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Carl Schmitt. *Political Theology: Four Chapters on the Concept of Sovereignty.* Chicago: University of Chicago Press, 2005. lii + 70 pp. $13.00 (paper), ISBN 978-0-226-73889-5.

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Lessons from Carl Schmitt: Political Theology, Executive Power and the "Impact of Political Events"

There can be little doubt that Carl Schmitt's *Political Theology: Four Chapters on the Concept of Sovereignty* (1922) has turned out to be one of the most important texts in modern political thought–for better or for worse. In a broad attack on both traditional state law theory and philosophical liberalism, Schmitt seeks to ground the political order of the modern state in what has aptly been called a "metaphysics of existence."[1] Postulating a structural analogy between jurisprudence and theology, Schmitt introduces a concept of sovereignty that is not derived from basic constitutional norms, as in the case of left-liberal legal scholars in Weimar Germany like Hans Kelsen.[2] Instead, Schmitt defines sovereignty almost exclusively from the perspective of the state of emergency–"the exception," as he notes (p. 5). Political order, in other words, cannot be safeguarded by constitutional provisions, but by an extra-legal authority, that is, by that which by definition cannot be part of constitutional arrangements (pp. 7, 11-12).[3]

Given the much-discussed crisis of liberalism in the late twentieth century, which ironically emerged contemporaneously with the end of the cold war, Schmitt's theories continue to fall on much fertile ground, even though most scholars are cautious enough to point out that they do not share the implications of Schmitt's thought.[4] Indeed, Schmitt himself–despite his rhetoric of *Eigentlichkeit*, his rhetoric of expressive authenticity–was well aware that his own thought was in many ways marked by the political surroundings of the early 1920s. Only a few years after its inauguration, the Weimar Constitution had proved increasingly fragile. While external political and social circumstances made it difficult to realize many of the central constitutional provisions, and while the presumed unity of the new German state after the First World War was threatened by a great variety of interest groups and radical political parties, many scholars of public law in Germany were critical about the validity of the constitutional provisions.[5] In contrast, for instance, to Kelsen, whose neo-Kantian legal positivism led him to assume that constituonal order could be derived from a "basic norm" entirely void of any actual political content, Schmitt opted for a radicalized version of the Hobbesian paradigm: emphasizing that the authority of the state is based on the "exception" and on the sovereign's "monopoly to decide," he concluded, "authority proves that to produce law it need not be based on law"(p. 13) With this step Schmitt distanced himself both from Max Weber and from Kelsen, whose position he attacked in much detail in *Political Theology* (pp. 18-24).[6]

It is interesting to see, of course, that the first edition of *Political Theology* was published shortly after the Weimar Constitution showed signs of distress and that the slightly revised second edition, published in 1934, came out after a series of political events that had entirely dissolved the constitutional provisions of the Weimar Republic: the "coup against Prussia" in 1932, the Nazi seizure of power in 1933, and the so-called Röhm Putsch of 1934, which allowed Hitler to eliminate any competition for power within the NSDAP.[7] The disappearance of the Weimar Republic frames Schmitt's theoretical speculations about the origin of political order. As he noted himself: "When theories and concepts of pub-

lic law change under the impact of political events, the discussion is influenced for a time by the practical perspectives of the day. Traditional notions are modified to serve an immediate purpose. New realities can bring about ... a reaction against the 'formalistic' method of treating problems of public law" (p. 16).

Clearly, the German editions of *Political Theology* were part of this process, but it is also interesting to realize that the same can be said with regard to its English translations. When George Schwab's first translation was published by MIT Press in 1985, the cold war was at its height and the political realities of a world dominated by Pershing and SS-20 missiles suggested a global version of Schmitt's friend-enemy distinction favored in *The Concept of the Political* (1932) that flew in the face of political idealism.[8] Schmitt himself died in April 1985. When the second English edition, with an added foreword by Tracy B. Strong, was published last year, these realities had changed once again. Schmitt's thought proved to be enormously adaptable and, after September 11, was repeatedly used to show how central "concepts of public law change under the impact of political events," as he put it in 1922 (p. 16).

