

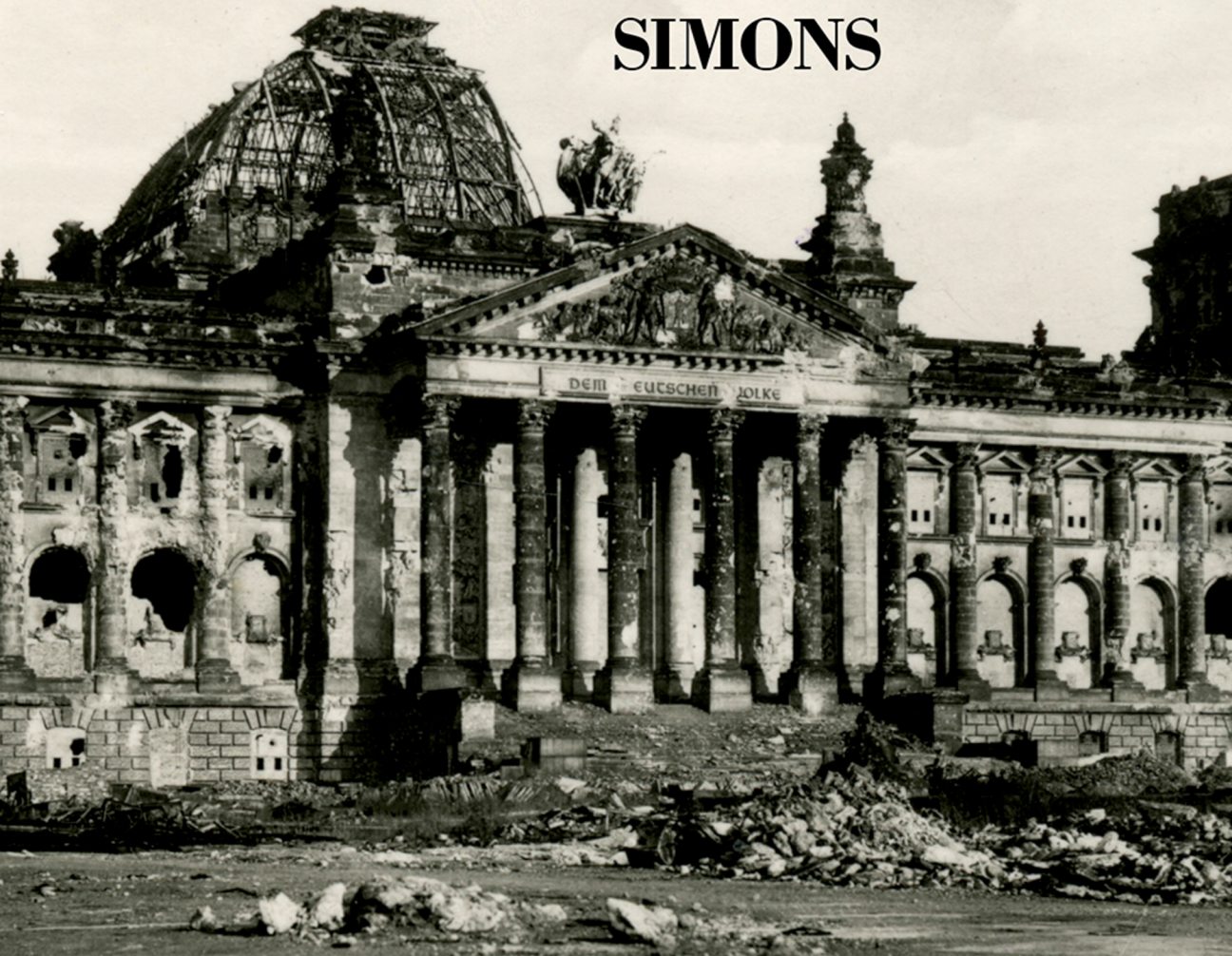
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≡ The Oxford Handbook of
CARL SCHMITT

THE OXFORD HANDBOOK OF
CARL SCHMITT

THE OXFORD HANDBOOK OF

CARL SCHMITT

Edited by

JENS MEIERHENRICH

London School of Economics and Political Science

and

OLIVER SIMONS

Columbia University

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Johannes Türk is associate professor of Germanic studies and adjunct professor of comparative literature at Indiana University, Bloomington, where he also serves as director of the Institute of German Studies. He is the author of *Die Immunität der Literatur* (Fischer, 2011) and has coedited a special journal issue on figures and figuration of the (un-)dead (*Germanic Review*, 2007) (with Robert Buch). He has published on Marcel Proust, Franz Kafka, Heinrich von Kleist, Carl Schmitt, Thomas Mann, and immunology. He is currently working on projects about immunity as a political concept as well as on political emotions.

Miguel Vatter is professor of politics at University of New South Wales, Australia. He previously taught in the United States and Chile and has held visiting professorships in Germany and China. He works in the areas of political theory and contemporary philosophy, and his books include *Between Form and Event: Machiavelli's Theory of Political Freedom* (Fordham University Press, 2000); *Machiavelli's 'The Prince': A Reader's Guide* (Bloomsbury, 2013); and *The Republic of the Living: Biopolitics and the Critique of Civil Society* (Fordham University Press, 2014). He has also coedited *The Government of Life: Foucault, Biopolitics and Neoliberalism* (Fordham University Press, 2014) (with Vanessa Lam).

Adrian Vermeule is the Ralph S. Tyler Professor of Constitutional Law at Harvard Law School. He has authored or coauthored nine books, including *Mechanisms of Democracy: Institutional Design Writ Small* (Oxford University Press, 2007); *Law and the Limits of Reason* (Oxford University Press, 2008); *The Executive Unbound: After the Madisonian Republic* (Oxford University Press, 2010) (with Eric A. Posner); *The System of the Constitution* (Oxford University Press, 2011); *The Constitution of Risk* (Cambridge University Press, 2014); and *Law's Abnegation: From Law's Empire to the Administrative State* (Harvard University Press, 2016). He is a coeditor of the *New Rambler Review* and a fellow of the American Academy of Arts and Sciences.

CARL SCHMITT'S LIFE: A CHRONOLOGY

- 1888 Carl Schmitt is born in Plettenberg, Germany (July 11)
- 1900–1907 Schmitt completes his secondary education at the *Humanistisches Gymnasium*, Attendorn
- 1907 Schmitt studies law at the University of Berlin
- 1907–1908 Schmitt studies law at the University of Munich
- 1908–1909 Schmitt studies law at the University of Strasbourg
Schmitt befriends Fritz Eisler
- 1910 Schmitt passes the first stage of his juridical training (*Erstes juristisches Staatsexamen*) at the University of Strasbourg
Schmitt completes his doctoral degree in law at the University of Strasbourg with a dissertation supervised by Fritz van Calker, entitled “Über Schuld und Schuldarten: Eine terminologische Untersuchung”
Schmitt begins the second stage of his juridical training at the *Oberlandesgericht Düsseldorf* (August)
- 1912 Schmitt publishes *Gesetz und Urteil: Eine Untersuchung zum Problem der Rechtspraxis*
Schmitt befriends the poet Theodor Däubler
- 1913 Schmitt publishes, with Fritz Eisler and under a pseudonym, *Schattenrisse*, a collection of parodies
Schmitt develops a close friendship with Hugo am Zehnhoff, subsequently minister of justice in Prussia, whom he credits with having taught him what it means to be a lawyer
- 1914 The death of Fritz Eisler leads to Schmitt's friendship with Georg Eisler, the brother of his close friend
World War I begins (July 28)
- 1915 Schmitt passes the second stage of his juridical training (*Assessorexamen*) (January)
Schmitt marries Pawla Carita Dorotić (February 20)
Schmitt begins military service at the *Stellvertretendes Generalkommando*, Munich (February 26)
Schmitt drafts *Bericht über das Belagerungszustands-Gesetz* for his superiors

- 1916** On leave from military service, Schmitt commences his *Habilitation* and a temporary lectureship in law as *Privatdozent* at the University of Strasbourg with a *Probeforlesung* titled “Die Einwirkung des Kriegszustandes auf das ordentliche strafprozessuale Verfahren” (February 16)
Schmitt completes the *Habilitation* in law at the University of Strasbourg with a dissertation entitled “Der Wert des Staates und die Bedeutung des Einzelnen”
Schmitt publishes *Theodor Däublers “Nordlicht”: Drei Studien über die Elemente, den Geist und die Aktualität des Werkes*
Schmitt publishes “Diktatur und Belagerungszustand: Eine staatsrechtliche Studie”
Schmitt begins a close friendship (which will end in 1933) with the author and editor Franz Blei
- 1917** Schmitt is promoted to *Assessor* in the *Stellvertretendes Generalkommando*, where he is now in charge of his own department (October 1)
Schmitt attends Max Weber’s lecture “Wissenschaft als Beruf” (“Science as Vocation”) at the University of Munich (November 7)
Schmitt begins a close friendship with the poet Konrad Weiss
- 1918** Schmitt befriends Ludwig Feuchtwanger, editor and executive director of the publishing house Dunker & Humblot
Schmitt publishes “Die Buribunken: Ein geschichtsphilosophischer Versuch”
Proclamation of the Weimar Republic (November 9)
World War I ends (November 11)
The University of Strasbourg is dissolved, and Schmitt loses his position (November 11)
- 1919** The German government relocates to the city of Weimar due to violent unrest in Berlin (January)
The first parliamentary elections in Weimar Germany are held. The democratic political parties gain a large absolute majority, and a center-left majority government (SPD, *Zentrum*, DDP) is formed under Reich chancellor Philipp Scheidemann (SPD) (*Weimarer Koalition*) (January 19)
Schmitt attends Max Weber’s lecture “Politik als Beruf” (“Politics as Vocation”) at the University of Munich (January 28)
The Weimar parliament convenes as a constituent assembly and unicameral parliament (February 6)
Friedrich Ebert (SPD) is appointed Reich president (February 13)
Schmitt’s health suffers due to the revolutionary situation and ongoing state of emergency in Bavaria (May)
The Treaty of Versailles is signed (June 28)
Schmitt declines a civil service position in the *Volkswohlfahrtsministerium* (Ministry of People’s Welfare)

- Schmitt begins a professional relationship with the macroeconomist Moritz Julius Bonn, the director of the *Handelshochschule*, who becomes a strong supporter
- Schmitt is appointed lecturer of law at the *Handelshochschule*, Munich (September 1)
- Schmitt publishes *Politische Romantik*
- 1920 The *Nationalsozialistische Deutsche Arbeiterpartei* (NSDAP) is founded (February 24)
- The “*Kapp Putsch*,” a failed attempt by right-wing forces to overthrow the Weimar Republic, takes place (March 13–17)
- The “*Ruhraufstand*,” a revolutionary workers’ revolt against the “*Kapp Putsch*” and attempt by left-wing forces to establish a dictatorship of the proletariat, fails (March 13–April 12)
- In the second parliamentary elections, the *Weimarer Koalition* loses the absolute majority, and a center-right minority government (*Zentrum*, DVP, DDP) is formed under Reich chancellor Constantin Fehrenbach (*Zentrum*) (June 6)
- Schmitt loses his position at the *Handelshochschule*, Munich (October 1)
- 1921 Schmitt begins a professional friendship with Rudolf Smend, the constitutional lawyer, who becomes a mentor
- Schmitt is appointed professor of law at the University of Greifswald (fall)
- Schmitt publishes *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*
- 1922 Schmitt is appointed professor of law at the University of Bonn (spring)
- Schmitt completes draft of *Der treue Zigeuner* (*The Loyal Gypsy*), a novella (February)
- Schmitt publishes *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*
- Schmitt republishes the first three chapters of *Politische Theologie* in a *Festschrift* for Max Weber
- Walter Rathenau is assassinated by right-wing forces, which preoccupies Schmitt (June 22)
- Hyperinflation destabilizes Germany (summer)
- Schmitt begins a brief friendship (which will end in 1925) with the writer and poet Hugo Ball, cofounder of the Dada movement in European art
- Schmitt befriends Erik Peterson, Karl Eschweiler, and other theologians; Blei serves as his most important interlocutor about Catholicism
- 1923 Schmitt publishes *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*
- Schmitt publishes *Römischer Katholizismus und politische Form*

- 1924 Schmitt publishes “Die Diktatur des Reichspräsidenten nach Art. 48 der Reichsverfassung”
In the third parliamentary elections, the left-wing and right-wing political parties gain significant support, and a center-right minority government (*Zentrum*, DVP, DDP) is formed under Reich chancellor Wilhelm Marx (*Zentrum*) (May 4)
In the fourth parliamentary elections, the democratic political parties gain, the left-wing and-right wing political parties lose some support, and a center-right majority government (DNVP, *Zentrum*, DVP, DDP, BVP) is formed under Reich chancellor Hans Luther (unaffiliated) (December 7)
- 1925 Schmitt publishes *Verfassungslehre*
The NSDAP is refounded with Adolf Hitler as party leader (February 26)
Reich president Ebert dies (February 28)
In the first presidential elections in Weimar Germany, General Paul von Hindenburg is elected Reich president (April 26)
The Treaty of Locarno is signed (October 16)
The NSDAP creates the *Schutzstaffel* (SS) as a subsidiary organization of the *Sturmabteilung* (SA) (November 9)
- 1927 Schmitt publishes “Der Begriff des Politischen”
- 1928 Schmitt is appointed professor of law at the *Handelshochschule*, Berlin
In the fifth parliamentary elections, the democratic political parties gain support, and a left-center-right majority government (SPD, *Zentrum*, DVP, DDP) is formed under Reich chancellor Hermann Müller (SPD) (May 20)
- 1929 Schmitt publishes *Der Hüter der Verfassung*
Schmitt publishes “Das Reichsgericht als Hüter der Verfassung”
Hitler appoints Heinrich Himmler *Reichsführer* (Reich leader) of the SS (January 6)
Schmitt begins a close professional friendship with the economist Johannes Popitz, a fellow academic-turned-practitioner who initially served and subsequently resisted the Nazi regime
- 1930 Reich chancellor Müller’s left-center-right majority government resigns due to internal disagreements; there is a de facto constitutional transition from parliamentarianism to presidentialism (March 27)
Heinrich Brüning (*Zentrum*) is appointed Reich chancellor, and a presidential government (Z, DVP, DDP, BVP, WP, DNVP, KVP) is formed (March 30)
Brüning persuades von Hindenburg to dissolve parliament by invoking Article 48 of the Weimar Constitution, inaugurating a steady rise in the use of presidential *Notverordnungen* (emergency decrees) to govern (July 18)

- In the sixth parliamentary elections, the democratic political parties incur heavy losses, the left-wing and right-wing political parties (especially NSDAP) gain significant support, and a presidential government is formed under reappointed Reich chancellor Brüning (September 14)
- Schmitt begins a friendship with the writer Ernst Jünger (fall)
- Schmitt receives an admiring letter from author and cultural critic Walter Benjamin, who acknowledges an intellectual debt to Schmitt's reflections on the state (December 9)
- 1931 Schmitt publishes *Der Hüter der Verfassung*
 Schmitt publishes "Die Wendung zum totalen Staat"
 Schmitt publishes "Die staatsrechtliche Bedeutung der Notverordnung, insbesondere ihre Rechtsgültigkeit"
 Schmitt receives, and declines, an offer to succeed Hans Kelsen (who took up a chair at the University of Cologne) as professor of law at the University of Vienna
- 1932 Schmitt publishes *Der Begriff des Politischen: Mit einer Rede über das Zeitalter der Neutralisierungen und Entpolitisierungen*
 Schmitt publishes *Legalität und Legitimität*
 Schmitt publishes "Die Verfassungsmäßigkeit der Bestellung eines Reichskommissars für das Land Preußen"
 In the second presidential elections, von Hindenburg defeats Hitler (NSDAP) and is elected to a second term as Reich president (April 10)
 Brüning resigns as Reich chancellor (May 30), and a presidential government (DNVP, unaffiliated) is formed under Reich chancellor Franz von Papen (unaffiliated) (June 1)
 In the so-called *Preußenschlag* (Prussia coup), von Papen persuades Reich president von Hindenburg to dissolve the government of Prussia and seizes power in the state (July 20)
 In the seventh parliamentary elections, the democratic political parties incur further losses, the NSDAP emerges as the strongest political party (July 31), and the presidential government continues under von Papen
 Schmitt serves as counsel for the German Reich in the case *Preußen contra Reich* at the *Staatsgerichtshof*
 Schmitt is appointed professor of law at the University of Cologne (September 19)
 The *Reichsgericht* (Constitutional Court) declares the *Preußenschlag* to have been partially unconstitutional (October 25)
 In the eighth parliamentary elections, the democratic political parties incur further losses, the NSDAP remains the strongest political party (November 6), and a presidential government is formed under Reich chancellor Kurt von Schleicher (unaffiliated) (December 3)

- 1933 Schmitt publishes *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit*
- Schmitt publishes "Das Gesetz zur Behebung der Not von Volk und Reich vom 24. März 1933"
- Schmitt publishes "Führertum als Grundbegriff des nationalsozialistischen Rechts"
- Schmitt publishes "Die deutschen Intellektuellen"
- Schleicher resigns as Reich chancellor (January 28), and a presidential government (NSDAP, DNVP, *Stahlhelm*) is formed under Reich chancellor Hitler (NSDAP) (January 30)
- Reich president von Hindenburg dissolves parliament (February 1)
- An arson attack on parliament results in the *Reichstagsbrand* (Reichstag fire) (February 27)
- Reich president von Hindenburg bestows extraordinary emergency powers on the Hitler government in the "Reichstag Fire Decree" (February 28)
- In the first parliamentary elections in Nazi Germany, the NSDAP secures a substantial (but not absolute) majority, and a presidential dictatorship (March 5) is formed
- Hitler government abolishes state governments and installs Reich commissars in their stead (March 5–10)
- The SS establishes Dachau concentration camp (March 22)
- The Nazi parliament adopts *Gesetz zur Behebung der Not von Volk und Reich* (Law for Rectification of the Distress of Nation and Reich), the so-called Enabling Act, formally establishing the Nazi dictatorship (March 23)
- Prompted by Popitz, Schmitt begins to contribute to the drafting of the *Reichsstatthaltergesetz* and to the law of criminal procedure (March 31)
- The NSDAP and affiliated organizations mobilize for a nationwide anti-Jewish boycott (April 1)
- The Nazi parliament adopts *Gesetz zur Wiederherstellung des Berufsbeamtentums* (Law for the Restoration of the Professional Civil Service), excluding most Jews and political opponents from the civil service (April 7)
- Schmitt refuses to support a petition seeking to prevent Hans Kelsen's removal from the law faculty at the University of Cologne, the sole faculty member to do so (April 18)
- Heinrich Göring establishes the *Geheime Staatspolizei* (Gestapo) (April 26)
- Schmitt joins the NSDAP (May 1)
- German student associations organize burnings of books by Jews and other presumed enemies of the state (May 10)
- Schmitt receives, and declines, an offer to succeed Gerhard Anschütz as professor of law at the University of Heidelberg (May)

Schmitt is appointed *Preußischer Staatsrat* by Hermann Göring (July 11)
 The Nazi parliament adopts *Gesetz gegen die Neubildung von Parteien*
 (Law against the Founding of New Political Parties), establishing a one-
 party state (July 14)

The Nazi parliament adopts *Gesetz zur Verhütung erbkranken Nachwuchses*
 (Law for the Prevention of Offspring with Hereditary Diseases), man-
 dating the forced sterilization of disabled persons (July 14)

Schmitt receives, and declines, an offer to become professor of law at the
 University of Munich (August)

Schmitt is appointed professor of law at the University of Berlin (October)

Nazi Germany leaves the League of Nations (October 14)

Schmitt becomes *Reichsgruppenleiter*, or chair, of the section “University
 Professors” of the *Bund Nationalsozialistischer Deutscher Juristen*
 (Association of National Socialist German Legal Professionals)
 (November)

1934

Schmitt publishes *Über die drei Arten des rechtswissenschaftlichen Denkens*

Schmitt publishes *Nationalsozialismus und Völkerrecht*

Schmitt publishes “Ein Jahr nationalsozialistischer Verfassungsstaat”

Schmitt publishes “Nationalsozialismus und Rechtsstaat”

Schmitt publishes “Nationalsozialistisches Rechtsdenken”

Schmitt publishes “Der Führer schützt das Recht: Zur Reichstagsrede
 Adolf Hitlers vom 13. Juli 1934”

Himmler is appointed head of Gestapo and of all police forces outside of
 Prussia (April 20)

Hans Frank appoints Schmitt editor of the *Deutsche Juristen-Zeitung*,
 Germany's most influential and respected law journal (June 1)

The “*Röhm Putsch*,” a violent purge by the SS of the leadership of the SA,
 the Nazi paramilitary organization, takes place, and select politicians
 are assassinated (June 30–July 2)

