



Review: [Untitled]

Reviewed Work(s):

Political Theology: Four Chapters on the Concept of Sovereignty by Carl Schmitt; George Schwab

The Crisis of Parliamentary Democracy by Carl Schmitt; Ellen Kennedy

Political Romanticism by Carl Schmitt; Guy Oakes

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Book Reviews

Political Theology: Four Chapters on the Concept of Sovereignty. By

Carl Schmitt. Translated by *George Schwab.*

Cambridge, Mass.: MIT Press, 1985. Pp. xxvi + 70. \$15.00.

The Crisis of Parliamentary Democracy. By *Carl Schmitt.* Translated by

Ellen Kennedy.

Cambridge, Mass.: MIT Press, 1985. Pp. 1 + 132. \$17.50.

Political Romanticism. By *Carl Schmitt.* Translated by *Guy Oakes.*

Cambridge, Mass.: MIT Press, 1986. Pp. xxxv + 177. \$20.00.

The appearance of these translations is the latest event in a modest but significant attempt to communicate the ideas of Carl Schmitt to the English-speaking world and to place Schmitt's notorious association with National Socialism in proper perspective. While it is sometimes difficult to discern what motivates those involved in these publications, all seem to agree on two things: first, that in the realm of politics Schmitt is "one of the most original and powerful thinkers in this century to have struggled with the problems of Machiavelli, Hobbes, Locke, Rousseau, and Kant" (*Political Theology* [PT], p. viii); and second, that in the postwar period overzealous defenders of the open society have grievously misunderstood this great man's ideas and abused his reputation. To set the record straight, Schmitt's new admirers call for a new detachment, a frame of mind necessary to investigate what engagement so long obscured, namely, his role as defender of the Weimar Republic in general and the Weimar Constitution in particular.

Now, while it is not difficult to assemble a large body of writings wherein Schmitt explicitly or implicitly claims this role for himself, if, in the name of the new detachment, one insists upon taking him at his word, the result will be a credulity as embarrassing as the old engagement's moralism was confining. This danger is not as obvious as might at first appear, for, as some commentators have tended to forget, when a constitutional democracy lacks strong constitutional precedents and real democratic traditions, its defense becomes a much trickier undertaking than it might otherwise be. Under these circumstances, if one wishes to defend, one must begin by defining and innovating and one must possess a statesman's awareness of the damage such defenses can cause. It is with this in mind that the historian must approach Schmitt's activities in Weimar Germany. These translations are of particular value in this respect, for what they deal with is, above all, definition and innovation.

Schmitt constructed his *Political Theology* around his famous definition of sovereignty, here rendered as: "Sovereign is he who decides on the exception" (PT, p. 5). While diverging outwardly from Jean Bodin's definition of sovereignty as the "supreme power over citizens and subjects, unrestrained by laws" whose "first and principal function" is "to give laws to the citizens," Schmitt, focusing on the idea of superiority to law, claimed to have grasped the quintessence of Bodin's definition in his own. He reasoned that because an exception was a situation not anticipated by the legal

order, the sovereign's very existence depended on its ability to confront exceptional circumstances with actions not found in the catalog of those prescribed by or deducible from the law. When dealing with an exception, the sovereign must suspend the law or be destroyed by legality. The supreme actions of the sovereign were thus actions utterly unregulated by law, and this makes "the essence of the state's sovereignty . . . not . . . the monopoly to coerce or to rule, but . . . the monopoly to decide" (PT, p. 13). In the exception, the sovereign's "decision frees itself from all normative ties and becomes in the true sense absolute" (PT, p. 12).

All of this amounts to one of those apparently fertile insights to which Schmitt's much vaunted reputation for "brilliance" is largely due. It intriguingly suggests a close parallel between political thought and theology by conjuring up a picture of the sovereign as a godlike personality who not only brings order out of chaos by granting law, but who also miraculously suspends that law when chaos in the form of an exception threatens to return. However, for all its "brilliance," Schmitt's definition raises serious difficulties when applied to a political order such as the one he was claiming to defend when he advanced this definition in 1922.