Seen against this background, the new edition of *Political Theology* is noteworthy more for Stong's new foreword, running over 29 pages, than for the translation itself. As far as I am aware, the translation has not been revised or updated in any way and is identical to the 1985 edition. Schwab follows Schmitt's German with much accuracy and delivers an elegant translation that leaves nothing to be desired. The translation itself is based on the second German edition of Schmitt's text from 1934, which notoriously omits some passages from the 1922 edition, in which Schmitt cited favorably from the work of the German-Jewish legal scholar Erich Kaufmann (p. 1) At the same time, it is important to note that Schmitt does not (not even in his foreword to the 1934 edition) explicitly endorse the National Socialist movement. Schmitt's precise relationship to the National Socialist establishment, together with his antisemitism, is a matter of debate among Schmitt scholars. Possible responses range from an outright denial of Schmitt's antisemitism, as in Gopal Balakrishnan's *The Enemy* (2000), to a reduction of Schmitt's thought as exclusively antisemitic, as in Raphael Gross's study on this subject.[9]

As is often the case, Schmitt's own position becomes much clearer once we take into account which understanding of public law he criticizes: "liberal normativism and its kind of 'constitutional state' "–largely the position of Kelsen, but also the Weimar Constitution as a whole–are described as "distorted," "deteriorated" and "degenerate" (pp. 1, 3). Although Strong also cites these passages, he does not note the rhetoric of degeneration that marks Schmitt's foreword to the second edition of *Political Theology* (pp. vii-xxxv, xxiii)–a rhetoric that cannot be found in the first edition of 1922.

The alternative to what Schmitt regards as a degenerate normative liberalism can be found in a passing reference to the "elements of the political unity"–that is, "state, movement, people"–which, needless to say, is a less direct way of simply noting that the ideal political order is a one-party state (p. 3).[10] Ironically, however, Schmitt himself, striving for a strong authoritarian state, does not realize that the identity of state, movement and people actually replaces the very concept of the modern state with a "völkisch" notion of political unity.[11]

But back to Strong's foreword, which–as I have noted earlier–is the most interesting part of this new edition of *Political Theology*. Much of what Strong has to say is, of course, of an introductory nature and intended to make a wider audience familiar with Schmitt's thought. For students who first encounter Schmitt's ideas this particularly welcome contribution situates *Political Theology* in the wider debates of modern political thought. Indeed, Strong's new foreword is more concise and balanced than George Schwab's original introduction, which is also included in this edition. Although the bibliographical references in the footnotes were obviously compiled in a hurry and often lack precise page numbers, places of publication, and so on, this well-written and well-researched introduction reaches far beyond *Political Theology*. It might be doubted that Schmitt really was the "leading jurist during the Weimar Republic"–at least it seems so from our own point of view at the beginning of the twenty-first century, when Hugo Preuss and Kelsen are rarely read in any detail (p. vii). Schmitt clearly was the most controversial and most public of the Weimar jurists and, as a consequence, Strong is particularly interested in Schmitt's transition from conservative public lawyer in 1922 to outspoken member of the NSDAP between 1933 and 1936.

Schmitt's alliance with the National Socialists is a tricky issue, especially since it tends to polarize much recent scholarship along ideological faultlines not always fruitful with regard to a better understanding of Schmitt's political and legal thought. Strong himself opts for an interpretation that seeks to take into account the ambiguities of Schmitt's own remarks on this matter before, dur-

ing and after the Second World War. Precisely because it is certain to be controversial, and precisely because it nevertheless seeks to achieve a more neutral ground, I should like to quote his interpretation at length: "The present volume, reissued with a new foreword but otherwise 'unchanged' in a second edition in November 1933, after Schmitt had joined the Nazi party, can ... be read on one hand as a document relevant to Schmitt's decision to see himself as allied with the NSDAP, and what that allegiance meant. To see the choice that Schmitt (or Heidegger, or many other German philosophers, theologians, artists, as well as people from all walks of life–not just in Germany, and not just then) made as blind or ignorant or born from venal ambition, is, I think, to misunderstand their thought and their life. It is also to sweep under the table what appeared as the appeal and apparent necessity of such a movement, and to avoid serious engagement with why it appeared as such.... Schmitt came, as did Heidegger, from a rural, Catholic, petit-bourgeois upbringing" (pp. x-xi; xxix).

