
THE DEVELOPMENT OF CARL SCHMITT'S POLITICAL THOUGHT DURING THE FIRST WORLD WAR

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Two legal publications that Carl Schmitt produced during the First World War contain the first expressions of his maximally authoritarian interpretation of the state of emergency. Yet, when read in conjunction with his wartime journals, we find that his production of these texts is contextualized by a profound, private struggle over whether to accept or reject the political values they articulate. What is most surprising about Schmitt's self-presentation in these journals is the degree to which, during the early war period, he expresses a visceral anti-authoritarianism and concern for decidedly liberal ideals such as the rights of the individual and the separation of powers. But it is also in these journals that we observe the process—culminating in a moment of existential decision during the winter of 1915–16—through which he came to see such liberal commitments as untenable on both personal and political-theoretical levels simultaneously.

The period of the First World War, during which Carl Schmitt served as a law clerk in the Independent General Command of the Bavarian First Army, represents a pivotal phase in his intellectual development. Two legal publications, “Diktatur und Belagerungszustand” and “Die Einwirkungen des Kriegszustandes auf das ordentliche strafprozessuale Verfahren”, which grew out of his work there, contain the first expressions of ideas that would later prove integral to his political thought.¹ In these articles, Schmitt first articulates the view that dictatorship is intrinsically sovereign and unlimited, that the legitimacy of the legal state is reducible to the situation of concrete danger, and that the claims of the individual

¹ Carl Schmitt, “Diktatur und Belagerungszustand: Eine staatsrechtliche Studie” (Dictatorship and State of Siege: A Study of Constitutional Law), *Zeitschrift für die gesamte Strafrechtswissenschaft*, 38 (1917 (1916)), 138–62; and Schmitt, “Die Einwirkungen des Kriegszustandes auf das ordentliche strafprozessuale Verfahren” (The Effects of the State of War upon the Standard Criminal Trial Procedure), *Zeitschrift für die gesamte Strafrechtswissenschaft*, 38 (1917), 783–97.

vis-à-vis the state are consequently without basis. In addition, during the early years of the war, Schmitt kept a private journal that provides a startling picture of the ways in which he interpreted his wartime experience.² In melodramatic terms, he paints himself as a suicidal basket case, struggling under the pressure of a militaristic society, and seeking desperately to find any means to alleviate this pressure. What is immediately striking when comparing these two sets of texts is that, in his private journals, Schmitt expresses sentiments radically opposed to the ideas of his wartime legal articles (often in terms of visceral hatred, terror and disgust), suggesting that these early expressions of his mature political philosophy were composed under duress.

Indeed, Schmitt's highly antagonistic attitude toward militarism and authoritarianism constitutes a central theme in his journals during the early years of the war. Yet during this time he also records brief moments of acceptance of "fate", both his own and that of a world caught in a machinery of war, which build toward a pivotal resolution in the winter of 1915–16 to cast aside internal resistance to the pressures placed on him by the world at war, and quite deliberately to internalize its values.³ In these moments, Schmitt articulates his personal struggle in terms strikingly similar to the way in which, in his contemporaneous legal articles, he depicts the conflict between the rights afforded the individual under the legal order and the demands of security during a state of war. In both his private journals and his legal publications, Schmitt comes, during the war period, to affirm that the merely normative demands of the individual must be subordinated to the concrete actuality of the political situation.⁴

While scholars have noted the "intellectual metamorphosis" that Schmitt underwent during the years immediately following the First World War,⁵ the critical literature on the wartime phase of his career is quite limited. Probably the most significant consideration of "Diktatur und Belagerungszustand" is provided by Peter Caldwell, though, curiously, Caldwell never mentions the

² Carl Schmitt, *Tagebücher: Oktober 1912 bis Februar 1915*, ed. Ernst Hüsmert (Berlin, 2003); and Schmitt, *Die Militärzeit 1915 bis 1919*, ed. Ernst Hüsmert and Gerd Giesler (Berlin, 2005).

³ For Schmitt's discussion of "fate" (*Schicksal*) see especially Schmitt, *Militärzeit*, 95 (15 July 1915), 118 (27 Aug. 1915), 135 (26 Sept. 1915).

⁴ In making this comparison, I employ the word "normative" in its broader sense, to denote the ought irreducible to that which is, rather than in its narrowly legal sense. The distinction between the normative order of the law and the "actual" (*tatsächlich*) demands of political or military reality in Schmitt's wartime legal articles will be discussed at length below.

⁵ See Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton, NJ, 1983), 22–23. Cf. Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London and New York, 2000), 32.

nearly contemporaneous “Einwirkungen des Kriegszustandes”. Caldwell provides a useful analysis of Schmitt’s “radical theory of the state as real, existing will”, demonstrating that Schmitt already employed a powerful critique of legal positivism during the war period.⁶ Another scholar to consider these texts is Joseph Bendersky, who notes that Schmitt’s wartime experience “led him further away from neo-Kantianism”, and toward an emphasis on “concrete danger”.⁷ William Scheuerman shows how Schmitt’s legal publications of this period expand upon a prior concern for the problem of legal indeterminism, as articulated for instance in his *Gesetz und Urteil* (1912), but Scheuerman falls prey to a misreading when he posits that Schmitt, in his wartime legal articles, “seems delighted by the fact that the experience of World War I shatters the rationalistic illusion of naive Enlightenment political and legal thought.”⁸ Missing from all of these accounts is the crucial context provided by Schmitt’s private journals, which detail his surprisingly fraught relationship with the themes of his contemporaneous legal articles. By connecting Schmitt’s most theoretically innovative arguments of the war period with the things that he wrote privately about and related to these arguments, we can see how his articulation and ultimate embrace of a maximally authoritarian interpretation of legality is conditioned by a profound struggle over which values to accept, a struggle at once privately fought out and heavily influenced by the world at war around him.

The only critical source to engage significantly with Schmitt’s wartime journals is Reinhard Mehring’s recent biography, which highlights some of the tensions between Schmitt’s private and public writing during this period. However, Mehring does not go into depth exploring the significance of these tensions for Schmitt’s development as a thinker. For Mehring, the stark concern for individualism apparent in Schmitt’s wartime journals is an aberration, predicated upon the death of Schmitt’s close friend Fritz Eisler during the first weeks of the war and upon his own negative experience in the barracks.⁹ *Pace* Mehring, however, Schmitt’s journals and personal correspondence from as early as 1912 indicate that the struggle to retain a space for individual autonomy was a major

⁶ Peter Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism* (Durham, NC, 1997), 41, 52–62.

⁷ Bendersky, *Carl Schmitt*, 19. On the association of neo-Kantianism, legal positivism and the liberal *Rechtsstaat* in early twentieth-century German academic discourse, see Jeffrey Seitzer and Christopher Thornhill, “An Introduction to Carl Schmitt’s Constitutional Theory: Issues and Context”, in Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC, 2008), 4–5.

⁸ William Scheuerman, *Carl Schmitt: The End of Law* (Lanham, MD, 1999), 22–3, 30.

⁹ Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall* (Munich, 2009), 77.

commitment for him well before the outbreak of the war.¹⁰ The present essay shows that Schmitt underwent a more profound shift during the war period than Mehring allows for.

In Schmitt's wartime journals, we observe a self-critical process that culminates in a moment of existential decision, which he describes in terms redolent of his mature political-theological world view, and in line with the arguments of the legal articles he had begun under duress.¹¹ Schmitt's depiction of this process yields a revealing back story to what Gopal Balakrishnan refers to as Schmitt's "right-wing crystallization" of the early 1920s.¹² With the recent availability of Schmitt's wartime journals, we are able to address from a more informed position some of the questions left unanswered in Balakrishnan's biography, in particular that of whether Schmitt's embrace of right-wing politics in the early Weimar period was "somehow natural in light of his past".¹³ As Balakrishnan points out, "In the absence of any deeper insights into his psychology, one is tempted to say that a rather unformed character made a decision explicable in terms of his background, but not reducible to it."¹⁴ Though we should not aim for a fully reductionist account of Schmitt's development, nor an essentialist account of his psychology, the current availability of his wartime journals provides precisely the opportunity to gain deeper insight into Schmitt's ideological transformation that Balakrishnan evokes.

But a close reading of Schmitt's wartime writing, both public and private, does more than merely fill gaps in the historiography. It also forces us to re-evaluate established narratives of Schmitt's early intellectual development on key points. For instance, John McCormick's claim that Schmitt's thought took a decisive turn with regard to the nature of emergency decision-making between the composition of *Die Diktatur* (1921) and *Politische Theologie* (1922) does not follow if we can show that Schmitt had already articulated the more radical position of that later work by 1917.¹⁵ At the same time, the strong sympathy for recognizably liberal values that Schmitt displays in his journals

¹⁰ See, for instance, Carl Schmitt to Pawla "Cari" Dorotic (24 Oct. 1912) in Schmitt, *Tagebücher*, 1–2. Discussed below.

