

# Schmitt, Carl (1888–1985)

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## Abstract

Carl Schmitt (1888–1985) was a conservative German public lawyer and political theorist. Schmitt is best known for his trenchant critique of liberal constitutionalism, parliamentary democracy, and legal cosmopolitanism. His contributions to debate on these issues continue to attract scholarly attention today, but they are considered to be highly controversial, due to Schmitt's association with National Socialism. This article presents an overview of the key themes and arguments in Schmitt's major writings, and it offers an assessment of Schmitt's relevance for contemporary political, legal, and constitutional theory.

## Biographical Sketch

Schmitt published his first academic works in the field of legal theory in the last years of the Wilhelmine Empire (see for Schmitt's biography: [Bendersky, 1983](#); [Balakrishnan, 2000](#); [Mehring, 2009](#)). The most productive period of Schmitt's career, however, was the era of the Weimar Republic (1919–33), which saw the publication of most of Schmitt's major political-theoretical works. In these works, Schmitt often presented himself as a defender of the Weimar Constitution, though on the basis of a rather authoritarian and highly contestable interpretation of that constitution that was rejected by the majority of German public lawyers at the time. In particular, Schmitt championed the claim that the popularly elected president of the Weimar Republic possessed an all but unlimited power of dictatorship, under article 48 of the Weimar Constitution, which would allow him to act as a 'guardian of the constitution' and to legislate and govern, in a situation of constitutional crisis, without any parliamentary support ([Dyzenhaus, 1997](#): 70–85; [Kennedy, 2004](#): 154–178).

While Schmitt seems to have been opposed to the prospect of a National Socialist government before 1933, he quickly sided with the Nazis after Hitler's accession to power and came to be perceived as the 'Crown Jurist' of Nazi Germany ([Mehring, 2009](#): 304–436). While some scholars have argued that Schmitt's willingness to support the new regime was born of his ambition and opportunism, and thus did not indicate an ideological affinity to Nazism ([Bendersky, 1983](#): 195–242), there can be little doubt that Schmitt held strongly anti-Semitic views and that his constitutional ideas of the Weimar period were open to be adapted to the new system ([Dyzenhaus, 1997](#): 85–101; [Scheuerman, 1999](#)). Schmitt's active involvement with the National Socialist system, however, was cut short in 1936, when he was accused by academic competitors with better National Socialist credentials of being a turncoat who had sided with the new government only to advance his career.

During the later years of the Nazi period, Schmitt therefore turned his attention increasingly to questions of international law. While Schmitt did attempt to provide a justification for Nazi Germany's claim to hegemony on the European continent, he also developed a general account of the conditions of a stable international legal order.

After the end of the war, Schmitt was briefly detained and interrogated by the allied powers, who considered the

possibility of putting Schmitt to trial in Nuremberg. Though nothing came of these plans, and Schmitt was set free, he was not allowed, due to his involvement with the National Socialist regime, to return to his academic position after 1945 ([Mehring, 2009](#): 438–463). Schmitt, nevertheless, remained a highly influential figure in West Germany's conservative intellectual scene until his death in 1985 ([Müller, 2003](#)). He continued to publish occasionally and to informally supervise young academics.

## Schmitt on Sovereignty and Dictatorship

In his early *Political Theology* ([Schmitt, 2005](#)), Schmitt famously defends the continuing relevance of sovereignty, both to legal theory and to political practice.

Liberal constitutionalism, according to Schmitt, aims to banish sovereign authority from political life, while it declares the concept of sovereignty to be theoretically dispensable. Its goal is to subject all exercises of political power to the rule of law. But in Schmitt's view, liberal constitutionalism overlooks that the applicability of general legal norms that are to control the exercise of political power presupposes a situation of social normality. No law, Schmitt argues, can be applied to a situation of utter chaos or disorder. Rather, such application requires a 'homogeneous medium,' a situation of social normality, so that the application of the norm will lead to predictable results. A state of emergency or of exception, on the other hand, cannot be governed by legal norms, because a legislator cannot foresee what measures may turn out to be necessary to pacify and normalize an abnormal situation of grave crisis ([Kahn, 2011](#); [Croce and Salvatore, 2012](#)). Schmitt concludes that a political community, or rather someone who can act on its behalf, must be endowed with the power to completely suspend the application of the law, and then to use dictatorial measures to restore a state of normality. This conclusion underpins Schmitt's famous claim that 'sovereign is he who decides on the exception' ([Schmitt, 2005](#): 5).

