, however, the dawn of modernity, exemplified in this case by the discovery of the New World of the Americas and the practical demonstration that the world was a globe, which raised the significance of a territorially limited world.

The globe as a potential challenge to order emerges in a number of ways. Firstly, Schmitt draws attention to the idea of *rayas* as divisional lines between Portugal and Spain arbitrated by Pope Alexander VI, marking the respective spheres of influence for colonial expansion. These are examples of emerging law or order within a global context. Similarly, the Anglo-French conception of amity lines is also raised as an example to the territorially bounded nature of interstate jurisdiction. This is the idea that the terms of treaties between such powers holds within Europe but not necessarily beyond it, so that conflict between these European powers in 'the Indies' does not necessarily constitute a treaty breach between them.

Secondly, Schmitt raises the challenge posed by the sea as a natural boundary to territorial order and a realm within which unbounded claims to right and competence are exercised. The contrast between land and sea powers is as old as that between Athens and Sparta, but it remains a persistent preoccupation for Schmitt, since it is linked to the development of universalist or globalist claims on the part of mercantilist sea-based powers.

Thirdly, Schmitt draws attention to the rise of the concept of humanity as a juridical notion in the 'just war' theory of the Renaissance thinker Francisco de Vitoria. The concept accommodated natives or indigenous peoples whose status could not be derived from their juridical or theological standing within the Order of the European colonialist states. From Vitoria onward, ethical significance was derived from being part of the created order even prior to membership of Christendom through baptism. These ideas of taking/occupation, just war and the boundlessness of obligation that arose from the law of the sea shaped the development of international law amongst the European powers and informed the writings of the political theorists of the early modern period. They create the understanding of international order embodied within the *jus publicum Europaeum*.

### The crisis of the *jus publicum Europaeum*

The key argument in *Nomos of the Earth* is an account of the *jus publicum Europaeum* as an idea of the international public law for the European states of the Westphalian order. The main features here are familiar from previous thinkers, with Schmitt offering careful, if sometimes controversial, readings of the ideas

of Grotius, Pufendorf, Locke and Rousseau as theorists who articulated the elements of the European order that lasted from the mid-17th century to the late 19th century. This order emerged from the Thirty Years War and withstood the challenge of the French Revolutionary wars in the early 19th century. Central to this world was the equal recognition of the claim to sovereignty amongst the major European powers, and the transformation of war as a policy tool amongst those powers for settling disputes between sovereigns. It is in this context that some of the elements of the criterion of the political emerge, such as the 'bracketing of war' or the distinction of war as a legitimate power of states exercised under commonly understood rules, and the understanding of enmity as adversarial rather than an opposition of hatred. Here, Schmitt's thought clearly reflects his reading of Clausewitz on the regulation and professionalisation of war as an extension of policy. Once again, the contrast between the territorially contiguous land powers and the sea power of Great Britain plays an important part in the narrative. The law of war and its international regulation are most appropriate to the land powers and the conduct of their conflicts, because these presuppose spatial limitation and territoriality – whereas the sea power and the domain of the sea do not recognise the same idea of territorial exclusivity, and the constraint that this places on jurisdiction.

The central thesis of Schmitt's argument is that international law grew as the public law of the European state system and the great powers that sustained it. Indeed, it was precisely in this capacity as a guarantor of territoriality and the arbiter of changes to borders following wars that the idea of the great powers emerged 'as the strongest participants in this common spatial order' (Schmitt 2006, p. 190). Great power status is not only a matter of power but the end or purpose to which this is exercised in sustaining a common territorial order from which that power emanates.

The substance of the *jus publicum Europaeum* is concerned with the matter of war, with territorial change and acquisition and with the continuity of regimes and the matter of succession. Whilst the primary context for this law is the European continental land mass, the *nomos* of the *jus publicum Europaeum* extended beyond the geographical boundaries of Europe into the space of European colonies. These were understood as effectively extensions of European territoriality and subject to the same norms that applied within this peculiarly European family of nations, with its set of related but rivalrous great powers.

The challenge for the *jus publicum Europaeum* arises when this law is detached from its territorial context and abstracted into an international law that no longer relates to the understanding of European civilisation and culture. The central claim of *The Nomos of the Earth* is that international law is always the law of some geographically limited and territorially bound order; therefore, there is no completely abstract international law. Any new 'nomos of the earth' must be that of some new emerging order and Schmitt sees this in the displacement of 'Europe' by the United States:

The first long shadow that fell upon the *jus publicum Europaeum* came from the West. The first characteristic indications became visible with the growing power of the United States, which could not decide between *isolation* behind a line separating itself from Europe and a global, universalist-humanitarian *interventionism*. (Schmitt 2006, p. 227)

This detachment begins with the rise and assertion of United States power with the 1823 Monroe Doctrine and continued with the U.S. recognition of the Congo Society's flag in 1884 and therefore a new state on African soil. The Monroe Doctrine asserted a sphere of influence – the western hemisphere – within which the United States would not tolerate any further extension of European wars and colonial conquests there. On one level this was an act of isolation from the wars of the 'Old World' and led to a strong tradition of political isolationism in U.S. politics. Yet, at the same time, according to Schmitt, it was an assertion of U.S. power in the world by marking its own sphere of influence within an entire hemisphere (going well beyond the immediate borders of the USA), which it regarded as its own peculiar responsibility. In so doing, Secretary of State James Monroe was imposing a clear limit on the scope of the *jus publicum Europaeum* as a source of international law or a *nomos* of the earth.

