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CARL SCHMITT CONFRONTS THE ENGLISH-SPEAKING WORLD

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George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921-1936*, Berlin: Duncker & Humblot, 1970, pp. 174. DM 36, and Carl Schmitt, *The Concept of the Political By Carl Schmitt; Translation, Introduction, and Notes by George Schwab; with Comments on Schmitt's Essay by Leo Strauss*, New Brunswick: Rutgers University Press, 1976, pp. ix, 105. \$15 cloth, \$3.50 paper.

The monograph and translation by George Schwab under review deserve special note for two essential reasons. First, Carl Schmitt is widely recognized by German scholars as one of their most controversial national figures. Secondly, despite this renown, Schmitt is known only to a limited number of academicians in Great Britain and North America; and their perceptions of him are usually based on dated or misleading interpretations. Although the English-speaking world has generally neglected Schmitt, his legal and political works have commanded respect in certain German intellectual circles, while attracting virulent condemnation in others. As the German historian Heinrich Muth stated, "He is one of the few really significant political theorists of our century, but without a doubt the most controversial."¹

The Schmitt controversy is perpetuated by a general disagreement over his legal and political philosophy, as well as over his role in Weimar and Nazi Germany. Any figure who writes so extensively on a variety of subjects, from constitutional law to politics and literature, will naturally attract differing interpretations. In Schmitt's case, the problem is accentuated because his work developed through various stages as he confronted the intellectual, political, and legal issues of four distinct political systems in Germany. His career extended from the era of Wilhelm II, through the Weimar Republic and

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National Socialist Reich, into the Federal Republic. Moreover, Schmitt's acceptance of each regime as the legally constituted authority in Germany further complicates any assessment of him, and leaves him open to the charge of opportunism. Essentially, Schmitt is a man of many pasts.

After receiving his doctorate in law at the University of Strasbourg in 1910, he soon established a reputation as a legal scholar with three major books, each reflecting the neo-Kantianism then in vogue in legal circles. Between 1921 and 1945 Schmitt distinguished himself as a law professor at the universities of Greifswald, Bonn, Cologne, and Berlin. In the 1920's he developed an original form of legal thought known as decisionism, which was distinct from both the normativist school of Hans Kelsen and the positivist legal theory of the late nineteenth century. Ernst Fraenkel referred to Schmitt as the "most brilliant political theorist" of the period; and Hans Kohn wrote that he was "the most influential teacher of public law for two decades."² Ernst Forsthoff and Ernst R. Huber, two renowned legal scholars in post-World War II Germany, were, in fact, students of Schmitt.

During the Weimar Republic Schmitt gradually abandoned his earlier neo-Kantianism and became preoccupied with problems concerning politics and the state. He wrote extensively on the questions of sovereignty, dictatorship, liberalism, the crisis of parliamentary government, and the emergency powers of the president under Article 48 of the Weimar constitution.³ A sharp critic of the fratricidal party politics of Weimar, Schmitt advocated the use of presidential emergency powers to re-establish domestic stability and to prevent a seizure of power by extremists. In 1929, he became an adviser to the coterie around General von Schleicher, the confidant of Hindenburg. From 1930 to 1932, the government relied considerably upon the legal interpretations and advice of Schmitt as a constitutional justification for the presidential system with its rule by emergency decrees.

Despite his initial opposition to a Nazi acquisition of power, Schmitt made the most decisive *volte face* of his career and joined the NSDAP after the Enabling Act of March 24, 1933, granted Hitler almost absolute dictatorial power. Schmitt then publicly supported the new regime for the next three years and became known as the figurehead "Crown Jurist" of the Third Reich. In 1936, however, the SS denounced him as an opportunist and he withdrew into the "inner-emigration." Schmitt was removed from his chair of law at the University of Berlin after the Nazi collapse in 1945 and retired from public life. In 1947 he was brought to Nuremberg as a potential defendant and witness but was never prosecuted. For the past thirty years Schmitt has continued his scholarly activity, publishing numerous works on politics, legal theory, international affairs, and literature. His *Nomos der Erde* (1950) is a major theoretical and historical study of the rise and decline of the European state system.⁴

