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Carl Schmitt's Friend-Enemy Distinction Today

Abstract After 1945, Carl Schmitt largely revoked his nationalist positions from before the war, although he also rarely publicly voiced his opinion about the Federal Republic of Germany and the development of the European Union. However, his complex system of categories offers manifold possibilities for an independent update. This paper aims to sketch the development of Schmitt's friend-enemy theory in his *Theory of the Partisan*, adapting this treatise to present issues. It further tries to, using Schmitt's categories, address the current situation in the EU from the perspective of the Federal Republic of Germany.

Keywords: Enemy, Partisan, Terror/Terrorism, Germany, Legality/Legitimity

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A biographical sketch

Carl Schmitt (1888-1985)¹ is among the most recognised legal experts and political philosophers of the 20th century. He grew up in Westphalia's Plettenberg, earned his doctoral degree in Strasbourg in 1910 with a dissertation in criminal law. In 1915 he passed his bar examination in Dusseldorf, after which he went to Munich to work in the military administration. At the same time, he habilitated (received his professorial title) in Strasbourg. Even before 1918, he noticed a growth of power in the executive branch and an expansion of dictatorial entitlements. The civil-war-like situation of the Munich revolution of 1918/19 and the crises of the Weimar Republic contributed to making the subject of dictatorship his life-long preoccupation. From 1919 he taught in Munich, Greifswald and Bonn, and from 1928 until 1945 in Berlin.

Schmitt found the rule of law under a liberal multi-party system ungovernable, "weak" and inadequate to cope with its competences, which is why, as a legal expert, he pushed for a more executive-oriented and authoritarian transformation of the Weimar constitution. He argued for an extensive interpretation of the president's executive capacities, which made him one of the "crown jurists" of the Weimar presidential system (1930-1933). Before 1933, he was active in the right-wing intelligentsia of the "conservative revolution", supporting Weimar nationalism in its fight against Weimar parliamentarianism. After the Enabling Act of 24 March 1933, he switched to national-socialism, working (as a Party member and top legal expert) on the

1 For more, see: Mehring 2011; Mehring 2014a; Mehring; Schmitt 2003.

“Gleichschaltung” (i.e. the forcible ideological assimilation) of law faculties, the justice system and jurisprudence in general.

As Prussian Privy Counsellor, Schmitt came into contact with Hermann Göring (1893-1946). More importantly, until 1936 he cooperated closely with the party jurist, “Reichsrechtsführer” and minister Hans Frank (1900-1946), who would later become the “governor general” of Poland. Even after his fall in the NS-polycracy (in late 1936), brought about by the SS, Schmitt continued until 1941 to justify the “total state”, as well as use his expertise in international law to defend the Reich’s expansionist policies. Over the span of 70 years he published dozens of brochures and hundreds of papers and articles. The vast body of work he left behind is still in publication, with some of the most recently published volumes including important correspondence and a scandalous biography packed with excesses, affairs and polemics. Problematic as he was, Schmitt nevertheless possessed enormous charisma, which helped give him influence in academia. Extremely ambitious and vain, moody and unstable, he still managed to maintain life-long friendships. The political constants of his thinking were statism, caesarism, nationalism and antisemitism. Even after 1945 he remained an adherent of dictatorship. He denied the sovereignty of the Federal Republic of Germany and ignored it as a state.

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The Friend-Enemy Theory Descriptively and Normatively

The high number of publications between 1910 and 1982 mean that Schmitt’s theories cannot be reduced to a single text. However, two texts at least provide a starting point for the reception of his work: *Political Theology (Politische Theologie)* from 1922 with its doctrine of “Sovereignty” and the famous opening line “Sovereign is he who decides on the exception”; and the treatise *The Concept of the Political (Der Begriff des Politischen)* with similarly poignant formulations “The specifically political distinction [...] is the distinction between friend and enemy” (Schmitt 1963a: 26), and “The concept of the state presupposes the concept of the political” (Schmitt 1963a: 20). There are four editions of the latter treatise, published in 1927, 1932, 1933 and 1963. The last edition is amended to include a historicising preface, and coincides with the publication of *The Theory of the Partisan (Die Theorie des Partisanen)*, which he himself described as a parenthesis to *The Concept of the Political*.