The second issue was part of a complex discussion of the division of the Congo Basin in the 1880s by the European great powers and Belgium's claim to sovereign acquisition. By recognising the claim of one of the colonial societies as a new state, the U.S. was ignoring the claims of the *jus publicum Europaeum* over the territorial claims and annexations of European powers. The American intervention and its unilateral act of recognition defined a capacity to set boundaries on the European powers. It was not simply a prelude for the new assertiveness of the U.S. on the world stage but a particular assertiveness that is conflicted between universalism and isolationism: something that still characterises U.S. foreign policy today (Kagen 2018). The challenge of universalism is most explicit in the idea of a discriminating concept of war and global legalism, and the challenge of isolationism behind the Monroe Doctrine and the division of the world into global spheres of influence underlies Schmitt's idea of the *Großraum* (or global blocs).

### *The discriminating concept of war*

Central to the idea of the *jus publicum Europaeum* was the idea of 'bracketing war' and its regulation together. Schmitt characterises this process without recourse to moral conceptions and he is dismissive of the moralisation of war – as we have seen in his earlier account of territorial conquest and the claims of indigenous Americans under Vitoria as 'humans'. The concept of *jus* is a primarily juridical notion, even for Aquinas and the Thomists. Therefore, it needs to be distinguished from the all-encompassing rise of morality following



the individualistic turn of modern natural law, exemplified by Locke's theory of the morality of war as a punitive power derived from individual rights. Yet, the moral regulation of war is often claimed as one of the highest achievements of international liberalism, as exemplified by the Nuremberg Tribunals (1945–1946), and their predecessors following World War I.

Schmitt's preoccupation with attacking the aspiration to legally regulate war and to criminalise the idea of 'aggressive' war is coloured in the eyes of his critics by his own experience, not least because it also appears in a brief he wrote in detention following the defeat of Nazism. 'The International Crime of War in Its Particularity As Opposed to War Crimes' (Schmitt 2014) was written in response to Justice Robert Jackson, the chief prosecutor for the U.S. during the Nuremberg Trials. Schmitt particularly argued that no crime can deserve a punishment when it was not a crime at the time the act took place (*nulla crimen, nulla poena sine lege*), and this and his broader brief remain serious arguments with respect to the legitimacy of subsequent war crimes trials.

Schmitt begins his account of the law of war within the idea of the *jus publicum Europaeum* as he understood it. The idea of war as a regulated activity grew up within the Westphalian state system following the European wars of religion in the 17th and 18th centuries. Schmitt regarded these wars as the archetype of moral wars in which the enemy was not a mere *hostis* (or adversary) but an *inimicus* (the subject of hatred), concepts that were also central in his account of the *political*. Essential to this idea of enmity, and to the modern legal regulation of war, is that of a military enemy as an authorised adversary, exercising the right of states to pursue war. The concept of the *political* is thus projected outwards to the international realm because the enemy is an external threat to the political claims of a state. Schmitt is clearly drawing on the Clausewitzian idea of war as an extension of the political, or a technical power of states to pursue their policy agendas. War is therefore a defining feature of state power in the *jus publicum Europaeum* and it is to be contrasted with the ideological and political wars of religion that shaped the Reformation period. For the opponents in those conflicts, the enemy was absolute: there could be no settlement between Catholic or Protestant, or between both creeds and the Anabaptist revolutionaries. One side could only win by converting or annihilating the enemy. In both cases, the key issue is not defeat, after which an enemy can go home, but destruction, after which they cease to exist. The moralisation of war imposes the concepts of good and evil on enemies and this turns that political relationship back into an existential relationship of victory or annihilation.

Whether Schmitt is right about 18th-century wars as professionalised extensions of political powers, he certainly claims that the regulation of war is of a different order to claims about good and evil. Of course, war can introduce great evils, especially as technology advances. According to Schmitt, this is what led to international regulations amongst the European powers of certain kinds of technologies, such as explosive bullets or flat-headed bullets known as

'dum-dums' that create more grievous wounds. Similarly, the conduct of war can result in breaches of the standards of military behaviour that are generally accepted, such as the torture or summary execution of prisoners. These issues of *jus in bello* are again regulated by interstate agreements such as the Hague Conventions. But the crucial feature of these *jus in bello* cases is that they fall to the state to enforce and prosecute. This does indeed happen as shown by the United States' trial of William Calley for the Mai Lai massacre in Vietnam, or prosecutions of British soldiers for breaches of laws of war following the second Gulf War.

What is not captured here is the idea central to modern 'just war' theory of the *jus ad bellum* or sanctions against the crime of war itself. For Schmitt, this is an incoherent notion that has its roots only in the victor's moral judgement of their opponents following World War I, and it has much to do with the fundamental flaw of the Versailles Treaty that followed the armistice. If war is a legitimate Clausewitzian extension of state power, then it is not a moral notion, and its onset cannot be considered unjust without a globally accepted conception of justice. This is precisely what Schmitt rejects as a matter of fact in the case of the crime of aggressive war. No such crime was accepted by the parties to World War I or II and, consequently, whatever else one might think of the Nazi leadership (a subject on which Schmitt is remarkably quiet), they were not in that case in breach of the law. Justice Jackson was acutely aware of this problem and sought to locate the relevant crime in international agreements such as the Geneva Protocols, the Versailles Treaty and the Kellogg-Briand Pact of 1928. Schmitt argued that the latter contained so many qualifications and contradicted so many provisions of other treaties that it could not be considered an authoritative source of law.

