

## REVIEW

*The Oxford Handbook of Carl Schmitt*

Edited by Jens Meierhenrich and Oliver Simons

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“Carl Schmitt is too important to be left to the Schmitt specialists.” (612). Thus begins the chapter “Demystifying Schmitt” in *The Oxford Handbook of Carl Schmitt*. This chapter was written by two law professors who are not Schmitt specialists: Eric A. Posner and Adrian Vermeule. Their claim could very well be taken as one of the general claims of this remarkable book because the contributors try to understand Carl Schmitt’s life and thought much more than they seek to evaluate him or his writings. In this, the contributors thread a judicious path between Schmitt’s defenders and Schmitt’s critics. The handbook contains 30 essays in five parts and while some may not seem to be as rewarding to read as others, all contribute to a fuller understanding of Schmitt as a person and as a thinker.

## PART I: INTRODUCTION

Part I which is entitled “Introduction” is not a typical one, but is an almost 70 page monograph on Carl Schmitt’s place in the history of German “greats” along with Kant, Hegel, Schiller, and Goethe. The editors of the book, Meierhenrich and Simons, note that Schmitt was “a theorist, a protagonist, and, above all, an antagonist” and they confess that he was “revered by some and reviled by others” (3). But, they remind us that Schmitt left his mark during four major periods of German history: Wilhelmine, Weimar, Nazi, and the Federal Republic periods of Germany. And he did so as a person, a political thinker, a jurist, and as a philosopher of culture.

Furthermore, Part I has a dominate theme: that of “order”, and the joint authors (Meierhenrich and Simons) argue that it is a theme that is present throughout Schmitt’s writings. Because “order” is also the focus of Meierhenrich’s own chapter, citations will be to both Chapter 1 (“Introduction”) and to Chapter 6 (“Fearing the Disorder of Things”).

Without intending to minimize Simon’s contribution to Chapter 1, for simplicity’s sake, references for both chapters will be to Meierhenrich.

The title of Chapter 1 is a quotation from the well-regarded German historian Hans-Ulrich Wehler who described Carl Schmitt as “a fanatic of order in an epoch of confusing turmoil” and indeed the Weimar period was one of continuous turmoil and perpetual crises (3, 13, 174). As such, it is readily understandable that Carl Schmitt would have been searching for a means to instill order. But, as Meierhenrich points out, Schmitt’s private life was filled with turmoil and crises: before, during, and after the Weimar period. Meierhenrich notes that Schmitt’s diaries from “between 1912 and 1934 are replete with descriptions of despair and disillusionment, of a life lacking an orderly form.” (175). And, Schmitt sought order in the form of institutions, although he disliked the term. Because “institution” was a foreign word, Schmitt coined the term “concrete-order thinking” (“konkretes Ordnungsdenken”) but Meierhenrich reminds us that it is simply Schmitt’s term for “institution.” (13, 35, 179). Meierhenrich also reminds us that like Hobbes, Schmitt believed that “man needed to be put on a leash” and he refers to his comment in *Roman Catholicism and Political Form* that man is “a cowardly rebel in need of a master”. (181). Meierhenrich discusses Schmitt’s lengthy search for the type of institution which could best introduce order. In the beginning, he thought it was the Catholic Church, followed by the dictator, and then by the sovereign state (21-23, 183-198). Meierhenrich claims that Schmitt “was grasping for two things in particular: insight and impact.” That is, he not only wanted to understand how “order worked”, but he also wanted to “make order work” (27). Much of the remainder of the Introduction is devoted to Schmitt’s search for order in political thought, legal thought, and cultural thought, which are the subjects of Part III, Part IV,

and Part V respectively. But, as Meierhenrich notes, the three types of thoughts overlap (53-55). Meierhenrich (and Simons) conclude by suggesting that they intended their handbook to be a “critical introduction to Carl Schmitt” and they note that “critique” in Greek (“κρίνω”) means “to separate,” “to distinguish,” and “to pass judgment” but that it can also mean “to order” and “to arrange.” They make it clear that the authors of the chapters in the handbook do not intend to judge Carl Schmitt. Instead, they believe their “mission was to engage in the critical ordering of Schmitt’s writings” by providing the “proper context of his challenging thoughts.” (57).

