

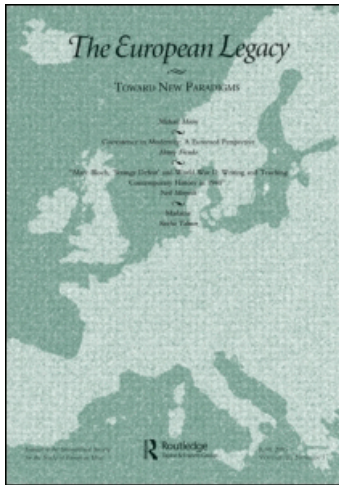
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## What Carl Schmitt Picked Up in Weber's Seminar: A Historical Controversy Revisited

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## What Carl Schmitt Picked Up in Weber's Seminar: A Historical Controversy Revisited

~ KJELL ENGELBREKT ~

**ABSTRACT** *The intellectual relationship between Carl Schmitt and Max Weber has been a point of controversy for at least half a century. At the 1964 convention of the German Sociological Association, in honor of Weber's centenary, Schmitt was famously referred to as Weber's "legitimate student." This article uses the chapter Schmitt specifically wrote for an edited volume in Weber's memory, published in 1923, as the starting point for juxtaposing the two scholars, and then expands the analysis to encompass a range of sources and commentaries. The comparison focuses on the approach of each of the two scholars to methodology and didactics, theory and conceptual use, as well as to the society/social science nexus. The article concludes by arguing that Schmitt performed a double rhetorical move: while styling himself as Weber's student, he then drew on that authority to assault Weber's liberalism and concept of scientific integrity.*

The Fifteenth Convention of the German Sociological Association, held in Heidelberg in late April 1964, was held in honor of Max Weber's centenary. As social scientists gathered in memory of the famous cofounder of the Association as well as of the discipline of sociology as a whole, the list of participants read as a virtual *Who's Who* of twentieth-century social science. A number of prominent U.S. German émigrés and American scholars attended the convention, including Carl J. Friedrich, Karl Deutsch, Herbert Marcuse, and Reinhard Bendix. The keynote speaker was no other than Talcott Parsons, the all-influential Harvard sociologist and distinctive interpreter of Weber's texts. The leading French Weber-scholar and father of the modern French study of international relations, Raymond Aron, took an active part.

From West German universities it would be only a slight exaggeration to say that "everybody" was present. These included, among others, Max Horkheimer, Hans Albert, Ernst Topitsch, and Wolfgang Mommsen, along with a sizeable portion of the Federal Republic's future generation of social scientists. Mommsen, significantly, had a few years earlier produced a controversial volume entitled *Max Weber German Politics, 1890–1920* (*Max Weber und die deutsche Politik, 1890–1920*), with a particular emphasis on the turbulent years of the Weimar Republic. The convention was opened by the President of



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the German Sociological Association, Theodor Adorno, a scholar and an intellectual who, not unlike Weber, had attained near-legendary status in his own lifetime. Carl Schmitt, meanwhile, the wholly discredited “Crown Jurist of Hitler,” was conspicuously absent, despite his reputation as a major intellectual force of the Weimar era.

The proceedings (subsequently published) show that deep political, methodological and ideological divisions were never far from the surface at the Heidelberg convention. Many of the physical and emotional wounds of the Second World War still seemed raw in the mid-1960s, at the same time as young scholars were beginning to unleash a set of critical questions. The foreign guests managed to preserve their diplomatic cool, but Mommsen’s 1959 book in particular had reinvigorated an intricate debate on Weber as a historical figure and “role model” for German intellectuals. Mommsen had alleged that Schmitt’s analysis of sovereignty was effectively implicit in Weber’s famous definition of the state, by stressing the linkage between Weber’s claim that a head of state may enjoy “plebiscitary authority” and Schmitt’s attempts to bolster the constitutional position of the German *Reichspräsident* in the Weimar Republic.<sup>1</sup>

In 1964 Mommsen held himself back in his comments to Parsons’ keynote address, yet a young Heidelberg professor sharply criticized the American scholar for playing down the importance of both “meaning” and “understanding” (*Verstehen*) in his rendition of Weber’s thought. In a more pointed remark, he went on to criticize Parsons’ acceptance of Weber’s political sociology as a form of liberalism. According to the record, this young Heidelberg professor stated that:

In the period of the First World War, Weber outlined the image of the Caesaristic *Führer*-democracy with nation-state imperialism serving as the contemporary basis. This militant Late Liberalism in the Weimar era had consequences that Weber could not have taken into account, though we are obliged to do so when we interpret Weber here and now. We must take notice of the fact that Carl Schmitt was a legitimate student of Max Weber. In terms of the influence exerted by his thought, the decisionist element in Weber’s sociology reinforced, rather than disrupted, the power of ideology.<sup>2</sup>

Uttered by the young Jürgen Habermas, this critical assessment reportedly inserted considerable momentum into the ensuing sessions of the convention.<sup>3</sup> In retrospect it appears doubtful whether Habermas had fully thought through the comment he made concerning the Weber-Schmitt connection at the 1964 Convention. The main body of his intervention constituted a sharply critical review of Parsons’ keynote address, phrased as three questions. Only toward the end of that intervention he made a partly ironic remark about the American appropriation of Weber as a distinctly liberal social scientist, followed by the charged comment linking Weber’s legacy to that of Schmitt, the former Prussian State Counselor and law professor.

The almost equally famous footnote in the 1965 publication of the convention proceedings seems to support the suspicion that the remark was indeed made in the heat of the moment. In this footnote Habermas slightly rephrased his controversial characterization of the Weber-Schmitt connection:

Taking up a friendly suggestion, I later came to view another formulation—if one can accept its ambivalence—as more appropriate: Carl Schmitt was Max Weber’s ‘natural son.’<sup>4</sup>

One cannot but agree with Habermas and his friendly adviser that the amended phrase is more appropriate, in that it retracts the allegation of a reciprocal relationship between Schmitt and Weber.<sup>5</sup> Schmitt was not Weber's "legitimate student" in the sense of an intellectual heir, especially not one that Weber recognized as a successor. It is true that Schmitt had attended the staff seminar over which Weber presided at the Ludwig-Maximilian-Universität in Munich, and that they had expressed some common concerns about the direction the Weimar Republic was taking.<sup>6</sup> In addition, they were both trained lawyers and their respective work is characterized by a keen interest in the entanglement of legal institutions and the history of political ideas. But there are no accounts affirming that they spent any significant time together outside the Munich seminar or that a mentorship evolved, let alone a personal relationship. Except for Weber thanking Schmitt and several other colleagues for their help in working out the concepts in *Economy and Society* in the preface to that posthumous publication, he makes no other references to Schmitt or his work.<sup>7</sup>