These difficulties stem from the considerable tension that exists between the "essence" of sovereignty and the secondary functions of the sovereign. To see this tension, one need only consider George Schwab's assertion that Schmitt's "sovereign slumbers in normal times but suddenly awakens when a normal situation threatens to become an exception" (PT, p. xviii). At first one is inclined to agree, but upon closer examination, it turns out that the sovereign is always on the prowl. Its supreme act may be a decision on the exception, but it nonetheless must rule during normal times. It must do so because the legal order that it creates to establish and maintain normalcy is made up of two basic elements, "norm and decision" (PT, p. 10).

Rejecting what he took to be the dominant jurisprudence in Germany at the time, a form of legal positivism that seemed exclusively concerned with the logic of legal norms, Schmitt held that in normal times norm and decision are interdependent entities. Here the sovereign or its agents must decide on the basis of the law, but because "the juristic deduction is not traceable in the last detail to its [normative] premises and because the circumstance that requires a decision remains an independently determining moment," the law does not predetermine the decision itself (PT, p. 30). While it was indeed true that in the "normal situation . . . the autonomous moment of the decision recedes to a minimum" (PT, p. 12), it cannot disappear, and neither can the sovereign. Every legal case contains exceptional elements that must be decided upon. The most that one can say is that it is only in a true exception, a full state of emergency where norm and decision are "dissolved into independent notions" and the norm itself is destroyed, that the sovereign steps forward in full battle gear ready to confront chaos with the weapon of the unregulated decision (PT, p. 12).

Schmitt thus actually depicted the sovereign as being or not being regulated by law, depending on the situation. This greatly complicates his treatment of the relationship between law and politics (the central problem of constitutional theory for German *Staatsrechtslehrer* during the Weimar period) and severely limits the applicability of his definition of sovereignty. To see this one must first recognize that Schmitt's definition of sovereignty anticipates his definition of the political, because the legal exception actually threatens the sovereign's existence. From this it is clear that in an exception politics takes precedence over law. In a "normal situation," on the other hand, where "the autonomous moment of the decision recedes to a minimum," law seems to constrain the political, with the precise relationship between the two being poorly defined and the ends of politics remaining unclear. This works out well enough

in "absolute monarchy" where "in the struggle of opposing interests and coalitions" the monarch makes "the decision and thereby create[s] the unity of the state" (PT, pp. 48–49). However, when "the political power emanates from the people," as stated in Article 1 of the Weimar Constitution, Schmitt's constructs fail to pass muster. In this case, decision will reach a maximum in normal times, for here the exception that destroys the norm is the inability to decide. The democratic equivalent of the decision on the exception is the recognition by "opposing interests and coalitions" of the principles of legality embodied in the constitution as the precondition of the political. Schmitt, however, unable to adjust to the new order of things, insisted that the democratic cat must bark, that at some point democracy must be able to cast off the bonds of legality, and then discovered that it could not. A monarch can decide, but "the unity that a people represents does not possess this decisionist character." It is an unwieldy "organic unity" in which "the struggle of opposing interests and coalitions" becomes a cannon rolling loose on the deck (PT, p. 49). At this point Schmitt, the reputed defender of the Weimar Republic, must begin to innovate.

In his *The Crisis of Parliamentary Democracy* (CPD) Schmitt does move off in the direction of innovation, but, significantly, only after he begins by begging the question. For here it turns out that "the unity that a people represents" does possess "decisionist character." In fact, "a democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and unequal that threatens its homogeneity," as seen in Turkey's "radical expulsion of the Greeks" and Australia's barring of "unwanted entrants through its immigration laws" and its admission of only the "right type of settler" (CPD, p. 9). Democracy requires homogeneity (diversity apparently being either the cause or the definition of the exception), and it is quite capable of obtaining it. The real problem is that in modern mass democracies, obstacles to stability emerge when concrete democratic homogeneity is mixed with abstract liberal concepts of "equality of all persons as persons" (CPD, p. 13). The chief obstacle here is parliament, "an inconceivable and outmoded institution" from the standpoint of a homogeneous people attempting "to realize an identity of governed and governing" and live by "the sole criterion of the people's will" (CPD, p. 15).