## PART II: THE LIVES OF CARL SCHMITT

Richard Mehring introduces this Part by focusing on Schmitt’s Catholicism. Mehring is a noted specialist on Schmitt, having written about him for some twenty-five years and having authored one of the most definitive biographies of Carl Schmitt as well as a major biographical work on Schmitt’s judicial life and thought. Mehring concentrates on Schmitt’s Catholicism but he places it within a larger historical context. What is perhaps most interesting is Schmitt’s shifting relationship to Catholicism. Although raised within a Catholic family, he did not seem particularly Catholic. His first wife, Cari was a Protestant and he often defended Protestantism (77-78). Yet, during the 1930s he regarded himself as a Catholic intellectual; yet he did not believe in natural law and rejected neo-Thomism. And, after the war he no longer thought of himself as a “true ‘Catholic’ thinker” (79, 90).

Raphael Gross takes up the issue of Schmitt and anti-Semitism and he notes that many of Schmitt’s defenders believed that he could not have been an anti-Semite because of his numerous Jewish friends while others admit that he was anti-Semitic but only between 1933 and 1945 to curry favor with the Nazis. Gross demolishes both defenses and convincingly demonstrates that Schmitt was an anti-Semite throughout his life and that it was one of his “deepest convictions” (110). Gross concludes his chapter with a warning: that we perpetuate his hatred of the Jews when we assimilate his ideas and he counsels us to make it clear that we need to clearly denounce Schmitt’s anti-Semitism (111). For almost all of Schmitt’s life, the Jews were the “true enemy” (96).

Gross relied on Schmitt’s diaries for his discussion of anti-Semitism; Joseph W. Bendersky makes them the central focus for his chapter. Bendersky also emphasizes Schmitt’s

anti-Semitism as it is revealed in his diaries (118-119, 143). However, his larger concern is to investigate to what degree the diaries confirm or reject our conceptions of Schmitt as a person. Bendersky notes that we do not have access to the thousands of pages of Schmitt’s diaries and he fears that we may never be able to see all of them. Nonetheless, he maintains that what we have is a “biographer’s dream” and they have made an “unprecedented contribution” to our understanding of Schmitt (119-120). He traces Schmitt’s infatuation with Cari Dorotić, his future wife but he emphasizes his insecurities and his angst (121). Like Mehring, Bendersky discusses Schmitt’s Catholicism. He not only began to doubt his faith in Catholicism, but his marriage was collapsing. His wife turned out not to be from a noble family but from a rather poor one. She was physically unwell and psychological unbalanced. Bendersky mentions that Schmitt contemplated suicide on several occasions (127). The diaries from 1930 through 1934 are crucial because they reveal that he had lost his earlier idealism and continued to suffer psychologically (130). However, the entries for 1933 do not reveal much about his political thinking or his personal response to the Nazi regime. But, they do show a constant battle with depression and a continuing apprehension about the future. The diaries from 1939-1945 have not been published but his *Glossarium*, which covers 1947-1945, gives us an indication of his attitude and thinking. Published in 1991, they indicate his conviction that he was being unjustly persecuted and unfairly treated (139-140). Bendersky notes that in the diaries, Schmitt often refrained from comments on current affairs and that they are very personal. Nonetheless, he states that “Their value cannot be overstated” and that he is convinced they will be used by biographers, historians, philosophy, and politics for years to come (120, 144).

Christian Linder offers one of the most nuanced accounts of Carl Schmitt’s life in his chapter. He reminds us that although Schmitt had defended Hitler publicly in 1936, the SS attacked him for his Catholicism, his opportunism, and his Jewish connections (147). While he was not prosecuted, he was effectively banned from participating in the Nazi movement for the duration of the war. In 1945, he was interrogated for several months by the Russians and then held by the Americans until October 1946. He was arrested again five weeks later by the Americans and held in solitary confinement. He was released from solitary confinement on May 6, 1947 but was confined to the grounds until finally being freed several weeks later. After being attacked by the Germans, held by the Russians, and then the Americans, he returned to Plettenberg, his birthplace (149). He was forced

to sell some of the paintings that he had collected and he regretted the “enemy seizure” of his 3,000 volume library by the Americans in October of 1945. He lived with his second wife Dutschka and their daughter Anima in the attic apartment of the house that his parents had built in 1937 while his two sisters, Augusta and Anna Margarete lived on the main floor. In 1970 he moved to Pasel, a town outside of Plettenberg. The number of people who had the courage to visit him grew larger with his move. Linder suggests that Schmitt had regarded Plettenberg as his “San Casciano” in reference to the town that Machiavelli had lived in after fleeing Florence. But, in Pasel, it was only his house that he called “San Casciano” (160). Linder paints Schmitt’s life after the war as one of poverty and relative isolation. But, he also shows that the “monster” was helped by some and respected by others; an indication of the “dialectic opposition that dominated all of his thought” (153, 155, 167).

