

Carl schmitt: the concept of the political



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The tradition of the oppressed teaches us that the ‘ state of emergency’ in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight. Then we shall clearly realize that it is our task to bring about a real state of emergency (Benjamin: 1999: 248)

The pinnacle of great politics is the moment in which the enemy comes into view in concrete clarity as the enemy.(Schmitt: 1963: 1)

The purity of pólemos or the enemy, whereby Schmitt would define the political, remains unattainable... no politics has ever been adequate to its concept.(Derrida: 1997: 114)

I Why Hegel Died

Schmitt begins *Staat, Bewegung, Volk* by stating that with the rise of the Nazi regime, Hegel died. By this, he did not mean that German Idealist philosophy had died, nor that the idea of the German state had died, far from it. Rather, Schmitt identified Hegel with the bureaucratic class of the Bourgeois; Hegel died when the bureaucratic state was no longer a possibility, and the total or pure state emerged as a possibility.

It is this attempt to find a pure politics upon which to base the coming community that characterises Schmitt's work. *Der Begriff des Politischen* (1963) is a vital text for Schmitt's argument. In it, he lays out his fundamental distinction between friend and enemy that he believes is the definition of politics. From this basic antagonism, Schmitt argues for a total state, which can provide the obedience and security that liberal contractualist theories are unable to offer. This total state allows the enemy to come into view in 'concrete clarity.' Thus, the total state for Schmitt offers the transmutation of the enemy: friend relationship in the state of nature into the politics of the total state, where the sovereign can command the power over life and the power to name the enemy. It is only such a state, Schmitt argues, that can resurrect the political from the morbid repetition of the bourgeois; only a total state can make clear the nature of sovereignty as an exception.

This essay will analyse how Schmitt's thought evolved in the historical context of the Weimar republic. It will lay out Schmitt's critique of bourgeois thought in the context of the Nietzschean leitmotif underlying many of the thinkers (Jünger, Spengler) of the period. It will then explain how Schmitt

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attempts to resolve this problem by using Hobbes to rethink the notion of the political, and by relying on the state of exception to guarantee the power of the law.

What is noticeable today is the extent to which scholars of the left use Schmitt. When Schmitt republished *Der Begriff* in 1963, it was in an intellectual climate dominated by the Frankfurt school and their reinterpretation of Marx. However, contrary to appearances and Schmitt's intention, his work shares many characteristics with Adorno: both attack the notion of Enlightenment reason; both see reason as able to co-exist with myth (though for Schmitt this is positive, for Adorno catastrophic). What is instructive about this convergence is the degree to which what separated the thinkers of the Left from Schmitt is a matter of degrees. This issue will be explored further in this essay.

This essay will argue that Schmitt makes a number of pertinent critiques of democracy, and that his theory of sovereignty is a powerful and subtle account of the exercise of political power. However, Schmitt's theory in *Der Begriff* is fundamentally incoherent on a number of counts. As Derrida notes at the start of the essay, Schmitt's concept of the political is unobtainable, it is structurally analogous to the concept of redemption in Christianity: it can only ever occur in the future when placed in the present utterance of speech. That he has created a 'pure' concept of the political is not only immensely politically unsound, divorcing as it does the notion of politics from the notion of the 'good life' that we find in political philosophy since Aristotle, it is theoretically suspect. Schmitt bases the entire of his political theory on an aestheticisation of violence, which is not born out by the phenomenological

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experience of violence, and misunderstands the relationship between sovereignty and the social world.

That his concept of politics is unobtainable is tacitly admitted by Schmitt (1996) in *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*. This work is written at the height of Nazi power, and yet Schmitt reverses his earlier claim about the relationship between the state of exception and the total state. This book could be seen as the epitaph to the argument between Schmitt and Benjamin (before Benjamin fled Germany to die at the Spanish border) on the notion of the state of exception. In the quote from Benjamin that begins this essay he uses a distinction between a real and a fake state of emergency: what he understands is that the use of a constant state of emergency is where the possibility of a relation between law and that state collapses. Sadly, Schmitt realised this too late.

II Was God a Bureaucrat?