To explain the problems of parliamentary government, Schmitt attempted to go beyond the standard complaints of his day and "to find the ultimate core of the institution of modern parliament" (CPD, p. 20). He found this core in "the intellectual world of liberalism" (CPD, p. 8). Liberals espoused a "rationalist conception of the law" that depicted law as the embodiment of "truth and justice" (CPD, p. 43). True law was "general and already promulgated, universally binding without exception, and valid in principle for all times" (CPD, p. 42). This conception of law implied that the task of parliament as a legislative assembly amounted to the discovery of truth and justice through rational methods. Its chief tool was discussion, "an exchange of opinion that is governed by the purpose of persuading one's opponent through argument of the truth or justice of something" (CPD, p. 5), and the chief precondition of discussion was "openness" or the subjection of political processes to the light of public opinion (CPD, pp. 48–49). A true parliament was an assembly of notables bound not by the instructions of their constituencies, but rather by their duty to search for truth and justice.

Schmitt saw this search as a nonpolitical undertaking. Its cold rationality conflicted with the passion underlying the authoritative decisions that were the hallmark of the political, and tended instead to produce interminable and thus indecisive debate. Given this fact, it is difficult to understand how such an institution could produce any legislation at all, and Schmitt made little effort to offer an explanation. He was,

however, quite certain that "if . . . openness and discussion have become an empty and trivial formality, then parliament . . . has also lost its previous foundation and its meaning" (CPD, p. 50), and that openness and discussion had indeed become formalities, given the behavior of modern political parties.

Probably the most disturbing feature of Schmitt's analysis of parliamentarism is his unwillingness to grant to parliament what he had granted to organs of government when the discussion stood in the shadows of monarchical absolutism. Parliament was permanently attached to a rationalist, unpolitical ideal of law and legislation, and while earlier norms and decisions could coexist in organs of government, Schmitt utterly refused to reinterpret the meaning of parliament in light of this fact and to see in the forum that a parliament offers to a modern industrial society what is, for all practical purposes, the only centralized, orderly, and legally regulated arena in which it is possible to display political ideals efficiently in public, give them intensive and somewhat expert scrutiny, and then have them passed into law by individuals more or less under the control of the people. Instead Schmitt maintained: "If parliament should change from an institution of evident truth into a simply practical-technical means, then it only has to be shown *via facta*, through some kind of experience, not even necessarily through an open, self-declared dictatorship, that things could be otherwise and parliament is then finished" (CPD, p. 8). "Otherwise" here does not mean the end of democracy, for "dictatorship is not antithetical to democracy" (CPD, p. 28), and if a group of representatives can decide for the people, "then certainly a single trusted representative could also decide in the name of the same people" (CPD, p. 34). "Otherwise" refers to some other means of divining the unified, personalistic, decisionistic will of the sovereign people in both exceptional and normal situations.

In falling for this fiction that so obviously contradicts the nature of the political process in a modern democratic state, Schmitt proved himself to be a prisoner rather than a critic of obsolete ideologies, and as a result of his lack of both perception and imagination he proceeded to foist upon the Weimar Constitution a version of the theory of the general will which was at least as dubious as the unpolitical concept of law and legislation he thought so ridiculous. Thus, when in his conclusion Schmitt, without explanation, astonishingly brings up the possibility "of renewing the age of discussion" (CPD, p. 76), one can only wonder what there is to discuss. When he states that "resumed discussion cannot content itself with repeating the question, 'Parliamentarism, what else?'" (CPD, p. 76), one can only respond with the query: If not in parliament, then where else?