Von Hindenburg dies, and Hitler becomes Reich president (August 2)

Hitler abolishes the office of Reich president and declares himself *Führer
 des deutschen Reiches und Volkes* (Leader of the German Reich and
 People) (August 19)

Himmler establishes the *Inspektion der Konzentrationslager* (Inspectorate
 of Concentration Camps), the central SS administrative and managerial
 authority for all Nazi concentration camps (December 10)

1935

Schmitt publishes “Die Verfassung der Freiheit”

Schmitt publishes “Der Rechtsstaat”

The Nazi government adopts the *Reichsstatthaltergesetz* (Reich Governors
 Law) (January 30)

The Nazi government reintroduces military service, thereby violating the
 Treaty of Versailles (March 16)

- Hitler's government decrees the *Reichsbürgergesetz* (Reich Citizenship Law) and *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre* (Reich Citizenship Law for the Protection of German Blood and German Honor), the so-called Nuremberg Race Laws (September 15)
- 1936 Schmitt convenes the conference "Das Judentum in der Rechtswissenschaft" (October 3–4)
- Schmitt publishes "Faschistische und nationalsozialistische Rechtswissenschaft"
- Schmitt publishes "Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist"
- The Winter Olympic Games take place at Garmisch-Partenkirchen (February 6–16)
- Nazi Germany occupies the demilitarized Rhineland, thereby violating the Treaty of Versailles (March 7)
- Hitler appoints Himmler Chief of German Police (June 17)
- The SS establishes Sachsenhausen concentration camp (July 12)
- Nazi Germany intervenes in the Spanish Civil War (July 25)
- The Summer Olympic Games take place in Berlin (August 1–18)
- The *SD-Hauptamt des Sicherheitsdienstes der Reichsführung SS* (Security Service Main Office of the SS High Command) begins investigation of "Prof. Dr. Karl Schmitt" (October 4)
- Das Schwarze Korps*, the official, weekly newspaper of the SS, publishes the first of two articles calling into question Schmitt's Nazi credentials (December 3)
- Das Schwarze Korps* publishes the second of two articles calling into question Schmitt's Nazi credentials (December 10)
- 1937 Schmitt publishes "Totaler Feind, totaler Krieg, totaler Staat"
- Schmitt publishes "Der Staat als Mechanismus bei Hobbes und Descartes"
- The Nazi parliament extends the Enabling Law by four years (January 30)
- The SS establishes Buchenwald concentration camp (July 19)
- The Nazi propaganda exhibition "Entartete Kunst" ("Degenerate Art") opens in Munich (July 19–November 30)
- Hitler decides on a violent solution of the "Lebensraumfrage" ("The Question of Living Space") by 1943/1945 (November 5)
- The Nazi propaganda exhibition "Der ewige Jude" ("The Eternal Jew") opens in Munich (November 8)
- 1938 Schmitt publishes *Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines politischen Symbols*
- Schmitt publishes *Die Wendung zum diskriminierenden Kriegsbegriff*
- Schmitt publishes "Völkerrechtliche Neutralität und völkische Totalität"
- Nazi Germany annexes Austria (March 11–13)
- The SS establishes Flossenbürg concentration camp (May 3)

- The SS establishes Mauthausen concentration camp (August 8)
- Nazi Germany, Italy, Great Britain, and France sign the so-called Munich Agreement, forcing Czechoslovakia to surrender its border regions to Nazi Germany (September 29–30)
- The NSDAP and affiliated organizations organize a nationwide pogrom against Jews (November 9–10)
- The Nazi government issues *Verordnung zur Ausschaltung der Juden aus dem deutschen Wirtschaftsleben* (Decree on the Elimination of the Jews from Economic Life), barring Jews from all economic activities (November 12)
- The Nazi government issues *Verordnung über den Einsatz des jüdischen Vermögens* (Decree on the Utilization of Jewish property), forcing Jews to sell any and all of their possessions (December 3)
- 1939 Schmitt publishes *Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte: Ein Beitrag zum Reichsbegriff im Völkerrecht*
- Schmitt publishes “Der Reichsbegriff im Völkerrecht”
- Nazi Germany invades the remaining territory of Czechoslovakia and establishes the “Protectorate of Bohemia and Moravia” (March 15)
- The SS establishes Ravensbrück concentration camp (May 15)
- Nazi Germany invades Poland; World War II begins (September 1)
- The SS establishes the civilian prisoner camp (later concentration camp) Stutthof (September 2)
- Himmler establishes the *Reichssicherheitshauptamt* (RSHA) (Reich Security Main Office), led by Reinhard Heydrich and subsequently charged with coordinating the destruction of the European Jews (September 27)
- Nazi Germany annexes former Polish regions and establishes the *Generalgouvernement* (General Government) to administer these occupied territories (October 26)
- 1940 Schmitt publishes *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939*
- Schmitt publishes “Reich und Raum: Elemente eines neuen Völkerrechts”
- Schmitt publishes “Die Auflösung der europäischen Ordnung im ‘International Law’ (1890–1939)”
- Schmitt publishes “Raum und Großraum im Völkerrecht”
- Nazi Germany invades Norway and Denmark (April 9)
- Nazi authorities seal the Jewish ghetto in Lodz (April 30)
- Nazi Germany invades the Netherlands, Belgium, Luxembourg, and France (May 10)
- The SS establishes Auschwitz concentration camp (Auschwitz I) (May 20)
- The SS establishes Neuengamme concentration camp (June 4)
- Italy enters World War II as an ally of Nazi Germany (June 10)

- Nazi authorities seal the Jewish ghetto in Warsaw (November 15)
Hungary, Romania, and Slovakia become allies of Nazi Germany
(November 20–24)
- 1941 Schmitt publishes “Staatliche Souveränität und freies Meer: Über den
Gegensatz von Land und See im Völkerrecht der Neuzeit”
Bulgaria becomes an ally of Nazi Germany (March 1)
Nazi authorities establish and seal the Jewish ghetto in Krakow (March
3–20)
Nazi Germany and its allies invade Yugoslavia and Greece (April 6)
The SS establishes Gross-Rosen concentration camp (May 1)
The SS establishes Natzweiler-Struthof concentration camp (May 21)
Croatia becomes an ally of Nazi Germany (June 15)
Nazi Germany invades the Soviet Union, and mobile killing units
(*Einsatzgruppen*) embark on the coordinated mass killing of Jews and
other presumed enemies on Soviet territory (June 22)
Heydrich and RSHA are charged with developing plans for the implemen-
tation of the “Final Solution” of the “Jewish Question” (July 31)
Nazi authorities establish the Jewish ghetto in Bialystok (August 1)
Nazi authorities seal the Jewish ghetto in Kovno (August 15)
Himmler tasks SS General Odilo Globocnik with implementing
Aktion Reinhardt, the plan for the destruction of Jews in the General
Government (October 15)
Nazi authorities seal the Jewish ghetto in Riga (October 25)
Nazi authorities in the General Government establish extermination
camps in Bełżec, Sobibór, and Treblinka (November)
Nazi authorities establish Theresienstadt concentration camp (November 24)
Japan attacks the United States at Pearl Harbor (December 7)
Nazi authorities establish Chelmno extermination camp and begin mass
killing of Jews (December)
- 1942 Schmitt publishes *Land und Meer: Eine weltgeschichtliche Betrachtung*
Heydrich and RSHA convene the so-called Wannsee Conference in Berlin
to coordinate the administration of the Holocaust (January 20)
Nazi authorities establish Auschwitz-Birkenau concentration and exter-
mination camp (Auschwitz II) (March 1)
The large-scale deportation and systematic destruction of the European
Jews begins (March)
- 1943 Joseph Goebbels announces “*den totalen Krieg*” in a propaganda speech at
the *Sportpalast*, Berlin (February 18)
- 1944 British and U.S. troops invade Nazi-occupied France (June 6)
- 1945 SS authorities begin forced evacuations of many concentration camps, so-
called death marches, notably in Auschwitz (January 17)
Soviet troops liberate Auschwitz concentration camp complex (January 27)

- U.S. troops liberate Ohrdruf concentration camp, a subcamp of Buchenwald (April 4)
- British troops liberate Bergen-Belsen concentration camp (April 15)
- Hitler commits suicide (April 30)
- Schmitt is arrested at his home in Berlin-Schlachtensee by Soviet troops in (April)
- Nazi Germany surrenders unconditionally (May 7–9)
- Schmitt prepares *Das internationalrechtliche Verbrechen des Angriffskrieges und der Grundsatz "Nullum crimen, nulla poena sine lege,"* a legal opinion in support of the defense of Friedrich Flick, a German industrialist, at the International Military Tribunal (IMT) (August)
- Schmitt is arrested and interrogated by U.S. authorities in Berlin and spends almost twelve months in detention there (September 25)
- The trial of the major war criminals before the IMT at Nuremberg begins (November 20)
- Control Council Law No. 10 is adopted (December 20)
- 1946 Schmitt is released from his first U.S. detention (October 10)
- The IMT delivers its judgment (October 1)
- 1947 The U.S. military government establishes Military Tribunal III to try *United States v. Josef Altstoetter, et al.*, the so-called Justice Case, under Control Council Law No. 10 (February 13)
- Schmitt is rearrested and interrogated by U.S. authorities; he spends two months in detention in Nuremberg (March 19)
- Schmitt is released from his second U.S. detention (May 6) and retreats to Plettenberg
- Schmitt begins work on the *Glossarium* (August)
- Military Tribunal III delivers its judgment (December 3–4)
- 1949 Schmitt publishes "Amnestie—Urform des Rechts"
- The resurrected *Vereinigung der deutschen Staatsrechtslehrer* opposes Carl Schmitt's membership
- Otto Kirchheimer visits Schmitt in Plettenberg (December)
- 1950 Schmitt publishes *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47*
- Schmitt publishes *Donoso Cortés in gesamteuropäischer Interpretation: Vier Aufsätze*
- Schmitt publishes *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*
- 1952 *Academia Moralis*, a support network for Schmitt, is formally established
- 1953 Schmitt's isolation lessens and his intellectual contacts and travel increase
- On the occasion of Schmitt's sixty-fifth birthday, friends and supporters publish a bibliography in his honor (July)
- Schmitt assists Johannes Winckelmann with the corrections for the new edition of Max Weber's *Wirtschaft und Gesellschaft*

- 1954 Schmitt republishes *Verfassungslehre* (May)
Schmitt publishes “Im Vorraum der Macht”
- 1955 Schmitt delivers a rare public lecture, on Hamlet, at the *Volkshochschule*, an institution of adult education, in Düsseldorf
- 1956 Schmitt publishes *Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel*
- 1958 Schmitt publishes *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre*
- 1959 Schmitt publishes “Nomos—Nahme—Name”
On the occasion of Schmitt’s seventieth birthday, friends and supporters publish the first of two *Festschriften*, this one edited by Hans Barion, Ernst Forsthoff, and Werner Weber
- 1960 Schmitt publishes *Die Tyrannei der Werte: Überlegungen eines Juristen zur Wert-Philosophie*
- 1962 As founding editors, Ernst-Wolfgang Böckenförde and Roman Schnur establish the journal *Der Staat*, a counterpoint to the influential *Archiv des öffentlichen Rechts*
- 1963 Schmitt publishes *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen*
- 1968 On the occasion of Schmitt’s eightieth birthday, friends and supporters publish the edited collection *Epirrhosis*, the second of two *Festschriften*, this one edited by Hans Barion, Ernst-Wolfgang Böckenförde, Ernst Forsthoff, and Werner Weber
- 1970 Schmitt publishes *Politische Theologie II: Die Legende von der Erledigung jeder Politischen Theologie*
- 1971 Schmitt ends discussions with Propyläen-Verlag, Berlin, about a possible edition of his political writings
- 1978 Schmitt publishes “Die legale Weltrevolution: Politischer Mehrwert als Prämie auf juristische Legalität und Superlegalität,” his final article
- 1985 Schmitt dies in Plettenberg (April 7)

LIST OF CARL SCHMITT'S WRITINGS

NOTE: This list of publications is comprehensive but not exhaustive. It is arranged chronologically and across five sections: books and monographs, articles and essays, diaries, correspondence, and interviews. We have excluded minor articles and essays, including most book reviews, the majority of Carl Schmitt's contributions to newspapers, his poems as well as other occasional writings, and his less significant correspondence. Due to space constraints, we have provided only basic bibliographical information.

BOOKS AND MONOGRAPHS

- Über Schuld und Schuldarten: Eine terminologische Untersuchung* (1910)
Gesetz und Urteil: Eine Untersuchung zum Problem der Rechtspraxis (1912)
Schattenrisse (1913) (with Fritz Eisler)
Der Wert des Staates und die Bedeutung des Einzelnen (1914)
Theodor Däublers "Nordlicht": Drei Studien über die Elemente, den Geist und die Aktualität des Werkes (1916)
Politische Romantik (1919), translated as *Political Romanticism* (1986)
Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf (1921), translated as *Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle* (2014)
Politische Theologie: Vier Kapitel zur Lehre von der Souveränität (1922), translated as *Political Theology: Four Chapters on the Concept of Sovereignty* (1985)
Die geistesgeschichtliche Lage des heutigen Parlamentarismus (1923), translated as *The Crisis of Parliamentary Democracy* (1988)
Römischer Katholizismus und politische Form (1923), translated as *Roman Catholicism and Political Form* (1996)
Die Rheinlande als Objekt internationaler Politik (1925)
Die Kernfrage des Völkerbundes (1926)
Volksentscheid und Volksbegehren: Ein Beitrag zur Auslegung der Weimarer Verfassung und zur Lehre von der unmittelbaren Demokratie (1927)
Verfassungslehre (1928), translated as *Constitutional Theory* (2008)
Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre (1930)
Der Völkerbund und das politische Problem der Friedenssicherung (1930)
Der Hüter der Verfassung (1931), translated in part as *The Guardian of the Constitution* (2015)

- Freiheitsrechte und institutionelle Garantien der Reichsverfassung* (1931)
- Der Begriff des Politischen: Mit einer Rede über das Zeitalter der Neutralisierungen und Entpolitisierungen* (1932), translated as *The Concept of the Political* (1996)
- Legalität und Legitimität* (1932), translated as *Legality and Legitimacy* (2004)
- Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (1933), translated as *State, Movement, People* (2001)
- Das Reichsstatthaltergesetz* (1933)
- Fünf Leitsätze für die Rechtspraxis* (1933)
- Über die drei Arten des rechtswissenschaftlichen Denkens* (1934), translated as *On the Three Types of Juristic Thought* (2004)
- Staatsgefüge und Zusammenbruch des Zweiten Reiches: Der Sieg des Bürgers über den Soldaten* (1934)
- Nationalsozialismus und Völkerrecht* (1934)
- Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines politischen Symbols* (1938), translated as *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (1996)
- Die Wendung zum diskriminierenden Kriegsbegriff* (1938), translated as *The Turn to the Discriminating Concept of War* (2011)
- Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte: Ein Beitrag zum Reichsbegriff im Völkerrecht* (1939), translated as “The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers: A Contribution to the Concept of Reich in International Law” (2011)
- Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940), translated in part as *Four Articles, 1931–1938* (1999)
- Land und Meer: Eine weltgeschichtliche Betrachtung* (1942), translated as *Land and Sea* (1997 and 2015)
- Die Lage der europäischen Rechtswissenschaft* (1950)
- Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (1950)
- Donoso Cortés in gesamteuropäischer Interpretation: Vier Aufsätze* (1950)
- Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950), translated as *The “Nomos” of the Earth in the International Law of the “Jus Publicum Europaeum”* (2003)
- Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel* (1956), translated as *Hamlet or Hecuba: The Intrusion of the Time into the Play* (2009)
- Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- Die Tyrannei der Werte: Überlegungen eines Juristen zur Wert-Philosophie* (1960), translated as *The Tyranny of Values* (1996)
- Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen* (1963), translated as *Theory of the Partisan: Intermediate Commentary on the Concept of the Political* (2007)
- Politische Theologie II: Die Legende von der Erledigung jeder Politischen Theologie* (1970), translated as *Political Theology II: The Myth of the Closure of Any Political Theology* (2008)

- Das internationalrechtliche Verbrechen des Angriffskrieges und der Grundsatz "Nullum crimen, nulla poena sine lege"* (1994), translated as "The International Crime of the War of Aggression and the Principle 'Nullum crimen, nulla poena sine lege'" (2011)
- Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- Antworten in Nürnberg* (2000)
- Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)

ARTICLES AND ESSAYS

- "Über Tatbestandsmäßigkeit und Rechtswidrigkeit des kunstgerechten operativen Eingriffs" (1911)
- "Diktatur und Belagerungszustand: Eine staatsrechtliche Studie" (1916), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- "Die Einwirkungen des Kriegszustandes auf das ordentliche strafprozessuale Verfahren" (1916), reprinted in *Die Militärzeit 1915 bis 1919: Tagebuch Februar bis Dezember 1915* (2005)
- "Rechtsbegriff und Rechtsidee" (1916) [book review]
- "Recht und Macht" (1917), reprinted in *Die Militärzeit 1915 bis 1919: Tagebuch Februar bis Dezember 1915* (2005)
- "Die Sichtbarkeit der Kirche: Eine scholastische Erwägung" (1917), reprinted in *Die Militärzeit 1915 bis 1919: Tagebuch Februar bis Dezember 1915* (2005); translated as "The Visibility of the Church: A Scholastic Consideration" (1996)
- "Die Buribunken: Ein geschichtsphilosophischer Versuch" (1918), reprinted in *Die Militärzeit 1915 bis 1919: Tagebuch Februar bis Dezember 1915* (2005); translated as "The Buribunks: A Historico-Philosophical Meditation" (1999)
- "Politische Theorie und Romantik" (1921), incorporated into the second edition (1925) of *Politische Romantik* (1919)
- "Die Staatsphilosophie der Gegenrevolution" (1922), incorporated into both *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (1922) and *Donoso Cortés in gesamteuropäischer Interpretation: Vier Aufsätze* (1950)
- "Soziologie des Souveränitätsbegriffes und politische Theologie" (1923), reprinted from *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (1922)
- "Die geistesgeschichtliche Lage des heutigen Parlamentarismus" (1923), reprinted as *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923) and reprinted in part in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- "Der Begriff der modernen Demokratie in seinem Verhältnis zum Staatsbegriff" (1924), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)

- “Romantik” (1924), reprinted as the preface to the second edition (1925) of *Politische Romantik* (1919)
- “Die Diktatur des Reichspräsidenten nach Art. 48 der Reichsverfassung” (1924), incorporated into the second edition (1928) of *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (1921)
- “Reichspräsident und Weimarer Verfassung” (1925), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “‘Einmaligkeit’ und ‘gleicher Anlaß’ bei der Reichstagsauflösung nach Artikel 25 der Reichsverfassung” (1925), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Die Kernfrage des Völkerbundes” (1925) [book review], incorporated in part into *Die Kernfrage des Völkerbundes* (1926) and reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Neue Herrschaftsformen im Kampf um den Rhein” (1925), reprinted in part in *Die Rheinlande als Objekt internationaler Politik* (1925)
- “Zu Friedrich Meineckes ‘Idee der Staatsräson’” (1926) [book review], reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Der Gegensatz von Parlamentarismus und moderner Massendemokratie” (1926), incorporated into the second edition (1926) of *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923) and reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Gerhard Anschütz, ‘Die Verfassung des deutschen Reiches vom 11. August 1919’” (1926) [book review]
- “Das Ausführungsgesetz zu Art. 48 der Reichsverfassung (sog. Diktaturgesetz)” (1926), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Absolutismus” (1926), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Diktatur” (1926), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Der Begriff des Politischen” (1927), reprinted in part in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and in whole in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Donoso Cortés in Berlin (1848)” (1927), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and incorporated into *Donoso Cortés in gesamteuropäischer Interpretation: Vier Aufsätze* (1950)
- “Der Völkerbund und Europa” (1927), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Der Staat und das Recht auf den Krieg” (1928), reprinted in *Der Begriff des Politischen: Mit einer Rede über das Zeitalter der Neutralisierungen und Entpolitischen* (1932)
- “Der bürgerliche Rechtsstaat” (1928), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995); translated, in part, as “The Liberal Rule of Law” (2000)