If there is today still no lack of those who do not know how indecent it is to “believe” – or a sign of decadence, of a broken will to live – well, they will know it tomorrow. (Nietzsche: 1990: 3)

Schmitt developed most of his ideas in the shadow of the Weimar Republic, a democracy struggling without an armed force and without a clear government. In this period, many conservative thinkers looked back to a time when man used to have God underwriting divine rule. In this *Mythischer Traum* (mystical dream), sovereignty was defined by transcendence. Thus, it was a sphere separated off from the rest of life: sovereignty was not a matter for discussion and popular will, it was the law. Conservatives in Germany at

the time thought many of the problems of the Weimar Republic could be understood as a result of a secularisation that placed man at the centre of the world, and thus turned the idea of sovereignty as an exception to life into an idea of popular will: in Schmitt's terms, transcendence is sacrificed to immanence.

In this critique, thinkers like Schmitt borrow a lot from Nietzsche's critique of the herd mentality of the bourgeois. They seek to rediscover the will, and like Nietzsche in the quote that started this section, await the day when people will know their will is being sapped. One should not believe (a matter of opinion and internal choice): rather, one should obey. It is the liberal idea of belief that they see as central to an age of neutralisations and depoliticisations (to use Schmitt's terms). In this age, politics fails to have a sphere for itself but is degraded by other considerations like morality and economics that fail to understand the absolute nature of sovereignty and so fail to offer a solution to the state. Thus, Schmitt can see in the fractured nature of the Weimar Republic a concept of the political that fails to offer people what they require (security and obedience) and threatens to fall back into the civil war of the state of nature.

Primarily responsible for this is a liberal bourgeoisie that has placed government in the hands of a bureaucracy that depoliticises the sphere of government. The bourgeoisie, Schmitt (1985a: 15) claims, is "a 'discussing class' [that,] wanting to evade the decision...[and] shift all political activity onto the plane of conversation." Thus for Schmitt, the bourgeoisie avoid the importance of the decision: of the authentic act of politics. They encroach on sovereignty and (ibid: 44) "aim with undeniable certainty as subjecting the

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state and politics to an individualistic, and thus private legal morality, partly to economic categories – and thus robbing it of its specific meaning.” Thus, Bureaucracy tries to dilute the power of the state with individualism and thus creates a state unable to carry out its functions effectively. Schmitt’s dislike here of private legal morality is linked to his dislike of the idea of the state allowing its citizens any autonomy: it is here that Schmitt breaks with Hobbes, as we shall see later. For Schmitt, bureaucracy functions in terms of fixed procedures and the rule: such procedures will never encompass the central element of sovereignty, and will sap man’s spirit by being inauthentic to the true political concept (which is the friend: enemy distinction).

In opposition to such apparent decadence, Schmitt postulates autochthonous decision. He argues that the bourgeoisie has sapped healthy German Lebensphilosophie, in an analogous way to the way the bureaucracy saps the notion of the political. He is in agreement with thinkers such as Spengler when they make a vitalist critique of the bourgeoisie. However, for Schmitt this critique also follows from his work on sovereignty. Already in *Law and Judgment* [1912] (see 1914: 14: ff. 1) he noted that one cannot understand the legal order in rational terms alone, as a bureaucrat might understand the law in terms of legal precedent. Schmitt announces that the actual decision (which might change the precedent) is always an irreversible particularity. Here Schmitt draws attention to a fundamental distinction in his work that is little remarked upon: that between constitutive and constituting power. For Schmitt, power must always be understood in terms of its possible constituting function: attempts that place power within the realm of established constituted power (e. g. a set legal order) miss the fundamental

aspect of law and of power. Thus, Schmitt remarks on bureaucratic interpretations of law (1985a: 71) " every rationalist interpretation falsifies the immediacy of life.

III The Failure of German Democracy

The increasing uncertainty and chaos in the Weimar republic led many to fear a communist revolution. In a true Schmittian spirit (the enemy of my enemy is my friend), the climate of the Weimar republic brought together the conservative revolutionaries with the Nazis. Fearing communism, which for Schmitt would be the triumph of the non-political sphere (class), and detesting the bureaucracy of democracy, which they compared to the notion of the content last man in Nietzsche, they wanted an active nihilism to give democracy its last push. They saw a class of Hero's emerging in opposition to the bourgeois after the demise of the democratic state. This democratic state, as was clear to Schmitt from his analysis of the situation, cannot demand to name an enemy from the people and cannot control the enemies that emerge within its own ranks.

