



**Review: [Untitled]**

Reviewed Work(s):

*Law as Politics: Carl Schmitt's Critique of Liberalism* by David Dyzenhaus  
Peter Breiner

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of the richness and tragic complexity of issues of race in the South and in the United States.

This attempt to retrieve the ideas of the southern agrarians faces a final challenge. Duncan suggests that by bringing their demands forward they faced two risks: cooptation to the northern view of industrialism and unrestrained individualism and destruction in the face of the uniformity and sameness imposed by modernity (p. 155). There is a third possibility, however, and it endangers the whole project of the agrarians and Duncan's efforts at reconstruction; this is the danger of being ignored by a triumphant opponent. Duncan's book represents an effort to avoid that third danger, to inject into our modern debates over community, globalization, and diversity the vision brought forward by the southern agrarians. As one might surmise from this review, I do not think Duncan fully succeeds in that effort, but it is surely worth making.

Anyone looking for a general introduction to the ideas and theory of the southern agrarians will be disappointed (and probably confused). But if you want to plunge headlong into a lively and idiosyncratic debate about republican virtue and sectionalism, combined with a vigorous defense of untimely men and a "road not taken," this book will provide plenty to think about and plenty to engage the emotions.

#### **Law as Politics: Carl Schmitt's Critique of Liberalism.**

Edited by David Dyzenhaus. Durham, NC: Duke University Press, 1998. 318p. \$54.95 cloth, \$18.95 paper.

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This is an excellent collection of articles, both from German and Anglo-American commentators, on one of the most controversial and influential critics of liberalism. Focusing largely on Schmitt's critique of liberal politics and his politicization of constitutional law, the essays tend to rotate around two interrelated questions. First, should we defend the reasonableness of liberal constitutionalism against Schmitt's well-known strategy of seeking to find beneath liberal institutions the primordial "political" moment when an individual or a people willfully and without rational guidance decide to impose a unified political and constitutional order? Second, can Schmitt's existential concept of the political as the definition of the self through the definition of the enemy be used to justify political forms he would never have embraced, that is, to defend constitutional liberalism, radical democracy, or natural right? An answer to the first question (according to Ronald Beiner and David Dyzenhaus) is the explicit aim of this collection, but the provocation of these essays is in the variety of answers they give to the second question.

Quite a number of the contributors seek to explicate the relation of Schmitt's concept of the political to his critique of the liberal concept of constitutional law, especially as developed in his most significant work on public law, *Verfassungslehre* (1928). Ernst-Wolfgang Böckenförde's essay, which is central to the German discussion, seeks to demonstrate that Schmitt's concept of the political as the struggle of friend and enemy was meant to apply to relations outside the state. Within the state the political referred to political unity beneath which constitutionally regulated competition could occur. The essays of Renato Cristi, Ingeborg Maus, and John McCormick cast doubt on this thesis. Cristi demonstrates that in *Verfassungslehre* Schmitt adds the notion of "the people" (das Volk) as the constituent power that produces constitutions to his resolutely monarchical (and antidemocratic) concept of sovereignty. By contrast, Maus

argues that despite Schmitt's decisionistic notion of popular sovereignty in his account of the Weimar constitution, "the social function" of Schmitt's theory is always to privilege the supercession of general (constitutional) law by decisionistic measures of a dictator in the state of emergency, a possibility which is always-already present in every constitutional form because all legal norms originate in the state of exception (p. 206).

McCormick provides a somewhat more nuanced account located between Maus's socially functional argument and Cristi's democratic reading of Schmitt. Carefully following the concept of dictatorship from Schmitt's early work to his later Weimar writings, McCormick rather convincingly demonstrates that Schmitt abandoned his earlier endorsement of limited dictatorship in emergency situations in favor of an absolute notion of sovereignty in order to counter revolutionary socialist and communist demands for the dictatorship of the proletariat. Thus, for McCormick, Schmitt embraces popular authority as a constituent power largely as a tactical move to counter revolutionary socialism.