Schmitt explicitly states that his conceptualisation was but an analytical “criterion” (Schmitt 1963a: 26), not an “exhaustive definition”, let alone an essentialist determination. The criterion should stand the test of application from the perspective of the observer, making political action as such clearer and easier to define. This means that Schmitt does not conceive this criterion as having a systematically-constructive meaning. Often his work is spoken of as the “Friend-Enemy Theory”. But Schmitt never speaks of a political

“friendship”, or even a political “peace”. His theory has been criticised for promoting the “enemy” concept: Dolf Sternberger² and Jacques Derrida³ are but two proponents of such criticism. In the strong sense, Schmitt is being accused of standing for the constructivist or creationist concept of the primacy of enmity: the claim being that Schmitt turns a more or less contingent occasional determinant of enmity into the primary purpose of political unification, and that he does not recognise any stable political identities. If we are to clarify these objections, we have to reconstruct his layered considerations with greater complexity.

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A closer examination of the four versions of *The Concept of the Political* shows that Schmitt seeks to support his systematic elaboration of his primary political distinction using historical examples. The text alternates in an essayistic manner between theory and praxis: theoretical considerations and politically-practical conclusions. One should clearly differentiate between the systematic and the politically-practical reception: which systematic meaning Schmitt attributes to “friend” and which to “enemy” can only be determined by consulting other texts.

The essay, *Political Theology* seems to imply a somewhat transcendental and transcendently-pragmatic foundation: political actors must actively opt for the prerequisites that make possible their standpoint as actors. What Schmitt means to say here is that political sovereignty is only possible within a theist and personalist worldview. This calls for rejecting atheist Marxism and choosing a theist and personalist counterrevolution. He interprets his opting for theism, personalism and decisionism through a decisively Christian key, which soon takes an anti-Semitic turn. Such a “friend”, who shares this theist and personalist requirement of opting for sovereignty, does not yet have to belong to the same nation. The systematic approach of *Political Theology* doesn't yet seem to make a nationalist perspective imperative.

Neither is the latter necessarily implied in his 1928 textbook *Constitutional Theory (Verfassungslehre)*, which is also fundamental to Schmitt's concept of political friendship: if we want to understand what Schmitt meant using the terminology of political “friendship”, we have to take *Constitutional Theory* into consideration, especially the relation between the “positive” and the “absolute” concepts of constitution. Schmitt here elaborates how “political units” are constituted through “fundamental decisions” in demarcation from “concrete” alternatives. What he understands by political “friendship” is formally defined as a relative “homogeneity” and “substance”. He identifies different “intensities” or levels of mobilising the political unity of attitudes and actions.

2 Sternberger 1961; Sternberger 1986.

3 Derrida 2000.

Schmitt describes the political dynamics and the constitutional struggles of the Weimar Republic predominantly through the tensions produced by ideas and arrangements of “Versailles”, “Geneva” and “Weimar”. He identifies various actors, and assumes strong internal antagonisms and constitutional struggles. Thus, in his 1923 paper, “The Crisis of Parliamentary Democracy” (*Die geistesgeschichtliche Lage des heutigen Parlamentarismus*) he observes civil-war-like strife between the Marxist movement and the nationalist “counter-revolution”, predicting that the state will lose its political monopoly, resulting in tensions between the State and the Nation. Here his famous opening line gets its historical and systemic meaning: “The concept of the state presupposes the concept of the political” (BP 20). Within the system, this means that political monopoly, i.e. sovereignty, must be described based on primary political actors. From the standpoint of constitutional history, on the other hand, it means that the territorial and bureaucratic institutionalised state is, in its current condition, no longer self-evident and that various political actors are capable of doing politics against the German state, mobilising political forces and movements. In the context of the Weimar Republic, Schmitt is thus implying that the allied victors of “Versailles” and their liberal constitutional system, along with the Marxist movement in Russia and Germany, and generally all kinds of totalitarian parties that function on the principle of *pars pro toto*, including the nationalist opposition, and even churches and syndicalist unions as “pluralist” forces formulating alternative loyalties, all jeopardise the “ethics of the state” and its unity.