However, Schmitt split from many conservatives in how he thought this ' revolution of will' should be brought about. Many conservatives blamed modernism for the bureaucracy and hankered after a return to God as the sovereign and the hierarchies of aristocracy. While Schmitt agreed that modernism gave rise to humanitarian democracy as much as technology, he did not think we could return to the past. He thought that as politics had lost its lieu propre (proper place), and had been intruded upon by the realm of economics, anything now had the potential to be political. Thus, he saw in

modernism something that was compatible with the will. As he noted in *Der Begriff* (1963: 75):

Economics is no longer eo ipso freedom; technology serves not only (the ends of) conflict, but instead just as much the production of dangerous weapons and instruments: its progress does not further eo ipso the humanitarian-moral perfection that was conceived of in the 18th century's progress.

Within technology, he saw the possibility for a new state: based on dictatorship. Such a political entity would be able to decide on a public enemy, and thus subsequently demand that the citizen either kill or sacrifice his own life, which for Schmitt was the mark of sovereignty. Thus, he claims the striking thing about the counterrevolutionaries of state of the 19th century is that the moment the monarchy collapsed and they realised it could not be returned, they called for dictatorship. Schmitt claims (ibid: 78):

The true significance of those counterrevolutionaries of state lies precisely in the constituency with which they decide. They heighten the moment of decision to such an extent that the notion of legitimacy, their starting point, was finally dissolved.

What such a dictatorship would allow is the return of a true sovereign.

IV Political Theology

All significant concepts of the modern theory of the state are secularised theological concepts not only because of their historical development-in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver-

but also because of their systematic structure(systematischen Struktur), the recognition of which is necessary for a sociological consideration of these concepts. (Schmitt: 1963: 36)

For Schmitt, the dictatorship of the future would allow again the lieu propre of sovereignty to be regained. This proper place, for Schmitt, is a theological place. This point is much disputed by Schmittscholars, see for example Meier (1995) and Mouffe (1999). In the quote above, it can be argued that Schmitt sees politics as theological: which would be to say his politics is a theological one whereby the omnipotent God is an omnipotent lawgiver. Or, it can also be argued that for Schmitt, theology itself is political: that theology is the basis for politics and the two meet at the point of sovereignty. This essay will leave aside for the moment the secondary aspect of this quote, which is that there is also a historical development that makes modern theories of the state theological concepts: it is enough to note that in either theory, the democratic notion of the people at the centre of sovereignty misunderstands the nature of the sovereign.

For Schmitt, the sovereign is he who creates law. However, in this creation, the sovereign has an interesting ontological characteristic. For (Schmitt: 1963: 36) " although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety." Thus, for Schmitt the sovereign is included in the legal order only at the point of its own suspension. This can be understood as the exception. For instance, in a state of exception, the law is suspended by an act of law itself: in that act, the exceptional nature of the decision of sovereignty becomes clear, and one can

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see that law is created by an exceptional decision that can be recalled at any time in the state of exception. This point is the original point that lies at the foundation of law, and thus, is the foundation for Schmitt's concept of the political. For Schmitt, the political is preceded in a certain sense by the state. As Agamben (1995: 26) explains:

The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. . . . The sovereign decision of the exception is the ordinary juridico-political structure (struttura) on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning

Is this anarchy? For if it was, then Schmitt would be arguing for replacing the Weimar republic with a state no better than the state of nature. This is not the case. For Schmitt (1963: 12):

What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order... Because the exception is different from anarchy and chaos, order in the juristic sense still prevails, even if it is not of the ordinary kind.

Schmitt is keen to maintain a constant relation between the state of exception and the state of law. It is still the law that suspends itself through the figure of the sovereign. For Schmitt, it is this decision that is at the heart of sovereignty. Rather than sovereignty being a matter for popular will, Schmitt understands that underlying the founding of any law is a moment where law must be suspended. This moment returns in the state of

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exception. This state of exception guarantees the power of the sovereign. It also reveals that sovereignty is pure immediacy, rather than representation (which is the making present of something which is absent). As Schmitt notes of the sovereign decision (1985b: 31): "the decision becomes instantly independent of argumentative substantiation and received autonomous value." This argument, Schmitt claims, understands the true power of law in a way that rationalist jurisprudence fails to do.