Space does not permit a further critical discussion of the careful scholarship behind each of these interpretations. But it is worth pointing out that a central issue at the heart of this debate is the second question, that is, whether Schmitt's inclusion under the exceptional situation of a radical democratic popular will should be regarded as a mere tactical maneuver in support of a plebiscitarian executive power or an occasion for inserting popular sovereignty into the political struggle over liberalism.

This question is indirectly taken up in a number of essays that discuss Schmitt's assault on the political institutions of modern liberalism. Ellen Kennedy points out that Schmitt's concept of "public" as the unified "people" steers between the rational liberal public and the irrational public of crowd psychology. Robert Howse argues that Leo Strauss accepted a limited version of Schmitt's decisionism in the emergency situation, but by echoing Schmitt's criticism of Weimar he also mobilized classical natural right to defend a liberalism that had abandoned the grounds for its own defense. Reinhard Mehring claims Schmitt vastly overstates his argument that the principle of liberal parliamentarism must inevitably collapse under the weight of its tendency to compromise contradictory political positions.

Other contributors seek to defend constitutionally limited government against Schmitt's notion of the supremacy of the political decision over any constitutional system of rights. In a deftly argued essay, Heiner Bielefeldt argues that liberal neutrality toward differing world views "can quite well go along with the willingness and readiness to engage in political conflict. Liberalism, especially Kantian liberalism, is after all a fighting political ideology" (p. 31). It struggles, he claims, against oppression and discrimination in all its forms and seeks to discover biases behind universal claims. This argument meets Schmitt's challenge only half way. It does not discuss the pressures to which a radical republican form of constitutional liberalism would be subjected once forced to engage in a partisan political struggle against those who oppose the elimination of barriers to human dignity.

Mehring and Dominique Leydet simply bypass this issue. Mehring claims that Schmitt overlooks the possibility of a "constitutional patriotism" that encourages peaceful compromises in a parliamentary setting. Leydet acknowledges the force of Schmitt's criticism that liberal parliaments tend to be taken over by private interests and disciplined parties, and therefore fail to live up to the liberal principle of rational public debate in which representatives overcome their party loyalties and converge on the proposal that is supported by

the best argument. We can answer Schmitt's political-sociological critique, Leydet insists, if we simply abandon the ideal of disinterested parliamentary discussion and instead rely on the public to screen policy proposals and hold representatives accountable.

The problem with both Mehring and Leydet's responses to Schmitt is that they cede him his most trenchant political-sociological criticisms while proposing rather pale institutional alternatives to offset them. A more vigorous challenge to Schmitt comes from McCormick, who points out that Schmitt quite rightly shows that liberal constitutions have neglected the problem of who should have sovereignty in a state of emergency and that his earlier Roman model is a potential solution to the problem; but he also argues that Schmitt is wrong that the exceptional moment is at the origin of all sovereignty. The institution of emergency powers is merely a constitutional mechanism.

William Scheuerman and Jeffrey Seitzer choose a different tactic. Scheuerman meticulously demonstrates how Schmitt, and Arendt for opposing reasons, quite deliberately distorts the political doctrines of the French and American revolutions to support the view that politics is prior to and supersedes all liberal constitutional rights of liberty. Scheuerman scores an important point against Schmitt for attributing to Siey  s a purely decisionist view of the people as constitutive power while overlooking this thinker's appeal to natural law and rights of individual liberty as a restraint on any popularly representative assembly. Similarly, Seitzer shows how Schmitt justifies a plebiscitary sovereign for the Weimar constitution by tendentiously reading the history of constitutionalism as a series of decisionist founding moments.

The question these last two readings raise, however, is whether merely showing Schmitt stylized and distorted constitutional history undermines the theoretical force of his existential theory of politics and sovereignty. Surely, neither Schmitt nor Arendt is the first theorist to distort history for the sake of projecting dynamic accounts of politics into static situations or, for that matter, to view politics from the viewpoint of polarized extremes. Thinkers as diverse as Machiavelli, Weber, Mannheim, and Gramsci have done the same for goals quite at odds with those of Schmitt.