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Schmitt’s treatise *The Concept of the Political*, in its 1927 edition, is doubtlessly a nationalist pamphlet. It mobilises the political unity of the People and the Nation in a fight against the system of the winners of WWI. It also explicitly regards “liberalism” as a “negation of the political” (Schmitt 1963a: 69). Schmitt’s nationalist ideal of political intensity and unity therefore significantly differs from the constitutional analysis and deconstruction of the Weimar Republic. In his *Verfassungslehre*, Schmitt distinguishes legal and political elements of the constitution. He wants to reduce the liberal elements of the constitutional state: the legalist concept of law, the basic rights and the separation of powers. Given that our aim here is to emphasise the importance of his work in our time, there is no space here to offer a detailed analysis of how, in his publications pre- and post-1933, Schmitt positions himself with regard to the national-socialist Leviathan.

Updating *The Theory of the Partisan*

As already stated, Schmitt distinguishes the concept of the political from the concept of the state. Even before 1933 he noticed a tension between state and nation, which was perhaps obvious considering the territorial losses after Versailles, but did not codify his concept of building political unity as

“nationalism”. He never wholeheartedly situates “legitimacy” within state legality and in the ruling system of international law. His *Theory of the Partisan*⁴ from 1963 revisits the distinction between the concept of the political and the concept of the state by explaining the figure of the partisan from the aspects of legality and legitimacy. Namely, the partisan is a sub-state political actor acting at their own peril: irregularly and illegally, but not *per se* illegitimately. Schmitt argues historically and genealogically by outlining the development of the partisan “figure”. His historical line dates the origins of the partisan in the time of nationalist resistance to Napoleon in Spain and Prussia, dubbing the Partisan the “Prussian ideal” of 1813. Looking back at WWII, the treatise published in 1963 serves the myth of the “clean” Wehrmacht by making the Marxist line from Lenin to Mao responsible for the ideological and terrorist unleashing of partisan warfare, or to use current language – the asymmetrical warfare of global terrorism.

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Yet even before 1933, i.e. in his 1923 brochure on parliamentarianism, Schmitt views the irregular, illegal partisan actor primarily against the backdrop of the “world civil war” of nationalism against Marxism. He seems to establish the legitimacy of the partisan from his defensive and telluric character. He principally separates legality and legitimacy: the former is a juridical criterion, the latter – echoing Max Weber – the main category of political sociology. Schmitt also differentiates this sociological aspect of legitimacy from the systematic foundation of law. Legality does not guarantee legitimacy: there is illegitimate law, as well as legitimate injustice. Even a collectively recognised and thus legitimate system of legality does not have to be just and true. Schmitt exemplifies this in his *Theory of the Partisan* with the “Salan case” (Schmitt 1963b: 86).

Schmitt’s approaches to a normative differentiation and evaluation of the political actor are indicated by constantly differentiating between legality and legitimacy. This is also why he separates the concept of the political from the concept of the state: legal actions are not *per se* legitimate. There are politically possible and juristically legitimate acts of resistance against the state. In his *Theory of the Partisan*, after the experiences of WWII, decolonisation, the war in Algeria and the Chinese revolution, Schmitt comes close to the problems of today. In debates after 9/11, his *Theory of the Partisan* is repeatedly quoted as particularly relevant.