Taken together, the four chapters in Part II reveal Carl Schmitt as a brilliant but troubled individual. He believed that he was often misunderstood but never accepted that his ideas, his style, and his disregard for facts contributed to these misunderstandings. He never stopped believing that he, the great State jurist, was regarded as an outsider, an “alienated intellectual loner” (143). And, he was convinced that he was often defenseless and that it was always he who was the real victim (101, 105).

### PART III: THE POLITICAL THOUGHT OF CARL SCHMITT

Duncan Kelly addresses the thorny topic of Schmitt’s political theory of dictatorship. Kelly notes that scholars have recognized that Schmitt’s interest in constitutions was based upon two concerns: his general belief in the weakness of modern liberalism and his specific objections to Article 48 of the Weimar constitution. Since this Article figures prominently in Schmitt’s writings and in this handbook, it is worth discussing it here. Article 48 was devoted to the emergency powers that the Reich President can invoke in cases in which a subsidiary government either cannot, or will not, fulfill its legal obligations. This entails the possible use of all measures, including force.<sup>1</sup> However, Kelly wishes to focus on a third concern, one which he contends has been especially “underappreciated in Anglophone scholarship”. This was Schmitt’s concern “to rewrite the history of modern political thought” (217). Kelly traces Schmitt’s early academic positions and he discusses his early responses to Romanticism. But, his main focus is on Schmitt’s evolving

ideas about the dictator and how he addressed the dictatorial powers that a military leader must have in order to deal with crises. Kelly then places Schmitt’s later concept of the dictator in its historical context by discussing it in conjunction with some of the writings of Friedrich Meinecke, Karl Kautsky, and the French Revolution. For Kelly, the concept of the dictator was the “heart” of Schmitt’s attempt to write a new history of modern political thinking (237).

The focus of Miguel Vatter’s chapter is on “political theology” which he suggests was the most controversial of all of Schmitt’s political concepts. In the first part of his chapter Vatter examines Schmitt’s early conception of political theology and notes how he is responding to Kelsen’s claim that there are two types of juridical fictions (245-247). He then moves to discuss Schmitt’s argument against Hobbes’ theory of representation—the “sovereign is not simply an impersonator or a fiction” but is a real belief in the true leader. The second part of Vatter’s chapter addresses Schmitt’s later thinking and is devoted to *Political Theology II*. Schmitt’s book is a “belated” response to Peterson’s *Monotheism as a Political Problem*. Contrary to Peterson’s claim that Christianity is peaceful, Schmitt contends that “enemy” in Scripture differs from enemy in politics (259).

Thomas Hobbes also plays a central role in John P. McCormick’s chapter. McCormick notes that Schmitt took issue with Hobbes, particularly in his mechanistic philosophy (276). And, he notes that Schmitt complained that Hobbes had not developed a philosophy that would have prevented liberalism from distorting and undermining his political thinking. However, he suggests that Schmitt and Hobbes shared a similar pessimistic opinion of human nature and that they both believed that a sovereign was necessary to prevent violence. And, they shared the belief that the notion of an enemy plays an enormous role in political thought (274). McCormick further suggests that Schmitt was convinced that the turmoil in Weimar Germany was similar to the warring factions in Stuart England. Schmitt was further convinced that Hobbes had been misunderstood for centuries, and only Carl Schmitt really understood him. McCormick concludes with the observation that Schmitt should have read Locke more carefully, because then he would have recognized that the actual state of war is not the state of nature. Rather, the state of war is due to a lack of a participating democracy; thus, a dictatorial “unaccountable rule” (287).

The notions of democracy and liberalism are central to William Rasch’s chapter. He contrasts the Athenian notion that all citizens were to participate in politics with

the modern belief that the personal is preferable to politics (316-317). But, in both cases there is a belief in equality. Schmitt raised the question “What is democratic equality?” (320). Rasch suggests that for Schmitt, equality is difficult to achieve and that it requires a certain degree of homogeneity. Furthermore, this political unity expresses the people’s will which makes governing possible (329-331). Rasch claims that Schmitt was defending democracy against the “massive dysfunction of liberal governance” but his claim seems to go against McCormick’s argument.

