

SCHMITT SCHOLARSHIP*

George Schwab

I

Until recently anyone interested in gathering information about Carl Schmitt in the English-speaking world had no choice but to turn to the standard literature written by well known political scientists and historians, some of whom exerted enormous influence on the American intellectual scene. A number of them, including Carl Joachim Friedrich and Franz Neumann, knew Schmitt personally or were well acquainted with his work.

It is not surprising — given his originality, his large intellectual output and his support of Bruening's measures against the Nazis and Schleicher's endeavors to outflank Hitler — Schmitt should have enjoyed wide respect and even admiration especially in Weimar Germany and Europe in general. But all this changed when Schmitt decided to participate in the Nazi venture after the Reichstag extended to Hitler an enabling act in March 1933 that was unprecedented in scope. Understandably, the attitude of a number of his former students, friends and followers who were forced to flee Germany shifted. It was their extreme disappointment with Schmitt's decision that led them to attack him bitterly, so much so that dispassionate discourse about Schmitt and his work became impossible. The forms that the attack assumed included questioning Schmitt's integrity, concealing some of his ideas, distorting others, and even appropriating his concepts without acknowledgement. A few examples will suffice to illustrate the extent to which the medium of scholarship was enlisted to serve nonscholarly ends.

*This paper constitutes, in shortened form, the foreword to four of my works on Carl Schmitt which appeared in Japanese translation in December 1979: "Enemy oder Foe: Der Konflikt der modernen Politik," tr. J. Zeumer, in *Epirrhosis: Festgabe für Carl Schmitt*, ed. H. Barion et al., Berlin, 1968, vol. II; *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936*, Berlin, 1970; "Carl Schmitt: Political Opportunist?" *Intellect*, Vol. 103 (February 1975); and the introduction to my translation of Schmitt's *The Concept of the Political*, New Brunswick, N.J. 1976.

Editor's Note: Professor Schwab's manuscript provides further historical siting of the reception met by Carl Schmitt's writings in North America. For further discussion of the Schmitt controversy, see Joseph W. Bendersky, "Carl Schmitt Confronts the English-Speaking World," *CJPST*, Vol. 2, No. 3 (Fall/Autome, 1978), 125-135.

GEORGE SCHWAB

Although Carl Joachim Friedrich was not a Nazi victim, his treatment of one of Schmitt's major works, *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*,¹ is interesting to follow. In an article that Friedrich published in the October 1930 issue of *Foreign Affairs* under the title "Dictatorship in Germany?" he characterized Schmitt as "one of the most acute constitutional theorists"² and stated that the second edition of *Die Diktatur* (1928) constituted "an epoch-making discussion to which the writer [Friedrich] is indebted for important suggestions."³ From Friedrich's discussion it is clear that he subscribes to Schmitt's distinction between a commissarial and a sovereign form of dictatorship, a distinction that Schmitt had made and elaborated in the first edition of *Die Diktatur* (1921). Whereas a sovereign dictatorship, according to Schmitt, is one in which a ruler exploits a crisis to destroy a constitution in order to bring a new constitution into existence, a commissarial dictatorship aims at putting an end to a crisis so that the existing constitution can in its entirety be restored and serve as the basic law of the land. In discussing the nature of President Hindenburg's rule, Friedrich treated it entirely within the framework of Schmitt's distinction and even used Schmitt's language to state that governmental rule based on Article 48 of the Weimar constitution could never be interpreted to mean the "destruction of the constitution."⁴

However, a reader of Friedrich's much studied *Constitutional Government and Democracy: Theory and Practice in Europe and America* was told in the first edition, which appeared in 1937,⁵ that in *Die Diktatur* (Friedrich's reference was to the second edition that appeared in 1928) Schmitt "attempts a comprehensive synthesis, but unfortunately his theoretical analysis is marred by his preoccupation with 'political' considerations of the moment — at that time the justification of more extended presidential powers."⁶ In the second edition of *Constitutional Government and Democracy*, published in 1941,⁷ Friedrich dismisses Schmitt's *Die Diktatur* as a "partisan tract."⁸ Notwithstanding the fact that Friedrich steadfastly used Schmitt's categorization, no reference to *Die Diktatur* is to be found in one of the subsequent editions that appeared in 1968.⁹

In comparison to the approach adopted by Friedrich, the attack by Franz Neumann was more sophisticated. Because of his brilliance and his commitment to teaching, Neumann decisively influenced many students. In addition, his major work, *Behemoth: The Structure and Practice of National Socialism, 1933-1944*,¹⁰ continues to shape the American perception of the Third Reich. Publishing *Behemoth* at the height of World War II, Neumann evidently felt compelled to settle accounts with his former teacher and friend.