- “Völkerrechtliche Probleme im Rheingebiet” (1928), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Wesen und Werden des faschistischen Staates” (1929) [book review], reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Der Hüter der Verfassung” (1929), incorporated into *Der Hüter der Verfassung* (1931)
- “Die europäische Kultur im Zwischenstadium der Neutralisierung” (1929), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Die Auflösung des Enteignungsbegriffs” (1929), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Zehn Jahre Reichsverfassung” (1929), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Der unbekannte Donos Cortés” (1929), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Donoso Cortés in gesamt-europäischer Interpretation: Vier Aufsätze* (1950)
- “Das Reichsgericht als Hüter der Verfassung” (1929), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Das Problem der innerpolitischen Neutralität des Staates” (1930), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Die politische Lage der entmilitarisierten Rheinlande” (1930), reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Einberufung und Vertagung des Reichstages nach Art. 24 Reichsverfassung” (1930)
- “Eine Warnung vor falschen politischen Fragestellungen” (1930)
- “Staatsethik und pluralistischer Staat” (1930), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940); translated as both “Ethics of State and Pluralistic State” (1999) and “State Ethics and the Pluralistic State” (2000)
- “Reichs- und Verfassungsreform” (1931)
- “Die Wendung zum totalen Staat” (1931), incorporated into *Der Hüter der Verfassung* (1931) and reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940); translated as “The Way to the Total State” (1999)
- “Wohlerworbene Beamtenrechte und Gehaltskürzungen” (1931), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Staatsideologie und Staatsrealität in Deutschland und Westeuropa” (1931)
- “Die neutralen Größen im heutigen Verfassungsstaat” (1931)
- “Die staatsrechtliche Bedeutung der Notverordnung, insbesondere ihre Rechtsgültigkeit” (1931), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Die Weimarer Verfassung” (1931)
- “Der Völkerbund” (1931), reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Grundsätzliches zur heutigen Notverordnungspraxis” (1932)

- “Legalität und gleiche Chance politischer Machtgewinnung” (1932), reprinted from *Legalität und Legitimität* (1932)
- “Der Mißbrauch der Legalität” (1932), reprinted in *Werkstatt—Discorsi: Briefwechsel 1967–1981* (2009) (with Hans-Dietrich Sander)
- “Ist der Reichskommissar verfassungsmäßig?” (1932)
- “Die Verfassungsmäßigkeit der Bestellung eines Reichskommissars für das Land Preußen” (1932)
- “Gesunde Wirtschaft im starken Staat” (1932), reprinted under a different title in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995); translated as “Strong State and Sound Economy: An Address to Business Leaders” (1998)
- “Plädoyer Carl Schmitts vor dem Staatsgerichtshof” (1932), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Inhalt und Bedeutung des zweiten Hauptteils der Reichsverfassung” (1932), reprinted under a different title in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Die Stellvertretung des Reichspräsidenten” (1933), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Weiterentwicklung des totalen Staates in Deutschland” (1933), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958); translated as “Further Development of the Total State in Germany” (1999)
- “Machtposition des modernen Staates” (1933), reprinted in *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (1958)
- “Das Gesetz zur Behebung der Not von Volk und Reich vom 24. März 1933” (1933)
- “Der Geist des neuen Staatsrechts” (1933)
- “Das gute Recht der deutschen Revolution” (1933)
- “Die deutschen Intellektuellen” (1933)
- “1 Jahr deutsche Politik: Rückblick vom 20. Juli 1932—Von Papen über Schleicher zum ersten deutschen Volkskanzler Adolf Hitler” (1933)
- “Staatsrat Univ.-Prof. Pg. Dr. C. Schmitt über den Staatsrat und die Führerfrage im nationalsozialistischen Gemeinwesen” (1933)
- “Frieden oder Pazifismus?” (1933), reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Führertum als Grundbegriff des nationalsozialistischen Rechts” (1933), reprinted from *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (1933)
- “Richtertum und Politik” (1933)
- “Die Ohnmacht des Liberalismus” (1933), reprinted from the second edition (1933) of *Der Begriff des Politischen: Mit einer Rede über das Zeitalter der Neutralisierungen und Entpolitiserungen* (1932)
- “Neue Leitsätze für die Rechtspraxis” (1933), reprinted as *Fünf Leitsätze für die Rechtspraxis* (1933)

- “USA und die völkerrechtlichen Formen des modernen Imperialismus” (1933), reprinted under a slightly different title in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Der Neubau des Staats- und Verwaltungsrechts” (1933)
- “Die Verfassungslage Deutschlands” (1933)
- “Ein Jahr nationalsozialistischer Verfassungsstaat” (1934)
- “Neuaufbau von Staat und Recht” (1934)
- “Das neue Verfassungsgesetz” (1934)
- “Nationalsozialismus und Rechtsstaat” (1934)
- “Die Logik der geistigen Unterwerfung” (1934)
- “Nationalsozialistisches Rechtsdenken” (1934)
- “Der Weg des deutschen Juristen: Ein Geleitwort” (1934)
- “Unsere geistige Gesamtlage und unsere juristische Aufgabe” (1934)
- “Der Führer schützt das Recht: Zur Reichstagsrede Adolf Hitlers vom 13. Juli 1934” (1934), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Der Vorbehalt beim Abschluß völkerrechtlicher Verträge” (1934) [book review], reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Auf dem Wege zum neuen Reich” (1934) [book review]
- “Gleichberechtigung und Völkerrecht” (1934), reprinted from *Nationalsozialismus und Völkerrecht* (1934)
- “Sowjet-Union und Genfer VB [Völkerbund]” (1934), reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Paktsysteme als Kriegsrüstung: Eine völkerrechtliche Betrachtung” (1935), reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Über die innere Logik der Allgemeinpakete auf gegenseitigen Beistand” (1935), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Die Rechtswissenschaft im Führerstaat” (1935)
- “Kodifikation oder Novelle? Über die Aufgabe und Methode der heutigen Gesetzgebung” (1935)
- “Die Verfassung der Freiheit” (1935), translated as “The Constitution of Freedom” (2000)
- “Was bedeutet der Streit um den ‘Rechtsstaat?’” (1935), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Der Rechtsstaat” (1935), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Die geschichtliche Lage der deutschen Rechtswissenschaft” (1936)

- “Sprengung der Locarno-Gemeinschaft durch Einschaltung der Sowjets” (1936), reprinted in *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Aufgabe und Notwendigkeit des deutschen Rechtsstandes” (1936)
- “Faschistische und nationalsozialistische Rechtswissenschaft” (1936)
- “Die siebente Wandlung des Genfer Völkerbundes: Eine völkerrechtliche Folge der Vernichtung Abessinien” (1936)
- “Die nationalsozialistische Gesetzgebung und der Vorbehalt des ‘ordre public’ im internationalen Privatrecht” (1936)
- “Vergleichender Überblick über die neueste Entwicklung des Problems der gesetzgeberischen Ermächtigungen (Legislative Delegationen)” (1936), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist” (1936)
- “Über die neuen Aufgaben der Verfassungsgeschichte” (1936)
- “Politik” (1936), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Totaler Feind, totaler Krieg, totaler Staat” (1937), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005); translated as “Total Enemy, Total War and Total State” (1999)
- “Der Begriff der Piraterie” (1937), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Der Staat als Mechanismus bei Hobbes und Descartes” (1937), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995); translated as “The State as Mechanism in Hobbes and Descartes” (1996)
- “Völkerrechtliche Neutralität und völkische Totalität” (1938), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005); translated as “Neutrality According to International Law and National Totality” (1999)
- “Das neue Vae Neutris!” (1938), reprinted in both *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940) and *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Neutralität und Neutralisierungen: Zu Christoph Steding, ‘Das Reich und die Krankheit der europäischen Kultur’” (1939) [book review], reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Der Reichsbegriff im Völkerrecht” (1939), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “*Inter pacem et bellum nihil medium*” (1939), adapted and expanded from *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940); reprinted as second corollary to the fifth edition (1963) of *Der Begriff des Politischen: Mit einer Rede über das Zeitalter der Neutralisierungen und Entpolitisierungen* (1932) and in

- Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1978* (2005)
- “Über die zwei großen ‘Dualismen’ des heutigen Rechtssystems: Wie verhält sich die Unterscheidung von Völkerrecht und staatlichem Recht zu der innerstaatlichen Unterscheidung von öffentlichem und privatem Recht?” (1939), reprinted in *Positionen und Begriffe im Kampf mit Weimar—Genf—Versailles, 1923–1939* (1940)
- “Reich und Raum: Elemente eines neuen Völkerrechts” (1940), incorporated into the third edition (1942) of *Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte: Ein Beitrag zum Reichsbegriff im Völkerrecht* (1939)
- “Die Raumrevolution: Durch den totalen Krieg zu einem totalen Frieden” (1940), reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
- “Die Auflösung der europäischen Ordnung im ‘International Law’ (1890–1939)” (1940), incorporated in part into *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950) and reprinted in *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969* (1995)
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PART I

INTRODUCTION

CHAPTER 1

“A FANATIC OF ORDER IN AN EPOCH OF CONFUSING TURMOIL”

*The Political, Legal, and Cultural
Thought of Carl Schmitt*

JENS MEIERHENRICH AND OLIVER SIMONS

INTRODUCTION

CARL SCHMITT was a leading thinker of the twentieth century. He was a theorist, a protagonist, and, above all, an antagonist. A conservative constitutional lawyer with a deep interest in matters of politics and culture, he wrote thought-provoking commentary on the human condition that was revered by some and reviled by others. During his long and eventful life—his work stretched from the beginning to almost the end of the twentieth century—Schmitt left a mark on four different incarnations of his native Germany: the absolutist regime that was Wilhelmine Germany, the failed republic of Weimar Germany, the authoritarian and totalitarian Nazi Germany, and the consolidated democracy of the Federal Republic of Germany.

Only a handful of theorists in history have survived as many radically different regimes as the controversial jurist from Plettenberg. Schmitt has influenced intellectual currents like few other Germans before him or since. Given his ever-broadening international appeal, some have been tempted to add Schmitt's name to the list of “German greats,” the list of internationally renowned thinkers of German pedigree that ranges from Immanuel Kant to Jürgen Habermas.

Schmitt was determined to leave a mark not only with his thought but also through his conduct. He was exceedingly driven in this quest—sometimes by considerations of power, at other times by matters of principle. Though repeatedly crippled by self-doubt,

Schmitt desperately wanted to succeed in life, to be someone. And he wanted to be *seen* to be someone.¹ Jacob Taubes called him a “striver from the ostracized minority of Catholics” (“*Aufstreber von der geächteten Minderheit der Katholiken*”; 1987, 75).² Hasso Hofmann has argued that nothing was more important to Schmitt “than constantly being ‘in touch with the times,’ locating the ‘intellectual place of the present’ in the process of history” (2002, 89). This quest for *Ortung*, or localization and orientation—a key term in Schmitt’s book *The “Nomos” of the Earth in the International Law of the “Jus Publicum Europaeum”*—may well have been one of the reasons he was drawn to positions in the echelons of power.

Despite a steadily growing appreciation of his writings in numerous disciplines, dealing with Carl Schmitt remains a challenge, for in addition to having been an incisive thinker, he was a committed Nazi and lifelong antisemite. In light of this increasingly well-documented fact, scholars continue to grapple with the question of what to make of the relationship between Schmitt’s thought and his conduct. As with any thinker, both dimensions of his persona were inextricably intertwined. Yet to what extent does one facet of his life invalidate or affect the other? Is it appropriate, or even possible, to make Schmitt’s thought usable for our time? As Benno Teschke recently asked, “Can we extricate—beyond either demonization or apologia—Schmittian insights from the odium of their association with Nazism?” (2011, 79). The thirty contributors to this Oxford Handbook have answered this question in very different ways.³

This framework chapter sets the stage for what is to come, but it is also an intervention in its own right that seeks to decenter the study of this most hyped thinker of the twentieth century. We advance two interconnected arguments. First, we argue that *the motif of order* is a powerful yet insufficiently utilized heuristic device for making sense of Schmitt’s thought. By placing the motif of order at its heart, we contradict the popular belief, articulated most recently by Jan-Werner Müller (2003), that no unifying thread runs through the jurist’s oeuvre. Although we do not propose to have found a master key for unlocking the many mysteries that are contained within Schmitt’s sprawling body of thought, we do think that much can be gained from searching for an overarching motif—that is, a salient recurring figure—that inspired and holds together the divergent strands of his thought.

Second, we argue that a *trinity of thought* is discernible in Schmitt’s writings comprised of his political, legal, and cultural thought. We establish intellectual connections across these three bodies of thought and trace the mutually constitutive relationships that exist among them. Schmitt’s thought, we propose, amounted to a veritable network of ideas about the sources of social order, the cement of society. Whenever Schmitt wrote about culture, he also addressed politics; whenever he wrote about politics, he also addressed law; whenever he wrote about law, he also addressed culture; and so forth. He mined these three defining spheres of his life as part of the same trajectory of *orderly thought*. We rely on the neologism to convey a dual meaning, namely the centrality in Schmitt’s oeuvre of a systematic (i.e., orderly) line of thinking in which the question of how to create—and maintain—social order also ranked supreme. In an attempt to analytically frame Schmitt’s trinity of thought, we have organized this introductory chapter around the motif of order.

Order as a Motif

In music theory, a motif is “the smallest structural unit possessing thematic identity” (White 1976, 26–27). We might say that in the social sciences, a theoretical motif is the shortest subdivision of a theoretical theme that still maintains its identity as an abstract idea. The motif of order in our argument fits this definition and recurs in the vast majority of Schmitt’s writings, albeit often indirectly. The concern with order, we argue, was Schmitt’s guiding motif, his *idée fixe*. We are nonetheless reluctant to claim that the idea of order amounts to more in Schmitt’s work—to a theme, for example. In music theory, a theme is a more complete artistic expression than a motif. For our purposes, a motif is the substrate of a theme (Dunsby 2002, 910). A brief look at Schmitt’s book *Dictatorship* (1921) helps illustrate the distinction. In it, Schmitt returned frequently to the motif of order, although the book addressed primarily the theme of dictatorship. His observations on the history and typology of dictatorship were the foundation for his argument in defense of commissarial dictatorship. The motif of order helped him unify the conceptual and historical sections of his account. In the analysis below, we provide many more examples of order as an overriding motif in Schmitt’s thought, highlighting the unifying function it served.

We believe that an integrated analysis of Schmitt’s orderly thought has the potential to illuminate new facets of his biography and intellectual output. Although we emphasize coherence at the expense of contradictions in Schmitt’s life and work, we are nevertheless mindful of the latter. A long line of scholars has commented on the inconsistencies in Schmitt’s oeuvre. It has even been suggested that this “foundational ambivalence” may be the principal draw for many of Schmitt’s readers (Lepsius 1994, 360). It would therefore be a distortion of the intellectual record to claim consistency for a body of work that evolved in anything but a straight line.⁴ But it is equally problematic to deny the existence of an underlying logic. Even though the themes of Schmitt’s many writings changed over the course of his life, the underlying motif—the logic connecting these themes—did not. We therefore conceive of Schmitt as a cartographer of orderly thought. He was taking the measure of the world. He mapped its political, legal, and cultural ideas and rearranged them on a new conceptual grid. The resultant trinity of his orderly thought was not a coincidental outcome; it was the result of a lifelong mapping exercise, the result of theoretical design.

The idea of turning to the motif of order to make sense of Schmitt’s convoluted canon is not entirely new. In 1957 Peter Schneider remarked that the idea of order was one of the “immovable reference points” of Schmitt’s thought (1957, 294). Three decades later Pasquale Pasquino (1986) returned to the centrality of order in the jurist’s writings. With our analysis we pick up where Schneider and Pasquino left off several decades ago. We dig more deeply than they were able to into the origins, nature, and manifestations of Schmitt’s orderly thought. We show that Schmitt’s oeuvre was centrally concerned with the determinants of orderly existence, but it was also a well-organized line of thinking, the emergence and evolution of which we trace in this chapter.

We locate the origins of Schmitt’s preoccupation with order in his socialization on the precipice of the modern age. Schmitt’s thinking turned to imagining possible—and

impossible—institutional solutions to the problem of social order in a time of “great transformation,” as Karl Polanyi (1957) famously dubbed it. Schmitt discarded as unworkable some models of political order (e.g., parliamentary democracy) while embracing others (e.g., commissarial dictatorship). He sought to eradicate the supposedly harmful influence of normativism from Germany’s legal order, and he labored hard to reconfigure the country’s cultural life by reviving an existentially meaningful social order to combat what George Lukács called the rise of “transcendental homelessness” (“*transzendente Obdachlosigkeit*”; 1994, 6).⁵ In all the meaningful spheres of his life—politics, law, culture—Schmitt assembled theoretical building blocks to construct a conservative bulwark against what he saw as the abomination of liberal modernity.

Although we believe in the importance of identifying guiding motifs in Schmitt’s thought, we are wary of arguments that overstate their significance. The tendency to offer interpretative master keys is exemplified by the influential yet problematic work of Heinrich Meier, who asserted that the essence of Schmitt’s thought is to be found in his political theology (2011; see also Wacker 1994). Friedrich Balke and other scholars have shown persuasively why Meier’s approach is inadequate for locating the overarching “problem” that motivated Schmitt (Balke 1996, 15–18).⁶ According to Balke, what Meier has produced is mere “*Abklatsch*,” poor copy, the result of too literal a reading of Schmitt’s writings (18). If we are serious about seeking a core of Schmittian thought, we must look beyond the themes that Schmitt himself names, because his use of language was directed in almost equal measure to illuminating the phenomena he studied and rendering them obscure.

In short, it is imperative to look at the underneath of things in Schmitt’s work. This introductory chapter is an attempt to do just that. By drawing attention to the underlying motif of order, we also hope to inspire more intellectual exchange than currently exists across the many diverse literatures in which Schmitt has come to feature prominently. It is an invitation to think of Schmitt anew, beyond orthodoxies and across boundaries, disciplinary and otherwise.

AN ANTAGONISTIC LIFE

Schmitt was an adversary of many, an enemy to some. This accounts for at least some of the attraction—and unease—the name Carl Schmitt still inspires. Because others have pored over the facts of his life, we draw just a basic sketch here.⁷ Schmitt was born in Plettenberg, Germany, on July 11, 1888, to a devoutly Catholic family. He received his university education in law at universities in Berlin, Munich, and Strasbourg. He completed his doctorate at the latter in June 1910 with a dissertation on the question of criminal guilt: “*Über Schuld und Schuldarten*” (“On Guilt and Types of Guilt”). That summer, Schmitt relocated to Düsseldorf to start the applied portion of his legal training. In the next eight years he published six monographs, three on questions of law, including the *Bericht über das Belagerungszustand-Gesetz*, a report on the law of the state of siege that

his military superior commissioned in September 1915; one on politics; and two on literature. In this period of his life, Schmitt was more taken with the changing character of culture than with law or politics. The latter were his bread and butter, the former his passion. Schmitt’s most notable literary publication from this time was *Theodor Däublers “Nordlicht”* (*Theodor Däubler’s “The Northern Light”*), a close reading of an important epic poem. Three years earlier, in 1913, under the pseudonym Johannes Negelinus, Schmitt had already coauthored *Schattenrisse* (*Silhouettes*), a collection of parodies. In 1917 he added “Die Buribunken” (“The Buribunks”), a satire of detached intellectualism, to his growing list of cultural writings.

Following Germany’s defeat in World War I and the founding of the Weimar Republic, Schmitt lost his teaching position at the University of Strasbourg, where he had begun work on his *Habilitation*, but was appointed lecturer of law at Munich’s *Handelshochschule*, a business school. In the early 1920s, having published three more books in the meantime—*Politische Romantik* (*Political Romanticism*), *Die Diktatur* (*Dictatorship*), and *Politische Theologie* (*Political Theology*)—Schmitt first took up a position at the University of Greifswald and then accepted a professorship of law at the University of Bonn. In Bonn he witnessed the assassination of Foreign Minister Walter Rathenau by right-wing forces and the hyperinflation that destabilized Weimar Germany in the summer of 1922. Shaken by these signs of the times, Schmitt devoted more of his thinking to questions of governance. His publications in the next three years reveal a man who had begun to fundamentally rethink the meaning of politics. In 1923 he published *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (*The Crisis of Parliamentary Democracy*) and *Römischer Katholizismus und politische Form* (*Roman Catholicism and Political Form*); two years later his magnum opus in law, *Verfassungslehre* (*Constitutional Theory*), came out.

The best known of Schmitt’s works from this period of maturation was his next book, *Der Begriff des Politischen* (*The Concept of the Political*), published in 1927, shortly before his next professional move, to the *Handelshochschule* in Berlin. Finally Schmitt was at the center of things, in the capital, where he had longed to be. Friends opened doors for him, and Schmitt’s counsel was sought in the turbulent constitutional crisis of the early 1930s, most formally when he represented the federal government in the case of *Preußen contra Reich*. His brief was to defend the constitutionality of the so-called *Preußenschlag* (“Prussia coup”), the controversial political move in which Reich Chancellor Franz von Papen persuaded President Paul von Hindenburg to dissolve the subnational government of Prussia and seize power there in July 1932. It was this performance on the public stage that earned Schmitt the moniker “*Kronjurist der Papendiktatur*,” the crown jurist of Papen’s presidential dictatorship (Hiller 1932; see also Meierhenrich n.d.). After the publication of his book *Legalität und Legitimität* (*Legality and Legitimacy*), also in 1932, and after a brief stint on the law faculty of the University of Cologne, where he served alongside Hans Kelsen, Schmitt took up a chair at the University of Berlin on October 1, 1933, following his appointment as *Preußischer Staatsrat* (Prussian state councilor) on July 11, his forty-fifth birthday.