In 1963, Schmitt names various “aspects and concepts of the last stage”. The spatial aspect of nationalist homeland defence, according to him, becomes increasingly diffuse and unclear, through the ideological orientation towards international Marxism as well as through the global political and technological

4 Schmitt 1963b.

integration. In Germany, this is currently concisely expressed in a formula by the former minister of defence, Peter Struck (1943-2012), who, in a 2004 statement justifying the deployment of German troops to Afghanistan said: “We are defending Germany at the Hindukush”⁵. This statement can today only be understood as satire – no one believes it in earnest. On the other hand, in times when humanitarian intervention seems necessary, there are no longer any clear criteria for differentiating aggressive from defensive wars.

In *Theory of the Partisan*, as well as other works, Schmitt further develops his thoughts for understanding today’s “last stage”. He speaks of the “human type” of the “industrial partisan” (Schmitt 1963b: 81), who, using advanced technology as means of abstraction and distancing from the concrete enemy, is about to lose the last of his human inhibitions. This makes us think of today’s varieties of cyberwar or drone attacks.⁶ In the asymmetrical war of modern terrorism, we see not only the application of modern technology, but also the simplest pirating and destruction of complex technical systems, as well as a combination of both atavistic and modern techniques and practices. Mobile devices and the internet are opening up an easy way of reaching global audiences. Terrorist videos of beheadings have a global political impact.

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Schmitt concludes his *Theory of the Partisan* by distinguishing the actual and the absolute enemy. This is an imputation to Marxism, but he could have just as well named his own anti-Semitic paranoia. In his anti-Semitism, Schmitt has himself lost the ability to distinguish between the actual and the absolute enemy: he constructed phantoms of absolute enmity and clouded his perception with ideological bias. He then retroactively and unilaterally attributed this ideological construction of absolute enmity to Lenin. He writes: “Lenin, as a professional revolutionary of the world civil war, (...) has turned the actual into the absolute enemy” (Schmitt 1963b: 94). When an actual enemy is proclaimed to be the absolute enemy, this denies him any capacity for peace, he is demonised and dehumanised. Schmitt recognises not only the ideological identification and defamation of the enemy, but also his condemnation on account of his deeds and means. For this, he quotes Hegel: “the weapons are the essence of the fighter”, and adds that “this means: the supraconventional weapon suggests the supraconventional man” (Schmitt 1963b: 95). He speaks of the “inescapable moral compulsion” to, following a “logic of value or lack thereof”, declare certain types of enemies “criminal and inhuman”, and push them “in the abyss of total devaluation” that ends in a “destructive spiral of absolute enmity” (Schmitt 1963b: 96).

Here Schmitt could have named excessive measures in fighting partisans during WWII, as well as other examples. In 1960s debates, the “supraconven-

5 https://de.wikiquote.org/wiki/Peter_Struck

6 For more on these justifications, see: Münkler 2015.

tional” weapon that threatened all rules of war was the atom bomb⁷. Today, we could add other forbidden weapons: biological and chemical, cyberwar and drone attacks, or even the regression to atavistic weapons like swords, machetes and axes. When an IS terrorist indiscriminately mows down pedestrians on a promenade in Nice, this renews the discrepancy between civilisation and barbarism, which is then perceived as especially inhumane and terrorist. The political motives of such an act are often contested: in an attack against the developed civilisation of humanity, the perpetrator seems only to care about maximising the dimensions of barbarism. Such a perpetrator is not perceived as a member of an organisation with limited political goals, but as the absolute enemy of humanity and civilisation. One would not even associate him with the notion of “radical evil”, but deny him any human potential. He is thus proclaimed insane and demanded to be locked up in a psychiatric institution instead of a prison.