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The changing attitudes towards Schmitt corresponded to the various stages in his work and political affiliations. In the Weimar era he had both critics and followers. Intellectual debate with Schmitt during these years always remained at a respectful level without the invective that would characterize later interpretations of him. When Schmitt became involved with the presidential government in 1930, criticism of him mounted, and once he began his collaboration with the Nazis few intellectuals were willing to acknowledge their relationship to him or his ideas. Those who previously relied upon his scholarship now ceased to cite him, or they referred to him only as a critic of the republic and as a Nazi "Crown Jurist."⁵ The major post-war monographs followed suit. Schmitt was made to appear, at best, as an opportunist and, at worst, as one who intentionally undermined parliamentary government and saw his ideas come to fruition in the Nazi *Machtergreifung*.⁶

Most of the post-war literature in English which referred to Schmitt was either based on these German monographs or reiterated similar theses about Schmitt as a progenitor of fascism. Franz Neumann described Schmitt as a theoretician of totalitarianism; William Ebenstein and Hans Kohn interpreted him as a political nihilist who promoted the Hitlerian notion of total war; for Earl Beck he was "the apostle of dictatorship." One of the most widely read historians, George Mosse, claimed that Schmitt was a proponent of the political theory of the Aryan race.⁷ For decades there was no monograph in English on Schmitt, nor were any of his writings available in translation. As late as 1966 only one article dealing with Schmitt had been published in English; it contained the traditional thesis that Schmitt was a nihilist.⁸

Scholars and students in the English-speaking world were totally dependent upon these partial interpretations. They knew Schmitt merely as an intellectual opponent of Weimar democracy and as a prophet of National Socialism. The average student of history remained unaware of his significance in the field of German law and political theory. Consequently, there was a general absence of research on, even interest in, Carl Schmitt; his ideas were simply dismissed as fascistic. Whereas German scholars continued to discuss Schmitt's place in German intellectual history, those in Great Britain and North America failed to take note of this perennial controversy.

Therefore, it is surprising that George Schwab, an American scholar at the Graduate Center of the City University of New York, made such a major contribution to Schmitt historiography. But as Helmut Rumpf wrote, with the publication of *The Challenge of the Exception*, "The period of one-sided and complete condemnation, negation, and extensive attempts at refutation [of Schmitt] appears to have ended . . ."⁹ These comments are of particular import because Rumpf is thoroughly familiar with the life and work of Schmitt, yet he does not belong to the Schmittian school of thought. It was

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obvious that Schwab's book served a dual purpose; providing the most balanced study on the subject to date while introducing the more significant aspects of Schmitt's ideas to English readers. With a marked degree of scholarly detachment, rare for such studies, Schwab carefully analyzes the various periods in Schmitt's career without allowing the Nazi affair to distort his perspective. He evaluates Schmitt's ideas in the context of the changing legal and political problems within Germany during each stage of his development.

Previously, historians had seized upon Schmitt's study of dictatorship, his latitudinarian interpretation of presidential powers, and his criticisms of liberalism, as evidence of his enmity towards the republic. It is now clear from Schwab's study that throughout the 1920's Schmitt's ideas were in harmony with the Weimar constitution. With meticulous attention to what the jurist actually stated in his writings, Schwab explains that Schmitt's objective was to arrest the disintegration of the state and to preserve the essential features of the Weimar system in the face of chaotic conditions and possible civil war.¹⁰ Schwab indicates that Schmitt placed special emphasis upon executive power precisely for this reason, and not with the intention of undermining Weimar or introducing a dictatorship. Schmitt's acceptance of the Weimar order was most evident in his opposition to constitutional revisions which might change the republican nature of the constitution.¹¹

Schwab does discern certain authoritarian tendencies in Schmitt, but he shows that Schmitt's reproof of liberalism emanated more directly from the discrepancy between liberal ideals and the actual practice of parliamentary government in Germany, than from an ideological predisposition on the part of the jurist.¹² Schmitt had defined the essential characteristics of liberalism as public debate, separation of powers, and enactment of laws through open parliamentary discussion. The tightly organized and rigidly disciplined *Weltanschauung* and *Interessen* parties of Weimar however, had turned parliamentary discussion into an idle formality. Decisions were made in secret party committees outside the sphere of parliamentary debate; thus parliamentarianism had lost its *raison d'être*. While most historians recognise the peculiar party-system in Germany as a major factor in the disintegration of Weimar, Schmitt is often accused of anti-republican sentiments because he acknowledged this problem.