By that time he had already made a name for himself as a rabid defender of Nazi values. In the immediate aftermath of the Nazi “legal revolution” and Hitler’s seizure of the title of Reich chancellor, Schmitt left no doubt about where his political allegiance lay. With what Germans call *vorausseilenden Gehorsam*, or anticipatory obedience, he celebrated the “transition to the one-party state” (“*Übergang zum Ein-Parteien-Staat*”), the “spirit” (“*Geist*”) and “good law” of the “German revolution” (“*das gute Recht der deutschen Revolution*”), and Hitler as Germany’s first “people’s chancellor” (“*Volkskanzler*”) in Nazi newspapers such as the *Westdeutscher Beobachter* and the *Völkischer Beobachter* (Schmitt 1933a; 1933b; 1933c). One of his most notorious and loathsome publications was a piece entitled “Die deutschen Intellektuellen” (“The German Intellectuals”; 1933d). In it, Schmitt praised the expulsion of intellectuals such as Albert Einstein, denying that they ever belonged to the German people (“*zum deutschen Volk haben sie niemals gehört*”) or to the German spirit (“*auch nicht zum deutschen Geist*”; 1933d). Gleefully he welcomed the news that these foreign bodies had now been expelled. Schmitt wrote elatedly that “Germany spat them out for all eternity” (“*Aus Deutschland sind sie ausgespien für alle Zeiten*”; 1933d). The diatribe is surpassed in notoriety only by his article “Der Führer schützt das Recht” (“The Führer Protects the Law”) the next year.

In mid-May 1933 Schmitt recorded a notorious event in his diary: the “burning of the disgraceful books” (“*Verbrennung der Schandbücher*”; quoted in Mehring 2009, 323, entry of May 17, 1933). When this description, which was made in private, is read alongside similar pronouncements he made about the promise of the Nazi project and a litany of antisemitic remarks, it is difficult to sustain the still-influential argument that Schmitt was just a fellow traveler, a careerist turncoat who joined the ranks of the new order for instrumental gain, not because he believed in Nazi principles (for a comprehensive analysis, see Meierhenrich n.d.). And this was just the beginning. In the period 1933–1936, Schmitt published forty-seven popular and academic articles defending and legitimating the Nazi regime.

But Schmitt not only wrote, he also *acted* in support of the new order by helping it build some of its institutional foundations. He contributed to the drafting of the *Reichsstatthaltergesetz* (Reichsstatthalter law) and the new law of criminal procedure. In recognition of his order-sustaining thought and conduct, he was chosen, among other things, as *Reichsgruppenleiter* (or chair) of the university professors’ section of the *Bund Nationalsozialistischer Deutscher Juristen* (Association of National Socialist German Jurists). However, after several years of climbing the Nazi professional ladder, Schmitt’s political career came to an abrupt end. On October 4, 1936, the Security Service Main Office of the SS High Command (*SD-Hauptamt des Sicherheitsdienstes der Reichsführung SS*) began a clandestine investigation of Schmitt. Within a few months he had been dismissed from all of his public posts except his professorship. His sudden downfall was the result of intra-Nazi competition over ownership of the mantle of the crown jurist. The mudslinging was all the more harmful because Schmitt’s Nazi credentials were called into question in a very public manner. His rivals supported the publication of several harmful portrayals of him in *Das Schwarze Korps*, the official

weekly of the SS (Anonymous 1936a; 1936b). This very public shaming tied the hands of Schmitt’s supporters in the Nazi state, including those of Hermann Göring, who had made Schmitt Prussian state councilor just a few years earlier.

However, in the wake of his fall from Nazi grace, Schmitt did not choose a life of “internal emigration” (“*innere Emigration*”). Although he no longer possessed formal political power, he never truly stopped supporting the totalitarian regime. He returned to the theory of the state, a topic he had tackled explicitly at the beginning of his academic career, notably in *Der Wert des Staates und die Bedeutung des Einzelnen* (*The Value of the State and the Significance of the Individual*). In 1937, on the occasion of the 300th anniversary of the publication of René Descartes’s *Discours de la méthode*, Schmitt published a noteworthy essay on the state as mechanism in the theories of Thomas Hobbes and Descartes (1936/1937). This proved to be an intermediate step to the publication, in 1938, of *Der Leviathan in der Staatslehre des Thomas Hobbes* (*The Leviathan in the State Theory of Thomas Hobbes*).

During the next seven years Schmitt was busy preparing a series of publications on international law and related themes. He published eighteen titles in this period, excluding his major summation, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (*The “Nomos” of the Earth in the International Law of the “Jus Publicum Europaeum;”* hereinafter *The “Nomos” of the Earth*), which did not appear until after the war. His twin concerns—Hobbes and international law—were intimately related. Schmitt used his engagement with the former to make a case for the development of the concept of the Reich in his study of the latter. Building on this new concept of politico-legal order, he developed his *Großraum* theory. Advanced most fully in the 1939 *Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte* (“The *Großraum* Order of International Law with a Ban on Intervention for Spatially Foreign Powers”), Schmitt’s tentative solution to the problem of international order hinged on the reterritorialization of the world, the creation of culturally homogenous and spatially expansive territories that would be governed by concrete (and local or regional) facts instead of abstract (and global) norms: “*Reichs* in this sense are the leading and bearing powers whose political ideas radiate into a certain *Großraum* and which fundamentally exclude the interventions of spatially alien powers into the *Großraum*” (2011, 101). Inspired by the U.S. Monroe Doctrine, Schmitt, in a politically less sensitive arena of the Nazi academy, used this ordering principle in his continuing work on the problem of social order.

More specifically, his *Großraum* theory addressed questions Schmitt had raised but left unanswered a year previously in *Die Wendung zum diskriminierenden Kriegsbegriff* (*The Turn to the Discriminating Concept of War*). His spatial theory had the advantage of being compatible with, and legitimating, Nazi international ambition. Schmitt undoubtedly “envisioned a European *Großraum* in which Germany would stand as the pre-eminent power—the *Reich*” (Hooker 2009, 136). As he insisted, “The action of the *Führer* has lent the concept of our *Reich* political reality, historical truth, and a great future in international law” (Schmitt 2011, 111). It is not at all surprising therefore that U.S. prosecutors at the postwar International Military Tribunal (IMT) at Nuremberg were keen

to look more closely at the role Schmitt had played in the preparation of “aggressive war” during World War II (Quaritsch 2000; Bendersky 2007; Meierhenrich n.d.).

From a distance, it certainly seemed as if Schmitt might have been the architect of Nazi international law. He had endeavored to garner support for his policy-oriented perspective at numerous talks around the country, especially in 1940, when he delivered lectures in Bremen, Kiel, Rostock, Halle, Naumburg, Cologne, and Berlin (Mehring 2009, 404). His lecture tour was yet another attempt to make his presence—and intellectual prowess—known to the faces of the “Third Reich.” However, Nazis better situated than Schmitt, such as Reinhard Höhn and Werner Best, rejected his arguments and advances. Because Schmitt had opted for a certain degree of vagueness in his spatial theory, the recriminations were less severe this time (Bendersky 1983, 255–256).

His last major wartime publication was *Land und Meer* (*Land and Sea*, 1942). Told as a story to his daughter, the stylistically unusual book was a renewed meditation on the spatiality of international order, which Schmitt continued after the war in *The “Nomos” of the Earth* (see Giaccaria and Minca 2016). *Land and Sea* led to his abandonment of the concept of the Reich. *Nomos* was the neologism that replaced it (Mehring 2009, 430–431). Schmitt’s choice of literary genre in this preliminary study coincided with—and performed for all to see—his retreat from the intellectual front lines inside the Nazi state.

In the final days of World War II, in April 1945, Schmitt was briefly arrested and interrogated by Soviet troops. Later that year, U.S. military authorities arrested him and detained him in Berlin and Nuremberg. Because in the international perception Schmitt was “Hitler’s lawmaker,” the question of his individual responsibility for international crimes arose, especially in the context of the newly created IMT (Sherratt 2013, 92–103, esp. 101; Meierhenrich n.d.). After eighteen months of investigations and interrogations by various U.S. authorities, Schmitt was released on May 6, 1947 (see also Quaritsch 2000). He had spent nearly fourteen months in detention since the end of the war, a fact that he neither understood nor ever forgot.

His postwar life in Plettenberg was active. Dirk van Laak, Jan-Werner Müller, and Christian Linder have shown that Schmitt did not retreat into “the security of silence” (“*die Sicherheit des Schweigens*”), as he had so melodramatically announced he would upon exiting the IMT (Laak 2002; Müller 2003; Linder 2008; 2016). Quite the contrary: Schmitt wrote and talked, talked and wrote. He had a need for “publicity” (“*Publizität*”), for the aura that the act of publication had previously bestowed on him.⁸ Schmitt had a secondary presence in the fledgling democratic regime; he was out of view, yet he was on people’s minds. From the rural depths of Westphalia, he nourished a conservative intellectual community. His peripheral location in postwar Germany made possible the construction of a loose network of intellectually and ideologically like-minded personalities. Regular visitors included constitutional lawyers such as Ernst-Wolfgang Böckenförde (who later became a prominent constitutional court judge), influential historians such as Reinhart Koselleck (who subsequently pioneered the field of *Begriffsgeschichte*, or conceptual history), conservative journalists such as Johannes Gross, and public intellectuals such as Ernst Jünger and Armin Mohler. This network, a veritable epistemic community, encouraged Schmitt to continue his scholarly

work—one of its several *Festschriften* for the fallen jurist was grandly titled *Epirrhosis*, or “encouragement”—and even set up a registered society, the *Academia Moralis*, to collect donations for the fallen jurist (Barion et al. 1968; see also Laak 2002, 52–63; Schmitz 1994). Over time foreign visitors, too, found their way to the boondocks. Schmitt documented many of these encounters, and the ideas to which they gave rise, in hundreds of letters and in a private notebook—the *Glossarium*—which he kept in addition to his diaries from 1947 to 1958 (Mehring 2009, 458). That his home, named San Casciano after the villa in which Niccolò Machiavelli spent his exile from the Florentine Republic, evolved into a travel destination for a certain type of postwar European intellectual eased Schmitt’s gripes with the times somewhat. However, this did not stop him from decrying the “tyranny of values” to which he saw himself and his circle subjected (Schmitt 1960).

Despite his complaints, or perhaps because of them, Schmitt wrote with abandon. In 1950 he published two important books, *Ex Captivitate Salus*, his self-satisfied reflections on the years of detention, and the already mentioned *The “Nomos” of the Earth*, his most important postwar work. But soon thereafter Schmitt abandoned the study of international law. The study of literature, especially of Shakespeare, was what preoccupied him during much of the remainder of his life. This rekindled an interest that had lain dormant since his student days. With a typical blend of panache and melodrama, he described himself in this transitional phase of his life as “the King Lear of constitutional law” (“*der King Lear des öffentlichen Rechts*”; quoted in Mehring 2009, 501). His turn to Shakespeare resulted in the publication of the book *Hamlet oder Hekuba* (*Hamlet or Hecuba*) in 1956.

Schmitt’s literary studies were a function of his search for historical archetypes for his own fate (Laak 2002, 77).⁹ But he also returned to two other themes of his Weimar years: the nature of the political and the role of theology in it. He published *Theorie des Partisanen* (*Theory of the Partisan*) in 1963 and *Politische Theologie II* (*Political Theology II*) in 1970. Many of Germany’s postwar intellectuals followed the gradual rehabilitation of Schmitt with concern, most prominent among them Jürgen Habermas (see Habermas 1989, 128–139; Becker 2003; and Specter 2016). Yet Schmitt’s Weimar-era writings enjoyed widespread appeal among Germany’s countercultural students. The rejection of the supposed trappings of representative democracy struck a chord on the left, where Schmitt’s concern with authenticity was also en vogue (most recently, see Felsch 2015, 203–205, 211). His work was anthologized in a leftist reader, and an extended conversation with the Maoist Joachim Schickel appeared as a radio broadcast in 1969 (Schickel 1970; see also Schickel 2008). Slowly an “intellectual normalization” of Schmitt’s work set in, driven in part by the conservative *Frankfurter Allgemeine Zeitung*, one of Germany’s most influential dailies (Assheuer 2012). However, Habermas scored one victory: he successfully blocked Jacob Taubes’s attempt to include Schmitt’s writings in a new (and subsequently hugely successful) theory imprint at the Suhrkamp publishing house (Felsch 2015, 213; see also Müller-Dohm 2014, 145–146). Had Taubes’s plan succeeded, the so-called Schmitt renaissance of the 1990s might have happened considerably sooner; because of Suhrkamp’s affordable paperback editions, no other publisher has had a greater influence on the intellectual life of postwar Germany.

Schmitt published his last article in 1978. In it he returned to the theme of legality and legitimacy. His final years were filled with heartbreak and decrepitude. Schmitt's daughter, Anima, passed away in 1983, and he developed dementia and other illnesses. Schmitt died on April 7, 1985, in the town where he was born. He was ninety-six.

ORDERLY THOUGHT

The eminent historian Hans-Ulrich Wehler once described Carl Schmitt as “a fanatic of order in an epoch of confusing turmoil” (“*ein Ordnungsfanatiker in einer Epoche turbulenter Wirren*”; 2003, 491), a fairly apt summation of a complicated life. The overarching project that cuts across Schmitt's many interventions into political, legal, and cultural affairs was his attempt to come to terms with the problem of social order. “The problem of social order,” writes Robert Bates, “is a classic one, and it has been posed in many forms. In political science, it is sometimes cast as a tension between private interests and the public good, between rights and obligations, or between the individual and the collectivity” (1983, 19).¹⁰ In Schmitt's case, the fixation on the problem of social order was both an intellectual concern and private affliction (Meierhenrich 2016). These twin motivations caused him to embark on a long and winding road of (self-)exploration, an intellectual search in different corners of knowledge that netted interrelated (if not always explicitly connected) insights about the determinants of all kinds of social order: political, legal, cultural.

Thinking Orderly

According to the *Oxford English Dictionary*, the noun “order,” among other things, refers to “the overall state or condition of something.”¹¹ The word can also connote “the state in which the laws or rules regulating the relationship of individuals to the community, and the public conduct of members within a community, are maintained and observed and authority is obeyed.” In its general sense, the noun “order” captures “the condition in which everything has its correct or appropriate place, and performs its proper functions.” In this understanding, order is a “force for harmony and regularity in the universe.”¹²

During the time Schmitt was attending university and undergoing legal training, the term “*Ordnung*,” the German word for “order,” became a favorite of right-wing intellectuals in the Weimar Republic (Breuer 2001, 12). The timing was not accidental. Zygmunt Bauman has described the onset of modernity as “a time when order of the world, of the human habitat, of the human self, and of the connection between all three is reflected upon; a matter of thought, of concern, of a practice that is aware of itself, conscious of being a conscious practice and wary of the void it would leave were it to halt or merely relent” (1991, 5). Though the onset of modernity preceded the onset of democracy in

Weimar Germany, it was the conflagration and destructiveness of the first modern and global war—World War I—and the steady rationalization and bureaucratization and democratization of the world in the early twentieth century that impressed upon many observers, including Schmitt, modernity’s all-encompassing force and real-world effects. While the publication of Hobbes’s *Leviathan* in 1651 is seen by some as the birth of the consciousness of order, the carnage of global conflict heightened this awareness exponentially.¹³ The problem of social order came to be perceived with a new and greater urgency as societies tried to avert anarchy and chaos.

But what does it mean to think about order—and did it mean the same at the beginning of the twentieth century? According to the philosopher Paul Weiss, to order is “to subordinate, to encompass from a particular perspective: it is to restrict entities in a definite way. Order allows one to systematize them, and hence to understand and control them” (1968, 18). The historian Frieder Günther has coined the term “radical-order thinking” (“*radikales Ordnungsdenken*”) to describe the tendency in Germany’s conservative circles in the period 1920–1960 to imagine institutional solutions to the problem of social order that eschewed any of the supposed trappings of liberalism (2011). Most of the proposed solutions sought to create a purified society that reinstated the norms and values of Wilhelmine Germany at the zenith of its empire.¹⁴ Schmitt’s famous case for “concrete-order thinking” (“*konkretes Ordnungsdenken*”) was a specific manifestation of a much broader intellectual phenomenon. With the neologism, Schmitt sought to repudiate the abstract-order thinking of many of his Weimar contemporaries, notably Max Weber. This was in line with broader efforts in the humanities to inscribe to the notion of order a higher truth, to create distance from the formal conceptions of order that the fledgling social sciences were promulgating. By using the old theological notion of the *ordo rerum*, or “the order of things,” conservative theorists such as Schmitt hoped to fight the historicism and relativism that modernity had ushered in (Raphael 2004, 119–120). Thus, they engaged in the sacralization of existing orders, for example the attribution of religious or otherwise metaphysical meaning to orderly arrangements they deemed institutionally desirable. In so doing, they invested them with an existential worth, “a worth that transcends rational discussion” (Dyzenhaus 1997a, 45).

A second semantic development is noteworthy. At around the same time, conservative economists such as Franz Böhm, Walter Eucken, and Alfred Müller-Armack appropriated the notion of *ordo*, which was enjoying a renaissance at the heart of neoscholasticism in Catholic thought. Now known as “Ordoliberals,” Böhm and his colleagues called for a strong state that would put in place a stable institutional framework within which market competition could play out in Weimar Germany. Though liberal minded in economic matters, the Ordoliberals were not democrats; what they argued for was “authoritarian liberalism” (Heller 1995).

From 1933 to 1945 all kinds of disciplines contributed to the discourse about order, though they often referred to rather different things. A plethora of new terms emerged, including “ideational order” (“*geistige Ordnung*”), “people’s order” (“*Volksordnung*”), “spatial order” (“*Raumordnung*”), and “racial order” (“*Rassenordnung*”). As Lutz Raphael has shown, the term order was used to justify a plethora of interventions into everyday life (2004, 129).

Scholars in the natural sciences, the social sciences, and the humanities contributed equally to this homogenization of different life-worlds. The semantics of order was radicalized in various ways. Thinking in terms of social pathologies became the norm, for example. The substance of the concept of order was grounded in biology, specifically race. The trope of “form” (“*Gestalt*”) was popularized to underwrite the supposed importance of the conceptual fusion of the idea of order and concrete existence, the integration of form and substance. Metaphors of “totality” (“*Ganzheit*”) abounded. Universal categories were viewed with suspicion and abandoned. The search for “essences” (“*Wesenheiten*”), especially of peoples, was de rigueur. The construction of ever-more orderly visions (e.g., *Volksgemeinschaft*, or people’s community) proceeded apace (Raphael 2004, 128–133; Steber and Gotto 2014). These and related language practices were designed to make exclusionary talk—and action—palatable and even desirable. It was the foundation for what became Nazi social engineering.

It is worth pointing out that Schmitt was not doctrinaire in his solutions to the problem of social order. The only requirements he seemed to have were that a given order be stable, durable, and capable of inspiring existential meaning; that is, that it imbued the lives of its members with an authentic, non-instrumental purpose. There is an affinity here with Arnold Gehlen’s institutional theory. Gehlen, a contemporary of Schmitt’s, argued that humans were “*Mängelwesen*” (“flawed beings”) who depended on at least a modicum of form, of institutional structure, for the creation and maintenance of social order: “If one smashes the institutions of a people, all of the fundamental uncertainty, the willingness to transgress, man’s chaotic nature will be unleashed” (Gehlen 1986, 23). In Gehlen’s argument, culture was this institutional structure. Schmitt was similarly pragmatic, but he also looked to politics and law as order-producing structures for a stable life. Whereas *the good life* was a staple of premodern thought, *the stable life* became the referent of modern (think Hobbes) and anti-modern (think Schmitt) theorists alike, the only difference being that the former were also interested in *the free life* (think John Locke), while the latter generally were not.

Paradoxically, given Schmitt’s virulent anti-modernism, the practice of ordering, of categorically and institutionally rearranging entire realms of life, is a product of the march of modernization. As Bauman notes, “Among the multitude of impossible tasks that modernity set itself and that made modernity into what it is, the task of order (more precisely and most importantly, of *order as a task*) stands out—as the least possible among the impossible and the least disposable among the indispensable; indeed, as the archetype for all other tasks, one that renders all other tasks mere metaphors of itself” (1991, 4). It is no wonder that Schmitt felt it necessary to devote a lifetime to thinking about the task of ordering the world.