But Schmitt's argument is more than just that there was no agreed law against waging a war of aggression. For him, the very idea is incoherent and dangerous because it would eradicate the idea of a pluralised international domain, such as the state system that underlay the *jus publicum Europaeum*. The criminalisation of war would entail the eradication of a plurality of political communities. They would instead be subject to an order that could legislate against war and punish crimes under that order. Such an entity would be more than the loose federation of the League of Nations or the United Nations – it would be a single political community but one without the fundamental features of a political community, namely radical difference, and enmity as hostility. It would be an inhuman Manichean world of two fundamental categories of person, namely the good and the evil. This echoes Schmitt's concern with the claims of Bolshevik class war as a reintroduction of religious war by other means. The liberal aspiration to eradicate war in this way unmasks the hidden millenarianism of liberalism as an alternative source of the end of history.

Schmitt's argument might seem rather exaggerated, but the argument is illustrated by the fate of neutrality in the new discriminating concept of war. If

an act of war is aggressive (and therefore by its nature unjust), what possible grounds could there be for asserting neutrality? One might plead poverty as a poor country, but could one not have a right of neutrality on the issue? If international relations becomes the domain of good and evil, then there can be no principled arguments for toleration or containment of regimes, as George Kennan claimed with respect to the USSR. There must always be the potential to confront and defeat wrong and evil. There must always be an authority to whom one can appeal for a judgement of when a war is aggressive – after all, hardly any state, even the Nazi state, claims not to be defending something in having recourse to war; aggression is always a matter of perspective. In medieval Europe, that power was potentially the authority of the papacy. And in the *jus publicum Europaeum* that power was the consensus of the major European powers. But, with the collapse of that order through the rise of the global liberalism, who is the relevant authority?

Where could that new authority or *nomos* possibly reside? One possible answer is in the United Nations as a potential international federation or (to its critics) a global superstate. Yet, Schmitt's point is not simply to worry about the United Nations as a potential liberal global superstate but rather that such institutions fail to achieve global pacificism. Instead they actually become a mask for enmity and conflict, just as the modern state of the Weimar Constitution was a plaything of economic and social conflict between classes and factions. Conflict is an ineradicable feature of human experience and central to that is conflict between organised groups, which is characterised as war. To overcome that conflict, human beings would need to become different to what they are. This potentially limitless remaking of humanity is what lies at the heart of liberalism, at least according to Schmitt. In this it usurps religion, but without the disciplining function that religion has. For Schmitt, the challenge for the future in seeking a new *nomos* of the earth is avoiding reincurring the experience of the European wars of religion.

### *Großraum and the new nomos of the earth?*

The concept of *Großraum* has an ambiguous role in Schmitt's late thinking on international order, not least because it was used in the late 1930s by Schmitt to give a legal framework for Hitler's expansionism in Europe in the run-up to World War II (Schmitt 2011). But even in this context it should not be confused with superficially similar concepts such as *Lebensraum* (literally 'living room') which played a role in Hitler's racialist theory, and which the Nazis did not derive from Schmitt. Schmitt's *Großraum* means the idea of a greater space (an extended territory) in which a dominant power exercises an authority beyond that of regular sovereignty over smaller states, without at the same time fully denying the sovereignty of those states. In the closest that Schmitt offers to a definition, in *Nomos of the Earth* he writes:

The territorial status of the controlled state is not changed if its territory is transformed by the controlling state. However, the controlled state's territory is absorbed into the spatial sphere of the controlling state and its special interests, i.e. into its spatial sovereignty. The external, emptied space of the controlled state's territorial sovereignty remains inviolate, but the material content of this sovereignty is changed by the guarantees of the controlling power's economic Großraum. (Schmitt 2006, p. 252)

The core idea is of a major power exercising a veto over the exercise of the sovereign powers of a minor state in its proximity (somewhat like the Chinese imperial concept of suzerainty). So it is a political constraint on the exercise of the legal sovereign power of that state, rather than a legal denial of that sovereignty. Originally this was a feature of the great power order of the *jus publicum Europaeum*, but it was transformed by the exercise of the Monroe Doctrine of 1823. That greatly expanded a traditional conception of local concerns into the idea of a hemispheric exclusion of the 'Old World' from the Americas.

From a defensive viewpoint, the primary drivers for the extension of Großraum thinking was the expansion of economic interests with trade and economic development. The scope of a major state's interests extended beyond those of territoriality and included the rights of succession and government stability of neighbouring states, as well as access to markets, sources of supply and trade routes. With industrialisation in the 19th century, the control over and ownership of international capital in rail networks, access to river ports and ownership of natural resources central to new heavy industry all extended the concerns of state interest beyond geography as a source of boundaries and borders. Economics moved from a private matter into a central part of state relations and became a source of conflict. A striking example of how economic networks and organisation gave rise to an extension of national interests beyond state boundaries is J.M. Keynes's *The Economic Consequence of the Peace* (Keynes [1919] 2015). Whilst Schmitt rejects the idea that economics is the primary driver of political and legal relationships, he is clear that the 19th century saw a transformation of state interests. Industrialisation and economic development led to the consequent shift from states being largely agricultural economies to their being commercial and industrial economies that rely on the import of raw materials to sustain expanding populations.