“Can a political thinker be both intellectual friend and political enemy?” That is the question that drives Matthew G. Specter’s chapter (427). He offers a history of the Left’s reception of Schmitt beginning with Habermas’ critique and appropriation. He points to Habermas’ simultaneous distancing himself from Schmitt’s students while utilizing the Schmittian critique of the welfare state. However, Specter argues that Habermas’ opinion of Schmitt became more positive between 1961 and 1992 largely because of Reinhart Koselleck’s influence. Specter spends much of the remainder of his chapter discussing three Leftist thinkers who appear to have built upon Habermas’ adoption of certain aspects of Schmitt’s political philosophy in their own thinking.

As Habermas played a central role in Specter’s chapter, Emmanuel Levinas figures prominently in Aryeh Botwinick’s chapter. Beginning with Plato, Botwinick sets out the same/other distinction and demonstrates how Levinas employs a similar one. But, Botwinick also considers Schmitt’s friend/enemy distinction and does so by way of Machiavelli and Hobbes. Botwinick emphasizes the fact that “the category of *enemy* clearly dominates over that of *friend*” (350). However, Botwinick does not appear to be sympathetic to Schmitt’s critique of liberalism and indicates that his “analytical framework is skewed and distorted” and that “he misconstrues the role of the state of nature in Hobbes’ thought” (357-358). Botwinick concludes that Schmitt’s friend/enemy distinction functions only in a theoretical frame work and not in the real multicultural one (364).

Part III contains four chapters on concepts. Matthias Lievens concentrates on Schmitt’s concept of history. He begins by acknowledging the importance that political conflicts play in Schmitt’s thinking but insists that he has a larger “metapolitical struggle” or “hyperpolitical level” (401-403). In other words, everything is political, even history. Schmitt takes issue with the idea that history repeats itself and argues instead that it is singular. But, there is one thing that appears in history and that is the idea of the “*kat-echon*.” Lievens believes that Schmitt adapts St. Paul’s no-

tion for use in politics; it manifests itself in history in order to warn of dangers. Lievens concludes it is a political weapon to be used in “Schmitt’s fundamental endeavor: to fight for the political.” (420).

It is the concept of war that preoccupies Benno Teschke’s chapter. He believes that Schmitt’s concern with war develops from his friend/enemy distinction (394). That made it surprising that Schmittian scholars have mostly neglected this concept and only recently began to investigate it. Scholars have done so largely because of the war on terror; unfortunately, they have concluded that Schmitt was a “prophetic genius”. Teschke believes this “celebration” needs “reconsideration” (367-369). Teschke indicates that during the Middle Ages there were no wars but there were feuds, and feuds were the “execution of justice.” (373). War began later when it became public with states having armies. The third stage was with the introduction of liberal war and Schmitt was thinking specifically about how the Monroe Doctrine could justify a doctrine that by international law was unjustifiable (374-376). Teschke suggests that by concentrating on liberal imperialistic wars, Schmitt avoided dealing with the Nazi’s radicalized conception of the enemy (394).

Samuel Moyn concentrates on Schmitt’s concept of the political and he suggests it was one of Schmitt’s “major and lasting bequests” but it was significantly altered during his life. Some of these changes were authored by Schmitt himself, but Moyn contends it was not so much Leo Strauss’ criticisms which prompted him to make changes, but Hans Morgenthau (298-299). Moyn also notes with interest that many of Schmitt’s Weimar critics were fundamental in developing the discipline of international relations (305). They were prompted to do so largely in response to the friend/enemy distinction which Schmitt had formulated in *The Concept of the Political*. However, Moyn points out that as central this distinction is, Schmitt never seemed to think that there could be “quarrels among friends” (296). If Schmitt’s concept of the political helped some German thinkers to develop international relations, Moyn argues that it also aided some French thinkers as well. Moyn suggests that it was Raymond Aron and his student Claude Lefort who focused on the differences in political and politics. It was Lefort who credited Schmitt for underscoring the importance of placing the political first. Moyn concludes by observing that Schmitt introduced his concept of politics but he could not control its legacy (307).