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Any number of passages from the *Theory of the Partisan* can be similarly used for the analysis of contemporary terrorism. In Germany, this has been done by Herfried Münkler in numerous publications on the “new wars” (Münkler 2002). The most recent example comes from an article in the magazine *Die Zeit* (the issue of July 25th 2016) about the type and profiles of terrorist actors, after the attacks of Paris, Brussels and Nice. Münkler states that a clear distinction between the paradigms of war and criminality is not possible anymore, and that Muslim petty criminals are using the IS as a means of self-aggrandisement and justifying running amok, being in turn instrumentalised for a politics of terror that aims to cause an all-out “conflict between the West and Islam”. Here Münkler refers to Schmitt’s allusion at the “interested third party” (Schmitt 1963b: 77f), who is needed for the terrorist to be recognised as a political actor. Münkler concludes: “He is hence also present in the new forms of terrorism, the ‘allegedly interested third party’. However, it is not addressed directly anymore, but has to be constituted by the reactions of the afflicted”. (Münkler 2016) The most recent reception of the *Theory of the Partisan* would be a big enough topic on its own.

The Current Situation in Europe (September 2016)

Before further applying Schmitt’s categories to the present, I will reiterate some of my theses:

- a. Schmitt has, with his *Concept of the Political*, at first formulated an analytic “criterion” from an observer’s perspective. Only in conjunction with other works, like the *Political Theology* and *Constitutional Theory* can one speak of a terminologically elaborate theory.

⁷ For instance, Jaspers 1958.

- b. Schmitt alternates between theory and praxis, descriptive analysis and normative partisanship. One can speak of a systematic partisanship for the conditions of possible political sovereignty. One cannot, however, find a clear option for nationalism or statism. Schmitt has rather relativised the concept of the state and has given no essentialist definition of the German “nation”. After Luther’s reformation, Germany lost its religious homogeneity, and Schmitt rejected the new humanism of Goethe’s era as a possible religiously-neutral carrier of consensus.
- c. After 1945, Schmitt transferred the distinction between the concept of the political and the concept of the state into his *Theory of the Partisan*. In doing so, he thematised and problematised the legality and legitimacy of this political actor and described his figure in a way which today, over fifty years later, is still relevant.

If we try to comprehend the current re-emergence of nationalism and national state in Schmitt’s categories, we have to concede that his work *literally* does not allow us to do so. We cannot seek orientation by reading his work literally, nor by following its spirit: we cannot and will not follow his political motives, nor can we guess how he would have reasoned if he were living in our times. We can only take some of his concepts and categories and transform them. Schmitt barely stated his opinion on the development of the European Union, and remained conspicuously silent after 1945 about the state of the nation or the “German question”. There are hardly any statements about the German Democratic Republic. Nor are there any strategic considerations concerning a possible German reunification. This silence can only be understood as his condemnation for the defeated of 1945: Schmitt probably interpreted the defeat as a military and political failure of the German people, which he answered by terminating his political loyalty. After 1945, he did not speak from a participant’s perspective, since his view was that Germany lost not only its political sovereignty but also its position as a political actor. In his opinion, Germany was not only powerless and vanquished, but also politically disabled, making him renounce his nationality.

After 1949, it was Franco’s Spain that became his adopted political home. The Federal Republic of Germany never was the home to which he owed loyalty. Behind his generalising diagnosis that “the era of the state” is over (BP 10), we can recognise the claim that Germany as a nation state is finished, annulling any national and citizen obligations towards it. In his last texts, such as *Clausewitz as a Political Thinker* (Clausewitz als politischer Denker) or *The Legal World Revolution* (Die legale Weltrevolution), Schmitt returned to national issues. On the other hand, a differentiated and generalised view of the European process can be found nowhere.

Let us try to look at the current situation using Schmitt's categories. It is understood that we cannot see with his eyes. He would have undoubtedly developed new aspects and categories to deal with today's issues. He did not regard his positions and concepts transhistorically. He spoke of a question-answer relation: whoever offers old answers to new questions has already lost the political game, meaning that he is incapable of appropriately understanding political dynamics.