¹¹ On the centrality of Schmitt's political theology to his entire theoretical project see Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*, trans. Marcus Brainard (Chicago, 1998), 20–25, 57–9, 72–3.

¹² Balakrishnan, *The Enemy*, 32.

¹³ *Ibid.*, 17.

¹⁴ *Ibid.*

¹⁵ See John McCormick, "The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Powers" in David Dyzenhaus, ed., *Law as Politics: Carl Schmitt's Critique of Liberalism* (Durham, NC, 1998), 217–51, 217, 224. Discussed below.

prior to 1916 forces us to qualify both William Scheuerman's and Ellen Kennedy's arguments for an unbroken continuity of anti-liberal sentiment linking Schmitt's thought before, during and after the First World War.¹⁶ Rather, Schmitt's wartime writing shows that this was a time of substantive transformation in his political thought, one in which he left behind clear traces of his reasoning for renouncing an earlier, rather deeply held commitment to the "significance of the individual."¹⁷

Finally, Schmitt's political-theoretical realignment of the war period offers a suggestive parallel to the better-known shift in commitment he underwent upon the accession to power of the Nazis in 1933, the meaning and extent of which remains the subject of much debate.¹⁸ In Schmitt's wartime journals, we watch as his initially deeply held aversion to authoritarianism and commitment to individual self-determination are crushed under the pressure he feels to conform to the expectations of a hyper-militarized society, a pressure which he expresses through frequent suicidal fantasies and self-diagnoses of psychosis. In the autumn of 1915, we see clear signs of a political-theological conversion, sparked by an encounter with the thought of Heinrich von Treitschke and the militaristic wartime publications of the Catholic group *Deutscher Orden*, which apparently allowed Schmitt to reimagine his situation in such a way as to overcome his crippling sense of "pointless resentment" and integrate himself more seamlessly into what he perceived to be the prevailing zeitgeist.¹⁹ Never again would he voice principled commitment to individual self-determination as an ideal, or to its supposed safeguards in liberal constitutional theory such as civil rights and the balance of powers. Taken together, Schmitt's public and private writings of the war period show the irreducible role of deeply personal motivations—to wit, a self-described psychological need to eschew principled resistance and conform to the pressures of concrete actuality—in shaping his political commitments going forward.

¹⁶ See Scheuerman, *Carl Schmitt*, 15–18; and Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham NC, 2004), 43–7. Discussed below.

¹⁷ See Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen* (The Value of the State and the Significance of the Individual) (Tübingen, 1914). Discussed below. See also Mehring, *Carl Schmitt*, 61–2.

¹⁸ See Peter Caldwell, "Controversies over Carl Schmitt: A Review of Recent Literature", *Journal of Modern History*, 77/2 (June 2005), 373–81. For a detailed account of Schmitt's career during the early years of the Third Reich see Andreas Koenen, *Der Fall Carl Schmitt: Sein Aufstieg zum "Kronjuristen des Dritten Reiches"* (Darmstadt, 1995).

¹⁹ For Schmitt's appraisal of his own "pointless resentment" (*zweckloses Ressentiment*) see Schmitt, *Militärzeit*, 135 (24 Sept. 1915). Discussed below.

A SURPRISING ANTIPATHY

Schmitt volunteered for military service early in 1915, but, due to a back injury during basic training, he was assigned to an office position at the Bavarian General Command in Munich. His primary duties were the surveillance and censorship of literature. The position suited his bookish demeanor, if not his overweening ambition, but pitted him against his peers in the community of avant-garde satirists which he continued, for a time, to count himself among.²⁰ Still, he attempted to hold on to his literary credentials, spending much of his free time during the year 1915 composing a book on the expressionist poetry of his friend Theodor Däubler.²¹ Later, Schmitt contributed three pieces of writing to the initial issues of the Catholic periodical *Summa*: a satirical story “Buribunken”, the theological article “Die Sichtbarkeit der Kirche”, and a reprint of the first chapter of his book *Der Wert des Staates und die Bedeutung des Einzelnen*. During this period as well, Schmitt contributed anonymous summaries of the foreign press, to which he had access because of his position as a censor, to the *Hamburger Woche*. The two legal articles “Diktatur und Belagerungszustand” and “Einwirkungen des Kriegszustandes” were published in the journal *Zeitschrift für die gesamte Strafrechtswissenschaft* in late 1916 and in 1917 respectively. A version of the latter text had been presented in February 1916 as a “sample lecture” to the Faculty of Jurisprudence at Strasbourg, where Schmitt ardently hoped to gain a lecturing position as an escape from his duties at the General Command.²² Schmitt’s output during this period also includes the private journal which he kept scrupulously until the end of 1915, with some further notes added in July

²⁰ See Ernst Hüsmert and Gerd Giesler, “Einführung” in Schmitt, *Militärzeit*, 2. In 1913, along with his friend Fritz Eisler, Schmitt had published a collection of satires (using the collaborative pseudonym Johannes Negelinus), including one called “Gottfried von Bouillon” which lampooned the kaiser. Hüsmert and Giesler liken this piece to an 1894 satire by the pacifist Ludwig Quidde that portrayed Wilhelm II as Caligula. When Quidde attempted to publish another anti-government tract in 1915, it was Schmitt who oversaw its censorship. See *ibid.* (17 May 1915), 69. On Schmitt’s early satirical writing see Ingeborg Villinger, *Carl Schmitts Kulturkritik der Moderne. Text, Kommentar und Analyse der “Schattenrisse” des Johannes Negelinus* (Berlin, 1995).

²¹ For Schmitt’s record of his process in composing this work see Schmitt, *Militärzeit*, 66 (10 May 1915), 95 (15 July 1915), 144–5 (9–12 Nov. 1915). Connections between Schmitt’s text *Theodor Däublers “Nordlicht”* and his later work are fruitfully discussed in Kennedy, *Constitutional Failure*, 46–7; and Meier, *The Lesson of Carl Schmitt*, 20–25. On Däubler himself see Raymond Furness, *Zarathustra’s Children: A Study of a Lost Generation of German Writers* (Rochester, 2000), 153–74.

²² For Schmitt’s ardent desire for employment as a lecturer at Strasbourg see Schmitt, *Militärzeit*, 157 (19 Nov. 1915), 159 (28 Nov. 1915), 161 (2 Dec. 1915). Schmitt attained the position early in 1916, but was obliged to resume his duties in Munich between academic terms. See Hüsmert and Giesler, “Einführung”, 8.

1916. The insights provided by these journals into the motivations and private apprehensions surrounding his wartime legal output reveal a surprising antipathy for positions that would later come to define his career as a thinker.

Upon the outbreak of war in August 1914, Munich was the site of extensive public displays of enthusiasm. There, the widespread *Burgfrieden* (wherein long-standing class and political conflicts were set aside in the interest of military necessity) remained largely in force until the summer of 1916, when food shortages and other major disruptions, along with the ongoing stalemate at Verdun, British victory at the Somme and Russian advances along the Eastern Front, brought about a nationwide political crisis.²³ Schmitt's strongly worded reservations about the increased militarism pervading his environment during the first year and a half of the war reflect a perspective informed by the anti-establishment tendencies of Munich's literary demi-monde.²⁴ His acquaintances in this milieu included the circles around the painter Walter Einbeck, the arts patron Albert Kollman, and the museum curator Hans Rupé.²⁵ Through the early war period, much of Munich's café culture survived, and Schmitt's journals reflect the uncanny normalcy of friendly literary discussions over coffee and leisurely excursions to the countryside. Rather than shortages or disruptions, Schmitt's primary complaints are his psychological distress at being forced to conform to the expectations of the military bureaucracy and his overwhelming fear of being sent to the front. Schmitt's wartime legal articles, conceived during the era of relative political accord, and brought to publication well before the transition to the "silent dictatorship" of Hindenburg and Ludendorff in the summer of 1917, anticipate the key issue of whether military commanders are empowered by the concrete facts of a state of emergency to decide where and when to suspend legal norms.²⁶ For this reason, it remains striking that, in his private journals of the

²³ See Martin Kitchen, *The Silent Dictatorship: The Politics of the German High Command under Hindenburg and Ludendorff, 1916–1918* (London, 1976), 25. Kitchen notes that the *Burgfrieden* of 1914 was an outgrowth of systemic conditions of German governance that favored Bonapartism. Since the era of Bismarck, foreign wars had been a primary means of ameliorating domestic conflict. See *ibid.*, 12–14, 17.