At least to some extent, then, Schmitt's background influenced his attraction to a radical expression of power that could be found in the absolutism of Catholic doctrine as well as in a certain understanding of the political that already gained shape in the final years of the Wilhelmine Empire. Indeed, this attraction to power becomes obvious in his recently published diaries from 1912 to 1915.[12] But once he had positioned himself more clearly as a constitutional lawyer critical of the Weimar "Parteienstaat," Schmitt's Catholicism, coupled with a fascination for authority, shaped a body of constitutional thought, the implications of which brought him ever closer to a political order that was diametrically opposed to liberal parliamentarism. Strong thus concludes: "[I]t is the reality of taking power and manifesting sovereignty in the use of power that attracted Schmitt: his understanding of law required that he support Hitler" (p. xxxi).[13] Schmitt's thought between 1922 and 1934 is characterized by a remarkable continuity that remains a central aspect of his writings even after the Second World War. But, Strong, as we shall see, is also interested in why Schmitt remains relevant today.

Written in April 2005, Strong's foreword presents us with a detailed account of both current Schmitt scholarship and the main trends of the current reception of Schmitt's thought by both left-wing and right-wing interpreters. This foreword is written with verve and clarity, looking back at Schmitt's definition of sovereignty from the perspective of a post-9/11 world, in which a number of liberal democratic states have introduced a new set of emergency powers, often bypassing constitutional arrangements and directly strengthening executive power. Defining state sovereignty from the point of view of a decision that needs to cover the exceptional case not anticipated by existing constitutional provisions, Schmitt famously noted: "Sovereign is he who decides on the exception.... The assertion that the exception is truly appropriate for the juristic definition of sovereignty has a systematic, legal-logical foundation. The decision of the exception is a decision in the true sense of the word. Because a general norm, as represented by an ordinary legal prescription, can never encompass a total exception, the decision that a real exception exists cannot therefore be entirely derived from this norm.... It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty. The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of extreme emergency and how it is to be eliminated. The precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited.... The most guidance the constitution can provide is to indicate who can act in such a case" (pp. 5-7).

Given the debates surrounding the validity of the Weimar Constitution and the status of the Reichspräsident's power to issue emergency decrees, the direction of Schmitt's argument, which both describes and contributes to a political crisis par excellence, is obvious: the auhority of the state, crystallized in the person of the (Reichs-)president, can only be derived from the latter's ability to decide first what constitutes a state of emergency and, at the same time, how to address this emergency. The double meaning of Schmitt's German phrase ("Souverän ist, wer über den Ausnahmezustand entscheidet") is a vexing problem for any translation into English or French, which Strong makes clear in an admirably insightful discussion (pp. xi-xiv).[14] At the same time, and following an observation made by Schmitt's French translator Jean-Louis Schlegel, Strong rightly notes that Schmitt's definition of what actually constitutes an *Ausnahmezustand* is notoriously vague (p. xiii).[15] In fact, Schmitt himself often equates a number of terms–*Ausnahmenzustand*, *Ausnahmefall*, *Notstand*, *Notfall*, and so on–without paying much attention to the fact that their meaning in state law theory is slightly different in each case (p. xiii).[16] But while Strong merely asserts the ambiguity of Schmitt's expression, it would be wothwhile to ask whether Schmitt (who must have been aware of these historically and theoretically different meanings)

opts for a rhetorical strategy that ultimately makes political order as a whole dependent on something that lies outside this order–even though Schmitt superficially suggests that "[f]or a legal order to make sense, a normal situation must exist" (p. 13). By programmatically emphasizing that the "exception in jurisprudence is analogous to the miracle in theology," and by rejecting Kelsen's theory of a basic norm as inviting political relativism, Schmitt renders it obvious that he has little interest in the normal situation (pp. 36; 18-23; 41-42).