The challenge of the Monroe Doctrine was that it involved a much larger territorial claim than normally associated with Großraum, as traditionally understood. If it is interpreted as an isolationist act or a retreat behind a boundary, it raises a challenge to access to resources (especially in Latin America), which are crucial to the developing European economies. It is therefore a potential threat to them, and certainly a risk to European liberal ideas of free trade and open economies. Here Schmitt was writing in the aftermath of the global wave of protectionism that had scarred the 1930s, in which tariff walls and the need to secure access to essential resources (such as wheat, oil and metals) became

an existential challenge to modern states. However, there is also the danger of 'economic' thinking driving a universalism of trade and markets and challenging borders and sovereignty. One possibility is that the Monroe Doctrine becomes just a first step on the way to a universal global order by one political society, driven by its own economic and commercial interests. Here the issue is the scale of the claim to control access to a hemisphere. When cast in spatial terms, it is greater than even the extended economic networks of a large country like the USA in relation to its neighbours. There is no necessary universalism in the Monroe Doctrine's assertion, unless it is coupled with the universalist legalism of the discriminating concept of war. But equally, for Schmitt, there remains an open question about how large a *Großraum* can be before it ceases to represent a particular spatial order, and instead becomes a genuine claim to be a *nomos* for the whole of the earth or a global political order.

*The Nomos of the Earth* does not end with a concrete conclusion about how the new world order should be understood. Schmitt offers three alternative pathways:

- a global state;
- a continuation of 'balance of power' thinking amongst macro-alliances, with technical changes to the balance of power components, such as the USA usurping the earlier British responsibility for the free seas; and
- a new global order of several *Großraums* balancing each other.

The first is seen as the most problematic because it threatens the chaos of an end of history. The second is the Cold War balance between the west, now under U.S. dominance, and its confrontation with the Soviet enemy. The third assumes a more complex view of regional global *Großraum* confronting each other and is part an acknowledgement of the rise of Asian powers that do not fall under the dominance of western order. Japan's failed attempt to build up an Asian empire only opens the way for the possible rise of China. (Schmitt's book was published in 1950, only one year after the Chinese Communist Party took power.)

It remains part of Schmitt's 'concrete order' thinking that the new 'nomos of the earth' can only be seen in intimations and challenges. The dominant post-war source of those changes was the United States and its Cold War role, so that Schmitt's speculations are oriented towards the direction of U.S. thinking. Interestingly, despite the USSR's undoubted role in the destruction of Nazi Germany and its proximity to Schmitt, he has nothing to say about the threat of Soviet communism as a candidate for the new world order. Perhaps this is because the USSR represents raw military power and not an attempt to reorder the world as a global legal order. The challenge of the USSR simply represents a continuation of the political as a struggle between friend and enemy. The risk for Schmitt is not the commonly perceived one of nuclear war, which he did not think would bring war to an end in a universal conflagration. Rather, it is the

rise of global order and the overthrow of politics, which might bring an end to interstate warfare but would not bring an end to violence and disorder.

### *The Partisan*

Amongst the many challenges that the Cold War posed to the international order was the consequence of nuclear weapons undermining the possibility of future significant interstate wars occurring on 1914–1918 or 1939–1945 lines. The inconclusive confrontation of the Korean War was partly the result of the wider fear of escalation into a nuclear conflict by both of the major ideological powers. The risk of accidentally falling into the global conflagration remained real, and theoreticians explored the security dilemma as a technical problem in decision theory. However, Schmitt did not regard nuclear weapons as signalling the end of war or a fundamental constraint on his theory of politics as mortal confrontation between friend and enemy. Whilst most theorists of international relations were looking at the rise of American power and the ideological confrontation between the U.S. and USSR, Schmitt turned his attention to new types of conflict and belligerence in his *Theory of the Partisan* (Schmitt 2007 [1963]). Although the lectures were intended as an extension of the argument of *The Concept of the Political*, they came to be seen as a prescient account of the rise of new kinds of conflict such as the urban terrorism of the 1960s and 1970s. They have also informed the understanding of non-state threats posed by the global terrorism of Al-Qaeda in the early 21st century.

Schmitt is not simply concerned with new forms of violence but with those that can be seen as specifically political, and therefore are not the chaotic and ever-present forms of violent human behaviour that are regulated within domestic legal systems under the heading of crimes. Partisan violence and action might well need to be criminalised, but it is categorically distinct from ordinary criminality. It has a political dimension and authority amongst those who are involved in it. As we have seen, political action is concentrated on the idea of the state in most of modern European history, yet it is not identical with state action, and hence the concept of the political is not reducible to the theory of the state. In his major works, Schmitt was concerned with violence from the perspective of states and the systems that states form through their actions in the international domain. However, in the *Theory of the Partisan* he returns to a category of political action that he had ignored, although not necessarily denied, in his earlier work.