In that sense Schmitt was certainly never a member of Weber's closest "family" of colleagues and friends. But then, of course, not every natural child is. The characterization of Schmitt as Weber's "natural son" is admittedly a double-edged remark that can be understood to imply that he was Weber's "illegitimate child" (with the even more insulting label "bastard" hanging in the air). Yet while this remark cleverly captures Schmitt's own attempt to draw on Weber's authority, it leaves the issue of an intellectual lineage wide open. To those who not only sympathized with Weber's thought but were familiar with his sometimes quite painful intimate life, moreover, the remark could be construed as having an insidious dimension in hinting that Max and Marianne Weber never had any children of their own.<sup>8</sup>

Nevertheless, Habermas's controversial intervention is useful as an entry point in at least two important regards. First, it serves to bridge the considerable historical gap between us and the intellectual and political environment of Munich at the end of the second decade of the twentieth century, widely assumed to be the formative period of Schmitt's political ideas. Second, this remark casts the two main protagonists in sharp relief to one another, and it does so in a formulation of yet a formidable theoretical *system-builder*, Habermas, who spent part of his subsequent life working on Weberian problematics.<sup>9</sup> The core of the controversy that I want to revisit relates to the query as rephrased by Habermas, namely, if Schmitt can be seen as Weber's "natural son." In view of the sweeping character of this query, though, the overarching issue of intellectual continuity from Weber to Schmitt is broken down into subsets of questions dealing with politics/ideology, methodology/didactics, and theory/concepts.

### THE WEBER-SCHMITT CONNECTION

The literature on Carl Schmitt is presently growing by leaps and bounds.<sup>10</sup> Every year, in the specialized intellectual history journals alone, there are new contributions on his work. The accumulated Weber literature, however, is many times more extensive. Hundreds of volumes exist in a wide range of languages, and Weber scholars are today so specialized that they tend to meet at their own conferences and publish in their own journals.

In fact, the secondary literature devoted to each scholar is sufficiently large to include the relationship between Weber and Schmitt as the subject of several articles, and two book-length treatments in German—Gary L. Ulmen’s *Political Surplus Value: A Study of Max Weber and Carl Schmitt* (*Politischer Mehrwert: Eine Studie über Max Weber und Carl Schmitt*) from 1991, and Matthias Eberl’s *The Legitimacy of Modernity: Cultural Criticism and Conception of Domination in the Work of Max Weber and Carl Schmitt* (*Die Legitimität der Moderne: Kulturkritik und Herrschaftskonzeption bei Max Weber und bei Carl Schmitt*) from 1994.

Both are comprehensive, high-quality studies though they go about their analyses in very different ways. Ulmen has identified Schmitt’s 1925 *Roman Catholicism and Political Form* (*Römischer Katholizismus und politischer Form*) as a pivotal piece of work, through which he compares the two scholars. In particular, Ulmen is able to show how Schmitt’s study of political Catholicism is conceptualized in contrast to Weber’s *Protestant Ethic and the Spirit of Capitalism* (*Die protestantische Ethik und der ‘Geist’ des Kapitalismus*), and thus becomes a vehicle for defining his own political ideas. For his part, Eberl has chosen to draw on a great variety of writings of both scholars. Two themes bring out the contrasts: the criticism of culture (*Kulturkritik*) and conceptions of domination/order (*Herrschaftskonzeptionen*). With regard to Schmitt’s texts published in 1912–32, Eberl finds considerable overlap in the topics discussed, but only limited intellectual continuity derived from Weber.

Of more direct relevance is the excellent chapter by Catherina Colliot-Thélène, “Carl Schmitt versus Max Weber: Juridical Rationality and Economic Rationality,” published in *The Challenge of Carl Schmitt* (ed. Chantal Mouffe) of 1999. As a whole the volume reflects a new level of engagement with Schmitt on the part of left-leaning critical theorists outside Germany proper, which in turn contribute to a number of interdisciplinary debates. Colliot-Thélène primarily reviews the use of the concept of *rationality* in the work of both scholars, ascribing part of Schmitt’s disagreements with Weber to “the response of a Catholic to a Protestant, but also the response of a political thinker to an economist.”<sup>11</sup> Even if the author tends to oversimplify Weber’s outlook, she is acutely sensitive to the tensions inherent in Schmitt’s reception of Weber and expressly refers to Habermas’s 1964 remark. Already at the outset Colliot-Thélène candidly states that “in spite of Schmitt’s unquestionable admiration for Weber, in spite of the tributes he frequently pays in his writings in the early 1920s, he does nevertheless consider him above all an adversary.”<sup>12</sup> She ends by noting the “strategic nature of the confrontation with Max Weber,” as well as Schmitt’s opposition to the “inescapable progress of economic and bureaucratic rationality” described by the former.<sup>13</sup>

Not unlike Colliot-Thélène, I will focus on the texts that Schmitt wrote in the 1920s and, as noted above, I follow a similar method of reviewing the relationship through the prism of three sets of issues. But there are two significant differences as to the assumptions of my analysis. First, I adopt a more skeptical view of Schmitt’s motives than does Colliot-Thélène and other Schmitt scholars. Presumably, it was quite an honor for a young associate law professor, in his mid-thirties, to be placed so prominently in a double-volume tribute to the great German scholar. Rather than interpreting Schmitt as ambivalent toward Weber, with tributes mixed in with criticisms, I will try to show that a rhetorical strategy is at work in the earliest references. Based on a close reading of the original 1923 text in its specific context, I find numerous indications that Schmitt’s adversarial approach to Weber was formed earlier than has been acknowledged.

Second, I believe that specifically the chapter Schmitt wrote in memory of Weber—published in 1923 as part of two volumes edited by Melchior Palyi—should be seen as a direct response to the work of his senior colleague at the Ludwig-Maximilian-Universität in Munich. Schmitt's chapter in the Palyi collection is titled "Sociology of the Concept of Sovereignty and Political Theology." It is some 35 pages long and is the first text to appear in the second volume of the *Key Problems of Sociology: In Memory of Max Weber* (*Hauptprobleme der Soziologie: Erinnerungsangabe für Max Weber*). The chapter has three distinct parts, one discussing the definition of sovereignty, one treating "legal form" and "the decision" and, finally, one called "political theology." Parts of the treatise were published separately in the famous four-chapter volume entitled *Political Theology*.

This does not mean that I doubt Ulmen's claim that the 1925 book on political Catholicism was written with *The Protestant Ethic and the Spirit of Capitalism* in mind, and that Schmitt in part was influenced by Weber in ways of which he himself was only dimly aware. But it appears reasonable to assume that Schmitt, who later often made implicit and explicit references Weber's works, would not have missed this opportunity to directly address Weber's *oeuvre*. I will therefore pay particular attention to the 1923 chapter, which is often bypassed as a composite paper or "first stab" of things further developed elsewhere. To my mind, not even Colliot-Thélène pays sufficient attention to the original text and its particular context, as she cites exclusively the differently organized *Political Theology* volume.