Recognizing that Schmitt's theoretical style does not entail his conclusions, Chantal Mouffe places his concept of the political in the service of a concept of radical democracy that Schmitt would have resolutely rejected. Mouffe accepts his criticism of liberal cosmopolitanism and agrees that political equality in a democracy demands at once homogeneity of citizens as citizens and the distinction between citizens and noncitizens. Yet, she cunningly argues that Schmitt gets it wrong in claiming that the tension between democracy and liberal procedure must inevitably destroy any liberal constitution. Rather, she insists the tension between citizens demanding equal rights of various kinds and liberal universalism produces beneficial consequences for a democratic polity. The rights claims of citizens offset procedural uniformity, and procedural uniformity checks the tendencies of citizens to exclude groups within society (pp. 164–5). Thus, Schmitt can be deployed to discover a democratic dynamic between his two existential poles of dictatorship and pure friend-enemy conflicts.

By redirecting Schmitt's political existentialism, Mouffe avoids a recurrent difficulty that entraps some of the other contributors who seek to defend liberal constitutionalism against his critique. The difficulty lies in Schmitt's strategy of placing liberal parliamentary politics and constitutionally limited government between the existential extremes of absolute sovereignty, on the one hand, and heightened

partisan political conflict, on the other. Once Schmitt makes this move, critics either must deny the fairly obvious fact that even constitutionally limited government shares somewhere along the way in a will-centered decisionist notion of sovereignty and that this model is part of a partisan struggle against enemies of this political form; or they must alter their political position in light of the pressures this existential condition imposes on liberal constitutionalism. Only the essays of Mouffe, McCormick, and Bielefeldt directly confront this latter problem, in part by playing off one part of Schmitt against the other.

This weakness does not override the obvious strengths of this collection. All the contributors engage directly with the substance of Schmitt's criticism of liberal politics both in its Weimar setting and in its contemporary variants. Furthermore, they do a fine job of mediating between the German and the Anglo-American idioms of political and legal theory. All in all, this collection demonstrates why theorists who do not share Schmitt's authoritarian commitments have found in his dynamic critique of liberal politics and constitutional law a recurrent challenge to their own commitments—and perhaps more important, a provocation not to reduce politics to constitutional form.

**Marxism and Social Science.** Edited by Andrew Gamble, David Marsh, and Tony Tant. Champaign: University of Illinois Press, 1999. 381p. \$42.50 cloth, \$19.95 paper.

**Engels after Marx.** Edited by Manfred B. Steger and Terrell Carver. University Park: Pennsylvania State University Press, 1999. 294p. \$55.00 cloth, \$18.95 paper.

Robert A. Gorman, *University of Tennessee*

Those of us who thought Marxian social inquiry unceremoniously died alongside the Soviet Union and communist Eastern Europe between 1989 and 1991 may now want to reconsider. Neoliberal optimism no longer can ignore an intensifying global and domestic maldistribution of resources. Several European nations have elected socialists to begin what promises to be a long process of reclaiming politics from corporate boardrooms. Some intellectuals—with distinct linguistic, cultural, and political identities—have survived the commercialization of universities and are standing up for decency at home and abroad. Often they organize against sweatshops, in favor of living wages, or to support unionized workers. They are also thoughtfully reflecting on the future of socialism, reevaluating socialist thinkers, and injecting the Left back into civil society. A surprising number of well-received new books, penned by notable socialists as well as young professors, have recently resurrected critical scholarship. *Engels after Marx* and *Marxism and Social Science* are recent additions to this expanding list of noteworthy publications. These books indicate that Marxian scholarship has ripened into a complex, subtle, engaging project that mainstream democrats may find attractive. The mindless certainty that often soiled its reputation thankfully has fallen, with communism, into history's dustbin.

*Engels after Marx* and *Marxism and Social Science* are edited anthologies. The respective editors agree that Marxism is alive and meaningfully contributing to social inquiry. They also feel Marxists no longer must agree on a set of inevitable historical laws that preclude the give and take of democratic politics. Finally, they believe that Marx himself carelessly provided the fodder for totalitarians by writing phrases that later were easily misinterpreted or taken out of context. Beyond these shared convictions, however, lie salient differences. Andrew Gamble, David Marsh, and Tony Tant,