According to Schwab, it was only when Weimar entered its final crisis stage, after 1929, that "... Schmitt developed his notion of the presidential system as an alternative to a Nazi or Communist victory."¹³ Schmitt then looked to a strong president who, supported by the bureaucracy and army, would institute emergency measures on the basis of Article 48 to prevent the economic and political collapse of Germany. To achieve this goal and preclude a legal or revolutionary seizure of power by extremists, the president

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could, Schmitt held, violate the letter of the constitution. One might question the legality or wisdom of such a manoeuver. Yet, as Schwab, and more recently Heinrich Muth, point out, anyone taking this public political stance in 1932 was surely not a National Socialist sympathizer.¹⁴

Schwab also rejects two apparent explanations, opportunism and ideological conversion, for Schmitt's sudden collaboration with the Hitler regime in 1933. Instead, Schwab continues to assert that one must analyze Schmitt in the context of the political and legal circumstances he confronted once the Nazis controlled the German government. It is Schwab's contention that Schmitt realised the Enabling Act had, in effect, destroyed the Weimar constitution and inaugurated a new political and legal order. "By opting for National Socialism Schmitt merely transferred his allegiance to the new legally constituted authority . . ." ¹⁵ While critics might remain unconvinced by this argument, those familiar with Schmitt's ideas know that a basic precept of his philosophy was always to obey the legally constituted authority. He had constantly adhered to the Hobbesian concept of the relationship between protection and obedience; citizens obey a sovereign so long as he protects them. Rather than seeking personal advantage, Schmitt also hoped that, by joining the party and playing the role of "Crown Jurist," he could direct subsequent constitutional developments (*i.e.*, regarding the structure and function of the one-party state) into a traditional conservative framework.¹⁶ In a recent book on German conservative theorists, Walter Struve presents a similar explanation, noting that many conservatives, including Schmitt, sincerely believed that they could exert this type of influence in the early stages of the Third Reich.¹⁷

It is clear that Schmitt accepted Hitler's leadership and the predominance of the party after these became established facts. However, Schwab shows there still existed a wide gap between the way Schmitt and Nazi theorists envisioned the future direction and nature of the new order. Although he accommodated himself to the Nazi regime, Schmitt never embraced the fundamental ideological tenets of Nazism. Whereas the Nazis worked prodigiously to establish totalitarian control over all aspects of society, Schmitt sought an authoritarian state that would protect the physical existence of its citizens and at the same time guarantee a private sphere of life. Schmitt also wanted to preserve the integrity of traditional institutions of the state (namely, the army and bureaucracy) against encroachments by the NSDAP, in contrast to the Nazi attempt at usurping all power and turning the state into a mere appendage of the party.¹⁸ Moreover, Schwab emphasises that Schmitt was not basically an anti-Semite and never accepted the biological racism on which the entire Nazi ideology was premised.¹⁹

Schwab did not write an apology, however; he is actually quite critical of the choices Schmitt made during the Nazi years. Schwab does not hesitate, for

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example, to disclose the basic contradiction in Schmitt's attitude towards the Hitler dictatorship. As Schwab points out, Schmitt's acceptance of Hitler as absolute sovereign undermined any hope of sustaining the traditional state structure and protecting the private sphere of life.²⁰ Furthermore, Schwab sharply rebukes Schmitt for compromising himself on the Jewish question between 1935 and 1936. Although he discounts opportunism as a motive for Schmitt's collaboration in 1933, Schwab states categorically that this ". . . recently acquired anti-Semitism was certainly opportunistic . . ." ²¹ and intended merely to placate the Nazis. Such compromises were all the more despicable, Schwab adds, because of the perilous situation of Jews in the Third Reich and because no trace of anti-Semitism existed in Schmitt's previous work or personal relationships. As Schmitt's position within the Nazi order became increasingly untenable, he used anti-Semitism to prove his ideological conversion. Schmitt tried to assure his own welfare "at the expense of the Jews"²² but even here Schmitt never indulged in biologically oriented racial arguments. In fact, his non-racial theories and his new opportunistic display of anti-Semitism were so obvious that the SS publicly denounced him for these reasons in 1936; he was soon removed from all party offices.