Other indications that it may be correct to concentrate on the early 1920s and on the 1923 chapter in particular are provided by Ellen Kennedy and John McCormick, two well-established Schmitt scholars. In his 1997 *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* as well as in a 1998 edited volume, McCormick analyzed the evolution of Schmitt's writings in the interwar period, identifying a significant radicalization of his views between publication of the 1921 *The Dictatorship* (*Die Diktatur*) and the 1922 *Political Theology* (*Politische Theologie*).<sup>14</sup> Kennedy passes a similar judgment in her 2004 *Constitutional Failure: Carl Schmitt in the Weimar Republic*.<sup>15</sup> This shift would coincide well with Schmitt's stay in Munich and with his exposure to Weber's seminar and the manuscripts that went into *Economy and Society* (*Wirtschaft und Gesellschaft*).

A further, more general assumption on my part is the important role of direct confrontation with political developments and personal encounters in the intellectual formation of scholars. I suspect that the conjunction of Schmitt's wartime service at the Munich military headquarters, his observations of the Munich revolution and the 1919 *Räterepublik*, his appointment to the social science faculty as teacher, his encounter with radical students, and the staff seminars with Weber—all had a powerful impact on his early academic career. Even though he remained a prolific writer throughout his life, the ten to fifteen years that followed this extraordinarily turbulent period were by far the most fruitful. As suggested, many scholars agree that this is also the time when Schmitt rendered explicit his distinctive outlook on law, politics, society, and aesthetics.

## POLITICS AND IDEOLOGY

In the Weimar era Weber was a prominent figure both on the political arena and in the academic world, and it was soon after Weber's death in 1920 that Schmitt's reputation began to soar. An obvious similarity between Weber and Schmitt is their acute interest

in the interface between politics and law, notably the outer limits of either field, and how they support and intermittently subvert each other. The opening passages of Schmitt's 1923 chapter in Weber's memory can serve to illustrate this interest, as well as Schmitt's lifelong passion for aesthetics and drama in his own writing.

"Sovereign is he who decides on the state of exception,"<sup>16</sup> Schmitt wrote, and few law professors have ever come close to the engaging and provoking style he applied in his texts. The chapter begins with one of the starkest formulations produced by Schmitt in defense of the "decisionist" philosophical position, and with which several contemporary scholars wished to distance themselves from the conceptual-idealist theory of law taught at many German law faculties.<sup>17</sup> Max Weber and Gustav Radbruch belonged to the same broad category of decisionist authors, but their version of the approach had more to do with political responsibility and individual ordering of preferences.<sup>18</sup> For his part Schmitt assumes what today is viewed as an extreme decisionist standpoint in claiming that the "state of exception" shall have theoretical precedence and thereby define the "state of normality."<sup>19</sup>

Undeniably, Weber and Schmitt shared a deep concern regarding the fragility of the Weimar constitutional order. Schmitt concurred with Weber's view that the German President (*Reichspräsident*) ought to be endowed with authority to assume emergency powers at a time of crisis. Weber had tried to influence the drafters of the Weimar constitution to make the President directly elected as "the sole safety valve for the need of (personal) leadership" (*die einzige Ventile für das Bedürfnis nach Führertum*).<sup>20</sup> Like Weber, Schmitt saw the danger of Germany unraveling without such a presidential mandate and he ardently supported granting emergency powers to the head of state.<sup>21</sup>

Weber advocated, somewhat skeptically, democracy, political modernization through the formation of parties, and parliamentarianism.<sup>22</sup> He was evidently hoping that German democracy would mature through the institutions and practices encouraged by the Weimar constitution.<sup>23</sup> In contrast, in his 1923 text Schmitt makes no mention of the direct election of the *Reichspräsident* and seems to care little for such formal legitimization. Instead, he thought that the entire constitution could be suspended in the interest of the state, except for the rules identifying the suspending agents—the President, the government and the legislature.<sup>24</sup>

Schmitt's preoccupation with the concept of sovereignty has a lot to do with the broader context of the Weimar era and the perceived weakness of German statehood. Both he and Weber were committed to a unified Germany, which in the aftermath of the disastrous war occasionally appeared threatened by centrifugal forces. Bavaria, with its historically close ties to France, is a case in point, and both men could have experienced these tensions while working in Munich. In his chapter Schmitt draws on Jean Bodin's notion of sovereignty as indivisible and absolute, to create a high standard for the consolidation of German statehood. A decade later, in the so-called Leipzig court case (*Leipziger Prozess*), he would prove instrumental in reigning in Prussian self-rule and thus bolstering central government at the expense of the periphery.

Even in 1923 we can see that Schmitt makes no commitment whatsoever to parliamentarism or democracy, referring to the latter as an expression of "political relativism."<sup>25</sup> Three years later, in *The Crisis of Parliamentary Democracy* (*Die geistesgeschichtliche Lage des heutigen Parlamentarismus*), he went as far as to suggest that Weber, together with Hugo Preuss and Friedrich Naumann, had merely regarded

parliamentarism as a means to extract “excellent leaders” (*Führerauslese*), but that the Weimar experiment had now failed for all to see: “With all due respect for these men, today nobody will commit himself to the hope that the parliament can easily guarantee the rise of a political elite.”<sup>26</sup>

But if Weber is charged only indirectly with political naivté, Hans Kelsen’s theory of “pure law” and its supposedly value-free character receives explicit and sharp criticism in Schmitt’s 1923 chapter. Several of the points he raises against Kelsen’s theory and its neglect of values have attained classic status and have been reiterated by legal theorists ever since the 1920s. Some of Weber’s positions on the philosophy of science are exploited in this context, particularly his concept of values. In essence, Schmitt accuses Kelsen of having stripped his theory of “pure law” of any connotations to politics and ideology, and thereby of constructing a circular mode of reasoning with “norms” on both ends.

The notion of values with which Schmitt operates, however, is similar to that of sovereignty, in that any value that is given precedence becomes *a priori* absolute, indivisible and incommensurate with other values.<sup>27</sup> This is of course in stark contrast to Weber’s liberal outlook according to which value differences always exist but may often be ranked in order of preference. Consequently, interested parties have the opportunity to negotiate a trade-off between sets of values.<sup>28</sup> At one point in his text Schmitt openly recognizes this difference, and speaks of Weber as a rationalist.<sup>29</sup> In his 1928 *Verfassungslehre* (Constitutional Theory) Schmitt carried the decisionist approach further, introducing the distinction between constitutional law (*Verfassungsrecht*) and constitutional rule (*Verfassungsgesetz*). The former is the unique decision over the political whole in respect of its particular form of existence, he explained, whereas the latter represents easily suspendable adjuncts to that decision.<sup>30</sup>

The strong decisionist stance is also what Schmitt greatly appreciates in Erich Kaufmann’s work, cited repeatedly in the 1923 chapter.<sup>31</sup> He more than hints his preference for Kaufmann’s approach over Weber’s and positively appraises the attempt by “a lawyer” to address the topic of the state.<sup>32</sup> Indirectly, Schmitt here appears to be saying that Weber, despite his extensive legal training, cannot be regarded as a full-fledged colleague because of his work in sociology, public administration and economics.