Although Schmitt was not talented at drawing up integrated blueprints for any type of order, his theoretical proclivities are indicative of a lifelong fascination, obsession even, with getting right the determinants of *all kinds* of orders (Neumann 1988, 567 n56). In an attempt to analytically frame Schmitt’s thought about order(s), we distinguish four *ordering practices* in his work. We first tackle Schmitt’s practice of categorical ordering, his analytical efforts to render the world comprehensible through concepts and classifications.

Distinguo ergo sum

The principle of *distinguo ergo sum*, once the motto of duelists, played an important role in Schmitt's approach to concept formation. As Helmut Lethen writes, “where Schmitt's *distinguo ergo sum* resounds, fuzzy contours suddenly clear” (2002, 168). For Schmitt, the ability to reach clear distinctions (“*klare Unterscheidungen*”) was the essence of classical thought, a tradition to which he was beholden (Schmitt 2009c, 11).¹⁵ In *Glossarium*, he noted that “the first precondition of the ability to arrive at good definitions is a rare ability: to exclude what cannot be circumscribed” (Schmitt 1991, 169, entry of June 22, 1948). Schmitt was a master of exclusion. But whenever he was not in full command of his masterly skill, despair quickly reared its head. Here is an example from July 19, 1948: “I am not in command of what penetrates into my consciousness . . . I therefore am unable . . . to distinguish what is in my power and what is not, and, on the basis of this distinction, master the one and accept the other” (1991, 180). Schmitt tried to preempt this lack of control in both his thought and his life by resorting to categorically unequivocal distinctions. “Using the principle of *distinguo*,” Lethen remarked, “the decisionist draws a line to mark off the spheres of what he can, and cannot, master” (2002, 183). Bauman put it more drastically: “The typically modern practice, the substance of modern politics, of modern intellect, of modern life, is the effort to exterminate ambivalence” (1991, 7).

As a semantic instrument, categorization can underwrite any imagined order. As Bauman maintains, “Language strives to sustain . . . order and to deny or suppress randomness and contingency” (1991, 1). Schmitt used conceptual language precisely to this end. Indeed, the principle of *distinguo* was for Schmitt the “proper foundation of both political and personal identity: ‘I think, therefore I have enemies; I have enemies, therefore I am myself’” (Müller 2003, 56). In his *Glossarium*, Schmitt asserted that “the indeterminacy of the enemy creates anxiety.” For him, “there is no other kind of anxiety, and it is the nature of anxiety to sense an indeterminate enemy.” In response to anxiety, says Schmitt, it is incumbent upon “reason” (“*Vernunft*”) to “determine the enemy” (“*den Feind zu bestimmen*”). With the help of this response, which Schmitt argued also invariably involved a process of “determining the self” (“*Selbstbestimmung*”), anxiety ceases and all that might remain is fear (“*Furcht*”) (1991, 36, entry of October 31, 1947).

But not everything was about enemies for Schmitt. It stands to reason that *any* form of categorization—not just its most extreme variant—provided an element of psychological relief for him, a sense of harmony and regularity that served as a counterpoint to the feeling of “powerlessness” (“*Ohnmacht*”) of which he so often wrote in his diary (2005a, 107, entry of August 8, 1915). Lethen remarks that “in the diary Schmitt repeatedly proclaims his favorite motto—*distinguo ergo sum*—but also knows that the certainty it suggests is illusive” (2002, 182). In 1915, a time in his life that was characterized by recurring bouts of depression and existential fears, for example, Schmitt proclaimed that the practice of “categorization” (“*Einteilung*”) represented nothing short of “the purpose of life” (“*der Sinn des Lebens*”; 2005a, 31, entry

of March 21, 1915). It is also telling, however, that his anxiety appears to have been assuaged whenever he engaged in an exclusionary categorical act such as stigmatizing persons based on their purported lack of desirability or their possession of undesirable attributes.¹⁶ A close affinity between categorizing and “othering” seems to have existed in Schmitt’s work.

His capacity to come to terms with the specter of what he perceived as chaos in its concrete form was limited, which is why, we suspect, Schmitt turned as a first resort to the abstract practice of categorical ordering. Categorical ordering was the foundation for his other, substantive ordering practices, his efforts to order the realms of the political, the legal, and the cultural, of which more below. Schmitt’s deconstruction and reconstruction of concepts was a necessary first step (and sometimes the only step he took) in the development of his polycentric thought. He was an exemplar of the decisionist as a conceptual type: “The power of definition had been Schmitt’s elixir, the axis of his sovereign consciousness” (Lethen 2002, 175).

The “other” of order. “Without the negativity of chaos,” according to Bauman, “there is no positivity of order; without chaos no order” (1991, 7; see also Anter 2004, 43–50). This insight helps account for Schmitt’s long-standing fascination with the “other” of order, that which any theorist of order fears: disorder. For him, both collectivities and conditions could represent the other. The tropes of the other of order in any life are plentiful; they include ambiguity, ambivalence, confusion, incoherence, and undefinability (Bauman 1991, 7). For Schmitt, and for many other conservatives of his time, the other of order was “the miasma of the indeterminate and unpredictable. The other is the uncertainty, that source and archetype of all fear” (Bauman 1991, 7). Conceptualizing the other of order also requires a conception of the agents of disorder, or worse, of chaos and even anarchy. The more comprehensive a given vision of order, the more important is this act of thinking the exclusion (Kollmeier 2007, 36).

Schmitt gained a clear understanding of who—and what—he was up against. In his public life he identified real and imagined adversaries; they ranged from romantics to liberals to moderns to assimilated Jews. In his private life he lived in an “erotic state of exception” (“*erotischer Ausnahmezustand*”; Mehring 2009, 235). These tumultuous encounters were both unsettling and productive for Schmitt. He had to think about the other of order—about disorder—if he was ever going to be successful in identifying the determinants of social order. In conceptual terms, as we shall see, the inseparable relationship between order and disorder was related to Schmitt’s reasoning in antinomies.

The practice of categorical ordering was most obvious in the formation of concepts. Schmitt was both careful and careless with concepts. He was careful in the sense that he made sure to maximize the polemical impact of his conceptual innovations. He was careless in that he was not interested in minimizing conceptual ambiguity when defining his terms. Definition was not a pressing concern for Schmitt. Arriving at an exciting formulation was often more rewarding than producing an exacting one. And conceptual ambiguity, paradoxically, was often a plus. As David Dyzenhaus writes, “Schmitt usually drew back from a decisive clarification of his conclusions, I think both out of a genuine

obsession with the arcane and the aphoristic and because he did not want to reveal his hand too clearly” (1997a, 41). The fact that some of Schmitt’s concepts cannot be pinned down is one of the reasons for their continued appeal. They can—and do—mean different things to different people. The fact that the aesthetic appeal of Schmitt’s concepts often trumps their explanatory power has amplified their reach. Democrats as well as autocrats have been fond of them, rightists as well as leftists. Because of their ostensible timelessness, Schmitt’s concepts have traveled across time and space, leaving indelible impressions on dynamics and languages of contention the world over.¹⁷ This is somewhat surprising in light of Schmitt’s call for a “sociology of concepts” that reflects usage in a concrete setting, what he called “the general state of consciousness” of a given time and place (2005b, 45).

A few years later, in his critique of Hugo Preuß, the principal architect of the Weimar Constitution, Schmitt elaborated: “All political concepts arise out of a concrete polarity of foreign or domestic politics [*aus einem konkreten, außen- oder innenpolitischen Gegensatz*] and without these suppositions are only misunderstood, meaningless abstractions” (1930, 5). He continued more provocatively: “Every political concept is a polemical concept. It has a political enemy in mind and, with respect to its intellectual rank, intellectual force, and historical significance, it is determined by this enemy. Words such as ‘sovereignty,’ ‘freedom,’ *Rechtsstaat*, and ‘democracy,’ obtain their precise meaning only through a concrete antithesis” (5). Timo Pankakoski has shown that for Schmitt concepts not only had to spring from a concrete political, legal, or cultural situation; they also had to be aimed at a particular target, usually a collectivity (2010, 753).

Schmitt’s way with words was tied to the motif of order in two ways. First, he engaged in categorical ordering because of an expressive impulse to categorize the world. By simplifying the world, Schmitt made it more comprehensible and, as a result, more manageable. When the nature of politics, for example, is reduced to an inherent and existential conflict between friend and foe, institutional solutions to the problem of political order that emphasize legislative debate over executive decision will seem inadequate and the case for more drastic, even extremist, solutions compelling. In this example, Schmitt’s conceptual reductionism can be said to have been indispensable for his political decisionism.

He also engaged in categorical ordering because of an instrumental impulse to change the world. It was ordering for the purpose of more order, of other orders, of simpler and more authentic orders. Schmitt often remarked on the utility of concepts as weapons, especially in political conflicts. In addition to an innate (and socially and historically reinforced) impulse to make sense of the world in order to better comprehend it and find his place in it, Schmitt embraced the strategic use of concepts. He knew that his categorical ordering of the world could help him recast political, legal, and cultural spaces of contention, as well as access to these. Schmitt’s method of concept formation, as Müller writes, “was ideological in the sense of aiming at directing political action, and establishing power and dominance over his opponents” (1999, 62).

Schmitt did not invent the language of extreme categorization; it was the wont of both progressive and conservative intellectuals in Weimar Germany. But his talent was the

ability to think in semantic antitheses that were evocative and memorable. His invention of concepts that were “perspectively occupiable” (Koselleck 1995, 344) meant that he was noticed during his lifetime—and continues to be noticed today.

When Schmitt first embarked on his conceptual project, the significance of concepts for the purposes of explanation and understanding was a cutting-edge concern in the fledgling social sciences. The publication in 1922 of Weber’s magisterial *Wirtschaft und Gesellschaft* (*Economy and Society*) was the culmination of a conceptual turn in the recently founded discipline of sociology begun by Auguste Comte, Ferdinand Tönnies, and Emile Durkheim. In it, Weber singled out and defined a series of basic concepts of sociology in order to introduce analytical rigor into the study of social phenomena. He implored scholars to adopt a “more correct (thus perhaps seemingly pedantic) form of expression” [“*etwas korrekterer (eben deshalb freilich vielleicht pedantisch wirkender) Ausdrucksweise;*” Weber 1972, 1] when formulating concepts. All of this was in the service, according to Weber, of erecting a “thinking order of empirical reality” (“*denkenden Ordnung der empirischen Wirklichkeit;*” 1985, 156). This methodological turn in the social sciences did not bypass Schmitt. It most certainly inspired (or awakened) his fondness for categorization, even if his approach to concepts was very different from that of his admired, if distant, teacher. For one, Schmitt had little use for Weber’s insistence on the correct pedantic expression. His conceptual toolkit was built on the precept that formulations had to be truthful in a metaphysical sense, not just in an analytical sense. His was a quest for classical clarity, for a restoration and tightening of conceptual boundaries (Weimayr 1999, 63). In a time of confusing turmoil, Schmitt experienced conceptual order as orientation (Kröger 1988, 163).

A key dimension of Schmitt’s conceptual thought was his penchant for binaries. Because every social order consists not just of substance but also of forms (of which concepts are but one example), the proper conceptualization of the world—the creation of semantic order—was of central importance to Schmitt’s vision of social order (Freund 1980, 328–329). The imagination of order qua concepts was, for him, the first step toward its attainment in the real world. Following are a few examples culled from Schmitt’s categorical universe.

In *Der Wert des Staates und die Bedeutung des Einzelnen* (*The Value of the State and the Significance of the Individual*), he introduced one of the most important antinomies of his categorical thought: the binary “abstraction/concreteness” (Schmitt 2004a, 41). The binaries “activity/passivity” in *Political Romanticism* and “organic/mechanistic” from a 1929 essay appended to the 1932 addition to *The Concept of the Political* pushed in the same theoretical direction (1986, 116–117; 2007b, 95). Better known from Schmitt’s political thought are the binaries “democracy/parliamentarism,” “norm/decision,” and “sovereign dictatorship/commissarial dictatorship.” Schmitt’s legal thought also employed conceptual opposites; “center/periphery,” “decree/statute,” “legal determinacy/legal indeterminacy,” “legality/legitimacy,” “rule/exception,” and “state/Reich” come to mind. Schmitt’s cultural thought is similarly replete with conceptual antinomies. Among other phenomena, he juxtaposed “myth/history,” “*Nahme/Name*,” “land/sea,” and “tragedy/play,” to name but a few.

Schmitt’s concept of the political, “the elevation of an adjective into a singular noun,” is one of his most enduring contributions to political thought (Jay 2010, 77). This particular example of categorical ordering had emotional significance for Schmitt, but it also illustrates his deep-seated analytical drive. “With the claim that ‘the political’ had ‘a concept,’” writes Martin Jay, “went the implication that it was a categorical mistake and perhaps even a dangerous one at that, to conflate ‘the political’ with anything else, say, the social, the economic, the aesthetic, the legal, and perhaps most important of all, the moral. So that those political theories that did so were somehow not living up to the pure conceptual meaning of the term” (2010, 77). Schmitt never entirely abandoned his scientific interest in the conceptual method. Some of his writings, particularly *Dictatorship* and *The Concept of the Political*, are grounded, at least superficially, “in etymology and a historicist view of concepts, which foreshadowed some of the central concerns of the German school of conceptual history” (Müller 1999, 62).

But aside from the *analytical* ordering functions concepts fulfilled, Schmitt was convinced that their true significance lay in the *political* ordering functions they served.¹⁸ He described his *Begriffspolitik*, his conceptual politics, as follows:

All political concepts, images, and words have a polemical meaning; they refer to a concrete opposition [“*konkrete Gegensätzlichkeit*”] and are tied to a concrete situation [“*konkrete Situation*”], the ultimate consequence of which is a grouping into friends and enemies (manifesting in war or revolution), and become empty and ghostlike abstractions when this situation no longer obtains. Words like state, republic, society, class as well as sovereignty, *Rechtsstaat*, absolutism, dictatorship, plan, neutral or total state, etc. are incomprehensible if one does not know who *in concreto* is to be “hit” [“*getroffen*”], “fought” [“*bekämpft*”], “negated” [“*negiert*”], and “refuted” [“*widerlegt*”] with such a word (Schmitt 2009c, 29).¹⁹

Shortly thereafter, in the year of his Nazi turn, Schmitt pronounced on the programmatic side of his conceptual project, exclaiming with self-evident satisfaction: “We are rethinking the concepts of law. . . . We are on the side of things to come” (“*Wir denken die Rechtsbegriffe um. . . . Wir sind auf der Seite der kommenden Dinge*”; 1934a, 229).

Schmitt was first and foremost a theorist of preservation. Just as “English and American traditions of mind and society,” foremost among them Edmund Burke, “stirred against French innovating fury after 1790,” Schmitt and his conservative contemporaries steadfastly railed against the modernizing fury after 1918 (Kirk 1952, 187). Jacques Derrida, whose discovery of Schmitt contributed to the jurist’s reception by the Left in the late twentieth century, once speculated about why Schmitt’s diagnoses of the interwar period possessed captive power: “As though the fear of seeing that which comes to pass take place in effect had honed the gaze of this besieged watchman,” Derrida wrote, “lucidity and fear . . . drove this terrified and insomniac watcher to anticipate the storms and seismic movements that would wreak havoc with the historical field, the political space, the borders of concepts and countries, the axiomatics of European law” (1997, 107; see also Bates 2005, esp. 17–21). As a “watcher,” Derrida surmised, Schmitt was

“more attuned than so many others to the fragility and ‘deconstructible’ precariousness of structures, borders and axioms that he wished to protect, restore and ‘conserve’ at all costs” (1997, 107).

Because of Schmitt’s concern with functioning orders, he was very adept at diagnosing faults with existing orders. He railed trenchantly and with some success against liberalism (a political order), positivism (a legal order), and modernism (a cultural order). He dissected these orders with verve. As Guy Oakes points out, “Schmitt was the consummate ‘prosecutorial’ thinker and all his major works were developed as attempts to destroy positions he rejected” (1986, xii). But processes of theoretical construction and deconstruction are two sides of the same activity: a quest for order. As humans, we take things apart in order to understand why they do not work, often with an eye to reconstructing them. Most destructive processes (think interventions and revolutions) are not directed against order as such but are aimed at substituting one order for another.

One of the major appeals, then and now, of Schmitt’s thought is its parsimony, itself an achievement of categorical ordering. The conceptual reduction of complex phenomena to their supposed essence can contribute to understanding. This, after all, is the conceit of game theory. However, any conceptually excessive simplification of life—whether political, legal, or cultural—also raises the specter of the fallacy of bifurcation. This logical fallacy obtains when a binary distinction or classification is presented as an exhaustive depiction of a given phenomenon despite the fact that alternative representations are possible. Also known as the “black or white fallacy” and the “either/or fallacy,” the fallacy of bifurcation is one of omission. It usually takes the following form:

Premise: There are only two options: x and y.

Conclusion: Because x is false, y must be true.

By reducing the universe in question to binaries, this conceptual strategy can lead to fallacious conclusions that are not borne out by empirical reality. It certainly did in Schmitt’s case, for as we have seen, he built much of his scholarly reputation on the back of intriguing—but fallacious—binaries. To take but the most famous of his categorical contributions, by declaring that the concept of the political revolves around the distinction between friend and enemy, Schmitt removed from consideration the alternative possibility that the political sphere could be inhabited by social agents whose actions are motivated by neither friendship nor enmity but by neutrality or indifference or yet other motivations. Schmitt’s authoritative declarations were intended to manufacture homogeneity and certainty—to create semantic order. Stylistically, evidence for this quest can be gleaned from the language of the first lines in his major works (Anter 1994, 163). These opening salvos often contained the essence of the analyses to come, their quotable argument. They performed ostensible truths about the topics under investigation. They were deigned to impose order on a wide-open intellectual field. Andreas Anter has termed this analytical procedure, after literary theorist Mikhail Bakhtin, Schmitt’s strategy of

“the authoritative word” (Anter 1994, 160–164). The sovereignty of many of Schmitt’s textual beginnings continues to be order-producing to this day. The opening sentences of Schmitt’s most famous works are almost always quoted verbatim, and they quickly divide readers into supporters and opponents. And yet despite his performative utterances, the semantic order that Schmitt’s practice of categorical ordering conjured is far from stable. As Raphael Gross has argued, “the aura emanating from his work and person . . . is not at all nourished by a clarity of ideas. To the contrary: his special powers of attraction rested much more strongly on a downright provocative pseudoclarity of concepts open to all kinds of interpretations, and in the impenetrability of his person” (2000, 3).

We now turn to the substance of ordering as practice. As already noted, Schmitt’s orderly thought was polycentric. It was oriented toward—and produced separate reflections on—three distinct spheres of social life: politics, law, and culture. Although we do not claim that it is possible to distill the essence of Schmitt’s oeuvre, to find a single key to his thought, we do believe that noticeable theoretical threads exist that tie together his many contributions to disparate literatures.

Political Ordering

Schmitt’s political thought was centrally focused on the institutional foundations of political order. Across his sprawling oeuvre, he analyzed a series of very different institutions—from the Catholic Church to dictatorship to the sovereign state to the Reich—in order to meet the challenges of what he called “the political.” Finding the perfect ordering principle for this (in his view) most fundamental of social realms was a lifelong quest. This particular ordering practice was political in two senses of the word. It was *about* politics, but it was also an intervention *into* politics. Another way of saying this is that Schmitt’s habitus was that of a theoretical partisan, not (or not primarily) that of a theoretical analyst. This is not to deny the sophistication and scholarly value of some of his work, but merely to highlight that Schmitt, unlike some contemporaries, such as Weber, was less interested in explanation and understanding than in diagnosis and prescription. Schmitt was a normative institutionalist (Meierhenrich 2016). His overriding objective was not just to interpret the world, but also to change it.

Below we analyze (some of) the institutions that Schmitt, at one point or another, believed could contribute to the task of political ordering. But before we can do so, we must focus on the thing that was to be ordered: the political.

The political of the concept. Of all the concepts that Schmitt made famous, none looms larger than that of “the political.” Several commentators have seen in it a key to understanding Schmitt’s theoretical canon as a whole. Reinhard Mehring has described the concept of the political as “a fundamental center” of and a summary device for Schmitt’s work (2003, 8), and Ernst-Wolfgang Böckenförde, Schmitt’s most respected

student, has argued that the foregrounding of “the political unity of a people” makes comprehensible the constitutional theory of his former teacher:

It is a premise of Schmitt’s political thought that it is not the constitution which forms the state but, rather, the state which facilitates setting up a constitution. This premise necessarily follows from the concept of the state as a political unity. As a political unity—i.e., a unity of power and peace, vested with a monopoly of coercive power in domestic affairs—the state is something *factually* given; it is given first as a concentration of power. In addition to this—and this seems especially important to me—the relative homogeneity of the people is also factually given rather than a normative postulate or something produced by compliance with the constitution. . . . The legal constitution—as well as the obedience to, and application of, its normative understanding—does not constitute the state; it is much more the case that the state, as a political unity, is the presupposition of constitutional validity. . . . The constitution is not a contract, but a decision. More precisely, it is a decision about the type and form of the political unity. (Böckenförde 1998, 42–43)

As with so many of Schmitt’s categories, the notion of the political was an interventionist concept. Schmitt deployed it to conquer—and occupy—semantic terrain. Most immediately, it was an attempt to seize the theoretical high ground in the debate of the 1920s over the nature of the state and its role in the creation and maintenance of political order.