Schmitt is not referring here to an established constitutional competence. What he argues, rather, is that sovereign authority is manifested in the successful exercise of the power to take a decision on the exception so as to create the conditions of the applicability of law. Schmitt holds that any legal order, even one where the constitution does not endow anyone with an

authority to declare a total exception, is based on a decision (to suspend the legal order or not to suspend it), and not on a norm. The fact that the constitutional façade of a modern, liberal-democratic political system typically does not show a sovereign authority, Schmitt thinks, is irrelevant to this point. The true sovereign will appear in a situation of crisis.

Schmitt concedes that a defense of sovereignty for the contemporary world cannot return to the age of absolutism, and portray sovereign authority as vested, by divine right, in a particular person or family (Schmitt, 1985: 22–32, 2008a: 101–111). The doctrine of sovereignty must, therefore, be translated into a democratic ideological context. It is hard to see, though, how such a translation would work. In a democratic context, after all, sovereignty ultimately rests with the people. But the people, it seems, will be able to take collective decisions only once constitutional rules have been put in place that allow them to speak with a united voice. The people, it would appear, are not a suitable bearer of Schmittian sovereignty who takes a decision on the exception.

Schmitt attempted to solve this difficulty through his conception of sovereign dictatorship, which he put forward in his seminal study on the history of the institution of dictatorship (Schmitt, 2014; McCormick, 1997: 121–156; Cristi, 1998: 108–125).

Though originally distinct, dictatorship and sovereignty, Schmitt argues, nevertheless, entered into an intimate relationship in the course of the French Revolution. The French Revolutionary governments employed extralegal, dictatorial force not merely – as the Romans had done – to restore the condition of social normality presupposed by an existing constitution, but so as to create a new situation of normality that would allow a new constitution to come into force. However, the French Revolutionary governments did not claim to be the sovereign. Rather, they took themselves to exercise sovereign authority in the name of the people.

Schmitt's systematic claim here is that democratic constituent power, the power of the people to give itself a new constitution, can only be actualized in the form of sovereign dictatorship: The sovereign people by itself, as an unorganized mass, cannot purposefully act outside the law to create a new situation of normality that will allow for the establishment of a new constitution. It needs to be led by a person or group of persons exercising dictatorial power in the name of the people. But this person or group is dependent on the trust of the people, on the people's willingness to be led and to accept the decisions taken and measures implemented as its own. Sovereign authority, then, still exists in a democratic state: it is the power to take the decision on the exception, so as to establish a new constitutional condition, insofar as it is exercised, and successfully, by appeal to the will of the people (Schmitt, 2008a: 109–110, 265–266).

### The Concept of the Political and the Critique of Liberalism

Schmitt's conception of democratic sovereignty assumes that a people or political community can exist prior to or outside of an established framework of constitutional rules. Schmitt's famous claim that politics is based on a distinction between

friend and enemy (Schmitt, 2007: 26; Kennedy, 2004: 92–118; Slomp, 2009: 21–37) may usefully be understood as an attempt to explicate the way in which a political community can exist outside of any legal or constitutional framework.

Schmitt emphasizes that the distinction between friend and enemy is essentially public, not private. Politics involves social groups that face off as mutual enemies. Two groups are in a situation of mutual enmity, if and only if, there is a possibility of violent conflict between them. The distinction between friend and enemy marks the 'utmost degree of intensity ... of an association or dissociation' (Schmitt, 2007: 26). The utmost degree of association, in other words, is the willingness to fight and to die for a group one identifies with, while the ultimate degree of disassociation consists in the readiness to kill others for the reason that they are members of a hostile group. A political community, then, differs from other kinds of community in that it disposes off the life of its members. Hence, wherever people are members of several kinds of community at the same time, political community will remain the decisive community, and it will typically manage to keep all disagreements between its members below the threshold of violent conflict.

Every political community, in Schmitt's view, requires a substantive collective identity. People who unite into political community must agree to rely on some commonality between themselves as the mark of inclusion in (or exclusion from) the community. But Schmitt does not think that there is any particular kind of difference of identity that is necessarily political. Neither does he hold, consequently, that the distinction between friend and enemy must always be based, in whole or in part, on some particular kind of difference. All kinds of differences of identity – be they ethnic, religious, linguistic, economic – can turn into the substance of a political difference if they turn out, in particular historical context, to have the power to sort people into mutually hostile groups (Schmitt, 2007: 25–27). It would therefore be naïve, Schmitt thinks, to hold that the political will disappear once the conflicts arising from a particular difference of identity have been solved or become irrelevant. History suggests, rather, that political conflict will simply latch on to another difference of identity (Schmitt, 2007: 80–96).