Leaving aside the historical and philosophical details of Schmitt's account of the structural analogy between theology and law, it is noteworthy that one of the examples for the way in which this structural analogy has survived in modernity is the United States. Even though Schmitt, quite in contrast to Weber, repeatedly attacks the "economic-technical thinking" that marks the world of "American financiers" and "industrial technicians" as an "onslaught against the political," he nevertheless points to the continued presence of a quasi-theological foundation for American democracy, which in contrast to European liberalism supposedly highlights the deficiencies of secularization (p. 65):[17] "It is true, nevertheless, that for some time the aftereffects of the idea of God remained recognizable. In America this manifested itself in the reasonable and pragmatic belief that the voice of the people is the voice of God"(p. 49). The idea of God allows for a broad resistance against the secularization of the political, Schmitt claims, since the latter remains "the cause and end of all things, as the point from which everything emanates and to which everything returns."[18] Schmitt's counter-revolutionary Catholicism, which becomes particularly manifest in the fourth and final chapter of *Political Theology*, is structurally analogous to his idea of an executive power in the state that derives its authority not from constitutional provisions and that, therefore, can safely disregard such provisions.

Indeed, Schmitt's vision of the Reichspräsident as safeguarding the constitution through extra-constitutional authority ties in almost perfectly with current proposals by some public lawyers, at least in the United States, for what is often termed a "unitary executive." Strong makes this connection clear in his foreword, thus underlining the continued relevance of Schmitt's thought as a warning against hollowing out constitutional provisions: "One can only note in this day and age … that the United States today has on its books a sufficient number of emergency powers, established *sine die*, to allow the executive free hand at the rule of all aspects of this country. The present US administration has ruled that certain prisoners in the 'war against terrorism' have in effect no status at all, not even that of a person charged with a crime" (p. xxxiii).

In April 2005 it was, of course, far from obvious that the U.S. Supreme Court would successfully intervene in the interpretation of such emergency powers with regard to so-called enemy combatants by ruling that "the Executive is bound to comply with the Rule of Law that prevails in this jurisdiction," that is, the United States.[19] It is, as Schmitt himself noted, "the impact of political events" that changes our understanding of public law. But constitutional norms can also resist such changes–although it remains to be seen whether the U.S. Supreme Court's decision in Hamdan v. Rumsfeld will have any consequences.

Against this background, the new edition of Schmitt's *Political Theology* is timely in an uncanny way. Most important of all, though, scholars of law and political theory and historians of the Weimar Republic once again have easy access to one of Schmitt's most important texts, which was out of print for a number of years and could only be purchased second-hand for a rather handsome amount. Better still, Strong's new foreword provides much-needed clarification of some of the most tricky issues in Schmitt's text.

Notes

[1]. Peter C. Caldwell, *Popular Sovereignty and the Crisis of Constitutional Law: The Theory and Practice of Weimar Constitutionalism* (Durham: Duke University Press, 1997), pp. 100-101.

[2]. On Kelsen, see Stanley L. Paulson, "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law," *Oxford Journal of Legal Studies* 12 (1992): pp. 311-332.

[3]. See also Carl Schmitt, *Legality and Legitimacy*, trans. and ed. Jeffrey Seitzer, with foreword by John P. McCormick (Durham: Duke University Press, 2004), p. 73.

[4]. See, for instance, Chantal Mouffe, "Carl Schmitt and the Paradox of Liberal Democracy," in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), pp. 159-175.