Interestingly, in 1917 Weber briefly commented on Kaufmann’s work in an article on Bismarck’s legacy in the national constitution. His view of Kaufmann’s study was favorable but with one important caveat. Weber thought that Kaufmann “failed where the lawyer transcends into a politician.”<sup>33</sup> In other words, he felt that Kaufmann was not respectful of the boundaries between the scholarly and the political domain, presumably in the vein later developed in his famous Munich lectures, “Science as Vocation” (1917) and “Politics as Vocation” (1919).

Incidentally, Schmitt’s unequivocal praise of Kaufmann goes some way to address the long-standing debate about his allegedly anti-Semitic views, expressed in a series of speeches when serving as Prussian State Counselor in 1933–36. It is clear that he was well aware that Kaufmann was a German Jew. Supported by a number of faculty members including Schmitt in the mid-1930s, Kaufmann remained in Berlin until the outbreak of the war in 1939, when he fled to the Netherlands. This suggests that Schmitt’s anti-Semitism was politically and opportunistically motivated rather than deep-seated



and racist. This was precisely what Schmitt's critics among the overzealous Nazi officials used against him in 1936, prompting the termination of his position as Prussian State Counselor.<sup>34</sup>

In general the secondary literature portrays Weber as a liberal and Schmitt as a conservative, although at times critics concede that the distinctions are thinner than that.<sup>35</sup> Some analysts seem particularly impressed by Schmitt's work, and their assessments occasionally border on the apologetic. Weber has sometimes been portrayed as the more fervent nationalist of the two. Gopal Balakrishnan, for instance, in his otherwise well-crafted biography, *The Enemy: An Intellectual Portrait of Carl Schmitt*, describes Weber as the "great-power chauvinist" and Schmitt as the postmodern pro-European intellectual.<sup>36</sup> Similarly, Chris Thornhill plays down the bleak nature of the Schmittian worldview and depicts his decisionism as a form of contract theory.<sup>37</sup>

While ostensibly reminiscent of Habermas's 1964 criticism of Weber as a malignant ideological influence on Schmitt, such claims belong to the minority view. Schmitt's 1923 chapter appears to affirm that this minority reading is, indeed, incorrect. The extreme version of decisionism presented there has very little to do with the "weak" variant defended by Radbruch and Weber. By the same token, the mere scorn that Schmitt pours on Locke and his political philosophy undermines Thornhill's reading of him as a closet contract theorist. Regarding the charge of radical nationalism in the case of Schmitt's alleged mentor, it may suffice to point out that Weber personally helped negotiate the Versailles Treaty despite his reservations about the treatment of Germany, and that he never advocated unilateral treaty violations by Germany.

Balakrishnan's rendering possibly reflects his reliance on Schmitt's own biographical anecdotes for assessing Weber's nationalism.<sup>38</sup> The 1923 text, along with a number of other writings in this period, may serve to demonstrate that Schmitt's politics early on were both anti-liberal and radically conservative. Several commentators have quite convincingly argued that Schmitt's turn toward fascism occurred in connection with his 1932 engagement with the *Langnam-Verein* group of German industrialists.<sup>39</sup> Ulmen has made another interesting assertion, namely that *Roman Catholicism and Political Form* (1925) represents Schmitt's own break with personal belief in Catholicism.<sup>40</sup> Be that as it may, the profoundly anti-liberal stance already present in the 1923 chapter indicates that this radicalization preceded the engagement with National Socialism in the early 1930s. In two passages of the text Schmitt even calls on "conservative authors of the Counter-revolution" and "authors of the Restoration" to join his intellectual struggle.<sup>41</sup>

The role of religion in the beliefs of both scholars will not be further explored here, as it is not expressly discussed in the 1923 chapter. It may suffice to recall that Wilhelm Hennis once felicitously summed up the contrast between Weber and Schmitt in two sentences, as the difference "between a Protestant unbeliever and a Catholic believer. Weber accepted without contradiction the diagnosis of Nietzsche saying God is dead. For Schmitt this was under no circumstances acceptable."<sup>42</sup> On a philosophical level there is considerable distance between the two. Whereas Weber cited Fichte's dictum of "imperfect man," Schmitt subscribed to a deeper pessimism and thus to expecting the worst when it came to human conduct, as lucidly reflected in his 1932 *The Concept of the Political (Begriff des politischen)*.<sup>43</sup>

## METHODOLOGY AND DIDACTICS

Weber strived to eliminate the teleological aim inherent in depictions of social life, as represented by normative functionalism. He emphasized the difference between justifying and explaining in scholarly accounts, and the “error” in confusing the two objectives. He felt that this particular error was endemic to legal science.<sup>44</sup> For that reason the challenge of developing a sociological explanation of legal concepts was particularly great, as these terms were “entrenched in a highly refined system of concepts defined in terms of another, so that single concepts could not simply be redefined without consequences for other usages, and second because they were constitutive of the historically developing tradition of the law itself.”<sup>45</sup>

The simple fact that Weber and Schmitt were both trained lawyers with a sociological outlook is sometimes overlooked. In some respects they were uniquely qualified to speak in a language that the other understood. Schmitt presumably understood that one important dimension of Weber's work was to “re-map” the classically grounded legal theory of Walter Jellinek and Rudolf Ihering. Schmitt also had considerable insights into the evolution of law and legal practice, which enabled him to follow and critically scrutinize many of Weber's historical arguments.

But as to the basic purposes of their work there is in important respects a profound tension. In terms of methodology, Schmitt consciously exploited the ambiguities of language and the friction between legal and sociological terminology rather than separating them. A seductive style and frequent use of rhetorical techniques should therefore be seen as an inherent part of Schmitt's method. It often takes close examination to discern the carefully concealed argumentative flaws in his elegant and erudite prose. Historical analogies and examples are typically chosen to bolster the thesis that Schmitt tries to advance in a particular text.

Schmitt's characteristic style of argumentation is fully at work in the 1923 text. Already when he first introduces Bodin as an ally the reader is told that the principal quality of the latter's analysis of sovereignty and the relations between the prince and the states (*Stände*) boils down to a simple either-or (*Entweder-Oder*) issue, which in turn relies on the state of exception. Bodin is cited as the theorist who showed that sovereignty has an indivisible quality and that it ultimately settles the question of power inside the state.<sup>46</sup> As mentioned, Schmitt drew on Bodin's concept to set a high standard for sovereignty, in order to criticize the Weimar order and the federal features of the Germany's constitutional structure.

But while Bodin is praised for setting up an ‘either-or’ problematic with regard to sovereignty, Kelsen is contrariwise admonished for performing a similarly binary operation between conceptions of law and sociology. Schmitt sees Kelsen's theory of law as “simplistic” and as characterized by “pathetic non-contingency and purity.”<sup>47</sup> The latter remark paves the way for a milder criticism of Weber's sociology of juridical concepts in the last section of the chapter. When he subsequently accuses Kelsen of “relativist, impersonal scientificity” (*Wissenschaftlichkeit*), it should be seen as directed at Weber as well. Like Schmitt, Weber believed that science should encourage the capacity to sharpen the judgment and attain insights, mostly bitter insights. But he decidedly understood scientific activity in the vein of Nietzschean perspectivism and the

context-dependent construction of knowledge.<sup>48</sup> According to Hennis, Weber never relinquished his dual role as a scientist and a teacher (*Erzieher*).<sup>49</sup>

Moreover, Weber engaged in at least six ambitious empirical investigations, the first being his 900-page study of the economic and social conditions of agricultural workers in eastern Germany. His interest in industrial sociology and social psychology later prompted him to develop survey techniques and endorse social research within the influential Association for Social Policy (*Verein für Sozialpolitik*).<sup>50</sup> By comparison, Schmitt stayed away from large-scale empirical studies guided by a systematic methodology, mainly resorting to selective evidence or even anecdotal illustrations in order to support his propositions.