Schmitt’s elusive opening sentence in *The Concept of the Political*—“The concept of the state presupposes the concept of the political” (2007a, 19)—was a salvo aimed directly at Georg Jellinek’s *Allgemeine Staatslehre* of 1900, the most important Wilhelmine-era publication on the theory of the state. It was a provocative restatement of Jellinek, who had argued the opposite: that the concept of the political presupposed the concept of the state: “‘Political’ means ‘statist’” (“*Politisch* heißt ‘staatlich’”; Jellinek 1900, 5). Jellinek was adamant that the realm of the political was not thinkable without “the imaginary of the state” (Loughlin 2010, 192–194).

Schmitt believed that the theoretical relationship between the political and the state was in dire need of clarification: “The state . . . appears as something political, the political as something pertaining to the state—obviously an unsatisfactory circle” (2007a, 20). In an attempt to square the circle, Schmitt subordinated the state to the political. This theoretical move was in recognition of Schmitt’s perception that the state was declining in significance. He no longer believed that the “state-form” was “the center of politics” or that the state was “synonymous with political order” (Galli 2015, 2).²⁰ He did not want to give up on the state, but he believed it was necessary to rethink its role in relation to the creation and maintenance of political order. This involved a transfiguration of the liberal idea of the state. Schmitt believed that “an efficacious order” was one that “would be mobile and not static, open and not closed, tragic and not pacified, transitional and not definitive” (3). What this summation by Carlo Galli highlights is the importance for Schmitt of relating institutional form to lived reality. Without such a fusion, Schmitt was convinced, any public representation of private subjectivities by the state would be inadequate. His causal logic was simple: no authority without representation. This insight

inaugurated what Schmitt referred to as the transition “from the concept of the state to the concept of the political” (“*vom Begriff des Staates zum Begriff des Politischen*,” quoted in Schönberger 2003, 42).²¹

By substituting the term “the political” for the more conventionally used “politics,” Schmitt created ideological distance between himself and liberal theorists of political order whose equation “politics = party politics” he despised (2007a, 32). The belief of liberals in politics as a sphere of cooperation rather than one of confrontation was alien to Schmitt. It had created “the age of neutralizations and depoliticizations,” as he put it in a 1929 eponymous essay (2007b). This development was disastrous for the task of solving the problem of social order because, in Schmitt’s interpretation, all of the solutions generated by a political system that “rests on compromise . . . are in the end temporary, occasional, never decisive” (Strong 2007, xv). The activity of “politics,” for Schmitt, was tied to modernity and rationality, while the activity of “the political” was tied to tradition and mythology. The modern, rational compulsion for form had hollowed out not only the idea of politics, but also its institutions. A misplaced faith in institutional formality (e.g., liberal norms and procedures) was responsible, in Schmitt’s view, for the production of meaningless politics, which for him meant a set of activities that were incapable of inspiring existential or metaphysical orientation. Chantal Mouffe has borrowed from the language of Martin Heidegger in her appropriation of Schmitt’s distinction between “politics” and “the political,” associating the former with “the ‘ontic’ level” and the latter with “the ‘ontological’ one” (2005, 9). Writes Mouffe: “By ‘the political’ I mean the dimension of antagonism which I take to be constitutive of human societies, while by ‘politics’ I mean the set of practices and institutions through which an order is created, organizing human coexistence in the context of conflictuality provided by the political” (9). Or, put another way, “the ontic has to do with the manifold practices of conventional politics, while the ontological concerns the very way in which society is instituted” (8–9). In this useful definition, Schmitt was not just concerned with the political, as is often claimed, but *also* with politics. The fact that Schmitt distinguished between the operation of the concept of the political at the macro level of governance and the role of “secondary concepts of the political” at the micro level is often overlooked. For he definitely acknowledged the salience of “more banal forms of politics,” as he called them. Though characterized by the occasional “antagonistic moment,” whether in the form of “tactics,” “competitions,” or “intrigues,” however, the resulting confrontations were merely “parasite- and caricature-like configurations” of the friend/enemy distinction (2007a, 30). For someone who prided himself on bringing concreteness to theory, Schmitt’s rendering of the nature of contentious politics was exceedingly abstract. As Jay has pointed out, “like the phenomenological reduction by Edmund Husserl,” Schmitt’s concept of the political “assumed that the *eidōs* or essential idea can be revealed by bracketing all the specific manifestations of political activity” (2010, 79).

Two themes stand out in Schmitt’s thought about the nature and demands of the political: political unity and constituent subjectivity (Galli 2015, 2; see also Galli 1996, 733–837). Tied to the motif of order, they are discernible in virtually all of his so-called political writings, thus creating a degree of “permanence within Schmitt’s thought”

(Galli 2015, 2). If we zoom out from some of the specific institutions—for example, state, dictatorship, Reich—for treatments of which Schmitt is well known, it quickly becomes clear that the themes of political unity and constituent subjectivity appear over and over in his writings. They lurk just beneath the surface in this quotation from *The Concept of the Political*: “The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping” (2007a, 29). Interestingly, Schmitt’s concept of the political, despite its rejection of liberalism’s procedural definition of politics, still hinged on a formal definition, not a substantive one. His logic was thus: “This [concept] provides a definition in the sense of a criterion and not as an exhaustive definition or indicative of substantial content” (26). Continued Schmitt: “The political can derive its energy from the most varied human endeavors, from the religious, economic, moral, and other antitheses. It does not describe its own substance, but only the intensity of an association or disassociation of human beings whose motives can be religious, national (in the ethnic or cultural sense), economic, or of another kind and can effect [*sic*] at different times different coalitions and separations” (38).

At the core of this conceptualization is the assumption that the political is everywhere, to be found in any social interaction that reaches a certain level of intensity. Schmitt’s broad understanding of the political is functionally equivalent to Michel Foucault’s concept of power. In *The History of Sexuality*, Foucault famously conceptualized power “as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization” (1990, 92). Schmitt, too, was concerned with “force relations,” and he also noted the transmutability of the phenomenon with which he was concerned. The political lay beyond politics. Governing the political, Schmitt insisted, required an ordering of unordered, unstable, and unbalanced societal forces. He surmised that few institutions could muster the infrastructural and symbolic power (to borrow a key term from Pierre Bourdieu) necessary to complete the task.

Schmitt’s definition of the political did not tie this criterion of intensity to the concept of the state, which is why, in the mid-1930s and beyond, he increasingly examined alternative institutional arrangements that would be able to accommodate his existential understanding of the political, a formal conception he never gave up on. What Christopher Schönberger has called “the moral core” of Schmitt’s concept of the political, that is, its contribution to the identity formation of groups, can be achieved by institutions *other than* the state, a theoretical possibility that Schmitt explored at length, including later in life, when he recognized the centrality of nongovernmental institutions in the constitution of political identities (Schönberger 2003, 41–42; Meierhenrich 2016). Immediately related, at a more fundamental level, to this process of constitution was Schmitt’s valorization of political activity. As one observer noted, “Schmitt’s theoretical reflections are born from the exigencies of practice” (Galli 2015, 3). In contradistinction to Kelsen (1925) and other leading voices in the legal subfield of *Staatslehre* (state theory), Schmitt valued concreteness over abstraction. Jo Eric Khushal Murkens summarizes the intellectual contest in early twentieth-century Germany and Schmitt’s intervention well: “Order is not created by legal rules but by the political existence of the

state. Whereas Kelsen had demystified legal science through a process of purification, Schmitt remystifies the state as a polity that is instilled with the autonomous will of the people and that is capable of exceptional action in exceptional circumstances” (2013, 41).

The necessity of such exceptional action becomes immediately more plausible, as both a theoretical and practical proposition, if the social realm in which it is to be carried out is viewed through a glass darkly. It is here that the substance of Schmitt’s conceptual transformation of “politics” into “the political” comes into play. By portraying this realm as inherently unsafe and by emphasizing “the utmost degree of intensity” that attends the “specific political distinction” between friends and enemies that must be brought to bear on the categorization of “political actions and motives” (2007a, 26), Schmitt wittingly created a demand for decisive—as opposed to deliberative—solutions to the problem of political order. By reframing (and radicalizing) the debate, he engaged in what positive political theorists refer to as agenda setting and control. With a dystopian diagnosis as his starting point, Schmitt was bound to come up with radical prescriptions (see Meier 1988, 552–555). Another way of putting this is that Schmitt, instrumentally or otherwise, invoked what Cass Sunstein has theorized as “the precautionary principle” (2005). Fearful of the specter of disorder, Schmitt made a case for incorporating, in effect, a margin of safety into the institutional structure of a given political order. “It is well established,” as Sunstein writes, “that in thinking about risks, people rely on certain heuristics, or rules of thumb, which serve to simplify their inquiry” (2003, 1041). We can think of Schmitt’s concept of the political as just such a heuristic.

As Schmitt himself conceded, his reconceptualization of the nature of political interaction did *not* qualify “as an exhaustive definition” (2007a, 26) of what it meant to act politically; rather, it was a calculated theoretical reduction, a heuristic in Sunstein’s sense. It functioned on two levels. First, it enabled Schmitt to persuade himself that decisionism, not parliamentarism, was needed to guide institutional choice and design in the political realm. Second, it made it possible for Schmitt to persuade others (both scholars and practitioners, and not just on the political right) of the need for decisive—rather than deliberate—responses to the specter of disorder in Weimar Germany. Schmitt had already described one dimension thereof a few years earlier, in 1923: “[D]emocracy requires therefore, first, homogeneity and second—if the need arises—elimination or eradication of heterogeneity” (1923, 9). This sentiment was not unusual at the time, but the language that Schmitt used to express it certainly was.

It is not easy to fully appreciate from the perspective of the present the aesthetic and emotional appeal of Schmitt’s conceptual interventions. The eminent historian Christian Meier, who was on friendly terms with Schmitt in postwar Germany, described the concept of the political as not only “fascinating” but “seductive”; its arrival in Weimar’s intellectual circles, he wrote, provoked astonishment (“*Es gab einen Verblüffungseffekt*”; Meier 1988, 542). Here is Sunstein one more time: “With respect to risks of harm, vivid images and concrete pictures of disaster can ‘crowd out’ other kinds of thoughts, including the crucial thought that the probability of disaster is relatively small” (2003, 1047). Schmitt knew full well that concepts, especially polemical ones, could have a similar effect.

In view of the exigencies of rule in interwar Germany, a country that was repeatedly teetering on the brink of civil war (see Blasius 2005; Bracher 1960), few citizens needed reminding of the precariousness of life. Having said that, the radicalization in intellectual circles of the critique of “the state of the political”—a process that Schmitt’s conceptualization of the political intensified as a catalyst—tapped into a reservoir of existential discontent (see Bolz 1989). By giving voice with hitherto unprecedented eloquence to key tenets of antiliberalism, Schmitt was building a case that institutions should take precautionary measures. On the basis of his well-known intellectual history of the so-called *Konservative Revolution* (Conservative Revolution), Armin Mohler concluded that Schmitt’s writings “decisively” shaped the language of this loosely organized, reactionary group whose fellow travelers, for a variety of reasons, opposed both liberalism and socialism and the uncertain democratic experiment that was the Weimar Republic (Mohler 1950, 75). Meier concurs, pointing to the aura-producing effect of Schmitt’s conceptualization of the political, which the historian attributes to an “ingenious blend” of empirical insight and distortion (1988, 544).

Schmitt’s political thought was systemic to a degree that is not fully appreciated. The friend/enemy binary coexisted in his thought with binaries that defined other realms of the social: the moral was defined by the binary good/evil, the aesthetic by the binary beautiful/ugly, and the economic by the binary profitable/unprofitable (Schmitt 2007a, 26). These binaries, as William Rasch (2004) has pointed out, are similar to modern systems theory, especially to the thought of Niklas Luhmann, whose theory of autopoietic social systems made him one of the most important sociologists of the twentieth century. It is worth noting that systems theory is associated with transdisciplinarity (Klein 2010, 24). Below we show that Schmitt’s trinity of thought was constructed on the foundation of an analytical eclecticism that sought to transgress, transcend, and transform disciplinary boundaries.

However, unlike Luhmann, Schmitt was not just after autonomy. His normative theoretical project had two objectives: (1) to theorize the political as an autonomous realm of social life and (2) to theorize the political as a superior realm. As Rasch notes, “Schmitt simultaneously champions the *autonomy* of the political system as well as the *primacy* of the political as something other than merely one system among many” (2004, 5). It was the second emphasis that set Schmitt apart from the liberal thinkers of his time. Because liberal solutions to the problem of social order did not accord primacy to the political, he agitated against them in theory and—eventually—in practice. Schmitt was concerned that the political was reduced to being seen as “a society among some other societies,” as “one association among other associations” (2007a, 44). While such a state of being ensured autonomy, that autonomy was bounded. Rasch’s analysis of this point is useful: “The power of the political is thus simultaneously absolute—anything can be judged politically and thus processed by the system—and limited—the political stands in a symmetrical, not hierarchical, relationship to the other systems in the network” (2004, 5).

But Schmitt was never one for nonhierarchical organization. Hierarchy was his institutional vade mecum. As we shall see, as an organizing principle, it featured centrally in virtually all of Schmitt’s concrete institutional solutions to the problem of political

order. This is not surprising; the political thought of Thomas Hobbes, more than that of any other thinker, shaped the development of Schmitt's corpus. We can speculate that Schmitt's exposure at a young age to the hierarchical norms and institutions of the Catholic Church, a sustainable order that fascinated him as a young scholar, further cemented his faith in the institutional logic of hierarchy.

Schmitt's concept of the political must not be imagined as having stood in an antithetical relation to his concept of the state; the relationship was rather an orthogonal one. In *The Concept of the Political*, Schmitt did not give up on the state as a conceptual variable (or a normative institution). Rather, he hoped to renew it. As the heir to Paul Laband's institutional theory of the state, which in the nineteenth century had influenced the so-called *Staatsrecht* (state law) of Wilhelmine Germany but came under attack at the turn of the twentieth century, Schmitt was seized by the idea of radicalizing the theory of the state from the perspective of transcendental philosophy (Schönberger 2003, 27).

If the state decides the normal situation, the inherent uncertainty of the political can be managed. “Absolute uncertainty” can be turned into “organized uncertainty,” or anarchy into order (Meierhenrich 2008, 39–41). As Schmitt wrote, “Every norm presupposes a normal situation” (“*Jede Norm setzt nämlich eine normale Situation voraus*”; 1930, 136). Schmitt was convinced that if an entity other than the state decided the normal situation—what he called “this concrete normality of the situation of the individual, the concrete order in which the individual lives” (“*diese konkrete Normalität der Situation des Einzelnen, die konkrete Ordnung, in welcher der Einzelne lebt*”)—the state could no longer expect loyalty from its citizens (137). What Schmitt called “the eternal relation of protection and obedience” would be torn asunder (2007a, 52). The Hobbesian contract in which the state provided security in exchange for loyalty would be null and void, with potentially disastrous consequences for the future of social order. If the state is unable or unwilling to cut through—with its sovereign decisions—the veil of ignorance that the state of nature (or an anarchic situation of a comparable kind) has put in place, disorder, or worse, is bound to result.

Schmitt was grasping for two things in particular: insight and impact. He wanted to comprehend how order worked, but he also wanted to *make* order work. His normative quest in the intersecting realms of politics, law, and culture had both a theoretical and an applied dimension. In the political realm, Schmitt performed an orderly two-step: he first redefined the meaning of politics (categorical ordering), then, in successive attempts, drew up blueprints for a redesign of its institutional architecture (substantive ordering). Put differently, his orderly approach to the political took aim at both the *idea* of politics and the *institutions* of politics and the interpenetration of these two things. Given Schmitt's fear-inducing conception of the political, it is not entirely surprising that it produced proto- or quasi-authoritarian solutions to the problem of political order. Let us turn to some of these solutions.

From *eidōs* to order. In the first instance, Schmitt attempted to order the political at the level of ideas. By naming the friend/enemy distinction the *eidōs* of the political, he advanced a theoretical argument that a transcendental logic of antagonism was

characteristic of all the many social practices that have been called political in history. But this is only half of Schmitt's practice of political ordering. In addition to the ontological, he also studied the ontic. It was all well and good to reconfigure the idea of the political and the boundaries of the realm in which political contestation is supposed to take place, but a comprehensive restructuring of political order also necessitated his paying attention to the institutions of the political.

One of the most central institutions for Schmitt was the state; with no other institution did he wrestle as intensely—and as often—in his life. For the younger Schmitt, “the impressive thing” (*das Imponierende*) about the state was the fact that the institution's “factual powers” outranked any individual, including “the most powerful despot” (1914, 85). For Schmitt, the state was therefore a “supraindividual” (*überindividuelle*) structure, not an “interindividual” (*interindividuelle*) one. The authority of this structure, Schmitt argued in 1914, was innate and did not depend on individual acts of creation: “The state is not a construction made by humans; to the contrary, the state makes a construction out of every human” (93). In his first pass at state theory, Schmitt threw down the gauntlet, challenging the Hobbesian contractual tradition. Schmitt rejected rationalist explanations of the state. He realized early on that the institutional appeal of the state was historically contingent. Although he considered what Robert Jackson and Carl Rosberg (1982) many years later would call “empirical statehood” and Michael Mann (1984) has theorized as “infrastructural power” to be a necessary attribute of the concept of the state, he did not think that a state's ability to broadcast power was *sufficient* as a definitional requirement. In 1971, in the preface to the Italian edition of *The Concept of the Political*, Schmitt recalled the political circumstances in which he had first written about the state of the political in 1927, reiterating that “the classical profile of the state broke apart when its monopoly on politics disappeared” (*Das klassische Profil des Staates zerbrach, als sein Politik-Monopol entfiel*; 1971, 271). According to Schmitt, the state's erstwhile centrality as an ordering mechanism had been the result of its unrivaled ability to monopolize the political (politics included).²² Once this monopoly was broken, once the state was no longer (or nor longer decisively) able to define the exception, to determine which collectivities count as friends and which as enemies in the realm of the political, a new guardian of political order had to be found. This never-ending search is neatly expressed in a favorite line of Schmitt's from Virgil's *Eclogues*, with which he closed, in abbreviated form, his 1929 essay “The Age of Neutralizations and Depoliticizations.” His variation on Virgil was “*Ab integro nascitur ordo*” (2007b, 96), or “an order is born from renewal.” If ever an inscription were needed to set in stone the guiding maxim of Schmitt as an institutional theorist, the compressed line from Virgil would be a definite contender.

Few political ideas fascinated Schmitt more than the notion of sovereignty. But sovereignty, for him, was “not invested in the state as an impersonal and objective legal subject, an aggregate of rules and statutes, but intermittently crystallizes if and when political crises and social disorder—liminal situations—escape constitutional norms. Such constitutional crises require an extra-legal and eminently political executive

decision by a single authority for the re-assertion of order, grounded in the state’s right to self-preservation” (Teschke 2011, 72).

To return to the metaphor of the system, in his Weimar-era writings Schmitt gave voice to a widely felt fear that “[t]he autonomy of the state as the unity of the difference of society [was being] replaced by the autonomy of the social system which guarantees the differentiation, not the unity of society” (Rasch 2000, 3). He believed that “the pluralist relativization of the legitimacy and sovereignty of the state, coupled with its recommendation that we transfer our loyalties from the state to social groups,” including the political parties that he so abhorred, “leaves us all dangerously exposed” (3).

Schmitt cared deeply about integrating form and substance when it came to theorizing about the institutional foundations of political order. Yet it is remarkable that at the same time he was formally and substantively agnostic; that is to say, he did not hold strong views on which particular institutions should be imbued with what specific substance to safeguard the political. As long as a given political institution (a stable form) was hierarchical and capable of creating and maintaining order undergirded by a political ideology (a meaningful substance) that was organic and capable of creating and maintaining existential meaning, Schmitt was willing to theorize and promote the institutional arrangement as a solution to the problem of political order. The development of Schmitt’s institutional theory in the period 1919–1942 (see Meierhenrich 2016) was the product of his search for what we might call “the ideal sovereign.” As he put it, “The sovereign is figured as an autonomous entity, an agent, or at least an agency, who has the authority to make decisions. That agent may be a monarch, a dictator, a ruling body, or any of a variety of other decision-making mechanisms” (Rasch 2000, 7–8). To identify the ideal sovereign, Schmitt immersed himself deeply (if selectively) in the theory and history of institutions. In the course of this immersion a series of alternative institutional solutions to the problem of political order left a deep impression on his thought, which space constraints prevent us from discussing here (but see Kelly 2016; Meierhenrich 2016; Vatter 2016).