Finally, Schmitt argues in the *Concept of the Political* that a group can be said to exist as a political community only as long as it is self-determining (Schmitt, 2007: 45–53). The members of a group that is to qualify as a political community must take the friend–enemy decision that differentiates their community from other polities by themselves and for themselves. If the friend–enemy decision is taken for a group, but not by the group, but rather by some external power, the group no longer exists as a political community. It follows from this that to deny a group the right to draw the friend–enemy distinction as it sees fit, for example by subjecting it to some binding international regime for the solution of conflict, is to deny the political existence of the group. As long as politics as such is considered to be legitimate, Schmitt concludes, any political community must be entitled to reject such an assault on its political existence.

Schmitt's analysis of the political is at least partly descriptive. The claim is that human beings, throughout history, have shown a tendency to form political communities based on a friend–enemy distinction. A group's ability to take that

distinction, Schmitt holds, does not presuppose that the group is already formally organized, that it already possesses a system of explicit constitutional rules for the creation of a common will. A political community, rather, can have a common existence prior to all legal form as long as its members identify with the substance of the group's identity strongly enough to be willing to fight and die for it. As long as a political community in this sense exists, it will be capable to support a sovereign dictatorship exercised in its name (Schmitt, 2008a: 126–135).

Though partly descriptive, Schmitt's conception of politics has clear normative implications. These are made explicit in Schmitt's critique of liberalism.

In Schmitt's view, liberalism's main characteristic is that it attempts to avoid genuinely political decisions (McCormick, 1997; Dyzenhaus, 1997: 58–70). According to liberals, it is not necessary or desirable for individuals to form groups constituted by friend–enemy distinctions. Liberals hold, rather, that all conflicts among human beings can, in principle, be solved through amicable compromise, as well as through the improvement of civilization, technology, and social organization. Consequently, liberalism is unable to provide markers of identity that can become the basis of political community. While liberalism aims to domesticate political power, in the name of individual freedom, it lacks the power to constitute political community (Schmitt, 2007: 69–79, 1985: 33–50).

This problem, Schmitt thinks, manifests itself in the inability of a liberal state to draw a distinction between friend and enemy. A liberal state will tend to recognize as citizens, and to offer legal protection to, all those who live law-abidingly under the rules laid down in some formal constitution. In doing so, however, liberal states are likely to extend membership to individuals who do not truly identify with the political community that underpins the state. Hence, there is a danger that, in a liberal system, the aims of the political nation will come to be frustrated by internal enemies who abuse the protection afforded by constitutional legality. Eventually, Schmitt, fears, the political nation will slowly disappear, as a result of a process of depoliticization encouraged by liberal ideology (Schmitt, 2008b: 65–77).

It is the job of the sovereign dictator, in Schmitt's view, to prevent such political disintegration, by means of a dictatorial suppression or elimination of internal enemies in a state of exception. In thus protecting the substantive homogeneity of the people, the sovereign dictator creates the condition for the legitimate applicability of the law. The application of constitutional law in nonhomogeneous society, Schmitt argues, can only lead to the legalized suppression of one social group by another (Schmitt, 2008b). Liberal protections of individual freedom and of rights of political association are to be welcomed, therefore, only once all citizens subscribe to a homogeneous political identity.

Though Schmitt expresses confidence that the political will not disappear any time soon, he appears to admit that a completely depoliticized global liberal utopia is possible. The claim that liberalism intends a depoliticization of the world, even if true, thus raises the further question as to why one should judge that the realization of a liberal utopia would be undesirable.

Schmitt offers a number of different responses to this challenge. A first answer emphasizes the Hobbesian claim that

the authority of a state is dependent on its power to protect citizens. A state that has suffered a subversion of the political, due to the spread of liberal ideology, may turn out to be incapable to mobilize the coercive force that is needed to protect its subjects, either from an indirect rule of pluralist interest groups who have colonized the state or from external enemies seeking to subdue the political community (Schmitt, 2007: 37–45, 51–53). Schmitt also argues, secondly, that a life without politics would be shallow and meaningless. A completely depoliticized world would offer human beings no other identity than that of a producer and/or consumer. In such a world, there would no longer be any values that would license risking one's own life, and thus give a meaning to one's existence that transcends the satisfaction of private desires (Schmitt, 2007: 35, 57–58). Finally, Schmitt intimates that the willingness to distinguish between friend and enemy is a theological duty (Schmitt, 2005; Meier, 1998). Liberalism, in this reading, is to be rejected because it purports to offer a secular redemption from man's fallen and corrupted nature. But such a promise, as well as the attempt to realize it, is to be rejected, Schmitt appears to suggest, as a rebellion against God, since it is God alone, but only at the end of history, who will deliver humanity from political enmity.