A few pages into the argument outlined in the 1923 text, Schmitt, characteristically, seems to realize that he has not yet justified this focused attention on the state of the exception, and inserts the following two sentences: “The exception is more interesting than the normal case. The normal case proves nothing, the exception everything.”<sup>51</sup> This sweeping assertion is then patchily bolstered by the reasoning of an unnamed Protestant theological writer, with no reference provided. Whereas contemporary social scientists speak of the methodological value of exploring “deviant cases,” Schmitt here appears content to rely on a poetic-intuitive claim and a drastic turn of phrase.

The same pattern arises from a comparison of virtually any text or account of teaching techniques applied by the two scholars. If Schmitt had the temperament of a courtroom lawyer, it seems Weber had that of a constitutional judge. In terms of weighing evidence, it has been said that Weber very much thought like a professional jurist.<sup>52</sup> This does not mean that he did not share a didactic vision of stimulating and provoking an audience into novel realizations. Especially in his Munich years Weber accepted invitations to improvised debates with students or quasi-scholars, such as Oswald Spengler.

It is quite possible that Schmitt took some of these seminar experiences to heart. At his later appointments in Bonn and Berlin he became widely appreciated and respected for his open style of teaching and supervising students, always prepared to engage in an exchange with people of different convictions.<sup>53</sup> This capacity also characterized his more informal seminars held in the postwar period, when he managed to consistently maintain a readership and a wide circle of interlocutors in the absence of an academic platform.<sup>54</sup>

### THEORY AND CONCEPTUAL USAGE

In line with Habermas’s 1964 critique, it is true that a number of Schmitt’s ideas, phrases and images in the 1923 chapter suggest Weberian influences. But few thoughts are presented as undigested insights merely picked up in a seminar setting. Indeed, the exact formulations in the 1923 text are often characteristically Schmittian, with vivid, sometimes even poetic language and antinomies. Weber’s notion of rationalization is transfigured into a critique of the Enlightenment and secular modes of reasoning whose strength has gradually grown so that “the machine now runs on its own” (*Die Maschine läuft jetzt von selbst*).<sup>55</sup> Schmitt further seems to have accepted Weber’s analysis of

modernity and of the waning of traditional legitimacy and the concomitant rise of a hollow “faith in legality” (*Legalitätsglauben*).<sup>56</sup>

Schmitt's critique of Kelsen's theory in the 1923 chapter is also relatively closely based on a Weberian reading of the rationalization of society where “pure law” is instrumental in speeding up the process of modernization. In *Economy and Society* Weber describes legal formation with reference to a legal provision (*Rechtssatz*), and its application (*Anwendung*) with regard to a concrete factual situation (*Tatbestand*). In the next instance legal logic is employed and a decision (*Entscheidung*) is made drawing on the abstract legal sentences.<sup>57</sup> For the most part, Schmitt raises objections to Kelsen's theory in a similar vein, stating that “the legal idea cannot apply itself.”<sup>58</sup> Weber's discussion adds the general point that a substantive rule never entails information about who is supposed to make the legal decision.

So some of the points Schmitt raises against Kelsen reflect ideas that Weber himself had developed in relation to nineteenth-century German legal theory, notably the writings of Rudolf von Ihering.<sup>59</sup> Had Weber lived longer it is quite likely that he himself would have commented on Kelsen's theory, which was finally published only in 1920, though we can anticipate his criticism by revisiting his theorization of the validity of order in *Economy and Society*.<sup>60</sup> On the other hand, some of Schmitt's assertions clearly went beyond Weber's reasoning, and it is quite possible that he would have felt that Schmitt was throwing out the baby with the bathwater. Weber's view of law as a vehicle for societal rationalization was “an empirical observation,” not the normative judgment that it became in Schmitt's treatment.

Whereas Schmitt's criticism of Kelsen concentrated on the absence of the state as the source of a legal order, Weber would never have left economic relations outside the equation.<sup>61</sup> Economic sociology and the interface between legal order and economic regulations are conspicuously absent in Schmitt's renditions of Weber.<sup>62</sup> And there are other areas of Weber's work that Schmitt chooses not to discuss. Had he done so he would have been unable to apply his double rhetorical move of drawing on Weber as a source of scientific authority, and then undermining the latter's liberal arguments. It is striking how in the 1923 text Weber is always cited with reverence, but the liberalism he embraced consistently remains the chief target of Schmitt's critique.<sup>63</sup>

Schmitt later used the same strategy only to further distance himself from Weber's liberalism. In the 1926 pamphlet-like treatise on parliamentarianism, he went so far as to enlist Weber in arguing against the strict division between private and public law. While it is true that Weber and Schmitt shared a keen interest in this distinction in legal and political thought,<sup>64</sup> the mischaracterization of Weber's reasoning through selective quotations to advance his own argument is certainly not in the spirit of a “legitimate student” of Weber's:

Max Weber explains in his text “Parliament and Government in the Reorganized Germany” (1928) that the state, sociologically speaking, only consists of a single large enterprise, and that an economic management apparatus, a factory and the state are no longer essentially different . . . However, a political form of organization ceases to be political when it, like the modern economy, is created on the basis of private law.<sup>65</sup>

But twenty years later, once the tables had been completely turned and Schmitt found himself facing a Nuremberg trial interrogator, Weber became a useful point of reference for an assessment of why people like himself had served the cause of National Socialism. In his response to the question asked by the interrogator Robert Kempner, “Why did the German state secretaries follow Hitler?” Schmitt cited Weber’s analysis of modern, rationalized forms of legitimacy:

The greatest German sociologist, Max Weber, a conscious and active democrat, managed in the critical years 1919–20 to show the correlation between smoothly functioning democracy and legality. He analyzed the distinction between lawfulness (legitimacy) and legality as a typical phenomenon and established that: “Today the most widely spread form of legitimacy is the faith in legality.” The faith in legality remains as the sole possible form of justifying a pervasive, functionalized technology. Already then Max Weber made the prediction: Bureaucracy is our fate. It has indeed become this through its kind of legality.<sup>66</sup>

Here again Schmitt performs a double move, first describing his Munich colleague as “a conscious and active democrat,” and then drawing on Weber’s structural analysis of modern legitimacy as primarily a “faith in legality.” Needless to say, the 1926 rendition of Weber as exclusively interested in democracy for the creation of “excellent leaders” is conveniently suppressed.