[5]. Michael Stolleis, *A History of Public Law in Germany 1914-1945*, trans. Thomas Dunlap (Oxford: Oxford University Press, 2004), pp. 24, 33, and 67.

[6]. Schmitt's account of sovereignty also differs fun-

damentally from Weber's account of "domination" and "legitimate violence". See Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), 2, p. 941, and Max Weber, "The Profession and Vocation of Politics," in *Political Writings*, ed. Peter Lassman and Ronald Speirs (Cambridge: Cambridge University Press, 1994), pp. 309-364; 310-311.

[7]. See Duncan Kelly, *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt and Franz Neumann* (Oxford: Oxford University Press, 2003), pp. 229-255.

[8]. For the postwar reception of Schmitt, see Jan-Werner Müller's excellent *A Dangerous Mind: Carl Schmitt in Post-War European Thought* (New Haven: Yale University Press, 2003).

[9]. See Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000); and Raphael Gross, *Carl Schmitt und die Juden. Eine deutsche Rechtslehre* (Frankfurt am Main.: Suhrkamp, 2000). An English translation of the latter will be published shortly by University of Wisconsin Press.

[10]. Schmitt refers here to his *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933). A second edition of the latter was published in 1934, shortly after the second edition of *Politische Theologie*.

[11]. See Stolleis, *History of Public Law*, p. 359.

[12]. See, for instance, Carl Schmitt, *Tagebücher: Oktober 1912 bis Februar 1915*, ed. Ernst Hüsmert (Berlin: Akademie-Verlag, 2003), pp. 47, 53, 60 and 64.

[13]. For a more detailed assessment of Schmitt's relationship to the National Socialist regime, see Dirk Blasius, *Carl Schmitt. Preußischer Staatsrat in Hitlers Reich* (Göttingen: Vandenhoeck and Ruprecht, 2001). For a slightly more revisionist account, see Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham: Duke University Press, 2004).

[14]. See also John P. McCormick, "The Dilemma of Dictatorship: Carl Schmitt and Constitutional Emergency Powers," in *Law as Politics*, pp. 217-51; 223.

[15]. See also Carl Schmitt, *Théologie politique*, trans. Jean-Louis Schlegel (Paris: Gallimard, 1988), n. 15.

[16]. For a detailed account of these terms, see Hans Boldt, "Ausnahmezustand, necessitas publica, Belagerungszustand, Kriegszustand, Staatsnotstand, Staatsnotrecht," in *Geschichtliche Grundbegriffe: Historisches Lexicon zur politisch-sozialen Sprache in Deutschland*, ed. Otto Brunner, Werner Conze and Reinhart Koselleck (Stuttgart: Ernst Klett Verlag, 1972-1997), 1, pp. 343-376. For the German discussion since the Weimar Republic, see András Jakab, "German Constitutional Law and Doctrine on State of Emergency: Paradigms and Dilemmas of a Traditional (Continental) Discourse," *German Law Journal* 7 (2005): pp. 453-477.

[17]. For Schmitt's critique of technology, see Kelly, *The State of the Political*, pp. 187-198; 200-204, and 212-217; and John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997).

[18]. For a detailed assessment of Schmitt's theological figures of thought, see Théodore Paléologue, *Sous l'? "il du Grand Inquisiteur: Carl Schmitt et l'héritage de la théologie politique* (Paris: Éditions du Cerf, 2004). For a more historically oriented interpretation of Schmitt's relationshp to German Catholicism, see Kelly, *The State of the Political*, pp. 161-164, 182-187, and 198-200. See also Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*, trans. Marcus Brainard (Chicago: University of Chicago Press, 1998;) and Reinhard Mehring, *Pathetisches Denken–Carl Schmitts Denkweg am Leitfaden Hegels. Katholische Grundstellung und antimarxistische Hegelstrategie* (Berlin: Duncker and Humblot, 1989).

[19]. Hamdan v. Rumsfeld, 548 U.S. 72 (June 29, 2006).