To sum up our analysis of the logic of political ordering, Schmitt “was engaged in two related but distinct intellectual processes. On the one hand, an analysis of decline and, on the other, a search for new principles to remedy that decline” (Hooker 2009, 9). In the political realm, Schmitt studied the institutions of state, dictatorship, and the Reich and related concepts such as representation for their potential to stave off decline. But as the next section shows, Schmitt was not only concerned with transitions to—and from—decline in the political realm. The specter of decline in the legal realm was of equal theoretical significance in his work—and of immediate relevance to the problem of political order as Schmitt imagined it.

Legal Ordering

In 1912, in *Gesetz und Urteil (Statute and Judgment)*, Schmitt began the construction of his legal thought with a far-reaching insight about the nature of law: far from constituting a gapless system of rules, the law was full of holes (Schmitt 1912). Such holes, argued Schmitt,

make any legal order brittle. Because he believed that legal indeterminacy inevitably resulted in disorder, Schmitt, at least for a while, was emphatic about decisionism as a more appropriate ordering principle for the legal realm: “The best thing in the world is a command, rather than a law” (Schmitt 1991, 274, entry of October 2, 1949). He believed that the involvement of intermediaries—such as judges—in discerning law’s meaning created at best ambivalence and at worst chaos. Because the interpretation of legislation can only ever be indirect speech, any legal order that was founded on the sovereignty of law will be inherently unstable, Schmitt argued. Law as theorized by legal positivism can never be more than an ersatz sovereign, an institution “overcompensating” for the absence of a genuine sovereign (see also Lethen 2002, 180). The absence of a true sovereign, or so he claimed, was an inherently unstable situation that sooner or later would require exceptional measures.

Liminal states. The theme of *Ausnahmezustand*, or state of exception, was one of the major topics in Schmitt’s legal thought. It had an immediate bearing on his political thought, with which it was intertwined (see Schmitt 1916c; 1916d; 1916a, 263, 310–312). Schmitt once likened the role of the state of exception in legal theory to the role of the miracle in theology (2005b, 36). Schmitt’s miserable experience in the military—an ordeal that had brought him to the brink of suicide—was responsible for pushing him toward some of his most memorable thoughts about the problem of legal order (2005a, 125). His first treatment of the topic was solicited; his military superior ordered him to prepare it. Though he was at first apprehensive about the instruction to draft a report that would justify the use of emergency decrees in non-emergency situations, Schmitt took to the topic quickly.

The specific state of exception with which Schmitt was tasked to grapple at the time of his military service in Munich was the *Belagerungszustand*, or state of siege. It was his first exercise in legal ordering. He was instructed to find a way to legitimate use of the machinery of wartime governance during peacetime. Schmitt’s gradual theorization of the state of exception was his attempt to rethink the determinants of order at the intersection of law and politics. Schmitt’s concept was, quite literally, a call to order. It is important to appreciate, however, that Schmitt did not equate the state of exception with chaos or anarchy. On the contrary, the temporary suspension of a state of normalcy, according to Schmitt, still represented a viable order, at least in the short term: “Because the exception is different from anarchy and chaos, order in the juristic sense still prevails, even if there is no legal order” (2005b, 18).²³

A state of exception is a liminal state. Temporary by definition and marked by ambiguity and indeterminacy, its direction is open to contestation. The defining feature of an exception, Schmitt claimed, was “principally unlimited authority, which means the suspension of the entire existing order” (2005b, 12). The fact that Schmitt preferred a blank institutional slate could be interpreted as an indication of a certain intolerance of messiness, ambiguity, and, ultimately, reform of an existing order. And according to Paul Noack, Schmitt had no interest in reform; he wanted to get rid of what he deemed objectionable in life (1993, 79). Of course, forming a political order from scratch is a less

challenging undertaking than reforming one already in place. If no institutional remnants have to be salvaged, the next institutional design will require fewer compromises.

The state of exception was a vehicle for Schmitt to rethink Weber’s concept of the state. For Weber, the state famously referred to “a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory” (Weber 1921, 78). Schmitt did not think that Weber had captured the essence of the state as a political phenomenon. This essence, Schmitt wrote, was not to be sought in the monopoly of force but in the “monopoly of decision” (“*Entscheidungsmonopol*”), specifically the monopoly of the power “to legally define” (“*juristisch zu definieren*”; 2005b, 19). The ability of the sovereign to make decisions demonstrates an authority to make law without being bound by it, or so Schmitt believed.

The paradox of this monopoly was not lost on Schmitt. The fact that theorists like John Locke and Immanuel Kant in the “rationalistic eighteenth century,” as well as the “neo-Kantian” Hans Kelsen, had not thought to theorize the exception left Schmitt flabbergasted (2005b, 19). He wrote in *Political Theology*: “The exception is more interesting than the rule. The rule proves nothing; the exception proves everything. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition” (2005b, 15). The conceptual binary of rule/exception was not just analytically significant, it was also *exciting* for Schmitt, especially the half of the Janus-faced concept that served as a load-bearing column in his conservative architecture of legal order.

The theme of the state of exception is associated not only with some of Schmitt’s most important writings, but also with some of his most famous conduct, notably with his appearance in 1932 as a legal representative of the Reich government in the all-important case *Preußen contra Reich* (see Grund 1976; Seiberth 2001), which was heard before the *Staatsgerichtshof* of the German Reich in Leipzig, which in a 1927 ruling had styled itself the “Guardian of the Reich Constitution” (“*Hüter der Reichsverfassung*”). The contending parties litigated the constitutionality of the state of emergency that Reich President Hindenburg had declared in Prussia pursuant to Article 48(1) and (2) of the Weimar Constitution.²⁴ As part of this declaration, Hindenburg had also appointed Reich Chancellor Franz von Papen as Reich Commissioner for Prussia. The title and text of Hindenburg’s executive decree insisted on the necessity of “re-establishing public safety and order” in Prussia’s territory. Schmitt believed that in theorizing a legal justification for this usurping of the power of a subnational state, he was on the side of the angels. He was creating order and trying to avert chaos and anarchy. In this well-publicized instance, his theory and his practice were perfectly congruent. Finally he was being noticed on the public stage, even though Schmitt afterward was cut up about the media reporting of his legal performance (see 1932b for the text of his statement in court).

The state of exception, as an analytical construct, was an orderly state suspended between the poles of order and anarchy. It was a conceptual vehicle that prompted Schmitt’s turn to the study of dictatorship, in the course of which his thinking about the nature of the state as institutional guarantor of order underwent an important transformation. Although Schmitt was not, in the early years, an adversary of the *Rechtsstaat*, in his legal theory he developed a strong preference for the *Exekutivstaat*, the executive

state, as the state form best suited for the creation and maintenance of social order. Two institutional mechanisms that promised to enhance the reach of this executive state, and its contribution to the creation and maintenance of political order, according to Schmitt, were, on the one hand, what political scientists in recent years have referred to as executive decree authority (Carey and Shugart 1998), and on the other, the institution of commissarial dictatorship. Having discussed the political aspects of Schmitt's theory of dictatorship elsewhere (Meierhenrich 2016; see also Kelly 2016), in this subsection we only touch briefly on the book's legal dimensions, in particular the discussion of Article 48 of the Weimar Constitution. Schmitt's detailed analysis of Article 48 did not appear until 1928, as an appendix to the second edition of *Dictatorship*. This venue was entirely fitting because the appendix, which was based on Schmitt's keynote address to the 1924 convention of the *Vereinigung der Deutschen Staatsrechtslehrer* in Jena, was designed to appeal to a legal audience (Hoelzl and Ward 2014, xxi). It was aimed at readers with a primary interest in the doctrinal—as opposed to historical—analysis of law (see also Schmitt 1924). Schmitt's legal analysis was imbued, as was so often the case in his long career, with ideas from his political thought. Interestingly, his interpretation of Article 48 cautioned *against* opening the door to unlimited dictatorship through the constitutional emergency provision and contemplated possible—and impossible—institutional mechanisms that could delimit the article (2014, 180–226).²⁵ This position is indicative of Schmitt's attempt in the late 1920s to preserve a legal order with limits. Although he was unconvinced that an ordinary act of parliament was legally capable of placing limits on the uses of a constitutional instrument, Schmitt was not intent on doing away with constitutional law (see Bendersky 1983, 76). Even though *Dictatorship* provides evidence that this was precisely Schmitt's objective, in his extensive analysis of Article 48 he showed a greater commitment to the constitution as an institutional pillar of social order:

The constitution remains, on the whole, not just the end of all the measures in Article 48; it is also decisive as a basis for its requirements. It defines the fundamental organisation of a state; moreover, it decides what order [*Ordnung*] means. . . . But Article 48 is only one part of a constitution that came into effect. Therefore, according to Article 48, what is normal—together with the decision as to what constitutes public security and order—cannot be arrived at by ignoring the constitution. (2014, 209–210)

Notwithstanding the fact that Schmitt, unlike the majority of Weimar's constitutional lawyers, favored a broad interpretation of Article 48 that bestowed on the president more powers in times of disorder than were enumerated in the provision's second paragraph, Schmitt was aware of the potential abuse of power. "He believed that the president must be unquestionably loyal to the constitution and represent the nation as a whole rather than the interests of a particular party" (Bendersky 1983, 79). The presidents of the Weimar Republic invoked the emergency provision more than 250 times in response to political disorder. Schmitt argued that the Weimar government's reliance on Article 48 was an act of "pure self-defense" ("*reine Notwehr*") against parliamentary abuse and incompetence (1932a, 14).

Schmitt’s analysis of Article 48 indicates that he was seriously engaging with thought related to legal ordering in the 1920s and 1930s. Renato Cristi labeled the period of Schmitt’s thought when *Dictatorship* and his reflections on Article 48 were conceived as his “early revolutionary conservatism” (Cristi 1998, 12): “Schmitt’s conservative thought, nurtured by the substantivist disposition of traditional metaphysics, emphasized the issue of legitimacy and relativized legality. Legitimacy furnished the conditions for the realization of legality” (21). Weber had described the institutional foundations of legal order differently: “Juridical thought holds when certain legal rules and certain methods of interpretations are recognized as binding. Whether there should be law and whether one should establish just these rules—such questions jurisprudence does not answer” (Weber 1922, 144). And yet according to Schmitt, these were *precisely* the questions that jurisprudence should answer, which is why he despised the procedural conception of law to which Germany’s legal positivists—Weber included—were wedded (see Meierhenrich 2008, 15–25). Schmitt gradually resolved to reimagine—to revolutionize, in Cristi’s parlance—Germany’s legal order, starting with its foundational document.

Constitutional identity as order. This brings us to the institution of the constitution, about which Schmitt wrote a great deal during his lifetime but had little positive to say. For him, the constitution was one of the most misunderstood institutions of legal order. He was consumed by a desire to reverse the intrusion of liberal concepts in constitutional theory. “The state does not *have* a constitution,” he exasperatedly exclaimed. “The state *is* constitution” (2008c, 60). What Schmitt meant was that the conceptual unity of people, state, and constitution was indivisible. The constitution was the state’s “soul” (60). He accused the positivist tradition in constitutional interpretation of destroying this soul. For Schmitt, the liberal understanding of the concept of a constitution turned it into an anti-institution. It could not be an institutional safeguard of order, least of all in Weimar Germany.

Schmitt was determined to bring analytical and normative order to constitutional theory. He believed it “necessary to make an effort to construct a systematic constitutional theory and to treat the field of constitutional [law] as a special branch...of [the study of] public law” (2008c, 53). *Constitutional Theory* is the most systematic of Schmitt’s many books, arguably the only truly systematic one. Although his theory of constitutional law was intellectually regressive, it was systematic in its attempt to turn back time.²⁶ *Constitutional Theory* was far more political than it appeared at first glance. It was occasioned by (and contributed to) what Stefan Koriath has called “the shattering of methods in late Wilhelmine Germany” (2000, 41). This shattering was the remote cause of Schmitt’s turn to the theory and practice of constitutional law; the proximate cause was the permanence of constitutional crisis in the Weimar Republic. To bring order to the intellectual mess that he perceived the “*Staatsrechtsdebatte*” to be, a weightier intervention was apparently required (on the contours of this debate, see also Gangl 2011). Schmitt’s occasional commentary had proved insufficient to the task at hand. If he wanted his voice to be heard—and to be taken seriously—he needed to publish his own “big book” on constitutional theory.

It is imperative to discuss *Constitutional Theory* in the context of legal ordering because his treatise, as Schmitt wrote at the time, was “neither a commentary nor a series of separate monographs,” but “an attempt at a *system*” (2008c, 53). On the foundation of a categorical ordering exercise, Schmitt once again erected a model institutional order. Schmitt’s concept of the constitution fundamentally contradicted the liberal understanding prevalent among Weimar’s democracy-supporting forces. For any constitution to be deserving of the name, argued Schmitt, it had to achieve a structural unity of people, state, and constitution. “The concept of the constitution is *absolute* because it expresses a (real or reflective) *whole*,” he wrote (2008c, 59). The cohesiveness and coherence of a legal order, in Schmitt’s argument, derived from a sustainable constitutional existence. As he wrote in 1928, “The state *is* constitution, in other words, an actually present condition, a *status* of unity and order. . . . The constitution is [the state’s] ‘soul,’ its concrete life, and its individual existence” (60). Or, as Ulrich Preuß says, Schmitt mobilized “the ‘substance of the constitution’ against its functional elements” (1987, 99; see also Preuß 2016).

As “a special type of political and social order” (Schmitt 2008c, 60), the constitution that Schmitt introduced in *Constitutional Theory* upended conventional understandings. As Ellen Kennedy has noted, “The *Verfassungslehre* was unlike any contemporary work on the Weimar constitution. Its analytic power and persuasion came from the fact that it was not an interpretation of that one constitution, nor was it a general theory of the state, but a political science of the dominant constitutional type of the twentieth century, the *bürgerliche Rechtsstaat*” (2004, 119). Like so many of Schmitt’s major works, it was a genre-bending publication and an impressive manifestation of what we call the trinity of his thought.

Schmitt’s “absolute” constitutionalism is an example of a systematic reordering of constitutional fundamentals. Bendersky suspects that fear coupled with a sense of pragmatism led Schmitt to advance a legal interpretation of the Weimar Constitution that emphasized its essence, not the strictly formal meaning of its provisions. The concrete situation, not the abstract possibility, was Schmitt’s guiding principle of constitutional interpretation. As he declared in a radio address on February 24, 1932, “the more formally we approach the constitution, the more it evolves from an instrument of inner liberation [*Instrument der inneren Befreiung*] and prevention of civil war into a weapon of intra-political enmity [*Waffe der innerpolitischen Feindschaften*]” (2003a, 24). Schmitt objected to a “purely tactical-technical conception of legality” (24). From his vantage point, the contribution of law to order had to be of an altogether different nature.

Ernst Rudolf Huber shed some light on Schmitt’s (and his own) suspicions about liberal constitutionalism. Many years later, he recalled that “we did not experience ‘constitution’ as a secure, normative, security-producing order, but as an endangered, contested, overall condition in need of protection as well as reform” (1980, 134). According to Huber, the constant constitutional crises, constitutional conflicts, constitutional takeovers, constitutional beginnings, and yet more constitutional crises meant that conservatives such as Schmitt and himself would never have much confidence in

the liberal constitutional ideal. Not only did the constitution, as an institution, not produce order, it seemed to spell *disorder*. This required a concerted legal response that Schmitt was more than willing to craft. As he put it in a lecture to chemical industry executives in November 1932: “All fundamental institutions [*Einrichtungen*] of the Weimar Constitution... today are completely denatured. Only the institution of the Reich President really remains” (1932a, 5). Weimar constitutionalism, according to Schmitt, was order-producing, but not in a constitutive sense, only in a regulatory sense. This was the crux of the matter, as far as Schmitt was concerned. He rejected Kelsen’s argument from a basic norm (*Grundnorm*). Schmitt came down on the side of facts, not norms: “For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation actually exists” (2005b, 13). In other words, legal order is what the sovereign makes of it.

Schmitt sketched the component parts of this order in great detail, with particular reference to his anti-liberal conceptualization of the idea of the constitution. His use of the phrase “the guardian of the constitution” bespeaks a belief in the importance of a caretaker, that is, an individual or institution that ensures order. In his writings from the 1940s Schmitt, as we shall see, increasingly theorized about another caretaker of order: the *katechon*.²⁷ In the Bible, the *katechon* is the restrainer who forestalls the coming of the Antichrist. According to Schmitt, every age has its own *katechon*, its own caretaker of order. In Schmitt’s legal theory, the most appropriate individual-as-institution for the job was the Reich president (1996a, 132–159).²⁸ Although he did not originate the guardian metaphor, which has a classical pedigree, Schmitt’s reliance on it in his 1931 treatise against constitutional review is indicative of his preference for a legal order that safeguards the sovereign’s power to respond to any exception and to do so entirely unencumbered.

Indeterminacy as disorder. In 1934 Schmitt invented his “concrete-order thinking” in response to the perceived problem of legal indeterminacy, which he regarded as a specific manifestation of the disorder of things. This was Schmitt’s third major effort to think creatively about the making of legal order. In this phase, his legal thought underwent an important transformation. He charted a theoretical path beyond normativism and decisionism. The meaning of law’s order, Schmitt was adamant, had to amount to more than the sum of a given number of rules: “The norm or rule does not create the order; rather, it only has, on the basis and within the limits of an existing order, a certain regulatory function with a relatively small degree of autonomous validity independent of a given situation” (1934c, 11).²⁹ Put differently, order constitutes rules. As Schmitt wrote in *Political Theology*, “Like every other order, the legal order rests on a decision and not on a norm” (2005b, 10).³⁰ *Rex* creates *lex*, not the other way around.

For Schmitt, a decision was the *only* way to overcome what he called “concrete *disorder*” (“*konkrete Unordnung*”; 1934c, 25). However, his ruminations about concrete orders were far less original than they may appear at first glance. The terminology of concreteness was very much of Schmitt’s time, and it was indebted to Weimar legal thought (Lepsius 1994, 205). It tied in with other contemporary intellectual efforts to revive what

Schmitt thought of as Germany's long (but interrupted) tradition of "indestructible order-thinking" ("*unzerstörbares Ordnungsdenken*"; 1934c, 42, 35–43). On the foundation of this centuries-old tradition, he brought concrete-order thinking into position against the "ideas of 1789" (37). It was the opening salvo of yet another battle in his ongoing war of words with liberalism. For Schmitt, a concrete order was a transcendental category, because as an institutional idea (and ideal) it promised to give expression to the true, real identity of a homogenous (or at least homogenized) people (see also Kollmeier 2007, 58). With this vision, Schmitt became the personified link between the abstract-order thinking of Weimar Germany and the racial-order thinking of Nazi Germany. Many analysts feel that he was instrumental in building this bridge, thus actively contributing to the consolidation of authoritarian rule (see, e.g., Kollmeier 2007, 67).

Ordering the global. For Schmitt's final attempt at legal ordering, we must turn to the topic of international law and Schmitt's *nomos* theme (see Koskeniemi 2016; Simons 2016; Teschke 2016). Galli has argued that Schmitt's *nomos* concept describes a "political form born of originary violence, concrete order oriented not by harmony but by a 'cut' that creates political space, instituting normality derived not from law . . . but from a concrete act of differentiation" (2010, 6). According to Schmitt, there had always been "some kind of *nomos* of the earth" (1995, 518). Schmitt's theory of international law, although deliberately vague and incomplete, hinged on what he called the "unity of order and orientation" ("*Einheit von Ordnung und Ortung*").³¹ The idea of orientation denotes the spatial dimension of international law. The reach of that law, Schmitt argued, was limited: It was valid only within the sphere of influence demarcated by the hegemon ("*Trägermacht*") that governed it, the Reich.