²⁴ See David Clay Large, *Where Ghosts Walked: Munich's Road to the Third Reich* (New York, 1997). See also Peter Jelovich, *Munich and Theatrical Modernism: Politics, Playwriting, and Performance, 1890–1914* (Cambridge, MA, 1985). Both authors note that these pre-war anti-establishment tendencies reflected genuine political diversity, what Jelovich calls the "modernists' polarization between the anarchist Left and the proto-fascist Right". See *ibid.*, 290.

²⁵ See Hüsmert and Giesler, "Einführung", 8.

²⁶ See Kitchen, *The Silent Dictatorship*, 127–36. After assuming command of the General Staff in August 1916, Hindenburg and Ludendorff clashed with Chancellor Bethmann-Hollweg on a number of issues, including unrestricted submarine warfare, the extension of suffrage,

early war period, Schmitt portrays himself as bound by a great deal of attachment to values antithetical to the authoritarian outlook these articles present.

On this point, it is significant to note that Schmitt, in his journals, records with dismay receiving commands that appear to have been the catalysts for the two wartime legal articles. On 6 May 1915, Schmitt, enumerating the events of his day at the office, writes, “Report on the jurisdiction of the military commander in Bavaria; repulsive thing.”²⁷ This assignment is likely the impetus for “Einwirkungen des Kriegszustandes”, which argues for a maximalist understanding of the power of the military commander during a state of war to conduct searches, seizures and arrests, and to influence the conduct of the judicial process (all the while making repeated reference to the particularities of Bavarian law). Four months later, on 7 September, he records a further assignment: “Report on the law of the state of siege. Justify that one still maintains the state of siege some years after the war. Me of all people! Why has providence chosen me.”²⁸ It is less clear that this assignment led directly to “Diktatur und Belagerungszustand”, since that article argues for a rather different claim about the state of siege: the essentially unlimited power of the military commander vis-à-vis the legal order, resulting in a refutation of the primacy of the separation of powers as a basis for the legal state. What is clear, however, from Schmitt’s exclamation “Me of all people!” is that the extensive research into the history and constitutional law surrounding the state of siege that is

and the proposal to rule out territorial annexation as a war aim. On a general level, these disputes revolved around the question whether norms of the *Rechtsstaat* (both domestically and in foreign affairs) should be preserved at the expense of immediate military-strategic gain. The conflict came to a head in July 1917, when the two commanders threatened to resign, effectively forcing the kaiser, who had theretofore largely sided with the chancellor, to acquiesce to his removal (because if the two commanders resigned, the chancellor would become so unpopular as to render his retention politically untenable). Hindenburg and Ludendorff had thus outmanoeuvred the titular head of state to establish themselves as the locus of executive decision-making through the perceived military necessity of maintaining their leadership. For a detailed narrative account of these events see Robert Asprey, *The German High Command at War: Hindenburg, Ludendorff and the First World War* (London, 1991).

²⁷ Schmitt, *Militärzeit*, 63 (6 May 1915).

²⁸ *Ibid.*, 125 (7 Sept. 1915). It is likely that Schmitt’s commanding officer, Captain Christian Roth, was the immediate source of these orders, though it is unclear how high up the chain of command they originated. The fact that Schmitt liked Roth—calling him “friendly” earlier in the entry just cited, before bemoaning his assignment, and elsewhere “a good-hearted fellow”—adds credence to the view that Schmitt’s distaste for these assignments was based on principled rather than personal antipathies. For the latter reference see *ibid.*, 36–7 (30 March 1915). On Roth himself see Hüsmert and Giesler’s appendix, “Christian Roth” in Schmitt, *Militärzeit*, 518–20.

so densely cited in “Diktatur und Belagerungszustand” was not a priority for him before this order. While Mehring characterizes this exclamation as ironic, positing that Schmitt indeed knew the subject well,²⁹ this is not at all clear from Schmitt’s earlier output. Further, Schmitt’s marked antipathy for the assignment is evident as the passage continues: “And I am cowardly and give in, although everything is in fact achieved through opposition.”³⁰ This statement is telling in that Schmitt characterizes himself as having a duty to oppose the assignment, and his acquiescence as a moral failing.³¹

Schmitt’s negative response to these assignments is rendered more intelligible when placed in the context of the general themes of his wartime journals, notably the profound antipathy that he repeatedly expresses for militarism. In his wartime journals, Schmitt refers to “this accursed militarism” as a form of “godforsaken slavery, worse than anything that ever was,”³² to “mad, idiotic militarism,”³³ to the “nightmare of the war, of the stupidity and idiocy of the masses, of the narrow-minded officers.”³⁴ He describes militarism as a self-perpetuating process, causing the war to become worse of its own accord.³⁵ Bound up with his antipathy toward militarism is his antipathy toward what he terms the “annihilation of the individual, the awkward violation [*plumpe Vergewaltigung*] of private life.”³⁶ These feelings are not limited to quiet moments of introspection, but rather intrude forcefully into his work and personal life. Thus, in the midst of a pleasant day trip with friends, Schmitt remarks, apropos of nothing, “I was mad with rage over the Prussians, over militarism, had the ability to commit the most ostentatious insubordination. How hideous, as an individual, to sit in such a prison.”³⁷ Such examples could go on and on. In his wartime journals, Schmitt’s antipathy toward militarism is a concern that it is impossible to ignore. As he

²⁹ Mehring, *Carl Schmitt*, 88.

³⁰ Schmitt, *Militärzeit*, 126 (7 Sept. 1915): “Und ich bin feige und gebe nach, obwohl doch alles durch Widerspruch erreicht wird.”

³¹ Although numerous circumventions of the Reich constitution were carried out even in the early stages of the war, there was no significant opposition to these measures within the community of German legal scholars. See Michael Stolleis, *A History of Public Law in Germany: 1914–1945*, trans. Thomas Dunlap (Oxford, 2004), 20–26; and Heinrich Dörner, “Erster Weltkrieg und Privatrecht”, *Rechtstheorie*, 17 (1986), 385–401, 386–7.

³² Schmitt, *Militärzeit*, 95 (15 July 1915).

³³ *Ibid.*, 103 (3 Aug. 1915).

³⁴ *Ibid.*, 105 (6 Aug. 1915).

³⁵ *Ibid.*, 94 (13 July 1915).

³⁶ *Ibid.*, 64 (7 May 1915).

³⁷ *Ibid.*, 77 (3 June 1915).

puts it, “there is no rescue and no help from militarism; after the war it will keep getting worse. The individual is nothing; frightful.”³⁸

In these journals, not only does Schmitt express antipathy for the generally militarist and authoritarian implications of his wartime legal articles, but he also records private sentiments directly opposed to their specific arguments. In contrast to the claims of “Einwirkungen des Kriegszustandes”, which argues for the effectively unlimited power of the military commander to make searches, seizures and arrests, Schmitt notes privately, “I fear the arbitrariness [*Willkür*]; I see the people upon whose grace one depends. How perhaps a house search, a suspicion, a denunciation <threatens> me.”³⁹ Similarly, in contradistinction to the claims of “Diktatur und Belagerungszustand”, which argues that the power of the military commander in a state of emergency overrides the principle of the separation of powers, Schmitt observes privately “how legitimate it is to be afraid of the military regime and to introduce a separation of powers [*Trennung der Gewalten*] and mutual controls”.⁴⁰ Such statements demonstrate that Schmitt’s private reservations about the arguments he put forth in his legal articles are not merely based upon resentment of his lowly position or upon a generalized sentiment against military bureaucracy, but also took the form of specific, targeted objections.

On the other hand, it must be noted that Schmitt’s disinclination for these projects was not completely straightforward, but rather took the form of one position in a dialogue he conducted with himself. Indeed, in the entry just cited, Schmitt goes on to characterize his antipathy as “pointless resentment”.⁴¹ An entry from the previous week illustrates this point further: after bewailing militarism and how it appeared to be growing irremediably worse, Schmitt remarks, “And I myself work at the pinnacle of this development and make beautiful reports! I comfort myself by saying: this is the passage of history, each individual is therefore only a tool.”⁴² In this last statement, we see Schmitt’s antipathy for militarism in conflict with a second main theme of his journals, namely the irreducible claim of concrete actuality, and the necessity, however painful, to reconcile oneself with it. This theme of the primacy of the actual, unlike the theme of antipathy toward authoritarian militarism, is quite consistent with that of Schmitt’s wartime legal

³⁸ Ibid., 130 (17 Sept. 1915).

³⁹ Schmitt, *Militärzeit*, 134 (22 Sept. 1915). Original emphasis elided. The verb “threatens” (*droht*) is omitted in Schmitt’s original text but suggested by the editors.

⁴⁰ Ibid., 135 (24 Sept. 1915).

⁴¹ Ibid.