## PART IV: THE LEGAL THOUGHT OF CARL SCHMITT

Martin Loughlin's chapter is on "polity" which for some of us is an unfamiliar term. Loughlin suggests that Schmitt recognized that when political economy was developed as a discipline at the end of the eighteenth century, the founders retained its association with the household. Thus, the term was "economy" whereas a more correct term would be "polity" because it has more to do with the state than it does the household (570). It is Loughlin's intention to discuss Schmitt's particular contribution to "polity" and he does so by stressing Schmitt's juridical background. Although he was trained in the traditional German approach to legal theory, Schmitt departed from it when he began to stress the political. Loughlin is less concerned with that shift than he is with Schmitt's later focus on "nomos." And, he points out that in Schmitt's opinion the Greek term "nemein" has "three main meanings in German": "to appropriate", "to divide", and "to pasture." For Schmitt, the political is revealed in these three ways: appropriation, division, and production (581). Schmitt's contribution to "polity" was to emphasize the importance of "nomos"; that is, that law is not something abstract but it is bound up with space (582).

Martti Koskenniemi also concentrates on *The Nomos of the Earth* but his focus is on international law. Koskenniemi contends that Schmitt began to be genuinely interested in international law beginning in the late nineteen thirties and that it was not intended as a diversion of the attention of the Nazi authorities (594). Schmitt regarded the period between the sixteenth and late nineteenth centuries as a period that had established order based upon "sovereign equality and limited warfare" (603). It was America's imperialism as promoted by the Monroe doctrine which upset this relative tranquility and unleashed new types of warfare. Koskenniemi admits that for many scholars of international law, Schmitt is problematic. Schmitt's criticism of American liberalism and his endorsement of the friend/enemy distinction are obstacles to his acceptance by international relationists. However, Schmitt should be welcomed into this discipline because he was a realist who considers "law as a concrete order", just like most international relations scholars (607).

There are four chapters on Schmitt's constitutional opinions all written by constitutional experts and are exceptionally rich and somewhat difficult to comprehend. All four

warrant careful study and deserve more commentary than can be given here. Ulrich K. Preuss provides a type of overview of Schmitt's problems with the Weimar constitution and begins by noting that the new constitution was intended not just to establish a new political order but would provide a framework for most every part of society (471). Like many others, Schmitt was skeptical of the Weimar constitution and he found it fundamentally flawed. It failed to represent the unity of the people and it failed in dealing with the ongoing crises. In his opinion a democratic dictator can solve both issues (475-478, 484-485).

David Dyzhenhaus addresses Schmitt's attacks on liberalism and his critique of the rule of law. Liberalism fails during times of crisis and the rule of law fails in its "guarantee against absolutism of all kinds" (490, 495-496). Furthermore, liberal rule of the law fails to recognize the "primacy of the political" and Dyzhenhaus illustrates this failure by focusing on Schmitt's constitutional position. This is partially found in Schmitt's response before the court regarding the failure of the Prussian government to fulfill its obligations and in defense of the German government take-over under Article 48. He claimed that Prussia had failed to deal with its enemies and could not guarantee security. This only serves to stress Schmitt's preference for a dictator (500-501). In Dyzhenhaus' opinion, the fundamental basis for Schmitt's thinking did not really change, it only became more radical (502).

William E. Scheuermann's chapter can be read as a companion piece to the one by Dyzhenhaus because he provides a biographical account of Schmitt's views on the state of emergency. Schmitt was stationed in Bavaria during much of the First World War and part of his duty in Munich was to provide a justification of the extra-juridical proceedings by the military. Not only was he supposed to justify legal matters but he was required to provide a basis for economic measures (548-549). Scheuermann examines two of Schmitt's writings from 1917 but he places more emphasis on the second one because it is largely neglected but is more interesting. In it, Schmitt "sheds the legalistic contours" and contrasts the differences between the state of siege and the state of a dictator. In the first, there is a continuation of the separation of powers between the executive and legislative branches whereas in the second both branches become fused (550-551). Scheuermann suggests that Schmitt wished to banish the naïve Enlightenment legalism because it was incapable of dealing with the unpredictable future. This was also Schmitt's justification for his later attack on Article 48

(556-557). Scheuermann spends the final pages of his chapter on Schmitt's thinking as it applies after 9/11 (560-565).

Stanley Paulson's chapter is on the feud between Schmitt and Kelsen and its culmination in the “Guardian” Controversy of 1931.” The reference is to the question of who is the “guardian of the constitution”—Kelsen maintained that it was the constitutional court while Schmitt insisted that it was the president. Before Paulson sets out that controversy, he notes four areas of disagreements between Schmitt and Kelsen.