But it is interesting that Schmitt returns to the “critical years 1919–1920” and chooses to build on Weber’s concept of legitimacy. The vast set of definitions that appear in the monumental, posthumously published *Economy and Society* may very well have stimulated Schmitt to think in terms of developing his own analytical concepts. When Schmitt says that all significant concepts (*prägnanten Begriffe*) are secularized concepts he is clearly building on a Weberian insight.<sup>67</sup> But there seems to have been something he could not accept in Weber’s “conceptual surgery,” aimed at liberating terminologies from law in order to be used for the purposes of the social sciences.<sup>68</sup> Again, when Schmitt specifically complains that the vast sociological material and insights analyzed by Weber has not been assessed by lawyers, he appears to be saying that Weber is not a proper lawyer.<sup>69</sup>

What begins to take form in the 1923 text is an alternative and innovative approach to the study of concepts. The relaxed analytical use that characterizes Weber’s sociological terminology meets with little understanding from Schmitt, a “proper lawyer.” Sovereignty is an excellent example in that it is a term that Weber uses in several ways throughout his texts. He can use it in a loose sense in connection with state autonomy, reminiscent of the notion Schmitt here discusses. But elsewhere in his writings Weber applies the term in at least three other contexts. He writes about the sovereignty “of parliaments,” “of the personality” and “of God,” the latter in conjunction with traditional forms of political and legal order.

Schmitt, as noted, writes of sovereignty in a much stricter sense, applying Bodin’s absolute and indivisible conception. One can assume that he has two reasons for doing so. One is the political and ideological perspective which he brings to the notion of sovereignty, drawing on Bodin’s work to formulate a series of objections with regard to Germany’s existing constitution.<sup>70</sup> From this perspective he can criticize the German tradition for an overly generous definition that overlaps with “state-like features”

(*Staatlichkeit*) of a looser type.<sup>71</sup> In case the state is rolled back into the position of a “declaratory power,” Schmitt explains that it will no longer be sovereign.<sup>72</sup>

The second reason is Schmitt's perceived need for some basis, even if not a normative one, from which to work out a definition. His provisional solution is as simple as it is brilliant. He is, already in 1923, on the path to inventing the method of conceptual history. In the following decades several scholars will start outlining an entirely new research program, inspired by what Schmitt here refers to as a “sociology of juridical concepts.”<sup>73</sup> His original notion described in 1923 is to compare the conceptual structure of a certain era with a social structure or, as Schmitt himself puts it, “A metaphysical image, produced by a certain age of world history, has the same structure as that illuminated by the shape of its political organization.”<sup>74</sup> This is presumably an early formulation of what eventually became the *Geschichtliche Grundbegriffe* research program, amounting to several volumes of conceptual history and scores of larger studies. Methodologically, it was above all the historian Reinhardt Koselleck who decades later elaborated conceptual history in his *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (*Kritik und Krise: Pathogenese der Bürgerlichen Welt*) and in subsequent publications.

Also, the “state of exception” (*Ausnahmezustand*) is a concept that Weber is not known to have used. In *Economy and Society* and in *Agrarverhältnisse im Altertum* he only discusses the “state of war” (*Kriegszustand*), making the point that a chronic state of war under a charismatic leadership can help develop bureaucratic society in important ways. The idea of defining and theorizing sovereignty from the viewpoint of the state of exception thus appears to be an original idea of Schmitt's, and one of his most distinctive contributions to constitutional theory. In *Verfassungslehre* (1928) he would elaborate on this theory much further, beyond the eschatology inherent in claims such as that the state of exception is to jurisprudence what miracles are to theology.<sup>75</sup>

Ulmen believes that Schmitt, just like Weber, never lost sight of the fundamental distinction between sociological and juridical concepts.<sup>76</sup> If this is true, though, he does not always make this important difference clear to others. It could be that at this point Schmitt himself was not able to fully grasp Weber's use of sociological conceptualizations and therefore appealed to a uniformity akin to that of legal scholarship. In the 1923 chapter we see him complaining about the confusion in Weber's usage of the term “form” in different portions of his work.<sup>77</sup> But given that Schmitt is able to make good sense of these usages, few social scientists would be able to understand what exactly Schmitt finds so confusing. One may suspect that Schmitt is simply at pains to keep the sociological conception separate from his legal understanding of the same terminology.

Weber was keenly aware of this epistemological problem. Indeed, in *Economy and Society* Weber stresses that when discussing terms like law, legal order and the like it is essential to clearly distinguish between a sociological and a legal vantage point.<sup>78</sup> Law, according to Weber, is a “dogmatic” discipline and this quality is deeply embedded in the project of law. But this was a line that Schmitt did not mind to deliberately transgress, just as he did with the distinction between scholarship and politics. For instance, as demonstrated above, Weber's sociological observation of the “sovereignty of parliament” was nonsensical to Schmitt, who on a normative level could not accept an alternative terminological usage to his own. The sociological dimension of Weber's discussion of sovereignty, on which Schmitt drew heavily in his other work, is in this case

suppressed, because it complicates his normative argument. Against this background, it seems reasonable to conclude, with Klaus Kröger, that Weber's and Schmitt's concepts and world-views virtually stand in a "counterpoint relationship."<sup>79</sup>

### SCHMITT AND HIS CRITICS

Schmitt managed to stay relevant to his sympathizers on the political right as well as to many left-wing intellectuals for some seventy years of scholarly output. Even his 1922 *Politische Romantik* was difficult to place on a right-left political scale.<sup>80</sup> Scores of students of law, sociology, political science, history and the humanities were taught by him and returned the favor through frequent citations. Still more read and learned from him, some acknowledging this and others not. For instance, Walter Benjamin caught the attention of some scholars because of a letter he wrote to Schmitt affirming his intellectual debt. It has also been shown that there are numerous parallels between the two in terms of their pointed criticism of modernity, popular culture, parliamentarianism and political rhetoric.<sup>81</sup> This is part of the thematic overlap between the Frankfurt School intellectuals and "Schmittians."

Habermas, of course, is a more complex case. In Heidelberg Habermas could hardly fully isolate himself from young Schmittians, mainly on the political right, and elsewhere they could be found among Frankfurt School theorists and prominent members of the Social Democratic party. Whereas Weber has come to be featured quite prominently in Habermas's work, explicit references to Schmitt are for the most part rare and selective.<sup>82</sup> Not unlike Schmitt's appropriation of Weber, in Habermas's texts Schmitt's ideas can often be sensed as an implicit counterpoint.<sup>83</sup>

The analysis presented here supports the claim that Schmitt actively styled himself as Weber's heir in the 1920s in order to bolster his academic credibility. His 1923 chapter demonstrates that from the beginning the young law professor appropriated Weber's work, though simultaneously undermining Weber's notion of liberalism. It would not be an exaggeration to say that later on he selectively enlisted or ignored Weber's arguments as it suited him, as forcefully illustrated in his statements to the Nuremberg trial interrogator. There were various things that he misunderstood in Weber's works, which led to several mischaracterizations, and, moreover, his methodology and philosophy of science directly contradicted Weber own convictions. For the most part, Weber comes across as primarily a problem-driven scientist who intermittently intervened in public affairs, whereas Schmitt appears as an ideology-driven scholar who drew on history, philosophy and science to advance his own preferred public policies.<sup>84</sup>

Habermas's 1964 characterization of the relationship between Weber and Schmitt has nonetheless stuck with commentators for the last forty-five years, and its wide acceptance can hardly be explained solely on the basis of Schmitt's references to Weber's work.<sup>85</sup> At stake at a deeper level lies, supposedly, the "soul" of the new Federal Republic and the "leading lights" of its intellectual class. In accepting Schmitt as Weber's "natural son" one should arguably acknowledge that Weber also had a number of "legitimate students" who were recognized as such at the time. Theodor Heuss, the first president of the Federal Republic, was precisely one such student. Heuss had studied with Weber at the end of the First World War and been deeply impressed with his sense

of political responsibility, not least as expressed in his Munich lecture of 1919 "Politics as Vocation."