⁴² Ibid., 131 (19 Sept 1915).

articles, and with much of his later work.⁴³ The commonality between the journals and the legal articles on this point lies in the perception that normative claims that run counter to the demands of the historical situation must be cast aside. In the journals such normative claims are represented by Schmitt's private concern for his own individuality in the face of rampant militarism, whereas in the legal articles they are the more general claims of the individual and the law vis-à-vis the executive power of the military commander.

It is worth emphasizing that, prior to the winter of 1915–16, Schmitt's thought focused largely on the project of preserving a space for individuality within state and society. Though his early work *Der Wert des Staates und die Bedeutung des Einzelnen* (1914) argues for the existential priority of the state in establishing the value of the individual, it uses this value of the individual, in characteristically liberal fashion, to retroactively affirm the state.⁴⁴ Pace Kennedy,⁴⁵ Schmitt's own characterization of his motives, sentiments and personal dilemmas in his early diaries shows that his pre-war critique of mechanistic forms of life (as is evident in his 1912 review of Walther Rathenau's *Kritik der Zeit*⁴⁶) was in fact a defense of individualism associated with other liberal values such as the separation of powers and contempt for arbitrary authority, and in this sense demonstrates a profound discontinuity with his later political thought. The conceptual framework surrounding this early commitment to individualism is given forceful expression in a 1912 letter to Pawla "Cari" Dorotic, soon to be Schmitt's first wife:

We are hopelessly lost in a brutal machinery if we do not define ourselves with a serious decision for self-respect [*ernsten Entschluss zur Selbstachtung*]. It always concerns a struggle of the self with the outer world [*Kampf des Selbst mit der Außenwelt*] over the question of whether one can determine one's fate oneself or whether one surrenders to it. So, Cari, Kant is therefore greater than Napoleon, and Nostradamus could predict Napoleon's fate but could know nothing of Kant.⁴⁷

After the outbreak of war, Schmitt's diaries illustrate how this commitment to self-determination came into conflict with the pressures of his position in the "brutal machinery" of wartime bureaucracy, and how he ultimately formulated an inversion of the Kant–Napoleon hierarchy he had set up in his 1912 letter,

⁴³ See especially Carl Schmitt, *Political Theology*, trans. George Schwab (Chicago, 2005), 13; and Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Berlin, 1989), 137. See also Caldwell, *Popular Sovereignty*, 97–8.

⁴⁴ See Schmitt, *Der Wert des Staates*, 2–3.

⁴⁵ See Kennedy, *Constitutional Failure*, 43–4.

⁴⁶ Carl Schmitt, "Kritik der Zeit", *Die Rheinlande* (1912), 324.

⁴⁷ Schmitt to Dorotic (24 Oct. 1912), in Schmitt, *Tagebücher*, 1–2.

making a substantial break with his early individualism by choosing very explicitly “surrender” to the “outer world”.⁴⁸

Schmitt’s struggle to reconcile himself personally to this perception of the primacy of the actual is plainly evident in passages which grow more numerous toward the end of 1915, appearing again in force when he briefly resumes journalling in July 1916. His description of this struggle and its relevance for his development as a thinker will be discussed below. Prior to this, however, we must examine in more depth the arguments put forward in Schmitt’s two wartime legal articles.

SCHMITT’S WARTIME LEGAL ARTICLES

In its exercise of extraordinary war powers, imperial Germany relied on two constitutional provisions, Article 68 of the Reich’s 1871 constitution and the 1851 Prussian law of the state of siege, which effectively suspended protections against search, seizure and arrest. But it quickly became clear that these provisions failed to equip the government to address the extensive administrative problems of industrial-scale trench warfare on two major fronts.⁴⁹ In the Reichstag, calls to subject these laws to “inspection and rejuvenation” were forthcoming.⁵⁰ Schmitt’s wartime legal articles were targeted interventions in this debate,⁵¹ but in their argumentative formulations went beyond his own prior legal thinking, going so far as to posit that the situation of concrete danger represents the “original condition” of “legally primal” authority.⁵² In this regard, as Bendersky aptly observes, “The basic tenor of Schmitt’s future work on constitutional law was

⁴⁸ See especially Schmitt, *Militärzeit*, 176 (July 1916), with its reference to Kant. For Schmitt’s later appraisal of Napoleon see *ibid.*, 113 (15 Aug. 1915). Both passages are discussed below.

⁴⁹ See Christian Schudnagies, *Der Kriegs- oder Belagerungszustand im Deutschen Reich während des Ersten Weltkrieg: Eine Studie zur Entwicklung und Handlung des deutschen Ausnahmestandsrechts bis 1919* (Frankfurt, 1994), 57–8.

⁵⁰ See *ibid.*, n. 2, which discusses the Reichstag debate of 27 Aug. 1915, in which this specific phrase was employed.

⁵¹ See Stolleis, *Public Law in Germany: 1914–1945*, 20–26. Stolleis lists Schmitt’s “Diktatur und Belagerungszustand” and “Einwirkungen des Kriegszustandes” among those wartime works that exemplified the extent of criticism that was permitted to exist within the field of jurisprudence, which were “directed against the organizational disarray and the confusion over spheres of authority and sought to rectify that situation”. For comparison see also Adolf Arndt (sr.), “Zum Gesetz über den Belagerungszustand”, *Deutsche Juristen-Zeitung*, 20 (1915), 307–8; Felix Rosenthal, *Deutsches Kriegsrecht: Eine Übersicht über das Recht des Kriegszustandes* (Berlin, 1915); and Werner Rosenberg, “Die rechtlichen Schranken der Militärdiktatur”, *Zeitschrift für die gesamten Staatswissenschaften* (1916), 808–25.

⁵² Schmitt, “Diktatur und Belagerungszustand”, 159 and 147. Discussed below.

already inherent in these wartime articles.”⁵³ Both of these articles deal with the legal contradictions revealed during a state of emergency, and both argue for a solution in the primacy of the actual, concrete need for administrative power over the merely normative claims of law.⁵⁴

This operative distinction between the normative and the actual originated with the legal positivism that had dominated German jurisprudence since the founding of the Second Empire, which sought to excise considerations of natural law, morality and practical politics from legal reasoning.⁵⁵ It posited instead a formal and supposedly gapless system of norms against which concrete cases could be objectively adjudicated. According to this view, championed by Carl Friedrich von Gerber, Paul Laband and later Hans Kelsen, the measure of legality was in its internal, logical coherence. Though legal positivism remained institutionally dominant, opposition within the field of jurisprudence was well advanced by the outbreak of the war, spearheaded by the legal realist Hermann Kantorowicz and the so-called “Free Law Movement” to which he belonged.⁵⁶ Schmitt’s earliest theoretical interventions show that he was already well ensconced within this anti-positivist camp before the outbreak of war, following senior colleagues like Heinrich Triepel, Erich Kaufmann and Rudolf

⁵³ Bendersky, *Carl Schmitt*, 19.

⁵⁴ The differentiation between constitutional and administrative law dates to the early nineteenth century, but the scholarly elaboration of the latter in Germany began only in the 1860s. On the eve of the First World War, Otto Meyer’s parallel treatments of French and German administrative law—*Theorie des französischen Verwaltungsrecht und Deutschen Verwaltungsrecht* (both 1895–6)—had established the discipline beyond dispute. See Michael Stolleis, *Public Law in Germany: 1800–1914* (New York: Berghahn Books 2001), 373, 393–5. Its most complete articulation prior to the outbreak of the war was Erich Kaufmann, “Verwaltung, Verwaltungsrecht”, in Karl von Stengel and Max Fleischmann, eds., *Wörterbuch des deutschen Staats- und Verwaltungsrechts*, vol. 3, 2nd edn (Tübingen, 1914). See Stolleis, *Public Law in Germany: 1914–1945*, 35–6. Kaufmann’s work remained within the parameters of the liberal *Rechtsstaat*, but, as Stolleis observes, “went far beyond traditional positivism by calling for the inclusion of actual administrative reality and the historical dimension”. In this sense, Schmitt’s wartime articles can be read as an application of Kaufmann’s method to the wartime administrative powers of the military commander. The radical thrust of Schmitt’s argument, however, comes from his exposition of the ways in which constitutional and criminal-procedural statutes collapse in the face of the administrative needs of an emergency situation.

⁵⁵ For an explanation of positive legal theory’s categorical separation of the normative sphere from all concrete considerations see Arthur J. Jacobson and Bernhard Schlink, “Introduction. Constitutional Crisis: The German and the American Experience”, in Arthur J. Jacobson and Bernhard Schlink, eds., *Weimar: A Jurisprudence of Crisis* (Berkeley and Los Angeles, 2000), 1–39, 6–7.

⁵⁶ See Stefan Koriath, “Erschütterung des staatsrechtlichen Positivismus im ausgehenden Kaiserreich”, *Archiv für öffentliches Recht*, 117 (1992), 212–38.