Schwab has discredited the longstanding assumption of a continuity between Schmitt's Weimar ideas and the Third Reich. At the core of Schmitt's legal and political theory was the state; but one should not infer from this that he worshipped the state. "None of Schmitt's Weimar writings," Schwab contends, "reveal that he entertained the thought of endowing the sovereign [state] with absolute power over the individual."²³ The purpose of the state was to assure order, peace, and security; Schmitt criticized Weimar because it failed to provide this stability. Despite attempts at promoting this concept of a strong state in the early phases of the Third Reich, Schmitt eventually realised that the Hitler dictatorship offered no such security. The totalitarian nature and nihilism of the Nazi regime by no means conformed to Schmitt's paradigm of the state. It is evident from Schwab's book that the preconceived notions and inaccurate descriptions of the political philosophy and personality of Schmitt manifested in so many earlier studies provide neither a solid foundation for scholarship, nor offer an adequate comprehension of the man and his work. While Schmitt's compromises with the Nazis remain inexcusable, they should not be allowed to detract from his major contributions to German legal and political theory. Equally important, this concise book shows that attempts at understanding do not have to end in exculpation.

Schwab's other important contribution to the study of Schmitt is his recent translation of the 1932 edition of *The Concept of the Political*. This is the first complete work by Schmitt to appear in English. Schwab made a very judicious choice when he selected this book as a means of introducing the

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ideas of Schmitt to an English-speaking audience. *The Concept* contains much of what is fundamental in Schmitt's understanding of the political nature of man and the state, including his contentious definition of the political as the distinction between friend and enemy. This thesis has often been cited out of context to prove that Schmitt was a nihilist or advocate of war.²⁴ Those who actually read Schwab's translation, however, will discover that this friend-enemy thesis is comprehensible only in terms of the sovereign state, whose function it is to preserve peace and security for its citizens. In order to fulfill this function the state must have the power to distinguish friend from enemy and take the appropriate action to secure itself. Schmitt was not promoting war or aggression, but simply stating that in extreme circumstances there is an ever-present possibility of conflict between organized political entities, (*i.e.*, states), or within these organized units as in the case of civil war.²⁵ Although Schmitt did believe that the state must suppress the domestic enemy, he was not advocating totalitarianism. Competing groups and political parties may exist within a state, he argued, so long as they do not seriously endanger the existing political and legal order.²⁶

Even a cursory reading of *The Concept* will convince one that, in style and content, the quality of its scholarship is unquestionable; any misconceptions about Schmitt as merely a rightwing polemicist will be removed. In his introduction, Schwab points out that Schmitt's analysis of the centrifugal forces within the German state proved to be a fairly accurate estimate of the factors that produced the demise of the Weimar Republic less than a year later.²⁷ Also, the domestic enemies Schmitt wanted the state to suppress in 1932 were the Communists and Nazis. Schwab relates *The Concept* to the problems of the European state system and the decline of the *jus publicum Europaeum* on which that entire system had been based since the seventeenth century.²⁸

Although the style and accuracy of this translation are commendable, the value of Schwab's introduction might have been enhanced by a discussion of the various editions of *The Concept* which appeared between 1932 and 1963. Excluded from this translation of the 1932 edition, for example, are three corollaries and Schmitt's article on the "Age of Neutralization and Depoliticalization" contained in the 1963 edition. These additions by Schmitt are certainly of some importance. Schwab also fails to mention that Schmitt revised the 1933 edition in an effort to make it acceptable to the Nazis. In that edition Schmitt eliminated his references to Karl Marx and the leftist theorist Georg Lukács, and replaced words such as "association" with "*Genossenschaft*," the Nazi jargon for social relationships which has racial overtones.²⁹ Although not essential to understanding Schmitt's thesis, such information is necessary for evaluating *The Concept* as an historical source. Perhaps Schwab felt that this type of commentary would distract attention

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from the content of the book and result once again in unwarranted concentration on the Nazi period.