In *Behemoth* Neumann concerned himself with three of Schmitt's notions: decisionism, the friend-enemy criterion of politics and the distinction between liberalism and democracy.

EXCHANGE

The decisionism that Schmitt developed in some of his writings of the Weimar period was based on his definition that the "sovereign is he who decides on the exception."¹¹ He derived his decisionism largely from his concern about the centrifugal forces that were responsible for undermining the powers of the sovereign, on the one hand, and from his controversy with Hans Kelsen's pure normativism, on the other hand. Basically the two are linked. In contrast to Kelsen's insistence that "the concept of sovereignty must be radically banished" (*Der Souveränitätsbegriff muss radikal verdrängt werden*),¹² Schmitt aimed at breaking open Kelsen's system by including in it the exception. This meant, of course, not removing from juridical consideration the sovereign's right to declare an exception and act accordingly.

The unity of Schmitt's political thought that emerged from his answers to problems facing Weimar is best reflected in his criterion of politics as the distinction between friend and enemy.¹³ Just as in the domestic domain so also in the power-political arena of states, sovereignty cannot be dissociated from decisionism. In the sovereign's endeavor to ensure order, peace and stability at home, and simultaneously safeguard the territorial integrity of the state, circumstances may dictate that the sovereign decide who the enemy/ies is/are and act accordingly.¹⁴

It would not be unfair to say that despite Neumann's thorough knowledge of Schmitt's works and the context in which he developed his ideas, he distorted Schmitt's political realism. Although it is true that Schmitt's ideas can lead to extremes, it is utterly without foundation to claim that Schmitt who, above all, craved order, peace and stability, had intended his decisionism to be a doctrine that demanded "action instead of deliberation . . . decision instead of evaluation."¹⁵ Moreover, it was a distortion on the part of Neumann to assert that Schmitt's friend-enemy distinction was a "doctrine of brute force in its most striking form."¹⁶

Schmitt's distinction between liberalism and democracy did not fare any better with Neumann. A thesis now in vogue — that liberalism destroys democracy and democracy liberalism¹⁷ — was advanced by Schmitt in 1923.¹⁸ Schmitt's fear was that political parties hostile to the Weimar state would tear it apart or subvert it by using that part of the Weimar constitution that enabled such parties to thrive and compete for power. To prevent that from happening and thus to preserve and strengthen the Weimar state, Schmitt argued that the constitution deserved to be developed according to its inner logic — that is, that the democratic part be developed at the expense of the liberal part. Cognizant, however, that constitutional revisions would take a long time to bring about, Schmitt argued that in order for Weimar to survive, its president must not be hampered from acting decisively. And, according to Schmitt, the Weimar constitution in general, and Article 48 in particular,

GEORGE SCHWAB

provided the president with both the means and the legal base to act accordingly.¹⁹ Time and again Schmitt warned that unless the problems caused by the inconsistencies in the constitution were resolved and unless the authorities immediately ceased to subscribe to the narrow interpretation of the constitution advanced by the formalists, "truth [would] avenge itself" (*dann rächt sich die Wahrheit*).²⁰

Though Neumann knew precisely the context that had led Schmitt to distinguish between liberalism and democracy and to plead for a strong presidency as a bulwark of Weimar, Neumann turned Schmitt's ideas upside down and claimed that his distinction between liberalism and democracy was a "sham" and that Schmitt was an "ideologist"²¹ who provided National Socialism with the ammunition in the 1920s and early 1930s to parade "as the salvation of democracy."²² Furthermore, Neumann interpreted Schmitt's attempts to strengthen the presidency in the fight against the antagonists of the Weimar state as a "deliberate maneuver" to give "all power to the president."²³