Smend in reintroducing considerations of history and politics into their legal thought.⁵⁷ Schmitt's wartime legal articles, however, go farther than these colleagues, and farther than his own prior interventions, in pushing the thesis of legal indeterminism to its extreme, arguing for the inability of any positive system of norms to prescribe or contain the decision-making power of the executive during a state of emergency.

The basic argument of "Diktatur und Belagerungszustand" is that dictatorship and the state of siege are defined as "exceptions to the legal order" for the "treatment of the situation of concrete, actual danger".⁵⁸ The legal distinction between these two forms of response to such an emergency is that in a state of siege, "a concentration [*Konzentration*] occurs within the executive" which, from a legal perspective, leaves in place the principle of the separation of powers, whereas in a dictatorship, legislative and executive powers are combined within a single office.⁵⁹ For Schmitt, however, it turns out that this distinction is merely formal, since in either case, the principle of the separation of powers is, in *actuality*, contradicted. As he goes on to argue, "Every law on the state of siege wants firstly to delimit the power of the military commander, but then also to ensure that within this limit the military commander has free room for maneuver [*Spielraum*]."⁶⁰ This creates a problem for constitutional thought, since in the context of a state of siege "the separation of powers no longer stands; within the room for maneuver entrusted to the military commander, the legal situation [*Rechtslage*] is as if there had never been a separation [*als hätte es eine Teilung nie gegeben*]"⁶¹

This concentration of authority leads to a kind of legal singularity, an "original condition" (*Urzustand*) of "legally primal" (*rechtlich zunächst*) authority in the

⁵⁷ See especially Carl Schmitt, *Gesetz und Urteil: Eine Untersuchung zum Problem der Rechtspraxis* (Munich, 1969; first published 1912), which, as Stolleis explains, "marked the first appearance of the 'decision' [*Dezision*] as a validating norm-creating factor". Stolleis, *Public Law in Germany: 1914–1945*, 18. See also Hasso Hofmann, *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts*, 3rd edn (Berlin, 1995), 32–9.

⁵⁸ Schmitt, "Diktatur und Belagerungszustand", 138, 147.

⁵⁹ *Ibid.*, 156. Both concepts, and the formal distinction between them, come from the French tradition of constitutional law, which strongly informed the German emergency laws of 1851 and 1871, but in Germany the legislative checks on emergency powers were significantly curtailed. Indeed, after defeating Napoleon III, it was the new German empire under Bismarck that carried the standard of plebiscitary dictatorship, or Bonapartism, into the twentieth century, leaving the constitutional questions surrounding the limitations of these emergency powers largely unresolved. See Keith Whittington *et al.*, eds., *The Oxford Handbook of Law and Politics* (Oxford, 2010) §§1.3–1.4. See also Kitchen, *The Silent Dictatorship*, 9–14.

⁶⁰ Schmitt, "Diktatur und Belagerungszustand", 153–4.

⁶¹ *Ibid.*, 160.

face of threatening danger.⁶² The problem for jurisprudence then becomes how to deal with the inescapable breakdown of the distinction between legislative and executive functions in emergency situations, and what this abrogation of the principle of the separation of powers implies for our conception of the legal state.⁶³ For Schmitt, the “legally primal” situation revealed in the state of emergency, a concentration of authority which de facto overrides any legal limitation, reveals the entire edifice of jurisprudence as an entity independent of outside concerns—the basic premise of legal positivism—to be illusory. As he argues,

The unification of legislative and executive in one hand is *only the legal description* [*staatsrechtliche Umschreibung*] of this concentration, which seizes the entire state in all of its military, political and economic elements and can take various forms according to the external course of the war in its extent and its intensity.⁶⁴

Indeed, as Schmitt notes, the question whether or not Germany ought to assign legislative powers to the military commander during the world war then under way was immaterial, since in either case “the practice itself hardly becomes different”.⁶⁵

“Einwirkungen des Kriegszustandes”, though it deals with a different problem, comes to similar conclusions. In it, Schmitt discusses the effects of the declaration of a state of war on the “standard criminal trial procedure” based on two considerations: first, the suspension of constitutional provisions; second, the transfer of executive authority to a military commander who is to be considered the supreme authority within a given territory. In both cases, Schmitt ostensibly seeks to delimit the jurisdiction of the commander by making reference to the independent sphere of “unhindered judicial activity” of the investigating judge, also given extraordinary powers under the laws of war.⁶⁶ This thesis is stated succinctly toward the end of the article: “Whether the military commander proceeds according to the suspension of constitutional provisions [*Aufhebung von Verfassungsbestimmungen*] or he intervenes on the basis of the transfer of executive authority [*Übergangs der vollziehenden Gewalt*], his effects always find their limits in the independence of judicial authority [*Unabhängigkeit der richterlichen Gewalt*].”⁶⁷ However, in arguing this, Schmitt must resolve an apparent contradiction, since, as he notes repeatedly, the authority of the military

⁶² Again see *ibid.*, 159, 147.

⁶³ See *ibid.*, 153.

⁶⁴ *Ibid.*, 161. Emphasis added.

⁶⁵ *Ibid.*, 153.

⁶⁶ See Schmitt, “Einwirkungen des Kriegszustandes”, 789–90.

⁶⁷ *Ibid.*, 796.

commander under the state of siege is actually unhindered by law.⁶⁸ That this is only an *apparent* contradiction becomes intelligible by making reference to the convention of legal positivism according to which all actuality is categorically opposed to a separate normative sphere. The fact that Schmitt spends a great deal of time citing a multitude of legally normative provisions makes his argument seem more equivocal than it is when carefully parsed. While the authority of the military commander is manifestly actualized in the face of threatening danger, that of the judiciary recedes to pure normativity. In the end, it is clear that, for Schmitt, all apparent limitations to the military commander's power are merely normative, never actual, since the military commander is only materially responsible to his superior in the chain of command, rather than subject to any legally determined consequences.⁶⁹

When read closely, both articles seem designed to marshal the contradictory and absurd results of the distinction between the normative and the actual in order to demonstrate the limitations of the idea of positive law as a system hermetically sealed from outside concerns. As Caldwell observes (referring to "Diktatur und Belagerungszustand"), "Schmitt's essay played havoc with the positivist style of legal interpretation. He pushed the opposition between theory and practice . . . to a head."⁷⁰ One particularly striking instance of this method of critical juxtaposition comes at a key moment in the argument of "Einwirkungen des Kriegszustandes", as Schmitt turns from a normative, legal discussion to one of actual, concrete effects:

One could now say that the measures arranged by the military commander, such as arrest, search and seizure, no longer really concern a criminal procedure, [and] the arrests made by the military commander, etc., would only actually signify interventions, which indeed could have actual importance for the outcome of the criminal procedure in the concrete case, but which one may not call legal effects on the criminal procedure. This is, however, *only apparently correct* . . . [T]he essential thing is that the military commander can exercise his legal authority in the interest of criminal prosecution, that he is thus not hindered in entrusting the results of his search, seizure or arrest to the state prosecutor, and using them in his criminal prosecution . . . The consequence is then that the provisions on seizure, search and detention of the regulations on criminal procedures are vacuous [*inhaltlos*] . . .⁷¹

Schmitt then goes on to make the case for the legal impact of military necessity (and therefore against the positivist conception of law) with regard to another

⁶⁸ See *ibid.*, 786–87. See also Schmitt, "Diktatur und Belagerungszustand", 147, 160.

⁶⁹ See Schmitt, "Einwirkungen des Kriegszustandes", 786–7.

⁷⁰ Caldwell, *Popular Sovereignty*, 61.

⁷¹ Schmitt, "Einwirkungen des Kriegszustandes", 788. Emphasis added.

power of the military commander, namely his ability to take over the office of the state prosecutor according to his discretion:

Theoretically, one can call the possibilities of influence, which are fulfilled on the basis of the transfer of executive power, irrelevant. As a result of this transfer, no change of function occurs, but rather only an exchange of the person responsible with the transfer of function . . . Nonetheless, this is actually *not* merely a meaningless exchange of persons. For the powers which befit the non-judicial official in the criminal trial allow the discretion of this official a certain room for manoeuvre. If the military commander now makes use of the transfer of executive power, he does this in order to enforce his appraisal of the situation [*um seine Auffassung der Sachlage durchzusetzen*]. If he were sure that the official in question would also act, without his intervention, in correspondence with his intentions, he would not have cause to make use of the transfer of executive power.⁷²

In both of these passages, Schmitt proceeds by cutting through a layer of merely normative abstractions to reveal the actual, concrete effects of a state of emergency upon the legal order. While jurisprudence cannot proceed without such normative abstractions, they remain, in Schmitt's view, subordinate to the outside influence of military necessity at every stage of the legal process.