312 We mentioned that Schmitt understood nations as historical formations and did not attempt to give essentialist definitions of national identities. The "substance" of national "homogeneities" can be diverse. Böckenförde⁸ has further developed this idea, presupposing formative phases in the European nation building processes, as well as relatively stable identities. Schmitt on the other hand, in his *Political Theology*, assumed social and moral resources and cultural prerequisites of political unification. Here in Belgrade, one must remember that Schmitt, influenced by both his wives, had strong affinities towards Serbia and Orthodox Christianity. He was also interested in nation building processes after Versailles, and mentored several dissertations on the Yugoslav state. (Schilling 1939) After 1945, however, he raised the question of multipolar alternatives to the bipolarity of the Cold War only in the most general way and kept proposing a plurality of "large regions" (Großräume) as an alternative to a universalist "world unity" and the "legal world revolution" of a globalised Western constitutional standard. He was aware of continuous nationalist (under)currents within the Soviet sphere of influence, but rightfully did not recognise them as actually decisive political forces. He did not live to see the fall of the Eastern bloc.

In general terms, Schmitt asked about the unifying homogeneous foundations of federative structures, and identified them in his 1926 paper *The Core Question of the League of Nations* (Die Kernfrage des Völkerbundes) as a demarcation effort towards the common enemy – the Soviet Union. In his "Großraumlehre", after 1933, he supported hegemonic relations and legitimised national-socialist Germany as a regulating power in Europe. He viewed the post-war system of Versailles as unstable and supported the territorial revisions of German revanchism. In fact, since the demise of the Soviet Union in 1989, the territorial system of Versailles has continued to collapse. The territorial order of the Cold War has been reduced to the old nationalist fronts of 1918. Nationalist energies have thus shown themselves to be the stronger "myth", as foreseen by Schmitt in 1923. Czechoslovakia and Yugoslavia, products of the Versailles Treaty, exist no more. Nationalist dynamics have led to bloody territorial rearrangements and vicious ethnic cleansing. The explosive potential of nationalism and national claims

8 Böckenförde 1999.

for self-determination have also manifested themselves in the secessionist movements and state-building processes after the collapse of the Soviet Union. These processes of separation are still not complete. After the Chechen wars, Russia under Putin has launched a new bid for empire, as evidenced in Georgia and Ukraine. For this purpose, Russia has dug out old pan-Slavic ideologies and reanimated Orthodox Christianity as a geostrategic means of expansion. Today there are signs of a possible dangerous alliance between Russia and Turkey that could affect the geostrategic order of NATO and constitute a serious threat to fragile world peace. I do not know where Serbia stands on this issue, whether it shares Ukraine's inner conflict between Westernisation and Russia.

Amidst the new crises of the European Union, Germany has been assigned a difficult leadership role. Of all the founding members, Germany has lately been forced to carry the weight of the European process alone. In June 2016, Great Britain voted to leave the Union altogether, even if the actual process of separation has not yet begun, and France is economically weakened and afflicted by Islamist terror. In the autumn of 2015, Merkel, together with her French colleague, called the situation "exceptional". After the Paris attacks, France formally declared a state of emergency, which is today, after the attack in Nice on 14 July 2016, still in place. The burden of the European process is, for certain issues, shouldered by Germany alone. There is little support for its initiatives towards a "European solution" of the refugee crisis⁹ through a more even distribution of the migration influx. Germany is becoming increasingly isolated in preventing the demise of the EU.

Germany's isolation is understandable. After 1945, it had an especially difficult relation to nationalism and nation state issues. During its Cold War division, it learned to distinguish between state and nation and to view nationalism primarily as a destructive factor. This is why right-wing movements in Europe are getting bad press in Germany. Right-wing extremism is fought and suppressed, which is why no strong populist party has been able to establish itself since WWII. There were only small and short lived attempts. The political system can continue to count on this organisational weakness of German nationalism, which is still under the heavy mortgage of national socialism. Such parties usually fail for their sectarian dynamics and their difficult position to anti-Semitism. This also seems to be the case with Germany's youngest populist party, the AfD: despite its huge success at the polls, it cannot seem to establish a stable organisational structure, morphing quickly from Euro-scepticism into right-wing populism, followed by internal quarrels and divisions. This does not mean that nationalism is not

9 For more on this, see: Mehring/Matejckova/Morkoyun (eds.) 2016.

a force to be reckoned with in the German electoral body. Right-wing violence is on the rise; however, as opposed to France or the Netherlands, German nationalism is still proving incapable of organising itself. It is lacking not only strong leader figures, but also public acceptance.