We see that Schmitt's argument about the decision versus the rule is not a new concept in his thought in the 1920's. The similarity between these statements and those in *Law and Judgment* indicate this project had been there from the very start. In *Political Theology* he gives a good definition of his project: (ibid: 22): "precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree." Through this project Schmitt attempts to break out of the choice between nihilistic individualism (the bureaucratic state) and community based politics (communism, as well as regimes based on tradition) by emphasising the singularity of sovereignty.

V Solutions: Sovereign Violence

Schmitt now has a critique of the contemporary world, and a desired world he would like to go to. He finds his means in violence. Through violence Schmitt argues it is possible to break with rule based systems of sovereignty. As he notes (1985b: 12): "the norm is destroyed by the exception." Thus through the exceptional act the possibility of safety and passive nihilism is destroyed, (ibid) "in the exception the power of real life breaks through the crust of a mechanism that has become torpid with repetition." There is a strong

theological undertone to such violence. The exception here functions much like the sacrifice in religion. It is that which is outside the limits of the rule; that which is offered up to something absolutely interior. Indeed, we could go so far as to say that what the miracle is for theology, the state of exception is for Schmitt. Both are exemplary, singular: and yet both define the basis for the rule: one by proof of God's existence, the other by proof of the existence of sovereignty.

When man is attuned to battle, he will once more realise the nature of existence and thus the nature of sovereignty. Schmitt here finds a strange bedfellow in the socialist Georges Sorel, who he quotes approvingly on many occasions. In his essay on Sorel, he notes (Schmitt: 1933: 18) "warlike and heroic conceptions that are bound up with battle and struggle were taken seriously again... as the true impulse of an intensive life." Both Schmitt and Sorel agree on the need for swift action and decision, both on the need for man to be subservient to a higher myth. Their only point of disagreement is on which particular myth needs to be followed. Sorel, as a Marxist, uses the myth of the proletariat. However, for Schmitt this is a non-political notion, allowing ideas of economics to infuse what should be a pure sphere of sovereignty. The idea of the nation is that only myth that can keep such a purity alive. In a staggering display of blindness to history Schmitt notes (1914: 70): "the stronger myth is national. The national myth has until today always been victorious." On the same subject he quotes Mussolini approvingly (ibid: 75-76) when he claims "we have created a myth, this myth is a belief, a noble enthusiasm: it does not need to be a reality."

We should note at this juncture several subtleties of Schmitt's argument. While he reverses Clausewitz, and claims politics should be placed in the cause of war, he does so only to the extent that war emerges as a possibility to return to an autonomous notion of the political sphere. Schmitt does not advocate violence for the sake of violence, but rather, as a way to bring democracy to its limit point. At this limit point, man will realise the impermanence of his existence (the friend: enemy distinction at the heart of politics) and realise that only a total state allows for this distinction to be transcended through the absolute notion of sovereignty. Thus, war appears in Schmitt as a constant possibility: which is to say, as a way of constantly realising the nature of man's existence. In this, the *Ausnahmmezustand* (state of exception) is not dissimilar from what Heidegger (1962: 312) calls a *Grenzsituation*, where "Dasein glimpses transcendence and is thereby transformed from possible to real existence."

Further, the relationship of violence to the state of exception should be clarified. The state of exception is not, in and of itself, violent. Schmitt makes two distinct arguments here that are structurally similar. He argues that through war man can realise the basic concept of the political and rise above the bourgeois mentality to become a hero. In this, man is exceptional and breaking through the rules of peace time. He also argues that it is in the state of exception that we find the true nature of sovereignty and only a state that keeps this absolutely singular notion of sovereignty will be able to succeed. It is important to bear in mind these arguments are separate and Schmitt is not arguing for violence for itself.

However, he does make several errors of analysis it is pertinent to demonstrate here. While Schmitt dislikes the bourgeoisie immensely, it is striking to note the degree to which his thesis on the power of violence as a singularity in which being is rediscovered is similar to the argument of bourgeois artists (most pertinently the Futurist Marinetti, who embraced Italian Fascism) in favour of art for art's sake. The problem in this argument is that there is nothing in violence per se that makes it singular. As a series of ethnographies of war (Richard: 1996) have made clear: war follows cultural patterns and, far from being cleansing, can be banal and quite the opposite of a *Grenzsituation*. Schmitt's eulogisation of law seems like the yearning of a bourgeoisie after an authentic existence expressed in an exoticised Other.