The preceding argument from "Einwirkungen des Kriegszustandes" is echoed in "Diktatur und Belagerungszustand", where, similarly, the primacy of the actual is presented as the key to cutting through the "unsolvable controversies" of jurisprudence.⁷³ For Schmitt, "The goal in a state of siege is determined purely factually [*rein faktisch bestimmt*]: a disturbance is to be suppressed, a determinate military outcome is to be secured. The means of achieving the goal are naturally similarly actual [*tatsächlich*]."⁷⁴ Laws which appear to limit the activity of the military commander "remain applicable, but the military commander may disregard them in the concrete case, [and] they no longer signify a limit to his activity".⁷⁵ Even those regulations such as Article 7 of the Prussian constitution, which seek to delimit the extent of a constitutional suspension, are no match for the power of actual danger.⁷⁶ The effect of the "purely actual instance of a concrete danger" is that "legal boundaries which could otherwise hinder the achievement of the goal fall away".⁷⁷

⁷² Ibid., 792. Emphasis added.

⁷³ See Schmitt, "Diktatur und Belagerungszustand", 147.

⁷⁴ Ibid., 158.

⁷⁵ Ibid., 159.

⁷⁶ Ibid., 159; see also 152.

⁷⁷ Ibid., 159, 158. On this point see 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, 2003), 177.

At this point, Schmitt pauses to describe the “room for manoeuvre” proper to the military commander during an emergency, whereby “a lawless space is staked out from the law [*vom Recht ein rechtsfreier Raum abgesteckt wird*], within which the military commander may employ any means that seem appropriate to him”.⁷⁸ The extent of this extralegal space “is only delimited by the purely actual goal, thus not at all conceptually [*nur durch den bloß tatsächlichen Zweck, also begrifflich überhaupt nicht abgegrenzt*].”⁷⁹ Since these statements appear in Schmitt’s 1917 publication, they call into question McCormick’s assertion that the 1922 text *Politische Theologie* represents Schmitt’s first articulation of the view that a constitutional suspension “cannot be circumscribed factually and made to conform to a preformed law”, and that this represented a substantial shift from an earlier position.⁸⁰ In his wartime texts, Schmitt identifies the character of this extralegal space as a return to the primordial authority of pure “legally primal” administration: “Within this space, a return to the original condition, so to speak, occurs, [and] the military commander acts within it as the administrative state before the separation of powers: he connects concrete authority as means to a concrete goal, without being hindered by legal barriers.”⁸¹ The actions of the military commander during a state of siege are “legally primal” in that, like “the measures which the captain of a ship takes for the maintenance of order”, they are self-evidently authoritative.⁸² In this way, the concentration of executive authority in the hand of the military commander during a state of siege reveals a fundamental quality of the legal state as such, within which “pure actuality unmistakably appears”: the primacy of concrete, executive decision-making over the abstraction of all legality, be it legislative (in “Diktatur und Belagerungszustand”) or judicial (in “Einwirkungen des Kriegszustandes”).⁸³

Though these arguments seem designed to support the type of “silent dictatorship” established by Hindenburg and Ludendorff after July 1917, it is important to note the periodicity of their composition and publication. Caldwell has argued that “Diktatur und Belagerungszustand” should be read as a response to the twin pressures of parliamentary demands for increased democratic participation in government and the machinations of the military leadership in favor of a *de facto* dictatorial regime.⁸⁴ It must be remembered,

⁷⁸ Schmitt, “Diktatur und Belagerungszustand”, 159. See also Schmitt, “Einwirkungen des Kriegszustandes”, 792.

⁷⁹ Schmitt, “Diktatur und Belagerungszustand”, 159.

⁸⁰ McCormick, “Dilemmas of Dictatorship”, 224; quoting Schmitt, *Political Theology*, 6.

⁸¹ Schmitt, “Diktatur und Belagerungszustand”, 159. See Caldwell, *Popular Sovereignty*, 59.

⁸² Schmitt, “Diktatur und Belagerungszustand”, 147.

⁸³ The quoted phrase is from Schmitt, “Diktatur und Belagerungszustand”, 147.

⁸⁴ Caldwell, *Popular Sovereignty*, 60.

however, that when the two legal articles appeared, Hindenburg had only recently replaced Falkenhayn as Chief of the General Staff in August 1916, and the contemporaneously published “Einwirkungen des Kriegszustandes” had already been delivered as a lecture at Strasbourg the previous February. It would not be until August 1917 that the two commanders would be able to secure the removal of Chancellor Bethmann-Hollweg, which precipitated the wholesale “caesarism” of the remaining war period.⁸⁵ *Pace* Caldwell, we must discern rather Schmitt’s remarkable prescience in diagnosing how positive constitutional law will *in fact* bend to the demands of concrete danger in the emergency situation, wherein the administrative power to decide that is manifest in the task of military command reveals itself.⁸⁶

In spite of the marked antipathy for such ideas that Schmitt continued to express in his journals during the period in which he began composing his wartime legal articles, it is clear from the groundbreaking nature of their claims that they are not reducible to mere bureaucratic exercise. Though Schmitt’s orders clearly required him to present a maximally authoritarian interpretation of the law, what is striking about these articles is that their arguments are in no way formulaic or routine, which one might expect if Schmitt were unambiguously opposed to their position, but rather demonstrate what is recognizably the innovative anti-liberal interpretation of legality for which the later Schmitt is known. It remains, then, to be shown how Schmitt, upon his own account, came to embrace these ideas—or, in any event, to give up resisting what he saw as their ineluctable force—as a way of reconciling the tension that had beset his inner life through the early years of the war.

THE SECRET BURDEN

Schmitt’s presentation of his struggle over whether to reject or embrace the values implicit in his wartime legal texts shows that his later political-theoretical direction was by no means a foregone conclusion, but it also illuminates the profound and idiosyncratic set of concerns that form the background for his subsequent embrace of right-wing politics. In this regard, the key moment of transition, when Schmitt begins to present his inner conflict in radically new terms, occurs toward the end of 1915. In the final weeks of that year, Schmitt begins to describe a religious renewal associated with a new-found ability to accept his “fate” and with it the necessity of the authoritarian state and the war unfolding around him. Then, on 29 December, his journal leaves off abruptly, mid-sentence,

⁸⁵ See Kitchen, *The Silent Dictatorship*, 25–41.

⁸⁶ See note 26 above.

with the four pages that follow ripped out.⁸⁷ When Schmitt returns, briefly, to journal writing in July 1916, his change of tone is pronounced. Taken together, these entries of late 1915 and of 1916 show that the shift toward embracing the maximally authoritarian (and anti-liberal) positions articulated in his wartime legal publications figures as a major turning point in Schmitt's narrative of his inner life. These entries suggest that Schmitt's later, stridently polemical political theology was rooted in this moment of decision, and motivated by an experiential understanding that any alternative framework would prove untenable in the face of the concrete actuality of the world.

When we observe Schmitt's depiction of the inner dimension of his conversion to his mature political-theological world view, it is impossible to ignore the profound psychological pressure that he characterizes as its prime motivation. For this reason, it will be necessary to detail the rather extreme ways in which Schmitt describes his mental state during this period. In this, the goal will not be to diagnose Schmitt or to unduly privilege the epistemic status of his self-presentation in his journals, but rather to highlight the ways in which the account he provides of his inner struggle formally parallels the arguments he presents in his wartime legal articles, and describe his ultimate rationale for accepting them. In an entry typical of his wartime journals before the transition, Schmitt writes,

I crawl more and more inside myself. What am I to do; outside is the World War . . . Now I know the bad life, the secret burden [*die heimliche Crux*], something greater will arrive, will shatter me, suddenly I am dying. Is it not worthy, to consciously make an end, to use suicide as a means to philosophical purification—and how pathetically one hangs onto life.⁸⁸

At times Schmitt seems to be struggling with the urge to commit suicide as he is writing, such as when he writes, “Should I jump out of the window! No, I am fearful of the two seconds that the fall would take.”⁸⁹ At other times he observes his condition from a more detached perspective, such as when he records, “In the afternoon, I tested to see whether one can shoot oneself in the head with an infantry rifle.”⁹⁰ And later that day, “my cousin remarked that I am showing signs of the beginnings of insanity (The insanity has long been there; I need only 9/10 of my strength to keep it from breaking out).”⁹¹ Schmitt expresses on many occasions that his job at the General Command exacerbates his anxiety, such as when he recalls returning to work after a lunch break “with great terror.”⁹²

⁸⁷ See editors' note, Schmitt, *Militärzeit*, 175.

⁸⁸ Schmitt, *Militärzeit*, 65 (8 May 1915).

⁸⁹ *Ibid.*, 102 (1 Aug. 1915).