Schmitt developed his *Großraum* theory in opposition to Kantian and Grotian conceptions of international law that are based on a universalist approach (see Benhabib 2012). He "critiqued the despatializing effects of the universal, moral categories of liberal thought," the liberal internationalism that had ushered in what he called "the discriminating concept of war," by which he meant the rise of just war theory (Minca and Rowan 2016, 164). For Schmitt, facticity as spatiality trumped morality as legality. The *nomos*, he wrote, was not different from a wall "because, like a wall, it, too, is based on sacred orientations" (2003b, 70). Schmitt engaged in categorical reordering: by divorcing the term *nomos* from its existing German meaning, which at the time was tethered to the idea of law, Schmitt outlined a new semantic order for the practice of international law. He strenuously objected to "the functionalization of *nomos* into 'law' in the style of the 19th century," seeking to invest the term instead "with words like tradition, custom, or contract" (72). For Schmitt, the idea captured "a constitutive act of spatial ordering," one with "a connection to a historical process" (71). At other times in Schmitt's theory of international law, the term *nomos* also appears to have stood in for a particular regime type: "nomocracy" ("*Nomokratie*"; 2003b, 71; 1997, 40).

The impetus behind Schmitt's theory of international law was the 1823 Monroe Doctrine. As early as 1932, Schmitt had described the U.S. foreign policy doctrine approvingly as "a unilateral declaration of governance" ("*eine einseitige Regierungserklärung*";

1932b, 189). Schmitt saw an intellectual opening and set out to normatively turn a historical fact into a theoretical solution to the problem of international order (2011, 87). Schmitt prescribed *de facto* globalism over *de jure* universalism. The former “thinks of the planet in spatial terms” (“*raumhaft planetarisch*”), he argued, the latter only in abstract philosophical terms (2011, 87; 2009a, 28).

In the early 1950s Schmitt began to compare three visions for international order: unipolarity, bipolarity, and multipolarity. He gradually came to be in favor of a system of regional *Großräume*, provided that these greater spaces were internally homogenous and externally sovereign (1955, 521–522). By 1962 Schmitt had developed a clear argument about the nature of the new *nomos* of the earth: “It is the division of the earth into industrial and lesser developed zones” (1962, 605). The defining question of this “pluralism of greater spaces” (“*Pluralismus der Großräume*”), argued Schmitt, was not who governs, but who “takes” (“*nimmt*”; 1962, 605, 607). Although the new *nomos* of the earth was an order in the conventional sense of the word, it was not a desirable order in Schmitt’s sense of the term. The postwar dispensation was an order devoid of meaning; it was driven by materialistic considerations rather than by metaphysical principles.

In Schmitt’s practice of legal ordering, the reference point for his concept of *nomos* changed quite dramatically. The Cold War proved to be a critical juncture. Whereas Schmitt’s prewar conception of an orderly *nomos* was tethered to the idea of unity (as exemplified by the *jus publicum Europaeum*), his postwar conception revolved around the idea of plurality. This volte face is quite remarkable and is not always fully appreciated. It underlines one of Schmitt’s behavioral trademarks: a ready ability to adapt to changing circumstances, intellectually and otherwise. This ability was facilitated by the general vagueness of most of his theoretical positions. Schmitt never chose to banish conceptual ambiguity from his thought. This intellectual trait is also apparent in his efforts at ordering the realm of culture.

Cultural Ordering

Remarkably for a thinker who is primarily known as a political and legal theorist, throughout his entire career Schmitt was keenly interested in the problem of cultural order. Particularly from 1910 to 1915, “Schmitt’s cultural openness,” as Kennedy puts it, is “striking, and . . . his work is more concerned with cultural questions than with strictly legal issues” (2004, 64–65). But even in subsequent years Schmitt pondered questions of literature and culture. Schmitt first became acquainted with artists and authors, including Hugo Ball, Franz Blei, and Theodor Däubler, in the wake of his university education. In this early period of his career, the majority of his publications dealt with cultural matters, notably literary questions. Only *Gesetz und Urteil* of 1912 and *The Value of the State and the Significance of the Individual* of 1914 dealt with politics or law. The ample list of Schmitt’s publications on cultural matters is much longer. He worked on a novel with Fritz Eisler, Franz Kluxen, and

Eduard Rosenbaum, though the manuscript is lost. He contributed short prose to *Die Rheinlande*, and he coauthored (with Fritz Eisler) *Silhouettes*, a satire of early twentieth-century culture and a polemical portrait of influential Germans who, in Schmitt and Eisler's eyes, were harbingers of cultural decline. For this broadside, Schmitt hid behind the pseudonym "Johannes Negelinus." Under his real name, he produced an analysis of Richard Wagner's *Meistersinger* in 1914; his book-length study *Theodor Däubler's "The Northern Light"* followed in 1916, and "The Buribunks" was published in Franz Blei's journal *Summa* in 1918. In Blei's preface to *Das große Bestiarium der modernen Literatur (The Great Bestiary of Modern Literature)*, Schmitt again made an appearance as "Dr. Negelinus" (Blei 1995).

Schmitt produced most of his literary works during this part of his life. But it would be wrong to suggest that his interest in cultural thought was merely a phase. Plenty of evidence of Schmitt's ongoing exploration of literary themes can be found in his diary entries and in some of his later writings. During World War II he worked on *Land and Sea*, the short text that he referred to as a story (*Erzählung*), and in 1956 he published *Hamlet or Hecuba*. The style of the cultural writings from his later period was fundamentally different from that of the experimental efforts of his early years. Gone entirely was the playful and satirical tone of *Silhouettes*. And despite his conception and characterization of *Land and Sea* as a story, Schmitt was insecure about his literary talent: "I am not a good storyteller" (*Ich bin kein guter Erzähler*), he noted in 1954 (quoted in Anter 1994, 154). But Schmitt's deep-seated interest in cultural matters was ever present in his thought. His cultural writings were not the products of an early period of intellectual experimentation and search for orientation that he abandoned once he had established himself professionally as a lawyer. Quite the contrary: literature and culture served as important intellectual reservoirs as well as tools for Schmitt that played significant roles in the development of his oeuvre.

Efforts to take Schmitt's cultural thought seriously are very recent and have come mostly, at least in the English-speaking world, from Telos Press in New York City, which published the English translations of *Hamlet or Hecuba* in 2009 and *Land and Sea* in 2015 and dedicated two special issues of its journal to Schmitt's literary output, in 2008 and 2010. In their introduction to the first of these issues, the editors, David Pan and Russell Berman, emphasized the "centrality of culture for his thinking" (2008, 3). They argued that Schmitt's political, legal, and cultural thought were mutually constitutive, a position that we share:

Cultural issues lie at the heart of Schmitt's concept of the political. This centrality of culture has been difficult to recognize, though, because culture always lies in a space that is essentially inaccessible to political calculations, discussable only in terms of such ideas as the decision or the state of exception. The trajectory of Schmitt's work therefore consists of a series of incomplete attempts to understand the foundations of the decision and of the political in a mythic-theological-cultural dimension... Although he never achieved a conclusive account of the cultural basis of law and political order, he recognized the inadequacy of considering a political order as a self-sufficient system. (Pan and Berman 2008, 3)

Schmitt engaged in practices of what we term cultural ordering because he believed that cultural disorder was just as inimical to the creation and maintenance of social order as political and legal disorder were. Schmitt’s cultural thought formed part of a trinity of thought, even though the connection and transition points among these bodies of thought are not always obvious or even discernible.

In order to make explicit the theoretical interpenetration among all of the different strands of his thought, we unpack Schmitt’s cultural thought with particular reference to his theory of modernity, and by singling out two of his key concepts: aesthetics and technology. Both are intimately related to the motif of order, and both enabled Schmitt to conjure the specter of cultural disorder. But Schmitt’s theory of culture was the starting point, the intellectual foundation, not only for his political thought, but also for his legal thought. By homing in on what he perceived as perversions of the cultural determinants of social order, Schmitt offered a dystopian portrayal of the early twentieth century. This stark portrayal, in turn, allowed him to construct and legitimate the archconservative theories of politics and law for which he is still primarily known.

Theorizing the modern. Schmitt’s cultural criticism amounted to more than mere criticism of culture. For Schmitt, the practice of *Kulturkritik* was inherently political. The focus on order in Schmitt’s cultural writings, according to Carsten Strathausen, was always “a response and intervention” (2010, 26)—a response that recorded the perceived state of cultural disorder and an intervention that sought to stem the tide of cultural decline. For Schmitt, the intervention was directly related to the task of reconfiguring the institutional foundations of political order, which could not be renewed without taking into account the cultural function of law.

As an example, although *Hamlet or Hecuba* was a literary intervention, the conceptual binary of tragedy/play that Schmitt theorized therein was important to him because it spoke directly to key themes that lay at the intersection of his political and legal thought. The most important of these was that of representation, a theme that featured centrally in both *The Crisis of Parliamentary Democracy* and *Constitutional Theory*, to name but the most significant works. In *Hamlet or Hecuba*, Schmitt approached the theme again. There, he argued that only the institution of tragedy was capable of *truly* representing the existential meaning of life, political and otherwise. He wrote, “Genuine tragedy has a special and extraordinary quality, a kind of surplus value that no [pure, merely aesthetic] play, however perfect, can attain because a play, unless it misunderstands itself, does not even want to attain it. This surplus value lies in the objective reality of the tragic action itself, in the enigmatic concatenation and entanglement of indisputably real people in the unpredictable course of indisputably real events” (2009b, 45). The political implication Schmitt derived was simple: a polity is ill served by cultural representations of its life and values when they prioritize aesthetics over politics—and play over seriousness. It follows that tragedy is political, and the political is tragic.

Schmitt’s cultural writings were inherently political because they guarded and sought to determine the cultural boundaries of social order. They were acts of policing. The cultural domain, in other words, was a battleground for Schmitt. He did not

just describe cultural events; he deployed cultural concepts strategically—sometimes to mete out symbolic violence—in his struggle to halt the march of modernity and inspire a renaissance of conservative mores. We illustrate the logic of Schmitt’s cultural ordering with reference to three additional concepts from his cultural thought: symbol, tragedy, and *katechon*. But we begin with an analysis of the concept of aesthetics—and Schmitt’s strident opposition to mere aestheticism.

Schmitt’s practice of cultural ordering sought to uproot the rise of anything that smacked of “the solely aesthetic” (“*des Nur-Ästhetischen*”; 1998, 17). Schmitt coined the term “subjective occasionalism” (“*subjektiver Occasionalismus*”; 18) to denigrate the Romantic infatuation with the primacy of the solely aesthetic that was popular at the time. For him, “[t]he general aestheticization, sociologically speaking, only served to privatize by way of the aesthetical all of the other areas of thought as well. When the hierarchy of the intellectual sphere dissolves, anything can become the center of intellectual life” (1998, 17). Schmitt was worried about cultural expression for the sake of only itself. As Susanne Heil writes, he feared the subversive force of the solely aesthetic (1996, 33). He was convinced that the disappearance of religious, political, and other socially meaningful concerns from cultural discourse would have destabilizing effects on the existing order (33). His idea of orderly thought was based on the assumption that modernity was hollowing out the soul of the state, a metaphor that, as we have seen, played an important role in *Constitutional Theory*. The modern way of life, with its excessive aestheticism, was a pure play of forms, a superficial order that lacked the substance required for holding together a polity.

Schmitt’s book *Political Romanticism* is a good example to illustrate the point. His account of the state of culture around 1800 was not just a description of the disorder of things, as he saw it. *Political Romanticism* was also a kind of roman à clef about Schmitt’s own generation (see Kennedy 1988a, 160). Schmitt singled out Adam Müller, a prominent political economist and theorist of the state, as the target for his broadside against Romanticism as a cultural movement. But he was not content with merely depicting the aestheticization of Müller’s political writings in the early nineteenth century; Schmitt was intent on drawing attention to the political implications of Romantic deformations in his own century, the early twentieth. His was not an aesthetic analysis of politics, but a political analysis of aesthetics. The analytical interest was overridingly prescriptive, not diagnostic. Schmitt sought to draw lessons from the past, to reimagine the foundations of social order. In *Political Romanticism* he explored the nexus of cultural order and political order and introduced the claim that ideational deformations in a polity’s culture can result in institutional deformations of its politics. The early twentieth-century bohemians that Schmitt encountered in Munich, he felt, were just like the “political Romantics” of Müller’s generation. The Romantics of his own time included Hugo Ball, Ernst Bloch, and Walter Benjamin (Kennedy 1988a, 161), all of whom were representatives of a political culture, Schmitt claimed, that had lost faith in—and abandoned loyalty to—the state as an institution. As text and genre, *Political Romanticism* is not dissimilar to *Silhouettes* and “The Buribunks.” In *Political Romanticism* Schmitt insisted, as he had before, that the vocabulary associated with the cultural movement of aestheticism should be overhauled. To this end, he made a case for a more orderly approach to

concept formation. Schmitt’s negative depiction of aestheticism was a theoretical prerequisite for his subsequent formation and deployment of what we call *interventionist concepts* in the battle for the re-equilibration of cultural order.

In his cultural writings, just as in his political and legal writings, Schmitt was concerned with re-establishing an *ancien régime*, a cultural dispensation that would reimpose—and guard—a “hierarchy of the ideational sphere” (*Hierarchie der geistigen Sphäre*”; 1998, 17). Without such an orderly orientation of decisive action, *anything* could become the “center of ideational life” (*Zentrum des geistigen Lebens*”), a prospect that was terrifying to Schmitt. To be sure, Schmitt was hardly alone in painting a gloomy picture of the age. Like many of his contemporaries, he was in agreement with Weber’s argument that the rationalization of the world had led to its disenchantment. Together with Benjamin, Bloch, Martin Heidegger, and Georg Lukács, Schmitt was among “the deserters of modernity” (Bolz 1989, 11). But before we turn to illustrate Schmitt’s use of interventionist concepts, it is essential to first address another principal target of Schmitt’s cultural thought: technology.

If we believe Arnold Gehlen, who influenced Schmitt’s cultural thought deeply, technology was akin to an “organ replacement” (*Organersatz*). Gehlen believed that it functioned as a bodily appendage with the help of which humans tried to compensate for their natural deficiencies, but he also warned that technology would lead to the gradual eradication of the organic way of life: “The world of technology, so to speak, is the ‘great human’: witty and cunning, life-promoting and life-destroying like himself, with the same troubled relationship with nature. It is, like the human, ‘*nature artificielle*’” (Gehlen 1986, 149). As long as humans looked upon technology only as an instrument, it was efficient and could be controlled. But the Industrial Revolution changed all that, removing the limits that culture had placed on technological reasoning. Technology, the conservative Gehlen prophesized, would take on a life of its own, a life that could no longer be contained.

Gehlen’s analysis is useful for making sense of Schmitt’s perspective on technology. In *Land and Sea*, for instance, Schmitt’s wistful description of the changing character of the institution of whaling was a metaphorical device in support of his argument against technology. He mourned the fact that, in the case of whaling, tales about machines were replacing tales about man’s engagement with nature: “Here, I must first say a word in praise of the whale and in honor of the whale-hunters. It is not possible to speak of the great history of the sea, and of the human decision for the element of the sea, without commemorating the fabled Leviathan and its equally fabled hunter. This is, admittedly, an enormous theme. My weak praise measures up neither to the whale nor to the whale-fish hunter” (Schmitt 2015, 25). Whaling, Schmitt declared, had become machinized and industrialized, and thus inorganic. Schmitt feared that humans were being robbed, on land as well as at sea, of elementary experiences, that is, of their primal interactions with the elements. The end result, he predicted, was that humans would become alienated from nature, and thus from themselves.

In one sense, Schmitt’s account of the dark side of technology, just like his negative account of aestheticism, was entirely conventional. The tropes and language he used

will be familiar to anyone who has ever perused the anti-technological literature of the time (for an in-depth treatment, see Herf 1984). Schmitt's critique of technology is thus relevant not on account of its analytical value, but because it served as the intellectual foundation, the theoretical incubator, if you will, for some of the arresting concepts that Schmitt crafted in response to the cultural as well as the more general social malaise that troubled him. His parsing and reinvention of cultural tropes was aimed at alleviating some of the alienation that he had diagnosed as a sign of the times.

The aestheticization of life, in his interpretation, had led to a distortion of language. The increase in abstraction, he believed, had invariably led to a misrepresentation of organic life. The price of modernity in this interpretation was a gradual loss of lived reality, with language no longer adequate to capture the existential depth of this reality. According to Schmitt, the tentacles of technology had also delimited scope for social action. The modern subject had been forced into passivity. Indeed, as John McCormick has argued, "The essence of romanticism, and political romanticism especially, is passivity" (1997, 49). Schmitt deplored this state of affairs, which is what led him to come up with the interventionist concepts that we have singled out and others like them. Schmitt's cultural oeuvre contains theoretical notions that are defined by their opposition to existing circumstances, aesthetic and technological. In general, the rationale of Schmitt's interventionist concepts—which are also plentiful in his other writings—was to break open, up, or through the status quo. In *Political Theology*, Schmitt put it thus with regard to the institution of the state of exception: "In the exception, the power of real life breaks through the crust of a mechanism caught in repetition" (2005b, 35). No less important than the political and legal dimensions of the concept of the state of exception is the metaphor of the "breakthrough" ("*Durchbruch*") that Schmitt used to describe the institutional state of affairs. It was one of the key functions of Schmitt's cultural thought to break through to an elementary level of culture. By means of the interventionist concepts of symbol, tragedy, and *katechon*, among others, Schmitt hoped to do away with (some of) the cultural disorder of his day. All three of the aforementioned concepts harked back to cultural traditions that had already been largely superseded at the time of Schmitt's writing, but which he labored to revive. All three, albeit in different ways, were aimed at transcending existing ways of seeing. They were quintessential examples of a reactionary modernism.

A strategy of symbols. If the culture of modernity was dominated by representations whose signs no longer referenced reality, but only other signs, it is not at all surprising that Schmitt was interested in experimenting with alternative modes of expression—modes that put a premium on the quest for metaphysical meaning. This explains Schmitt's interest in Däubler's "The Northern Light" (Heil 1996, 14). Published in 1910, the lengthy poem (comprised of more than 30,000 lines) was an exploration of the cosmic condition and the question of being. Released in three volumes, the metric epic impressed Schmitt because of its synthetic power (see Türk 2016). "The Northern Light" for Schmitt was more than an artistic act of occasional expressionism. To him, it was a mythical tale about the elements of nature. The poem does not just describe

a long-lost time; its appeal, especially to Schmitt, was Däubler’s invention of a singularly emotive, poetic language that transcended the purely communicative function of words. It was the kind of meaningful aesthetic representation for which Schmitt had longed.

Poetry was attractive to Schmitt as a medium that was capable of revealing the elementary function of language. Its unique symbolic power, he was convinced, set it apart from the novel, the literary form at the heart of Romanticism, which Schmitt held in low regard. He believed that the novel, as an art form, could never signify more than an act and product of subjective invention. In the hands of the Romantics, the novel was said to have lost all connection to reality; it was seen as a solely aesthetic achievement. Throughout his life, Schmitt’s commentary on the novel was always pejorative. For example, when Schmitt, after World War II, dismissed West Germany’s new, democratic constitution, its so-called Basic Law (*Grundgesetz*), he wondered whether the constitutional text belonged to the “realm of the pure novel” (“*Reich des reinen Romans*”; quoted in Anter 1994, 153). Moreover, he quipped that the newly democratizing country’s state constitutions were “novels of the state” (“*Staatsromane*”). Schmitt’s elevation of poetry as a cultural institution in 1916 and his concomitant demotion of the novel was his attempt to reorder—with the help of yet another conceptual binary—existing cultural hierarchies in the dying days of the German empire.

It is possible to draw a straight line from Schmitt’s analysis of language in *Theodor Däubler’s “The Northern Light”* to his later writings, in which language remained central, but his substantive focus was more explicitly on politics and law. In the case of *The Concept of the Political*, to cite but the most prominent example, already the title was programmatic. “The concept of the state presupposes the concept of the political,” Schmitt (2007a, 19) declared early in the text. The famous formulation is usually interpreted from the vantage point of political thought, but it is also significant from the perspective of Schmitt’s cultural thought, especially his cultural criticism. If criticism, as the Greek term *krinein* suggests, is a form of distinction, and the essence of the symbol, in its original meaning, is the unification of elements, Schmitt’s concept of the political, with its friend/enemy distinction, can be seen as a *critical symbol*, by which we mean an ordering concept that analytically separates two elements while simultaneously relating them to one another. Here is how Schmitt wrote about his friend/enemy distinction: “This provides a definition in the sense of a criterion and not as an exhaustive definition or one indicative of substantial content” (2007a, 26). What this means is that the concept in question—the political—is *not* defined by the phenomenon that it denotes, politics, but by the distinction that it makes possible. Armed with this critical distinction, Schmitt was ready to reorder the discursive foundations of the political. The idea of culture in Schmitt’s thought, one might say, served as the foundation for its own critique. Literary texts continuously inspired Schmitt in the construction and reconstruction of the theoretical edifice of his *entire* oeuvre. As Galli writes, “The literary text is always for Schmitt a pretext, an occasion to speak about himself and about his obsession, namely, the ubiquitous and elusive presence of the ‘political’ in all realms of human activity” (2012, 62).