1. Schmitt believed that the sphere of the political was much larger than did Kelsen; whereas Kelsen drew a strong separation between “is” (“Sein”) and “ought” (“Sollen”), Schmitt replaced it with one between “being” (“Sein”) and “not being” (“Nicht-Sein”).
2. Kelsen believed that the sovereign is limited by laws, but Schmitt insists that the sovereign must have decisionist powers.
3. Kelsen defended democracy; Schmitt subjected it to a “savage critique”.
4. Both Schmitt and Kelsen believed in the need for political unity, but they disagreed on how much it should be and on what measures needed to be taken in order to maintain it (510-511).

Paulson addresses the “Guardian” controversy later in his chapter and he examines Schmitt's 1931 book *The Guardian of the Constitution*. Schmitt's claim is that constitutional review is “impossible or unworkable” (524-525). Paulson's account is detailed but he makes several points:

1. Schmitt does not believe some of his own points,
2. that he has a narrow reading of some facts, and
3. Kelsen does not believe Schmitt's claims.

Paulson concludes by saying that Kelsen's assumption that the Weimar constitution was in danger of being blown apart” was tragically proven to be correct (525-531).

The title of Giorgio Agamben's chapter is somewhat perplexing: “A Jurist Confronting Himself” but the subtitle clarifies that the chapter dwells on “Carl Schmitt's Juridical Thought.” Agamben's points of departure are the texts and interviews that Schmitt gave and he suggests that Schmitt spoke of himself with “unprecedented” directness. However, Agamben cautions that this picture is not like a mug shot, but more like a picture with figures hidden within it (457). Agamben attempts to discern Schmitt

within these hidden figures and he does so by way of several comments that Schmitt made. One was Schmitt's admiration for Kafka and his notion of law. Another was Schmitt comparing himself to Benito Cereno, the captain who is forced to do his sailors' bidding in Melville's story (458-460). Both Kafka's *The Trial* and Melville's *Benito Cereno* reveal the protagonist who is at the mercy of forces beyond his control. Agamben directs our attention to the end of “State, Movement, People” where Schmitt has the “image of a dangerous sea voyage” and the need to steer cautiously between the “mythical sea monsters” of “sovereignty of law” (legalism) and the “sovereignty over law” (the state of exception) (466-467). Agamben concludes with the observation that the true “Führer” of the ship (of state) is finally death and he warns that Schmitt recognized that but played one “mythographic mask against the other” (468-469).

Posner and Vermeule focus much of their chapter on Schmitt's *Legality and Legitimacy* and they observe that it contains a critique of Max Weber's concept of legitimacy. Weber had argued that the state was the sole legitimate force and he claimed that there were three types of legitimacy: traditional, bureaucratic, and charismatic. Schmitt argued that the modern state was based upon Weber's second type and that this was not only insufficient but that legality is opposed to legitimacy. Legality is merely formal and the opposite of what is legitimate, something may be legal but not legitimate (614-615, 617). The two also discuss Schmitt's relationship to rules. They suggest that in law and in economics anyone who wishes to “enact a sensible rule” needs to have an adequate prediction of the future. Yet, they note that Schmitt insisted that the “sovereign is he who decides on the exception” (618). Posner and Vermeule suggest that the Anglo-American emphasis on rule and standards makes it difficult to comprehend Schmitt's legal thinking. But, they maintain that Anglo-American scholars would be well-advised to make the effort to understand Schmitt's thinking. They acknowledge that his writings tend to be tailored to his times but insist that his thinking can apply to different times. And, they insist that Schmitt offers “two major insights”: his distinction between norm and the exception and his distinction between legality and legitimacy (623). Posner and Vermeule are not the only ones who point to Schmitt's importance; so do all of the other authors in this handbook.