It is interesting to note the views that Neumann held, at least prior to 1933, on some of Schmitt's notions that Neumann subsequently distorted and condemned during World War II. On the distinction between liberalism and democracy, Neumann wrote to Schmitt on September 7, 1932, that he shared with him the fear that parties hostile to Weimar would succeed in tearing it apart. According to Neumann, rule by parliamentary means would become impossible if it turned out that "the basic political contrast in Germany is the economic . . . that the decisive friend-enemy grouping is the grouping of labor and property." "Parliamentary democracy," he agreed with Schmitt, "can function only as long as it is possible to adhere to the principle of the equal chance. Were this principle to fail . . . then the parliamentary lawgiving state must necessarily fail to function as well." To forestall Weimar from being torn to shreds, Neumann agreed with Schmitt that the "constitution deserved to be freed of its contradictions . . . and developed coherently, that is, according to its inner logic." Neumann reminded Schmitt that he, Neumann, had been trying, "even if not very thoroughly," to "develop a leading principle from the maze of contradictions in the second part" of the constitution. "I doubt, however," Neumann continued "if there is still enough time to develop the substance of the second part. This substance cannot be the order of a bourgeois *Rechtsstaat*. . . . According to the wording of the second part it can only be an order that is based on freedom and property." Without doubt, such an order had to "be sustained and preserved through the participation of all productive elements in society [*Volkskreise*]."²⁴

The writings of Friedrich and Neumann are characteristic of how the record has been distorted, legends propagated and scholarship set back about the person and work of Carl Schmitt. The hostile attitude towards Schmitt has

EXCHANGE

been diluted, however, by occasional references that were objective, even if brief. For example, without referring to Neumann, Clinton Rossiter challenged the implication of Neumann's remarks concerning one of Schmitt's major ideas about how to save the Weimar. By stating in *Behemoth* that Schmitt's attempts to strengthen the presidency constituted nothing but a "deliberate maneuver" on the part of Schmitt to concentrate all power in the president, Neumann insinuated that Schmitt was glorifying power for the sake of power. In analyzing the narrow interpretation of Article 48 by legalists such as Hans Nawiasky,²⁵ and Schmitt's latitudinarian interpretation of Article 48, according to which the president would be given wide powers to enable him to confront crises successfully, Rossiter did not hesitate to conclude in 1948 that "In actual practice, even when German democracy was at its strongest, [Schmitt's] . . . thesis was nearer the facts than was the strict and legalistic point of view."²⁶

On a related constitutional issue, namely, on measures assuming the force of law, Frederick M. Watkins correctly pointed out in 1939, years before the appearance of *Behemoth*, that for a good part of the Weimar period Schmitt argued that Article 48 did not give the president the right to decree formal laws. Passing ordinary laws was the prerogative of the Reichstag, according to Schmitt. The thesis that measures not be extended to the field of legislation is one with which Western liberals would feel completely at home. Said Watkins, the rejection of Schmitt's thesis and the "acceptance for so extended an interpretation of Article 48 . . . were serious in the extreme."²⁷

However brief Rossiter's and Watkin's comments were, their scholarly detachment was a relief and certainly constituted sound directional signals for scholarly research. It was in this context, too, that I remember having been startled by a brief and yet extremely revealing reference to Schmitt by the late Hannah Arendt in 1951. To the best of my knowledge, she was the first person in the English-speaking world who, in her celebrated *The Origins of Totalitarianism*, committed to paper the fact that Schmitt was not a true Nazi and was, in fact, replaced in the middle thirties "by the Nazis' own brand of political and legal theorists, such as Hans Frank, the late governor of Poland, Gottfried Neesse, and Reinhard Hoehn."²⁸

A giant step toward paving the way for a reassessment of Schmitt came in 1965. Without even one word of explanation, the late Leo Strauss had his well known 1932 discussion entitled "Comments on Carl Schmitt's *Der Begriff des Politischen*" translated²⁹ and published in his *Spinoza's Critique of Religion*.³⁰ By drawing the English reader's attention to the affinity between Hobbes and Schmitt (leading scholars have even characterized Schmitt as the Hobbes of the twentieth century³¹), Strauss obviously wanted to serve notice that notwithstanding Schmitt's terrible utterances of the Nazi period, the

GEORGE SCHWAB

cause of scholarship could not be served by distorting, inventing or omitting the rich body of thought that is contained in Schmitt's voluminous writings.