The partisan exercises political violence on behalf of a political community but they are not a regular state actor and in particular do not form a part of the regular military powers of the state exercising political force within a 'bracketed' conception of war. That said, a partisan is not merely a single individual exercising violence. Schmitt illustrates this partisan relationship with what he calls the classic *telluric* (tied to the soil or territory) partisan of the Spanish

guerrilla war against Napoleon, or the Russian irregular fighters against Napoleon, and also against the German invasion from 1941 to 1945. The problem is that military authorities are hostile to affording irregular partisans recognition and protection under the laws of war. Anti-partisan campaigns by military forces are notoriously brutal and involve hostage-taking, summary execution and torture. In consequence, partisan warfare is total and the enmity of the partisan for their enemy is absolute, especially given its *telluric* or territorial dimension. In the classic cases, the partisan is fighting an occupier, often after their state and its regular army have been defeated. Although this should bring the conventional war to an end, this does not happen for the partisan, who continues the struggle against the occupier from within the civilian community. In many cases, the partisans are remnants of the defeated army that fight on, but they also include civilians and those previously considered non-combatants because of their age, status and social role. It is precisely this *telluric* dimension that is at the heart of Schmitt's interest, because it emphasises the concrete experience of partisans as political actors. They have a total attachment to the political territory of the community, even when the institutions of the state have been defeated or compromised through occupation and collaboration.

Partisans assert an irreducible political claim through the connection to land and territory, their assertion of absolute and unconditional enmity towards their opponents, and their total commitment to the political assertion of or defence of their community. The classic partisan is the freedom fighter struggling against an occupying power and continuing the political struggle on behalf of a political community with a compromised state structure. Whilst conventional military authorities are hostile to or lukewarm about partisans, their claim to act on behalf of a political community in seeking its liberation and emancipation has become a recognised and distinct form of political violence. However, whilst exhibiting a kind of nobility, the *telluric* partisan is also dangerous because of their tendency to absolute enmity. This always escalates the type of and scope of violence that they exercise, and inspires more counter-violence in response – thus putting pressure on the bracketing of war as an attempt to humanise it.

Schmitt also traces the development of the partisan away from a spatially limited belligerent into a global belligerent, under the influence of Lenin's doctrines of global revolutionary struggle. The modern partisan is shaped by Lenin's and Mao's ideas in the struggle against a global and universal enemy, such as capitalist imperialism and colonialism in the case of Mao's theory. Schmitt saw Mao's thinking as containing within it the elements of *telluric* partisanship, especially because he fought a civil war against nationalists and colonial powers, as well as exhibiting a reluctance to submit to Stalin and Moscow as a new communist imperial power. That said, the commitment to revolutionary violence and the absolute enmity of the colonial and imperialist power of capitalism also continued Lenin's push towards a genuinely global struggle

against a global enemy. Although the enmity of the global partisan is universalistic, it primarily serves as an obstacle to recognising the more insidious and dangerous global power of global capitalism. This does not imply that Schmitt has become an enemy of capitalism, but it does reflect his thesis that violent struggle will always erupt against the claims of a universalistic order that denies the pluralism of the political. In this sense, if universalism is the metaphorical Antichrist for its attempt to build Heaven on earth and usurp the rule of God, the global partisan is the *Katechon* or restrainer of the Antichrist and the guarantee of an open and undetermined history and therefore human experience.

This apocalyptic idea of partisan as the opponent of an alien, faceless and tyrannising global order proved attractive to radicals in the 1960s and 1970s such as the Baader–Meinhof gang in Germany and the Red Brigades in Italy. They sought to fight the global capitalist system through terror and the tactics of partisans: kidnapping, torture, murder and symbolic acts of destruction. It also impacted on the practice of otherwise *telluric* partisans such as the Provisional IRA or the Palestine Liberation Organization (PLO), who extended their wars to take action beyond the territorial community they sought to liberate from colonialist domination and aggression. Schmitt's speculations on the development of the criterion of the political in a globalised world also take on a stark significance in the War on Terror after 9/11. However, for Schmitt the key significance of partisan actions was as a sign of the irreducibly belligerent character of human experience, even in an age where conventional wars had been rendered problematic by nuclear weapons. The tendency to distinguish friends from enemies manifested in these new partisan forms shows how central the concept of the political is, as it manifests within new forms of order within and beyond the nation state that is transformed by an international legal order and economic and cultural globalisation. The open question Schmitt leaves is whether this turn from regular to irregular war reopens the kind of enmity that characterised the pre-modern world of religious wars of annihilation.

### Schmitt in contemporary international theory

Despite his presence at the foundation of the modern post-war sub-discipline in America and Europe, through his connection with Hans Morgenthau and Raymond Aron and their students, Schmitt is frequently 'rediscovered' as a potential classic of international relations theory (see Odysseos and Petito 2007). Both Morgenthau's and Aron's relationships with Schmitt went back to their pre-war education and academic career. Although Morgenthau was left with a poor impression of Schmitt's character, this does not seem to have been a consequence of the anti-Semitism that Gross catalogues. Yet, that fact, along with his complicity with the Nazi state, explains the absence of Schmitt at the forefront of the giants of the subject, despite the context of the Cold War backdrop to post-war international politics. This was also true in political theory.



Until relatively recently, Schmitt was not read, except as a footnote in the history of ideas of late Weimar Germany, despite the fact that he remained an unacknowledged interlocutor of Leo Strauss, Herbert Marcuse, Eric Voegelin and especially Hannah Arendt – whose work is focused on the task of expunging violence and enmity from an account of the political. Schmitt is rarely if ever mentioned, but he is her constant challenge.