## PART V: THE CULTURAL THOUGHT OF CARL SCHMITT

Part V may be the weakest and the least informative part, but it also must have been the most challenging one for its authors. These seven scholars are forced to confront the stylistic defects and the excessive claims that Schmitt was prone to make. Oliver Simons addresses Schmitt's use of spatial rhetoric from his use of the term space ("Raum") at the end of the 1930s to his later thinking about it in *Land and Sea* and *The "Nomos" of the Earth*. But, his task is challenging both because of Schmitt's substance and style in these works. Simons notes that Schmitt engaged in "peculiar etymological speculations" like his attempts to link "space" ("Raum") and "Rome" ("Rom"), "farmer" ("Bauer") and "building" ("Bau"), and "order" ("Ordnung") and "location" ("Ortung") (784-786). Furthermore, these works "lack" "methodological rigor" and are more a "form of a narrative"; they have been referred to as "poetic texts" and as "a romantic fairy tale" (788, 781, 778). Many of Schmitt's writings lack conceptual clarity and often he stretches conceptual borders, but the ones on space suffer even more from these deficiencies.

Johannes Türk briefly alludes to *Land and Sea* and *The "Nomos" of the Earth* but only to point out the importance of understanding Schmitt's "grand rhetoric." Türk identifies the early Roman Catholic Church and specifically in Augustine as the source for Schmitt's realization of the power of rhetoric (765, 754). Schmitt correctly understood that "language is an instrument of power" and he justifiably recognized that literature plays a "crucial role." (753, 760). He also realized words could be both "polemical and playful" (762). He focuses on two of Schmitt's most literary works, an early one and a later one. Türk examines Schmitt's study *Theodor Däubler's Northern Lights* and notes that *Northern Lights* represents "a synthesis of European culture." Written in 1916, Schmitt's work can be viewed as an expression of his early idealism and comfort with cosmopolitanism. (763-764). But, he also recognized that Däubler does violence to language by going beyond its conventional bounds (766). Türk also investigates *Hamlet or Hecuba* which Schmitt wrote in 1956. He claims that in this work Schmitt recognizes that "literary experience of identification" is connected with a "political decision" and he bases that on Hamlet's viewing of *Hecuba* (769).

A co-translator of *Hamlet or Hecuba*, David Pan makes it the center of his chapter and argues that it represents

Schmitt's view that myth legitimates politics. But, as much as Schmitt had recognized that "literature is inseparable from politics", it was not until *Hamlet or Hecuba* that he spelled out this connection so clearly (732). Pan explains Schmitt's contention that the exception is linked to tragedy and the connection between the normal and play (733-734). He also defines the state of exception as the "conflict between mythic orders"; that is, the struggle between them in the quest for authority (736-737). In doing so, Pan contrasts Schmitt's belief with that of Hannah Arendt. Arendt sought to ground authority on tradition and looked to the Greeks and the Romans for that political tradition, but Schmitt sought to ground authority on the "general will." In his early thinking that meant locating the "general will" within the religious institution of the Catholic Church but later it was to be found in the unified voice of democracy (738-739). In thinking everything is political Schmitt argued that to regard literature and theater as merely aesthetic pleasures would eliminate much of their importance. Pan closes by referring to Schmitt's reaction to Walter Benjamin, the subject of Horst Bredekamp's chapter.

If Carl Schmitt took issue with Walter Benjamin's aesthetics, Bredekamp explores Benjamin's "esteem" for Schmitt. Bredekamp states that "Benjamin's esteem for Carl Schmitt is one of the most perplexing cases of the Weimar Republic" and he cites Benjamin's 1930 letter in which he explains that he has arranged for his publisher to send his book on the "Trauerspiel" to Schmitt and that it will indicate his indebtedness to his thinking. (679). Bredekamp explains that Benjamin was not the only person who would seem to find Schmitt's writings objectionable but nevertheless, was impressed by him. He then delves into the letter's history and how decades later, it finally aroused Schmitt's interest. Bredekamp then discusses Benjamin's concern with Schmitt's literary work in the teens and twenties and that Schmitt's influence was not just limited to the "Trauerspiel" book. Schmitt's *Political Romanticism* also inspired Benjamin's *The Work of Art in the Age of Mechanical Reproduction*. Bredekamp's conclusion is two-fold; while Benjamin and Schmitt agree on the importance of the political, they differ on the nature of the state of exception (685). Bredekamp concludes with a reference to Benjamin's discussion with Bertolt Brecht after listening to Schmitt's lecture in Berlin in 1930: "Schmitt/Agreement Hate Suspicion" (695).

Alexander Schmitz contends that Schmitt did not advance positions and standpoints but "relations" and "forms of differentiation." Accordingly, there is movement throughout Schmitt's thinking that corresponds to his life.