At any rate, Schmitt argues that the political is unlikely to disappear as long as there are at least some who are willing to stake their existence on the attachment to a political identity. Wherever there is one political community, it will force other communities to choose a political existence or to accept subjection. To avoid the latter fate, Schmitt warns, Germans must remain willing to live politically. His analysis of the political at times shades over into a plea for living politically. Schmitt is not just a theorist, but also a partisan of the political.

### Schmitt's Theory of Democracy and Constitutional Theory

Democracy, literally, is the self-rule of the people. Or as Schmitt prefers to put the point: a democratic political system must be characterized by the fact that the ruling will is identical to the will of the ruled (Schmitt, 1985: 25–30).

In political practice, of course, such democratic identity is merely presumed, for instance, when the decision of a majority (or of a majority of representatives) is regarded as the decision of the people as a whole. One must therefore ask for the conditions under which the identification of the will of the majority with the will of the whole is justified. Schmitt's answer, unsurprisingly, is based on his analysis of the political. Schmitt claims, as we have seen, that every political community is based on a constitutive distinction between friends and enemies. The equality of democratic citizens, he concludes, must not be confused with the general equality of all human beings. It is an expression, rather, of a shared substantive identity (Schmitt, 2008a: 255–267).

A legitimate identification of the will of the majority with the will of all, then, presupposes that all those who participate in a democracy share one and the same substantive identity. It is only under this condition that one can demand of the members of an outvoted minority that they accept the majority's choice as their own. Schmitt goes on to argue that the ideal of democracy

is not as intimately tied to majoritarian decision-taking as we are inclined to believe (Schmitt, 1985: 28–32). Forms of collective decision-taking other than majority voting may well turn out to be expressive of an identity of ruler and ruled. A populist dictatorship claiming to exercise the sovereignty of the people, Schmitt argues, need not be any less democratic than a system of majority rule, if the dictator and his followers indeed share a political identity. A system of majority voting, on the other hand, whether direct or representative, may turn out not to be democratically legitimate if it is not expressive of an underlying identity. In that case, the rule of the majority will degenerate, Schmitt holds, into an illegitimate and potentially oppressive rule of one social faction over another.

Above all, Schmitt is emphatic that democracy must not be identified with parliamentary government (Schmitt, 1985). The principle of legitimacy of parliamentary government, Schmitt believes, is not democracy, i.e., the identity of ruler and ruled, but rather the view that parliamentary deliberation, in front of an interested and educated bourgeois public, is most likely to lead to correct or sound legislative decisions that cater to the common interest. Schmitt is convinced that this assumption does not apply to modern mass-democracies, where parliaments are controlled by tightly organized parties that represent firmly entrenched social interests. Since parliament has become the scene of a pluralist disintegration of the political community, its decisions are not likely to be expressive of a shared interest or political identity of the whole.

The general effect of Schmitt's reflections on democracy is to dissociate the ideal of democracy from the institutional forms – majority rule and parliamentary government – with which it is most commonly associated, and to link it up with exercises of sovereignty in a state of exception. This revisionist understanding of democracy informs Schmitt's constitutional theory and his interpretation of the Weimar Constitution (Dyzenhaus, 1997: 38–101; Scheuerman, 1999: 61–84; Kennedy, 2004: 119–153).

Schmitt's *Constitutional Theory* argues that a democratic constitution is not to be regarded as a social contract, but rather as a unilateral determination, on the part of an already existing political community, of the concrete institutional form of its political existence. The constituent power of the people, i.e., its power to choose for itself any constitution it sees fit, is inalienable, since the people, as long as it exists as a political community, always retains the ability to engage in renewed exercises of constitution-making (Schmitt, 2008: 75–77, 125–130, 140–146; Kalyvas, 2008: 79–186).