After 1945, the Federal Republic of Germany became the engine of the European process. Unfortunately, Germany forgets the strategic conditions of its Euro-enthusiasm: the economic and political rise after WWII was only possible through Western alliances, and even the reunification after 1989 was only successful under conditions of further strengthening those alliances. With the eastern expansion of the EU, the geopolitical situation has changed considerably. EU and NATO are at Russia's borders, which effectively mean the end of "soft" borders that empires actually require to function. The European Union is struggling to incorporate the various and diverging positions of its member states into nationhood.

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Strong nationalist movements were not very common in Europe after 1945. This applies even to the "hereditary hostility" between Germany and France. Franco-German relations have been very successful for fifty years now. This is why there are still strong voices in Germany supporting a unified Europe, and dreaming of an end to national identities. A depressing testimony of such a dream, or nightmare, is a programmatic article in the *Frankfurter Allgemeine Zeitung* by Martin Schulz¹⁰, President of the European Parliament, written in reaction to "Brexit". It lacks any realistic description of the current situation, crediting the EU with all the new constitutional achievements, while accusing national governments for all the problems. Certain left currents, even in the Social Democratic Party, have perceived the demise of the national state as a just punishment for Auschwitz¹¹. In place of a nationalist sectarian ideology, here we have its equivalent – the ideology of a transnational "good European" in a United States of Europe.

Germany has yet to grasp that the eastern European countries have a different relation to the national state. In addition to economic benefits, what they expect from their EU-membership is the securing of their at long last achieved national autonomy against Russia. Europe is perceived as the enabler of national independence. Nor is it only the young Eastern European member states that are responding to the refugee crisis by reaffirming their national identity and closing their borders; there is no patience any longer for calls to European solidarity. Since its inception, the EU has been a predominantly political project, employing economic cooperation and liberalisation as a means to achieve unitarisation. It remains to be seen if the

10 Schulz 2016: 6.

11 As already stated by Winkler 2000: vol. II, 654 f.

economic liberties in the EU can be separated from other cooperations and solidarities. England appears to be attempting to negotiate Brexit in this direction. It is undisputable that the EU today is facing grave challenges to its unity. Schmitt would have maybe emphasised the integral correlation of constitutional standards, arguing against processes of differentiation and division between the core of Europe and the secondary members, a Europe of different speeds or articulated partial integrations. On the other side, he would probably have relativised strong substantialist presuppositions towards partial communitarian mobilisations, by stressing the external difference towards Russia.

After 1989, the relationship between NATO and EU has also changed. The growing EU has become somewhat of a buffer between the United States of America and Russia. During the 1990s, afflicted by the dissolution of the Soviet Union, Russia was barely perceived as a global power. The USA were credited as “the only remaining superpower”. With the return to old imperial positions under Putin and the “new cold war”, EU and NATO policies are growing closer. The borders of both alliances are more strongly identified. The integral connection of EU and NATO policies is evident in their stance towards the issues of Ukraine and Turkey. This however is making an independent political stance towards the USA more difficult. For instance, there are considerable differences between the EU and the USA regarding their policies on Ukraine. The massive and not entirely unjustified security interests of Poland and the Baltic states are impeding attempts of a de-escalating politics of understanding towards Putin. The USA, who consider the Eastern European border policies to be part of their stance against Russia, are not affected by refugee routes and migratory potentials of failing border states in between Russia and the EU. Germany is interested in assuring stability in Ukraine not least because it would not be able to absorb another wave of immigration.