Despite the fact that the state of exception and the violence/war arguments are separate, their structural similarity should make us aware that for Schmitt, an aestheticisation of politics (politics as a pure sphere being equivalent to art for art's sake, or in Schmitt's concept of the state, the state is simply that which is for itself) underlies his entire political theory.

Moreover, this aestheticisation is a facile one that is at odds with the nature of war and the nature of violence. Following from this, it becomes clear that the exception is not a 'pure' example of politics: in as much as it is the basis for political order, it is bound up in, for instance, economics. For Schmitt to claim that it is 'pure' requires the assumption that the state precedes politics, a claim, as we see in the next section, Schmitt cannot sustain.

VI Hobbes and the Root of Liberalism

The fundamental theological dogma of the evilness of the world and man leads, just as does the distinction of friend and enemy, to a categorization of

men and makes impossible the undifferentiated optimism of a universal conception of man (Schmitt: 1963: 65)

Schmitt seeks to return to Thomas Hobbes. However, the Thomas Hobbes he searches for is not the contractual Hobbes who allows citizens some element of self-control. Rather, he returns to Hobbes as the theorist of the state of nature. It is here that Schmitt seeks to ground his notion of the political. Man is originally living in contingent, risky circumstances, when any man around him could be his enemy: indeed, is his enemy. Schmitt notes (ibid: 61) "all genuine political theories presuppose man to be evil, meaning dangerous and dynamic." It is this dangerous man that political theory must confront: a man without the illusions of democracy and self-improvement. He notes (ibid: 65) "for Hobbes... the pessimistic conception of man is the elementary presupposition of a specific system of political thought."

Because man always requires an enemy, it is this conception of man that can only be assuaged by sovereignty powerful enough to give a public enemy: to command obedience in return for protection. To resurrect such a man in Hobbes, it is necessary to remove Hobbes from his later work, which 'taints' him. In this task, Schmitt performs some interesting manoeuvres. Normally, Hobbes is criticised today in a facile way by those who argue that there is no state of nature; that man always presupposes culture, exchange and reciprocity. Hobbes makes clear in a footnote (1997: 312) that the state of nature did not need to have occurred: it is a model for politics. Most interpret this to mean it is a model for human nature. However, Schmitt interprets the state of nature as the state of sovereignty in some senses. Sovereignty is also an exception that sublimates the category of friend: enemy onto the national

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stage. As Schmitt notes of international politics(1963: 69): “ in it, states exist among themselves in a condition of continual danger, and their acting subjects are evil for precisely the same reasons as animals are stirred by their drives.”

What is faulty and interesting about Schmitt's thesis is partly the extent to which it underlies all his other hypotheses. He argues that politics presupposes the state. What this ignores is that there is always already an encultured human, an encultured state. This is less problematic in Agamben's formulation of Schmitt because he sees this state of sovereignty as reflecting the character of sovereignty itself: it does not require an original sovereignty, merely that the exception occurs every time a sovereignty institutes itself. However, Schmitt requires that we begin from a point of enemy, and without this, the justification for the total state begins to crumble.

The violence of the original friend: enemy distinction is similar to the violence with which he wants to bring down democracy and allow men to realise their need for dictatorship. Indeed, he makes (1963: 58) the explicit statement: “ the word struggle (Kampf) like the word enemy, is to be understood in its existential primordially (seinsmässige Ursprünglichkeit).” Thus, in the struggle for the nation in the time of total mobilisation, we find the true relationship of singular sovereignty and the enemy: friend distinction presents itself. As Schmitt notes (ibid: 32) “ to the enemy concept belongs the very present possibility of combat.”