In April 1964, incidentally, Heuss died. At the Heidelberg convention Theodor Adorno paid tribute to the ex-president, expressly recalling Weber's legacy. In Adorno's eulogy to Heuss there was no talk of "militant Late Liberalism," as Habermas had characterized Weber's frame of mind in Weimar Germany. Instead, Adorno praised Heuss's legacy as the first head of state of a reborn, democratic Germany, characterizing him as "first of all . . . a civilian, through and through. He was an intellectual."<sup>86</sup>

The battle over Weber's legacy as a brilliant and independent-minded social scientist has long been won, and he belongs to the pantheon of German and international "classics." Ironically, perhaps, since the mid-1960s it was Habermas himself who in no small measure contributed to repairing that legacy. Few today would be disturbed if Weber's broader circle of followers were to encompass Schmitt as well as Heuss, along with many other students and sympathizers. One may recall one of the most appreciative tributes paid at the 1964 convention in Weber's memory, expressed by Raymond Aron:

When a man is a great thinker, a great personality and in particular when he is a man of contradictions, then it becomes possible to envisage several interpretations of the work and the thought of this man.<sup>87</sup>

More surprisingly, however, forty years on, some would argue that the same may be said of Schmitt.<sup>88</sup> Arguably, the renewed interest in Schmitt's work seems in part to extend beyond the question of Germany's "soul," relating to themes and issues that he and his contemporaries sensed and struggled to describe in the complex political settings of Weimar and post-1945 Germany. These issues concern, among other things, the philosophical vicissitudes of modernity, secularism, technology, and the representation of power, and they cut across a wide range of ideological and political sensitivities.

It is indisputable that Schmitt both before and after his collaboration with the Nazi regime wrote a series of highly original and evocative texts, some of which continue to find new readers and are the subject of novel interpretations. Although Schmitt, in styling himself as a follower of Weber, has prompted some commentators, including Habermas, to look for similarities in their outlooks, my analysis demonstrates that there are important limitations to this comparison. With respect to several core ideas Schmitt from the very beginning not only deviated from Weberian thinking but consciously attempted to undermine and subvert Weber's conceptions. This becomes especially clear from a close examination of his 1923 text, when read as an extended, solicited commentary on Weber's own texts, seminars and speeches.

## NOTES

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1. Wolfgang Mommsen, *Max Weber und die deutsche Politik, 1890–1920* (Tübingen: Diss, Köln, 1959), 408–9; Carl Schmitt, *Der Hüter der Verfassung* (Tübingen, 1931), 14–17.
2. Otto Stammer, ed., *Max Weber und die Soziologie heute: Verhandlungen des 15. Deutschen Soziologentages*, Anonymous (Tübingen: Mohr, 1965), 81. Here and below, all translations from the German are my own.
3. Duncan Kelly, *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber*, Carl Schmitt and Franz Neumann (Oxford: Oxford University Press, 2003), 19; David Dyzenhaus, ed., *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford: Clarendon Press, 1997), 236–37; Mattias Eberl, *Die Legitimität der Moderne: Kulturkritik und Herrschaftskonzeption bei Max Weber und bei Carl Schmitt* (Marburg: Tectum-Verlag, 1994), 1.
4. Stammer, *Max Weber und die Soziologie heute*, 81.
5. The friend whose advice Habermas accepted was Hans Paul Bahrdt, who at the time was professor of sociology in Göttingen and worked on issues of industrial and urban sociology (personal information). Bahrdt was Habermas's senior by eleven years.
6. Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham, NC: Duke University Press, 2004), 78.
7. Max Weber, *Wirtschaft und Gesellschaft* (Tübingen: Mohr, 1980), 28; Kennedy, *Constitutional Failure*, 212–13.
8. Joachim Radkau, *Max Weber: Die Leidenschaft des Denkens* (Munich and Vienna: Carl Hanser Verlag, 2005), 253–315.
9. John P. McCormick, *Weber, Habermas and Transformation of the European State* (Cambridge: Cambridge University Press, 2007). In this otherwise brilliant study, McCormick, who is a well-established authority on Schmitt, virtually leaves the latter out of the equation and focuses on Weber and Habermas.
10. Kennedy, *Constitutional Failure*, 1–2. Kennedy notes that hardly any of Schmitt's texts had been translated into English by the early 1970s.
11. Catherine Colliot-Thélène, "Carl Schmitt versus Max Weber: Juridical Rationality and Economic Rationality," in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Verso, 1999), 142.
12. *Ibid.*, 141.
13. *Ibid.*, 151.
14. John P. McCormick, "The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Powers," in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham, NC: Duke University Press, 1998), 225–26, 236–37; John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997), 121–25.
15. Kennedy, *Constitutional Failure*, 117–18.
16. Carl Schmitt, "Soziologie des Souveränitätsbegriffes und politische Theologie," in *Hauptprobleme der Soziologie: Erinnerungsausgabe für Max Weber*, ed. Melchior Palyi (Munich: Duncker und Humblot, 1923), 5.
17. McCormick, *Carl Schmitt's Critique of Liberalism*, 121.
18. Stephen P. Turner and Regis A. Factor, *Max Weber and the Dispute over Reason and Value: A Study in Philosophy, Ethics and Politics* (London: Routledge, 1994), 59–60.
19. William E. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge: MIT Press, 1994); Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 5–11.
20. Max Weber, "Politik als Beruf" in *Schriften und Reden, Bd 17*, ed. Wolfgang Mommsen and Wolfgang Schluchter (Tübingen: Mohr, 1992), 549; Weber, *Wirtschaft und Gesellschaft*, 850.
21. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 8.
22. Reinhard Bendix, *Max Weber: An Intellectual Portrait* (London: Methuen, 1960), 455–56; Wolfgang Mommsen, "Zum Begriff des plebiszitären Führerdemokratie bei Max Weber," *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 15 (1963): 295–322.