And, while his private life revealed a fundamental tension between what he approved of and what he rejected, it also showed that his views were often closer to those that he rejected so emphatically (705). Schmitz uses Schmitt's late attacks on Hans Blumenberg as an example. He details how Schmitt's attacks in *Political Theology II* on Blumenberg's conception of legitimacy in the modern age show that the two thinkers were not as fundamentally at odds as it seems. The question whether Schmitz is correct about this specific example must be decided by specialists. However, there is no question regarding his point about how Schmitt becomes more aggressive in his attacks on notions when they are closer to his own sentiments. That helps explain, but not minimize, some of Schmitt's anti-Semitism. However, Schmitz' discussion of Schmitt's returning to his ideas in *Political Theology (I)* suggests that perhaps Schmitt was less interested in process than he was in positions. The subtitle of Rüdiger Campe's chapter should alert the reader to the real focus of his work: "Novalis' *Faith and Love or the King and Queen* with Reference to Carl Schmitt." Campe's chapter is a fascinating account of the lack of understanding that the Prussian King, Prussian military, and the Prussian church had of Novalis' Romantic work (667-668). Yet, Schmitt is only referred to along with the legal historian Ernst Kantorowicz. Campe argues that both Schmitt and Kantorowicz have notions of political theology and emphasize pre-Enlightenment theories but that Schmitt considers the basis to be a "baroque origin of sovereignty" whereas Kantorowicz relies on a medieval foundation (664). While both Schmitt and Kantorowicz appreciate Novalis' emphasis on the monarch's visibility, the latter would not have approved of Novalis' claim "Every true law is my law" (675). Nor would one expect that Schmitt, "the fiercest critic of political Romanticism", would have approved of Campe's suggestion that Novalis was an inspiration for his thinking during in "1920s and 1930s" (660, 657).

Friedrich Balde suggests that maybe Schmitt was not just the fiercest critic of Romanticism but had actually appropriated some of its key tenets. One is the Romantics' belief in the "untenability of classical concepts" and another is their use of irony (630). And Balde hints that Schmitt approved of the Romantics' negativity (635). Balde shifts his attention to Schmitt's political thinking and he notes Schmitt's belief that the state of exception allows the ruler to act without constraints (637). He concludes by indicating that Schmitt, like Hannah Arendt, "cannot withhold his admiration for the classical image of the 'great state'", but he admired the

Roman notion of the supreme leader in contrast to Arendt who extolled the Greek interplay of speech and action (652).

The chapters in this Part contribute to the picture of Schmitt as a confusing, and sometimes a confused, thinker who grappled with the many complexities and various disorders which plague the modern age. And, he was one who sought to do so by utilizing literature, history, and even myth, if he thought it could help him.

## FINAL THOUGHTS ON THE OXFORD HANDBOOK OF CARL SCHMITT

The authors of Part 2 often portray Schmitt as a depressed individual who was frequently opportunistic. The authors of Parts 3 and 4 set out in detail Schmitt's conviction of the primacy of the political and his belief in the fundamental weaknesses of liberal democracy and parliament. The authors of Part 5 clearly believe that Schmitt used rhetoric to further beliefs that he could not argue for and that his fondness for a romanticized past made him blind to the progress of the present. And, many of the authors have pointed to his support for the Nazi regime. Given all of this, it is fair to ask as Dyzenhaus does: "Why Read Schmitt." Except that Dyzenhaus does not place a question mark at the end of this question and that is because he, like virtually every scholar in this book, is convinced that Schmitt has much to teach us today. If they are being honest, even Schmitt's detractors have to admit that he was a brilliant thinker and one of the most influential jurists of the twentieth century. For those who are not detractors, his analyses of modern democracy are instructive and they prompt us to reflect on liberalism's shortcomings. The scholars here have provided ample reasons not only to why people should read Carl Schmitt, but why *more* people should. And, this leads to a final point. Some of these chapters were written by specialists in law as well as in other fields and while many others were written by Schmitt specialists. But, this *Handbook of Carl Schmitt* clearly and fully demonstrates, Carl Schmitt is too important to be left only to the Carl Schmitt specialists.<sup>2</sup>

## NOTES

1. Paulson writes "The key provision is section 2." (529).
2. Regarding the length of this review essay: some readers no doubt would have preferred a much shorter one and some others may have wished for even more information.

*The Oxford Handbook of Carl Schmitt*. Edited by Jens Meierhenrich and Oliver Simons. Oxford: Oxford University Press, 2019.