This tendency to avoid acknowledgement of his work has not stopped other scholars constructing family trees that tie Schmitt to contested policy choices in recent international politics. A particularly egregious example is the linking of Schmitt via Leo Strauss and his students to the ‘Project for the American Century’ that was implicated in advocacy for, and response to, the second Gulf War. For those who wanted to criticise the policy, what better argument could there be than one that linked the war to a former Nazi via an esoteric émigré political theorist (albeit a Jew)? Care needs to be taken in tracing the impact of Schmitt’s thought on theory or policy in international relations, although it is undoubtedly the case that Schmitt’s ideas and conceptual distinctions are there. This is especially true amongst realists trying to transcend economic determinism or the formalism of Waltz-type systems theory, in the face of the end of the Cold War and the collapse of the Westphalian order.

### *A clash of civilisations?*

The challenge of the end of the Cold War and the collapse of the USSR is best exemplified in two opposing articles: Francis Fukuyama’s ‘The End of History’ in *The National Interest* (Fukuyama 1989) and Samuel P. Huntington’s ‘The Clash of Civilisations’ in *Foreign Affairs* (Huntington 1993). The former predicts the triumph of western capitalism and the nation state because globalisation and the convergence of human interests have undermined the sources of ideological conflicts. Although this draws on the ideas of Alexandre Kojève (who in turn was associated with Schmitt), this argument for a universal triumph of economic liberalism could not be further removed from Schmitt’s anti-liberalism. Huntington’s article, on the other hand, can be seen as a direct application of Schmittian categories to the post-Cold War world and a rejection of the optimism that underpins Fukuyama’s historical projection. In both cases, the article was followed by a book-length expansion of the argument, but in neither case does the more careful examination have the polemical force of the original articles (Fukuyama 1992; Huntington 1997).

Huntington’s essay was designed, in an almost Schmittian style, to both analyse and provoke those who, in their excitement at the collapse of the Berlin Wall and the end of the Cold War, really did think we were entering the end of history, at least in the sense of a new period of universal pacifism and consumption. In shattering this optimism, Huntington wrote, presciently, that:

In the coming years, the local conflicts most likely to escalate into major wars will be those, as in Bosnia and the Caucasus, along the fault lines between civilisations. The next world war, if there is one, will be a war between civilisations. (Huntington 1993, p. 39)

The concluding section of the essay is therefore a warning to those who assumed that the end of the Cold War would result in a significant 'peace dividend' and thus legitimise a transfer of resources away from defence and military spending towards domestic consumption or tax cuts. Coupled with the rise of the neo-liberal preference for a small state apparatus, the end of the Cold War was seen by many as an opportunity to cut back on the size of the state and rein in the behemoth of the 'military industrial complex'. In light of this, observers, many of whom were on the left, read Huntington's essay as a plea from within a conservative political constituency to maintain high levels of military spending, using the advent of a new external enemy as the rationale. With the collapse of any serious *ideological* opponent as a candidate for the enemy (so conceding Fukuyama's main point), Huntington turned to the new identity politics to find that enemy. His innovation was to extend identity politics beyond the reach of national cultures, which was the familiar currency of intra-state multiculturalism (Kymlicka 1995). Instead, Huntington focused on the broader transnational identity frameworks upon which culturalism drew.

Central to civilisations is religion, or proxies for religion such as Confucianism in the case of China and East Asia. Civilisational conflict has been masked by the ideological oppositions of the Cold War, but with the end of that ideological conflict brought about the long-term oppositions of value and ideas that drive conflict and opposition could reassert themselves. Religion-based conflicts have been brought back into focus, especially in territorial regions where civilisations confront each other, and in states that are mixed. The emerging examples that Huntington alludes to have become classic examples of inter-ethnic conflict such as the former Yugoslavia, Ukraine and the Middle East conflict between Israel and Palestine. More importantly for international affairs in the subsequent decades, he identifies a conflict between global Islam and the west, and the rise of China as the next major fault lines in world politics. He presciently argues that the rise of these two forces in politics challenges the presumption of liberalism, that economic modernisation will be accompanied by soft or constitutional democratic government, as opposed to authoritarian capitalism.

Huntington's thesis does not mention Schmitt, but it has been read by critics and supporters (including some Schmitt scholars) as exemplifying Schmittian themes (McCormick 1993). The most obvious is the identification of an external enemy as an irreducible feature of international politics. With the disappearance of the USSR as an objective enemy, the new enemy of the west is a civilisational opponent with whom one confronts mortal struggle, hence the

allusion to future wars as civilisational. With this notion of enmity and confrontation, Huntington emphasises that the end of the Cold War is not the end of war. Although neither the essay nor his later book expands on the idea of war in history, it is implicit in Huntington's argument that war is an ineradicable feature of international politics, and not merely a technical problem to be overcome by diplomats and policymakers. This is a familiar classical realist position, yet it is also a specifically Schmittian realism in that it does not see war as a problem that can be resolved, managed or contained. War is an existential feature of the human condition, which is linked with the deepest ways in which humans have tried to make sense of that condition, namely through religion.