⁹⁰ *Ibid.*, 112 (14 Aug. 1915).

⁹¹ *Ibid.*, 112–13 (14 Aug. 1915).

⁹² *Ibid.*, 71 (21 May 1915).

However, he depicts himself as fearing regular military service even more, a sentiment expressed when he writes, "Stupid work at the office, but I always work feverishly from fear that I will have to return to the barracks."⁹³ At times, this fear is expanded to include fear of being near soldiers, such as when, in a café, Schmitt recalls, "I got seizures [*bekam Anfälle*] if I saw a soldier."⁹⁴ On another occasion, Schmitt describes a dream in which he is sent to the front and notes that he has trouble writing the journal entry because his hand is trembling from fear.⁹⁵ In his wartime journals, Schmitt presents his recurring state of "angst because of the military" as a long-term condition with very little reprieve.⁹⁶

Schmitt's self-described "insanity" underscores the rather perverse ways in which his resentment of German militarism expresses itself, such as when he remarks that, while reading foreign newspapers, he experiences "a special joy when the enemy wins."⁹⁷ Schmitt expresses the belief that such extremes allow him a unique perspective on events, a profoundly indifferent position: "I see through the entire swindle, no less correctly and superiorly than Napoleon would have been able to see through it."⁹⁸ Within this state of indifference, Schmitt records moments whereby, in accepting a banal fate, he can find a way of affirming his existence: "Deep inside me, everything is indifferent [*gleichgültig*]; I would then be able to commit the greatest stupidities [*Dummheiten*]. So I actually have it unbelievably good."⁹⁹ As the year 1915 progresses, Schmitt occasionally records moments of real acceptance: "Sometimes I am happy because I feel myself to be a capable administrative official."¹⁰⁰ However, as previous entries make clear, Schmitt has already characterized such acceptance as itself a symptom of insanity, as when he notes, discussing the war, "The people are crazy to put up with it. But I am crazy too, and the commonality consists in this: that one does not earn obedience [*Gehorsam nicht gewinnt*], that one commands [*befiehlt*]."¹⁰¹ Such entries underscore that the acceptance of one's place in an authoritarian hierarchy, of the "primal" necessity to obey orders that is so clearly articulated in his legal articles, was not at all a straightforward or unambiguous commitment for Schmitt well into the year 1915.

⁹³ Ibid., 153 (5 Nov. 1915).

⁹⁴ Ibid., 115 (23 Aug. 1915).

⁹⁵ Ibid., 149 (26 Oct. 1915).

⁹⁶ Ibid., 67 (12 May 1915).

⁹⁷ Ibid., 81 (13 June 1915).

⁹⁸ Ibid., 113 (15 Aug. 1915).

⁹⁹ Ibid., 75 (29 May 1915).

¹⁰⁰ Ibid., 149 (25 Oct. 1915).

¹⁰¹ Ibid., 91 (8 July 1915).

In this context, it is important to note that Schmitt articulates his sentiments of anxiety and loathing side by side with a marked concern for his status and career development, a self-described “Insane desire for power and impact”.¹⁰² This careerism becomes entwined with his stated goal of insulating himself from the threat of military service when a friend informs him of an opportunity for habilitation at the University of Strasbourg. Schmitt describes his ardent desire to gain the lectureship there several times.¹⁰³ He submitted “Einwirkungen des Kriegszustandes” as his sample lecture, for which he received an encouraging response from the eminent legal positivist Paul Laband,¹⁰⁴ and *Der Wer des Staates* as his *Habilitationsschrift*, suggesting that he saw these as his strongest short- and long-form texts respectively. The “beautiful reports” which he had originally castigated himself for authoring, comforting himself by likening his role to that of a “tool”,¹⁰⁵ had turned out to be his most powerful means to achieve what he hoped would be an escape from the existential fear and personal anguish he felt at the General Command. Clearly, the positive feedback, both intellectual and institutional, which he received for “Einwirkungen des Kriegszustandes” would have had an impact upon the balance of power in his own internal debate, giving sustenance to the hope he expresses when, in beginning a new journal volume on 8 December 1915, he vows to make the year ahead different from the previous one, and the new journal unlike the previous one, which he calls “the book of an unhappy man”.¹⁰⁶ From this point of view, it becomes less surprising that Schmitt’s entries from the summer of 1916, once he had taken up the position of *Privatdozent* at Strasbourg, display a marked change of voice, though one for

¹⁰² Ibid., 88 (30 June 1915).

¹⁰³ See *ibid.*, 157 (19 Nov. 1915), 159 (28 Nov. 1915), 161 (2 Dec. 1915). In a unique moment of equivocation, Schmitt writes in his penultimate journal entry of 1915 (just prior to the point where he tears out the final entries of the year and leaves off journalling until the summer of 1916), “Last year, everything was still a whirlwind of victory, today everything is already [oriented] against annexations, and this time next year militarism will also succumb. Oh God, then I might be better off in the end not going to Strasbourg.” *Ibid.*, 173 (28 Dec. 1915). Of course, in the end, Schmitt might have been better off not taking the position at Strasbourg, but for a reason exactly opposite to his optimistic conjecture: France’s annexation of the city following Germany’s defeat, which forced Schmitt into an even more profound state of professional insecurity than any he had experienced beforehand. What this passage of 28 December does underscore, however, is the motivating reason behind Schmitt’s eagerness to become *Privatdozent* at Strasbourg: his desire to escape from the immediate pressure of his place in the military bureaucracy and the looming threat of the trenches.

¹⁰⁴ See Paul Laband to Carl Schmitt (6 Jan. 1917), in *ibid.*, 501.

¹⁰⁵ Schmitt, *Militärzeit*, 131 (19 Sept 1915). Discussed above.

¹⁰⁶ *Ibid.*, 163 (8 Dec. 1915).

which intimations are apparent in the earlier journals, growing more frequent during the final weeks of 1915, as the prospect of a more secure life presents itself.

One of these entries from 1916 in particular shows the degree to which Schmitt's later political-theological approach has taken root, and how directly he repudiates his existential struggles of the previous year: "*Do not complain about the terrible pressure under which you live*, but rather know that your godlessness, your Protestantism, your racial mysticism, your relativism, your godless swindle with logic as with Kant, Wagnerism and other frauds [*Hochstapeleien*] are responsible."¹⁰⁷ Here, Kant has fallen far from the high status he is accorded in Schmitt's 1912 letter to Pawla Dorotic, in which the philosopher figures as greater than Napoleon.¹⁰⁸ In these later entries, it is rather the Napoleonic quality of being able to "see through the entire swindle" which Schmitt prioritizes as necessary in order to live under the pressure of authoritarian militarism.¹⁰⁹ By this point, rather than the brutal mechanism of state violence that he had been caught up in, Schmitt had begun to see his "pointless resentment" of this mechanism as the source of his unhappiness, and his suppression of this resentment as the key to a better future.

Crucially, in November 1915, Schmitt appears to have experienced a Catholic reawakening of sorts through his reading of a pamphlet called *Wiedergeburt* (Rebirth) by an author referred to only as Merandasen, a text which Schmitt describes as a potent antidote to his depression.¹¹⁰ Later he writes, "At the office, quite fresh (thank Merandasen!)."¹¹¹ Though the appellation "Merandasen" is not attested in any known source and remains a mystery, it is nonetheless likely that Schmitt is here referring to the anonymously authored *Wiedergeburt: Deutschreligiöse Flugschriften*, published by the Deutscher Orden between January 1914 and December 1916.¹¹² These pamphlets combine militaristic nationalism with Catholic theology, and prominently display a swastika design on the

¹⁰⁷ Ibid., 176 (July 1916). Emphasis added.

¹⁰⁸ Again see Schmitt to Dorotic (24 Oct. 1912) in Schmitt, *Tagebücher*, 1–2. Discussed above.

¹⁰⁹ Schmitt, *Militärzeit*, 113 (15 Aug. 1915). Discussed above.

¹¹⁰ Ibid., 159 (27 Nov. 1915).

¹¹¹ Ibid., 162 (3 Dec. 1915).