In embracing Hobbes in this fashion, he attempts to attack the project of Liberalism founded on moderating Hobbes. He disagrees with the possibility Hobbes holds out for that people can improve themselves to a degree, and in doing so relinquishes the notion of the 'good life.' The life in the state is a life for itself: the state becomes a self-sufficient cause for all. To ground this Geist-like state, he takes as his basis what he finds to be human in Hobbes. Namely (Hobbes: 1997: 99): "the passion to be reckoned upon, is fear." This fear should drive men to accept the singularity of the state. Hobbes claims (ibid: 102) "every man to every man, for want of a common power to keep them all in awe, is an enemy." For Schmitt, the common awe is the state: and the reason the state can take this role is because it can designate the common enemy and in doing so, command the sacrifice of the person within its sphere. Here we see the theological leitmotif in the thought of Schmitt emerge again. The sovereign becomes like God: he who can demand the sacrifice of life. To reformulate this statement in Schmittian terms, the sovereign is he who can demarcate the boundary of the rule and the exclusion, and include you within an exclusion. This concept is much more absolute than Hobbes, who holds out for self-improvement. Yet, for Schmitt this later Hobbes misses the absolutely singular nature of human existence and of sovereignty.

As we have already emphasised, Schmitt does not use Hobbes to get to a state of nature. Rather he uses Hobbes to establish the reality of humanity without illusions. Hobbes was writing in a time of civil war, which Schmitt liked to think was analogous to the Weimar republic. In such a period (Hobbes: 1997: 26): "all legitimate and normative illusions with which mean

like to deceive themselves regarding political realities in periods of untroubled society vanish." He sees Hobbes as trying (1963: 52) to "instill in man again the mutual relation between protection and obedience." This mutual relation finds its answer in Schmitt's total state.

VII The Total State

Insofar as it is not derived from other criteria, the antithesis of friend and enemy corresponds to the relatively independent criteria of other antitheses: good and evil in the moral sphere, beautiful and ugly in the aesthetic sphere, and so on. In any event, it is independent, not in the sense of a distinct new domain, but in that it can be based neither be based on any one antithesis or any combination of other antitheses, nor can be traced to these. (Schmitt: 1963: 45)

Schmitt places politics in its own sphere: a sphere that we cannot establish, as Derrida astutely noted. We might argue that this position of absolute submission before the state is functionally similar to the position that a worshipper finds himself before God. We find this in the *Der Begriff* when Schmitt (ibid) states that "to the state as an essentially political entity belongs to the *jus belli*, i. e. the real position of deciding in a concrete situation upon an enemy and the ability to fight him with the power emanating for the entity."

Yet, this is not a new development in Schmitt's thought. The absolutist nature of Schmitt's thought can also be found in his early work. In 1914, in *The Value of the State and the Significance of the Individual*, he argues (1914: 101) that "no individual can have autonomy within the state," and that "the individual

is merely a means to the essence, the state is what is most important." Here, the state emerges in Schmitt's work as something essential. As a sociologist, Schmitt was aware of the temporal formation of the state. Yet he also considered it as a Platonic form that one aspires towards.

With the emergence of the Nazi state, Schmitt joined the Nazi party and wrote legal tracts for them. However, increasingly isolated and under threat as an unconventional thinker, he went into early retirement. The Nazi state did not emerge as the total state, as he tacitly admits in his work on the Leviathan. Interestingly for a scholar who placed so much emphasis on the real and the concrete evidence of life: his solution was a Platonic state. Schmitt tries in vain to exclude all other categories from the political. What he finds is that when, as in the Nazi regime, the constitution exists alongside the non-formalisable decision of the state of exception (the Führer's rule is the law, as Goebbels never tired of saying), the one requires a generalised state of emergency. In such a state of emergency the link that Schmitt sees as essential, that which is between law and decision, is broken. This is not to say there is not order in the generalisable state of emergency, far from it, but to claim that, with Agamben (1995), *nomos* and *animos* enter a state of undecidability that breaks the Schmittian dream of such a state providing security.

VIII Conclusion

Behind the idea of the total state stands the correct realisation that the contemporary state possesses new mechanisms of power and possibilities of enormous intensity. (Schmitt: 1963: 186)

This statement by Schmitt is correct. There are indeed great mechanisms of power and intensity in the idea of the total state. Furthermore, these are weapons of the modern age. Schmitt's positive legacy is the elucidation of the grounds of sovereignty in a founding violence that occurs when law suspends itself in its own creation. This understanding, while it needs to be nuanced, is still useful for democracy today. An understanding of the way in which supposedly democratic regimes today use and instrumentalise violence and a state of exception is vital to combating the excesses of sovereignty. We could for example look to the way the Guantanamo bay inmates are placed in a category which is now beyond the friend: en