Equally important to the identification of the enemy is the idea of civilisations as concrete orders. In this way, Huntington goes beyond identity politics by concentrating on value systems that have an institutional and a territorial manifestation. This analysis actually becomes a bit tenuous in relation to Confucianism, and more broadly it has been subject to much criticism from specialists and sceptics alike. Yet, it does have force in contrasting western Christianity against the orthodoxy of the eastern churches, or Islam against the west, or Islam against Hinduism in South Asia. The values of these systems are related to institutions of law and governance, as well as having broad territorial boundaries and concentrations that can give rise to a history of confrontation and conflict. Huntington does not abandon the idea of the state or even a qualified system of states within this world of conflicting civilisations. But he does identify major and intermediate powers as central to the political organisation of civilisations, echoing Schmitt's idea of *Großraum* or territorial orders in which these powers dominate and set the terms of other state's powers. Obvious examples in Huntington's essay are the USA, China and, in the case of eastern Christian Orthodoxy, Russia. Islam as a religion does not have a central dominant state, but it is a site of conflict for that dominant position. We might see the obvious candidates for dominance as Saudi Arabia (containing the Islamic holy places and a centre for Sunni Islam) or Iran (a strong centre of Shia Islam). Yet, again presciently, Huntington draws attention to the position of Turkey in central Asia (with its Ottoman legacy and modern success) as a potential civilisational power.

Huntington is careful to present his theory of civilisational conflict as an analysis and description of emergent empirical patterns in international affairs at the turn of the millennium. Civilisational preference might indeed account for the different approaches of Russia and Turkey to the first Gulf War, and the hostility of Russia to western action against Serbian forces in Bosnia and later with respect to Kosovo. What is unclear is whether he is also affirming a normative claim, that civilisational preference and opposition should shape U.S. or western policy in the future. This has become one of the most deeply contested features of Huntington's argument. In one passage of the essay he does come close to endorsing civilisational preference, not simply as an explanation but as a justification for policy.

Muslims contrasted Western actions against Iraq [in the 1991 Gulf War] with the West's failure to protect Bosnia against Serbs and to impose sanctions on Israel for violating U.N. resolutions. The West, they alleged was using a double standard. A world of clashing civilisations, however, is inevitably a world of double standards: people apply one standard to their kin-countries and a different standard to others. (Huntington 1993, p. 36)

He is clearly suggesting here that actions favouring civilisational preference are what will happen, a fact of life. Therefore it is something that we might as well recognise in constructing international policy. The decades since the 1990s have seen significant debates in U.S. and western international policy between those defending an evolving global order and those acknowledging different and ineradicable sites of conflict precisely as Schmitt would have predicted. Huntington provides one possible avenue through which a new 'nomos of the earth' emerges. Yet, his is not the only Schmittian way, as we can see if we look at the distinct but related critique of global legalism.

### *Global legalism*

The challenge to global legalism has become a contested element of international law and human rights thinking, especially in the USA. Although he is by no means the only critic of global legalism, the American jurist Eric Posner has become an important figure in this critique (Posner 2011). Once again, I do not wish to identify Posner as a self-confessed apostle of Carl Schmitt – he is not. Posner's work can be located within venerable traditions of American jurisprudence and political science which emphasise Hamiltonian federalism and scepticism about judicial activism. That said, in writings with his colleague Adrian Vermeule, Posner does draw on Schmitt's critique of liberal constitutionalism in relation to the emergency powers of the U.S. presidency, which have become particularly important in the context of the War on Terror.

Challenges to the idea of international law are familiar within realist international relations theory and policy, and its associated moral scepticism also generates a scepticism about human rights. The specific critique of global legalism is not simply a rehash of realist moral scepticism and an assertion of statism that one might find in Morgenthau or George Kennan. Instead, it is a specific extension of the issue of judicial activism to the international realm. Judicial activism occurs when judges make law themselves in their adjudication and application of the law to new cases. For strict legal positivists and realists, judges make new law in adjudicating hard cases and hence can usurp the prerogatives of legislatures. This creates the problem of the democratic legitimacy of judicial review within liberal constitutions. If judges directly make laws, then the issue of their authority to do so is raised. Within this complex set of debates, Schmitt's early

work on *Dictatorship* (1921) and the concept of sovereignty in *Political Theology* (1922) argues that all constitutions and legal systems ultimately depend on a fundamental political act. Within a stable political community, that political act can be provided by democratic institutions, or an elected executive power such as the U.S. president. In American constitutional politics, Posner and his colleagues have been associated with defending a broad and unconstrained interpretation of presidential powers. But in the field of international law there is no such political structure that legitimises the lawmaking behind international law and adjudication.

For critics of global legalism such as Posner, the problem is not just the absence of a global state with political structures but furthermore the absence of any legitimate political context that can ground the practice of international jurists. This makes them into a professional elite abstracted from the social practice and the profession of lawyers operating within national, state or municipal legal systems. Alternatively jurists become merely functionaries (bureaucrats) of an autonomous system in the international realm. Much of Posner's argument is an empirical account of international law and decisions that shows that they are merely an extension of the political interests of dominant states or the result of coalitions of states collaborating to achieve shared national interests – e.g. other states often gang up to limit the legitimate power of the United States. If a coalition dominates, then it is best to see those interests stated clearly so that governments can be held politically accountable. If a single state dominates, then global legalism is no more than an abstract form of international moralism. Posner has interesting critical discussions of the recent growth in international tribunals for prosecuting human rights violations in Rwanda or the former Yugoslavia, as well as a critique of the near-‘sacred’ status of the Nuremberg War Crimes Tribunal following World War II. These discussions echo Schmitt's own (perhaps self-serving) critique of victor's justice. More importantly these developments rest on a ‘discriminating concept of war’ that assumes a just global order.