Schwab did show sound editorial judgement when he included Leo Strauss' 1932 article on *The Concept* as an appendix to this translation.³⁰ Strauss, who later distinguished himself as a political philosopher at the University of Chicago, is a scholar whose writings are generally recognised as credible and noteworthy. By no means a Schmittian, Strauss nonetheless basically agreed with Schmitt's analysis of the crisis of the modern state and liberalism. As Strauss notes, "The critique of liberalism that Schmitt has initiated can be completed only when we succeed in gaining a horizon beyond liberalism . . . To show what is to be learned from Schmitt for the execution of this urgent task was therefore the main concern of our comments."³¹ This is the first opportunity for English readers to see how reputable scholars viewed Schmitt before the Nazi experience led to an almost universal condemnation of his ideas.

There is, of course, much to criticise in the life and work of Carl Schmitt, but such valid and necessary criticism in no way diminishes his significance. No student of the Weimar Republic can neglect his writings, nor deny his intellectual contributions or influence; his position in the history of political and legal theory is well established. Furthermore, an objective reading of Schmitt's writings should be a preliminary step towards any understanding or criticism of his ideas and politics. Only then can his thought and place in German intellectual history be properly studied. Particularly for this reason, the works by George Schwab are welcome additions to the literature on Carl Schmitt. As more of Schmitt's works become available in translation, scholars in the English-speaking world will have an opportunity to formulate their own interpretations of this enigmatic jurist and assess his significance accordingly.

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Notes

1. Heinrich Muth, "Carl Schmitt in der deutschen Innenpolitik des Sommers 1932," *Historische Zeitschrift, Beiheft*, 1971, p. 75.
2. Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship*, New York: 1941, p. 131; Hans Kohn, *The Mind of Germany: The Education of a Nation*, New York: 1960, p. 337.
3. The more important Weimar books by Carl Schmitt are: *Legalität und Legitimität*, Berlin: 1932, *Der Begriff des Politischen*, Berlin: 1932, *Der Hüter der Verfassung*, (Tübingen, 1931, *Der Völkerbund und das politische Problem der Friedenssicherung*, Leipzig: 1930, *Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre*, Tübingen: 1930, *Verfassungslehre*, Munich: 1928, *Volksentscheid und Volksbegehren: Ein Beitrag zur Auslegung der Weimarer Verfassung und zur Lehre von der unmittelbaren Demokratie*, Berlin: 1927, *Römischer Katholizismus und politische Form*, Hellaarau: 1925, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, Munich: 1923, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*, Munich: 1922, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*, Munich, 1921, *Politische Romantik*, Munich: 1919.
4. See Carl Schmitt, *Politische Theologie II*, Berlin: 1970, *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen*, Berlin: 1963, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialien zu einer Verfassungslehre*, Berlin: 1958, *Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel*, Düsseldorf/Cologne: 1956, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*, Cologne: 1950.
5. This change of attitude is particularly noticeable in the writings of Waldemar Gurian and Sigmund Neumann. Gurian had earlier made extensive use of Schmitt's ideas in such publications as *Der Integrale Nationalismus in Frankreich: Charles Maurras und Die Action Francaise*, Frankfurt: 1931, *Die Politischen und Sozialen Ideen des Französischen Katholizismus 1789/1914*, Gladback: 1929, "Zur Soziologie der Wahlpropaganda," *Archiv für Politik und Geschichte*, III, 1925, pp. 585-589, "Ein Traum vom Dritten Reich," *Hochland*, Bd. 22, 1924/1925, pp. 237-242. But in later publications he cited Schmitt merely as a National Socialist theorist. See Waldemar Gurian, "Trends in Modern Politics," *Review of Politics*, II, No. 3, July, 1940, p. 335, *The Future of Bolshevism*, New York: 1936, p. 53, and the attacks on Schmitt found in *Deutsche Briefe*. In "Germany: Changing Patterns and Lasting Problems," *Modern Political Parties: Approaches to Comparative Politics*, Chicago: 1956, pp. 354-392, Sigmund Neumann excluded any references to Schmitt in contrast to his 1932 book *Deutschen Parteien*.
6. Peter Pattloch, *Recht als Einheit von Ordnung und Ortung: Ein Beitrag zum Rechtsbegriff in Carl Schmitts "Nomos der Erde"*, Aschaffenburg: 1961; Jürgen Fijalkowski, *Die Wendung zum Führerstaat: Ideologische Komponenten in der politischen Philosophie Carl Schmitt*, Cologne: 1958; Christian Graf von Krockow, *Die Entscheidung: Eine Untersuchung über Ernst Jünger, Carl Schmitt, und Martin Heidegger*, Stuttgart: 1958; Karl Schultes, *Der Niedergang des staatsrechtlichen Denkens im Faschismus: Die Lehren des Herrn Professor Carl Schmitt, Kronjurist der Gegenrevolution*, Weimar: 1947.
7. Franz Neumann, *Behemoth: The Structure and Practice of National Socialism, 1933-1944*, New York: 1963, pp. 42-71; William Ebenstein, *The German Record: A Political Portrait*, New York: 1945, pp. 48-51, and *Man and the State: Modern Political Ideas*, ed. William Ebenstein, New York: 1947, pp. 294-295; Kohn, *Mind*, p. 338; Earl R. Beck, *The Death of the Prussian Republic: A Study of Reich-Prussian Relations, 1932-1934*, Tallahassee: 1959, pp. 106-107; George L. Mosse, *The Crisis of German Ideology: Intellectual Origins of the*