Today the EU enforces a common European constitutional standard, considering human rights and democracy to be non-negotiable membership criteria. With regard to these criteria, further accession talks with Turkey are currently (as of August 2016) placed in jeopardy. Schmitt would have viewed the presidential, autocratic and even dictatorial transformations under Putin and Erdogan as exemplary cases of a constitutional reconstruction of more or less liberal “legislative states” into autocratic and executive systems of actions and measures. It is to be presumed that he might possibly opt for Russia, if the only alternative were the current Federal Republic of Germany. When we in present day Europe demand of Moscow and Ankara to adhere to our Western constitutional standards, we should not ignore the legal and democratic deficiencies of the EU. Schmitt’s treatise *The State*

of *European Jurisprudence (Die Lage der europäischen Rechtswissenschaft)* is eerily relevant today. He would have possibly been interested in engines of the European process like the EUCB, or the EU Court of Justice¹². He would surely ask about the present place and carrier of sovereignty. He would not, however, be interested in the usual references to a lacking European public community and a non-existent democratic pan-European government, as Schulz would have it. He was no liberal democrat, even if he held that a certain amount of plebiscitary legitimation was politically necessary. He would certainly criticise the informal and non-public centres of decision-making in the EU, ascertaining a kind of vagabond sovereignty, with no clear and transparent responsibilities. Therefore, he would perhaps draw parallels to the Cold War, stating that regardless of whether it is in Bonn, Paris, Strasbourg or Brussels, or even Athens and Warsaw, the EU is structurally and politically blocking its own options of action, which is shifting the place of sovereignty to “interested third parties”. In a decisive moment of crisis, the place of decision is still located in the USA, whether it resides with the American president or with NATO’s military strategists (formally situated in Brussels). This scenario has repeated itself numerous times over the last decades, such as during the Bosnian war, the bombing of Belgrade, even in Libya and Syria.

Here I must end. This overview of considerations cannot refer to the authority of Schmitt’s work. We cannot say how Schmitt would have seen the situation today – his complex body of work allows different interpretations and applications. I will only mention one last aspect: Schmitt fought tirelessly against “universalist” thinking. In the end, he feared a “legal world revolution”, that is, a universalisation of one given constitutional standard without alternatives. In his *Political Theology*, however, he only selectively touches on the social and moral premises of liberal-democratic constitutions. Today we are experiencing the limitations of universalist beliefs, especially when confronted with non-European cultures. National identities inside and outside the EU are once again proving to be the strongest sources of political solidarity and loyalty. “Ethnonationalist” identities are tearing the Arab world apart, mauling it through religious civil wars, with no trace of pan-Arab pacifism or civil political culture. The national prerequisites of liberal-democratic constitutions are today being recognised even in Germany. Schmitt’s dramatic scenarios of states of emergency and civil wars appear to be coming true, and moving from the Middle East and Central Asia towards Europe. I have been studying the work of Carl Schmitt for more than 30 years now. He has never seemed as relevant to me.

12 For more on this, see: Gosewinkel 2016: 592 ff.

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Rajnhard Mering

Razlikovanje prijatelja i neprijatelja kod Karla Šmita danas

Apstrakt

Nakon 1945, Karl Šmit se uglavnom odrekao svojih nacionalističkih pozicija od pre rata, mada je takođe retko javno iskazivao svoje mišljenje o Saveznoj Republici Nemačkoj i razvoju Evropske Unije. Međutim, njegov složeni sistem kategorija pruža višestruke mogućnosti za nezavisnu procenu. U ovom radu se pokušava skicirati razvoj Šmitove teorije o prijatelju i neprijatelju u okviru njegove teorije partizana, adaptirajući ovu tezu u skladu sa današnjom situacijom. Dalje, pokušava da, koristeći Šmitove kategorije, opiše trenutnu situaciju u EU iz perspektive Savezne Republike Nemačke.

Keywords: Neprijatelj, partizan, teror/terorizam, Nemačka, legalnost/legitimnost