The challenge of global legalism is that it is not actually a concrete order but instead an abstraction of global liberalism. In his *The Perils of Global Legalism*, Posner includes a final intriguing afterword, ‘America versus Europe’. Here he suggests that there are two perspectives on global international law that are in conflict as candidates for what Schmitt would describe as a new *nomos* of the earth. Posner does not argue that the European form of global liberalism poses the existential challenges that one could infer from Schmitt's political/theological speculations. But it does threaten the integrity of sovereign powers by separating law from democracy or popular government, and placing the two in conflict. Posner's position is not merely a restatement of U.S. hegemony within the post-Westphalian state system and the advantages of a unipolar world. It also challenges the immanent historicism of international law as the next phase of progressive evolution towards a world without war, or without political communities locked in conflict.

*A war on terror: Schmitt, partisans and global terrorists*

The debates within the U.S. government and amongst American constitutional theorists over the extent of presidential power in the face of the terrorist attacks of 9/11 and the subsequent 'War on Terror' has also raised the spectre of Schmitt as an *éminence grise* behind the voices backing ultra-realism. A good example is the brief written by a former deputy assistant U.S. attorney general, John Yoo, on the scope of the Geneva Conventions with respect to the treatment of terror suspects and detainees. He is also particularly associated with the controversial advice that governed U.S. military and intelligence services practice under President George W. Bush on the use of the euphemistically named 'enhanced interrogation techniques' (including waterboarding, stress positions and sleep deprivation). Yoo argued for the narrow interpretation of the idea of prohibitions of torture in the Geneva Conventions that made this approach legitimate. Once again, it is important to remember that the president's right to exercise emergency powers is an original feature of the U.S. political system that is set out in the Federalist Papers and was also exemplified in President Lincoln's suspension of the fundamental legal doctrine of habeas corpus during the U.S. Civil War. That said, Schmitt's preoccupation with emergency powers in his account of the sovereign dictator, as well as his theorising of the modern partisan, undoubtedly shaped the American understanding of the response to the War on Terror. And even critics of U.S. strategy and policy are inclined to appeal to Schmittian concepts and language to characterise and critique policy positions and the public rhetoric surrounding the 'War on Terror'. Indeed, that very language is a clear rejection of the alternative line of criminalising global terrorism, with its implications for a global police action, one that brings with it intimations of a global legal order that many U.S. policymakers have sought to resist in asserting the primacy of U.S. political interests and capabilities to act.

Whether Schmitt's ideas directly shaped policy decisions within the U.S. about how to deal with jihadi terrorism, his concept of the partisan does have implications for how such terrorists are to be understood. Al-Qaeda's Islamic jihadism rejected attachment to any given place, and proclaimed the idea of a worldwide caliphate as a deferred ideal. It is a clear exemplar of Schmitt's global partisan waging a 'just war' without boundaries. On the other hand, the adherents of ISIS are a mixture of the global and the *telluric* or territorially based partisan. In a rejection of Al-Qaeda's refusal to declare the realisation of the caliphate, the leadership of ISIS in Iraq and Syria did just that, establishing a territorial caliphate as a place and entity. Within its territory, ISIS fighters took on many of the features of Schmitt's *telluric* partisans, fighting occupiers and external aggressors (Gerges 2016). The two Islamic movements share the features of global partisanship in their total enmity of their opponents. The struggle is not one that can end in a new political compromise but must involve the annihilation of their enemy. This perhaps explains the extraordinary brutality and theatrically gruesome violence of ISIS towards its opponents

(Gerges 2016). ISIS can only triumph when their enemies are completely annihilated, and with that any conception of the political within the caliphate. To this extent, the caliphate is not another political community but is genuinely an attempt to replace the political with a divine order. That the Kingdom of God would be the outcome of such a horrendously brutal and violent process is perhaps a fitting illustration of Schmitt's political/theological warning about human capacities for evil and against dangerous forces that wish to bring history to an end, what he refers to – using Christian apocalyptic language – as the coming of Antichrist.

## Conclusion

Schmitt's dark and ambiguous past and his illusive and eclectic style make him an attractive yet dangerous thinker both to a resurgent conservatism that is trying to avoid the liberal reductionism of neo-liberal capitalist triumphalism and to a western left that is seeking to expose the real face of its enemy as again more than just the legacy of Edmund Burke or Adam Smith. In a world where history has lost its place as a supplier of meta-narratives of progress, redemption and justice, Schmitt's willingness to use apocalyptic terms to confront the challenge of nihilism makes him a profound challenge to the limited vision of technocratic international relations and political science. His committed views also contrast with the apparent emptiness of much applied ethics and liberal political philosophy. Whether he has any answers to give, his challenge to contemporary international, political and legal theory is as a provocation to confront the ways in which the hidden legacies of our conceptual frameworks expose the real and ambiguous nature of human experience, and the unavoidable requirement to conceive of a political response. Yet, he also remains a challenge because so many people still remain spellbound by the allure of violence and channelling conflict to enhance their own agenda or conception of political action.

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*Suggestion for open access further reading on Carl Schmitt*

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