23. Chris Thornhill, *Political Theory in Modern Germany: An Introduction* (Cambridge: Polity Press/Blackwell, 2000), 25–33.
24. Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000), 44.
25. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 30.
26. Carl Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, 2nd ed. (München: Duncker und Humblot, 1926), 12.
27. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 15.
28. Sven Eliaeson, *Max Weber's Methodologies* (Cambridge: Polity Press, 2002), 25–29.
29. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 20.
30. Thornhill, *Political Theory in Modern Germany*, 72.
31. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 10–12, 19, 27–28.
32. *Ibid.*, 20.
33. Max Weber, *Bismarcks Erbe in der Reichsverfassung* (Berlin: Digitale-Bibliothek, 2001).
34. Joseph W. Bendersky, “Carl Schmitt’s Path to Nuremberg: A Sixty-Year Assessment,” *Telos* 139 (2007): 17.
35. Kelly, *The State of the Political*, 307.
36. Balakrishnan, *The Enemy*, 64–65.
37. Thornhill, *Political Theory in Modern Germany*, 70.
38. Balakrishnan, *The Enemy*, 21.
39. Ingeborg Maus, “The 1933 ‘Break’ in Carl Schmitt’s Theory,” in Dyzenhaus, *Law as Politics*, 196–216; McCormick, *The Dilemmas of Dictatorship*, 236; Kelly, *The State of the Political*, 217.
40. Gary L. Ulmen, *Politischer Mehrwert: eine Studie über Max Weber und Carl Schmitt* (Weinheim: VCH Vlg., 1991), 342–43.
41. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 26, 34.
42. Hennis’s comments are reported in “Aussprache zu dem Referat von Klaus Kröger,” 167–80 in *Complexio Oppositorum über Carl Schmitt*, ed. Helmuth Quaritsch (Berlin: Duncker und Humblot, 1988), 169.
43. Mika Luoma-Aho, “Carl Schmitt and the Transformation of the Political Subject,” *The European Legacy* 5.5 (2000): 705–16.
44. Turner and Factor, *Max Weber and the Dispute over Reason and Value*, 93.
45. *Ibid.*, 94.
46. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 6.
47. *Ibid.*, 13, 19.
48. Kelly, *The State of the Political*, 32.
49. “Max Weber und die Welt von heute: Eine Diskussion mit Wilhelm Hennis, Wolfgang J. Mommsen and Pietro Rossi,” 195–213 in *Max Weber: ein Symposium*, ed. Christian Gneuss and Jürgen Kocka (München: Deutscher Taschenbuch Verlag, 1998), 203.
50. Paul F. Lazarsfeld and Anthony Oberschall, “Max Weber and Empirical Social Research,” *American Sociological Review* 30.2 (1965): 185–99.
51. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 11.
52. Turner and Factor, *Max Weber and the Dispute over Reason and Value*, 166.
53. Ernst Rudolf Huber, “Carl Schmitt in der Reichskrise der Weimarer Endzeit,” in *Complexio Oppositorum über Carl Schmitt*, ed. Helmuth Quaritsch (Berlin: Duncker und Humblot, 1988), 34.
54. Jan-Werner Müller, *A Dangerous Mind: Carl Schmitt in Post-War European Thought* (New Haven, CT: Yale University Press, 2003).
55. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 33.
56. Ulmen, *Politischer Mehrwert*, 147.
57. Weber, *Wirtschaft und Gesellschaft*, 394–97.
58. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 24.
59. Turner and Factor, *Max Weber and the Dispute over Reason and Value*, which systematically investigates Weber’s intellectual debt to Ihering.

60. Weber, *Wirtschaft und Gesellschaft*, 16–19.
61. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 13–14.
62. Thornhill, *Political Theory in Modern Germany*, 61.
63. Reinhard Mehring, “Liberalism as a ‘Metaphysical System’: the Methodological Structure of Carl Schmitt’s Critique of Political Rationalism,” in Dyzenhaus, *Law as Politics*, 134; Colliot-Thélène, *Carl Schmitt versus Max Weber*, 140–41.
64. Balakrishnan, *The Enemy*, 232.
65. Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, 33.
66. Helmuth Quaritsch, *Antworten in Nürnberg* (Berlin: Duncker und Humblot, 2000), 181.
67. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 26.
68. Turner and Factor, *Max Weber and the Dispute over Reason and Value*, 93–94.
69. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 12.
70. Pauline Johnson, “Carl Schmitt, Jürgen Habermas, and the Crisis of Politics,” *The European Legacy* 1.6 (1998): 18.
71. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 12–13.
72. *Ibid.*, 17.
73. *Ibid.*, 30–31. According to Jan-Friedrich Missfelder and others, Koselleck was directly inspired by the conceptual analysis performed by Schmitt in *Leviathan* from 1938. See Jan-Friedrich Missfelder, “Die Gegenkraft und ihre Geschichte: Carl Schmitt, Reinhart Koselleck und der Bürgerkrieg,” *Zeitschrift für Religions – und Geistesgeschichte* 58 (September 2006): 310–36.
74. *Ibid.*, 32.
75. *Ibid.*, 26.
76. Gary L. Ulmen, “Politische Theologie und politische ökonomie—über Carl Schmitt und Max Weber,” in *Complexio Oppositorum über Carl Schmitt*, ed. Helmuth Quaritsch (Berlin: Duncker und Humblot, 1988), 361.
77. Schmitt, *Soziologie des Souveränitätsbegriffes und politische Theologie*, 21–22.
78. Weber, *Wirtschaft und Gesellschaft*, 181.
79. Klaus Kröger, “Bemerkungen zu Carl Schmitts ‘Römischer Katholizismus und politische Form,’” 161–65 in Quaritsch, *Complexio Oppositorum*, 163.
80. Balakrishnan, *The Enemy*, 22.
81. Susanne Heil, “Gefährliche Beziehungen”: *Walter Benjamin und Carl Schmitt* (Stuttgart: Metzler Verlag, 1996).
82. Jürgen Habermas, *Die Normalität einer Bonner Republik* (Frankfurt: Suhrkamp, 1995), 112–22.
83. Ellen Kennedy, et al., “Special Section on Carl Schmitt and the Frankfurt School,” *Telos* 71 (1987): 25; Johnson, *Carl Schmitt, Jürgen Habermas, and the Crisis of Politics*, 25–30; Stephen Turner, “Depoliticizing Power,” *Social Studies of Science* 19 (August 1989): 535–36.
84. David Dyzenhaus, “Introduction: Why Carl Schmitt?” in Dyzenhaus, *Law as Politics*, 11.
85. In a volume from 2007, John McCormick characterizes the relationship thus: “The infamous jurist Carl Schmitt, in some sense a student of Weber.” See McCormick, *Weber, Habermas and Transformation of the European State*, 83.
86. Stammer, *Max Weber und die Soziologie heute: Verhandlungen des 15. Deutschen Soziologentages*, 158.
87. *Ibid.*, 155.
88. Timo Frasch, “Should We Erect a Monument in Tribute of Carl Schmitt?” (“Sollen wir Carl Schmitt ein Denkmal setzen?”), *Frankfurter Allgemeine Zeitung*, 17 March 2007, 44.