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- Third Reich*, New York: 1964, p. 285. More accurate treatment of Schmitt is found in Hannah Arendt, *The Origins of Totalitarianism*, New York: 1964, p. 339; and Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, Princeton: 1948, pp. 33-69. But these exceptions were overshadowed by the more traditional interpretations.
8. Charles E. Frye, "Carl Schmitt's Concept of the Political," *Journal of Politics*, Vol. 28, No. 4, November, 1966, pp. 818-830.
 9. See Rumpf's review of George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936*, in *Die Öffentliche Verwaltung*, Heft 23, December, 1971, pp. 827-828.
 10. Schwab, *Challenge*, pp. 38, 43, 49.
 11. *Ibid.*, pp. 41-43, 69-71.
 12. *Ibid.*, pp. 67-69.
 13. *Ibid.*, pp. 77, 80-89, 94-97.
 14. *Ibid.*, pp. 88-89; and Muth, "Carl Schmitt in der deutschen Innenpolitik," p. 97.
 15. *Ibid.*, p. 106.
 16. *Ibid.*, p. 105.
 17. Walter Struve, *Elites against Democracy: Leadership Ideals in Bourgeois Political Thought in Germany, 1890-1933*, Princeton: 1973, p. 416.
 18. Schwab, *Challenge*, pp. 107-113, 130, 146.
 19. *Ibid.*, p. 137.
 20. *Ibid.*, pp. 125, 132.
 21. *Ibid.*, pp. 138.
 22. Geroge Schwab, "Carl Schmitt: Political Opportunist?" *Intellect*, February, 1975, p. 337. In this article Schwab continues to argue that Schmitt's opportunism was limited to this anti-Semitic phase.
 23. Schwab, *Challenge*, p. 147.
 24. See Frye, "Schmitt's Concept," and Laqueur, *Weimar*, p. 100.
 25. Schmitt, *The Concept*, pp. 32-34, 49.
 26. *Ibid.*, pp. 38-39.
 27. *Ibid.*, pp. 11-16.
 28. *Ibid.*, pp. 6-11.
 29. See Carl Schmitt, *Der Begriff des Politischen*, Berlin: 1933, pp. 27, 43-44.

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30. Strauss originally published this article as "Anmerkungen zu Carl Schmitts *Begriff des Politischen*," in *Archiv für Sozialwissenschaft und Sozialpolitik*, Bd. 67, Heft 6, August/September, 1932, pp. 732-749.
31. Schmitt, *The Concept*, p. 105.