Schmitt was insightful enough to understand that a functioning political order daily defies what some nineteenth-century liberals took to be the laws of society by combining the fire of creative decisions with the water of predecided norms in order to bring discussion to a fruitful conclusion. But what he tried hard not to see was that this insight is hardly incompatible with liberalism. The imbalance within his own thinking that this shortsightedness produced landed him squarely among those who conspired to burn the house down. Schmitt's problem, as his *Political Romanticism* (PR) (perhaps the most fascinating of the books under review here) clearly demonstrates, was that he confused individualism with individuality, and in so doing subverted the entire liberal project of finding some general principle that could direct individuals toward some higher unity.

For Schmitt, individuality was the core of romanticism, and romanticism was nothing less than the worldview of the modern bourgeoisie. Romanticism had no distinctive subject matter but consisted, rather, of a subjectivizing and aestheticizing approach to every object of inquiry. The romantic took everything as an opportunity to elaborate upon his own sensibility: "in other words, in the romantic, the romantic

subject treats the world as an occasion and an opportunity for his romantic productivity," a disposition that led Schmitt to define romanticism as "subjectified occasionalism" (PR, p. 17). The plasticity and arbitrariness of every form of occasionalism made of it a "disintegrative concept" that "negates the concept of *causa*" or "the force of a calculable causality, and thus also every binding norm" (PR, p. 17). Accordingly, romantic politics becomes incapable of contact with objective reality and degenerates into the endless discussion that Schmitt elsewhere proposed as the meaning of parliamentary government. Political romanticism "wants to be productive without becoming active"; it is "a kind of lyrical paraphrase of experience" that is incapable of creating or sustaining order (PR, p. 159). Indeed, the romantic's obsession with his individuality makes him utterly hostile to every normative order, for "every norm destroys the occasional license of the romantic" (PR, p. 161).

But if the endless discussion of the parliamentarian is the endless discussion of the political romantic, how is it that liberal normative legal positivism is the natural ally of parliamentary democracy? One might connect political romanticism with legal positivism by way of their alleged shared unpolitical outlook, but the imputation of such an outlook to legal positivism in the realm of public law was the error of those who opposed positivism, and not the positivists themselves. Schmitt himself admitted that legal norms represented an objective order, and if he had retorted with the stock complaints about the "abstraction" and unreality of the positivist treatment of norms, he would have had to recognize that positivists were quite capable of understanding what Georg Jellinek, one of the most important of their number, termed "the normative power of the factual." Schmitt's real problem was that he simply could not bear the individualism that accompanied positivism, for it failed to comprehend—and here his true colors are on view for all those who are willing to see—that which was "hierarchically distributed among different functions in a social order" (PR, p. 20).

Schmitt's defense of the Weimar Republic was the defense of a *Vernunftrepublikaner*, someone whose heart was elsewhere and who was on the lookout for something both more "rational" and more fulfilling. Schmitt was never terribly forthcoming about precisely what that something might be, and it is quite possible that he would only have known it when he saw it. However, for all the mystery, those who believe that liberalism is not quite as silly as he made it out to be should have no trouble in seeing through Ellen Kennedy's claim that "Schmitt's political theory remains burdened by a tendency to blame the bearer for the bad news" (CPD, p. xli). On the contrary, nowhere does Karl Kraus's famous verdict on psychoanalysis as "the spiritual disease of which it considers itself to be the cure" seem more fittingly reapplied than to the decisionism of Carl Schmitt.

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In Search of Stability: Explorations in Historical Political Economy. By

Charles S. Maier.

Cambridge: Cambridge University Press, 1987. Pp. x + 293. \$29.95 (cloth); \$10.95 (paper).

Although the essays in this collection already have been published elsewhere, this is not one of those familiar attempts by author, agent, and publisher to scrape together a book by ransacking old journals for no longer relevant articles. It brings together,