Columbia University

Notes

1. Munich/Leipzig, 1921, 1928; Berlin, 1964.
2. Vol. 9, no. 1, p. 131.
3. *Ibid.*, note 15, p. 129.
4. *Ibid.*, p. 130.
5. The first edition appeared under the title *Constitutional Government and Politics: Nature and Development*.
6. *Ibid.*, pp. 534-535.
7. Boston.
8. *Ibid.*, p. 627.
9. Waltham, Mass./Toronto/London.
10. The first edition published by Oxford University Press appeared in New York in 1942. The same firm published a second edition in 1944. The volume has been reprinted since in hardcover (New York: Octagon Books, 1963) and in paperback (New York: Harper Torchbooks, 1966; New York: Octagon Books, 1972).
11. *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*, Munich/Leipzig, 1922, 1934, p. 11.
12. *Das Problem der Souveränität und die Theorie des Völkerrechts*, Tübingen, 1920, p. 120.
13. *The Concept of the Political*, trans., intro., notes by George Schwab. With comments on Schmitt's essay by Leo Strauss, New Brunswick, N.J., 1976, *passim*. Fearful that the uninitiated reader may confuse Schmitt's criterion with a definition of politics or the political (on the distinction between "politics" and "political" see my introduction to *The Concept of the Political*, pp. 12-16), Piet Tommissen calls attention to the places in *The Concept of the Political* where Schmitt, instead of using the word "criterion," speaks of a definition. See Tommissen's "Schmitt et la polemologie" in *Cahiers Vilfredo Pareto — Revue européenne des sciences sociales*, Tome XVI, No. 44, 1978, p. 148. I do not, however, share Tommissen's great concern. Almost at the outset Schmitt clearly states that it must be understood as "a definition in the sense of a criterion and not as an exhaustive definition or one indicative of substantial content," *The Concept of the Political*, p. 26.
14. *The Concept of the Political*, *passim*.
15. *Behemoth*, New York, 1966, p. 45.
16. *Ibid.*
17. See, for example, Alan Wolfe, *The Limits of Legitimacy*, New York/London, 1977, p. 7, *passim*.
18. *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, Munich/Leipzig, 1923, 1926; Berlin, 1961, 1969.
19. See, in particular, the appendix to the second edition of Schmitt's *Die Diktatur* (1928, 1964), pp. 213ff.

EXCHANGE

20. *Legalität und Legitimität*, Munich/Leipzig, 1932; Berlin, 1968, p. 98. See also Joseph W. Bendersky, "Carl Schmitt in the Summer of 1932: A Re-examination," *Cahiers Vilfredo Pareto* . . . , pp. 35-53. By showing that in the months before Hitler's accession to power, Schmitt was associated with Schleicher's endeavors to thwart Hitler's climb to power, Bendersky decisively refutes the widespread legend that Schmitt paved the way for Hitler's acquisition of power.
21. *Behemoth*, p. 43.
22. *Ibid.*, pp. 42-43.
23. *Ibid.*, p. 44.
24. This letter is in Professor Schmitt's personal files, and a photostatic copy is in my possession. In Schmitt's concept of the "equal chance," only those political parties should be given the right to compete for . . . seats in parliament and for governmental power that would not, upon [their] gaining control, deny other parties a similar chance to compete for power. *Legalität und Legitimität*, pp. 30ff.
25. The thesis of the legalists can be summarized as follows: with the exception of the seven articles enumerated in Section 2 of Article 48, all other articles were sacrosanct and even immune from presidential measures.
26. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, Princeton, 1948; New York, 1963, p. 69.
27. *The Failure of Constitutional Emergency Powers under the German Republic*, Cambridge, Mass., 1939, p. 19. In Schmitt's construction of his presidential system as a last resort to save Weimar he, too, by 1931, began to subscribe to the dominant view that measures may also have the force of ordinary legislation.
28. New York, 1951, note 66, p. 332. There have been numerous editions and reprints of this study.
29. Originally it appeared in the *Archiv für Sozialwissenschaft und Sozialpolitik*, Vol. 67, no. 6, pp. 732-749, under the title "Anmerkungen zu Carl Schmitt, Der Begriff des Politischen."
30. New York, 1965, pp. 331-351.
31. See, for example, Helmut Rumpf, *Carl Schmitt und Thomas Hobbes, Ideelle Beziehungen und aktuelle Bedeutung mit einer Abhandlung über: Die Frühschriften Carl Schmitts*, Berlin, 1972, pp. 56-60.