¹¹² See Anon., *Wiedergeburt: Deutschreligiöse Flugschriften* (Rebirth: German Religious Pamphlets) (Berlin, Jan. 1914–Dec. 1916). See also Hüsmert and Giesler's editors' note confirming this attribution in Schmitt, *Militärzeit*, 159. Founded during the Third Crusade, the Deutscher Orden (Teutonic Knights) had given rise, by this point, to a politicized press representing what might be termed the Catholic wing of militant German nationalism. Note that while virulently anti-Catholic himself, Treitschke had celebrated the historical annexationist mission of this group in his *Das deutsche Ordensland Preußen* (The State of the Teutonic Knights in Prussia), which appeared posthumously in 1915.

masthead, at the time still a relatively esoteric symbol of the radical right.¹¹³ Around the same time, Schmitt records having begun reading the prominent nationalist historian Heinrich von Treitschke, whom he describes as greatly influencing his thinking.¹¹⁴ He summarizes his understanding of Treitschke's view thus: "Democracy (idealistic; it comes from below: as with biologicistic emergence [*biologistischen Entstehen*]), monarchy comes from above, by the grace of God, out of mystical or now physical exaltation. Therein lies its strength."¹¹⁵ Following Treitschke, Schmitt had begun to conceive of submission to the political authority of the state according to the model of submission to the moral authority of God.¹¹⁶

This moment in late 1915 appears to be crucial for the genesis of Schmitt's mature political commitments and political-theological world view. While Schmitt had discussed his Catholic faith at length in previous theoretical works, never before had he made the association between this faith and the subordination of the claims of the individual to an authoritarian political order.¹¹⁷ Schmitt's encounters with Treitschke and the *Deutscher Orden*, along with his application to Strasbourg, are among the final events recorded in the 1915 journals, and when he briefly resumes journaling from his new position at Strasbourg during the summer of 1916, as noted above, he expresses a resolve to no longer "complain about the terrible pressure", but rather to accept the war, the larger culture of authoritarian militarism, and his place in it. After making these concessions, Schmitt's prior concern for liberal values such as the rights of the individual and the separation of powers recedes to the point of vanishing, and in its place the polemical thrust of his Weimar-era theoretical project appears. What is significant, then, about the shift in Schmitt's thinking so starkly portrayed in his journals of late 1915 is that it shows him in the process of coming to see such liberal commitments as untenable on both personal and political-theoretical levels simultaneously.

There are even earlier intimations of this shift, such as the entry from the previous August in which, after a night of anxiety about the war and the fate of the Reich, Schmitt records, "I got up, washed and felt unbelievably well, so well that I became completely optimistic and started to find the war to be in order and

¹¹³ See Malcom Quinn, *The Swastika: Constructing the Symbol* (London, 1994), 145–6.

¹¹⁴ Schmitt, *Militärzeit*, 171 (21 Dec. 1915). See *ibid.*, 170 (20 Dec. 1915).

¹¹⁵ *Ibid.*, 171 (22 Dec. 1915).

¹¹⁶ Schmitt would go on to develop this theme in Carl Schmitt, *Römischer Katholizismus und Politische Form* (Munich, 2008; first published 1923).

¹¹⁷ Cf. Schmitt, *Der Wert des Staates*, 43. See also Schmitt, "Die Sichtbarkeit der Kirche: Eine scholastische Erwägung," *Summa*, 2 (1917–18), 71–80. The strong thematic similarity of these texts is discussed in Mehring, *Carl Schmitt*, 97–9. Though "Die Sichtbarkeit der Kirche" is from the period after Schmitt's pivotal winter of 1915–16, it does not present any discernible political-theological edge.

to trust in my fate, without fear, without any fear.”¹¹⁸ Here we see the combination of an absence of fear, a beatific feeling, and embrace of the war. Later that same day, however, as is typical of these earlier expressions of beatitude, Schmitt records his descent into a counter-extreme of anxiety: “I am crazy, I still see black shapes, little black men [*schwarze Männchen*] walking in front of me, clearly within reach, then again marionettes, tiny, I see all humanity disgusting as mud-people [*ekelhaft als Dreckpöbel*]. Oh, I am going crazy.”¹¹⁹ What such entries show, above all, is the level of psychological distress that Schmitt’s later resolve to no longer “complain about the pressure” was meant to contain and channel. But they also provide an intimation of his profoundly psychological rationale for doing so: only by accepting with fatalistic resignation the progress of a catastrophic war and one’s place in a crushingly authoritarian state apparatus could one find any reprieve from overwhelming existential fear. Indeed, by Schmitt’s account, only by abandoning that version of reason which rebels against these realities could he retain any vestige of reason at all.

CONCLUSION

Schmitt’s wartime legal articles represent a decisive theoretical advance toward what would later become the quintessentially “Schmittian” world view. Concepts associated with Schmitt’s better-known later work—such as the fundamentally unlimited nature of dictatorship; the extralegal space opened up by the threatening emergency within which a primordial condition of pure administration, cleansed of all legal abstraction, reveals itself; the absolute claim of authority over the rights of the individual—are first articulated in these early texts. Nonetheless, when reading these articles, it is important to bear in mind the context provided by Schmitt’s private journals, which strongly suggest that he would not have undertaken to research and write articles such as these were he not ordered to do so. They are themselves, at least in part, the products of coercion. On the other hand, the clues that Schmitt provides in his journals as to the ways in which he set about to reconcile himself to the facts of his situation during the war suggest a striking parallel to the arguments of his wartime legal texts: in both sets of texts, the primacy of the actual must be asserted *in extremis* over any and all normative claims, including those of the individual.

It is important, however, to be careful which conclusions we draw from such findings. We cannot, for instance, go so far as to declare that Schmitt’s world view was shaped unilaterally by the institutional power of the military bureaucracy into which he was forced. It remains impossible to determine the degree to which

¹¹⁸ Schmitt, *Militärzeit*, 118 (27 Aug. 1915).

¹¹⁹ *Ibid.*

Schmitt became convinced by the arguments of his legal texts as he wrote them, or as they gained him professional advancements such as a position as *Privatdozent* at Strasbourg. Similarly, Schmitt leaves only an incomplete account of the role his growing interest in a politicized Catholic theology played in his embrace of anti-liberal ideals. It remains an open question whether Schmitt's hostility toward militarism during the early war period evolved into a commitment to defend whatever constitutional order he found himself under, in an ultimately misguided attempt to prevent future outbreaks of organized violence, or whether, rather, this early anti-militarism represents a fundamental discontinuity with his later thought. While none of these possibilities can be definitively, causally linked to Schmitt's embrace of right-wing authoritarianism, or a conception of "the political" predicated on the existential threat of military conflict, they all play a crucial role in contextualizing Schmitt's early struggle over which values to accept. Schmitt's highly circumspect narrative of this struggle, alongside the theoretical work that was deeply imbricated in it, provides the most powerful explanatory device for understanding the substantive shift in his political commitments during the First World War.

Finally, we may note that this early period of transformation in Schmitt's political thought provides some insight into his public embrace of Nazism in 1933. Despite ongoing scholarly disagreement over the scope and significance of this later accommodation, it is clear that Schmitt realigned himself politically after the Nazi electoral victory, when he struggled briefly with disappointment and then resolved to put his best foot forward with the new regime.¹²⁰ Schmitt then apparently came to accept it as his duty to defend the new form of legality inaugurated by Hitler's sovereign dictatorship, and in so doing made reference to the unwillingness of the *Kaiserreich*, during the last phase of the First World War, to exploit just such dictatorial prerogatives as are outlined in his wartime legal articles.¹²¹ As he saw it then, Hitler's regime promised to rectify this situation, to "atone for the inhibitions and paralyses of the German government during the

¹²⁰ On the personal dimension of this shift in political allegiance see especially Gopal Balakrishnan, "Two on the Marble Cliffs", in Balakrishnan, *Antagonistics: Capitalism and Power in an Age of War* (London, 2009), 195–204, 195 ff.

¹²¹ See Carl Schmitt, "Der Führer schützt das Recht: Zur Reichstagsrede Adolf Hitlers vom 13. Juli 1934" (The Führer Defends the Law: On Adolf Hitler's Address to the Reichstag on 13 July, 1934), in Schmitt, *Positionen und Begriffe im Kampf mit Weimar–Genf–Versailles. 1923–1939* (Berlin, 1988; first published 1934, 1940) 199–203. The basic idea articulated in this text is prefigured in Schmitt's wartime argument that the dictator "does not execute a given statute of the authority [*Stelle*] which gives him the order, but rather he stands protectively in front of the authority [*Stelle*] itself." See Schmitt, "Diktatur und Belagerungszustand", 143. Here Schmitt plays upon the ambiguity of the term *Stelle*, which can mean both "authority" and "position".

World War”, and in so doing inaugurate a new legal order that would not fall prey to the same misguided faith in “an allegedly gapless legality” which had led to the collapse of 1918, when Germany had sacrificed itself “to the idols of liberalism”.¹²² Knowing what we now do about Schmitt’s private struggles during the early years of the First World War, we may recognize the apparent vindication, manifest in his subsequent rise to prominence, of his decision to cast aside these “idols” and embrace the values articulated in his wartime legal articles. We may conjecture that Schmitt expected a similar sort of vindication to follow from his second major surrender, in 1933, to the what he saw as the demands of concrete political reality.

¹²² See *ibid.*, 199, 200 and 203.