Of course, it would make little sense to claim that any written constitution is ever a choice of the people down to its last detail. A people, Schmitt thinks, can do no more than to express its preference for a certain basic constitutional structure, which will then have to be filled out and concretized by the sovereign dictator acting in its name. But it would be wrong, Schmitt holds, to think that the particular norms of a written constitution possess the same normative force as the people's original choice for a certain kind of political system. Even where a written constitution that implements the people's choice for a certain kind of political regime does not impose any material limits on the constituted power of constitutional amendment, it would still be unconstitutional, Schmitt argues, to use that power to transform the very identity of the polity. Such an

action, even if it was supported by a supermajority of members of parliament, would amount to usurpation, on the part of constituted powers, of the constituent power of the people (Schmitt, 2004: 85–94, 2008: 77–82, 147–158).

Before 1933, Schmitt relied on this argument to oppose a formally legal Nazi seizure of power. However, Schmitt's constitutional theory did not provide a principled defense of the liberal and democratic constitutional system of the Weimar Republic. While Schmitt denied the constitutionality of changing the fundamental nature of the constitution from within, he, nevertheless, endorsed the possibility of fundamental constitutional change through sovereign dictatorship. Hence, his constitutional theory deliberately left open the possibility of a renewed exercise of constituent power that would sweep away the liberal and parliamentary democracy of the Weimar Republic.

The ambiguity of Schmitt's position toward the Weimar Constitution is equally visible in his interpretation of the powers of the president under the Weimar Constitution (Schmitt, 1931, 2014: 180–226). By assimilating the powers of the president under article 48 of the constitution to those of a sovereign dictator, Schmitt defended an unusually extensive interpretation of presidential authority that subjected most constitutional rights to the discretionary interference of the executive headed by the president. At the same time, Schmitt vehemently opposed the establishment of a constitutional court for the protection of the Weimar Constitution. Such a court, Schmitt argued, would have to limit itself to uncontroversial cases or it would have to act as a constitutional legislator that illicitly claims the power to determine the political identity of the people.

Schmitt seems to have hoped, during the terminal crisis of the Weimar Republic, that presidential dictatorship in defense of the existing constitution would be able to recreate a situation of normality that would allow the constitution to come to function properly again (Kennedy, 2004: 154–183). But Schmitt's theory of presidential guardianship of the constitution is at times difficult to distinguish from a call for an authoritarian transformation of the constitution. The project, at any rate, failed when the Nazis managed to take power through the kind of abuse of constitutional procedure, Schmitt had warned against.

It did not take Schmitt very long to throw in his lot with the new regime, and to offer his services as a legal advisor. Schmitt's readiness to support the Nazis has often been explained as the result of mere personal ambition and opportunism. However, Schmitt's constitutional theory clearly did allow for an interpretation of the Nazi *Machtergreifung* as a valid exercise of constituent power. It thus had the potential to portray Hitler's rule as perfectly legitimate. Hence, it seems unnecessary to postulate a deep discontinuity between Schmitt's views before and after 1933 (Dyzenhaus, 1997: 82–101; Scheuerman, 1999: 113–139).

### Liberal Cosmopolitanism and the Foundations of International Legal Order

Schmitt's conception of the political implies two conditions of the legitimacy of international order (Hooker, 2009; Slomp,

2009). Every true political community must claim an unrestricted *ius ad bellum* or right to decide whether to go to war to protect what it sees as its vital interests. If a group no longer takes the distinction between friend and enemy by itself – if that distinction is taken for the group, for instance, by a hegemon or an international organization – the group in question no longer exists as a political community. Hence, an international order that acknowledges the legitimacy of politics must recognize the *ius ad bellum* of all groups that have successfully constituted themselves as political communities. Second, Schmitt's conception of the political implies that a group can only exist as a political community if there is at least one other political community that is its enemy. Since the friend–enemy distinction must be based on a difference in substantive identity, politics depends on the availability of several identity-defining forms of social and political life. As a result, an international order that makes room for the political must acknowledge that there are several legitimate forms of social and political life.

These two demands may appear to be a recipe for anarchy, as they seem to rule out an international legal order that successfully regulates the use of force between political communities and that imposes minimal human rights standards on the several members of international society. Schmitt's reply to this objection is to argue that attempts to suppress the *ius ad bellum* and to impose standards of moral conformity on the internal governance of members of international society will only lead to greater disorder and violence than we can expect to see in an international order that is built on a recognition of the political.

Schmitt's argument for this claim proceeds by way of historical example (Schmitt, 2003). Traditional European public international law, the *ius publicum Europaeum*, did not distinguish, according to Schmitt, between just and unjust war. Rather, it acknowledged that every European state had the right to decide to go to war on the basis of its own judgment of justice and necessity. In interstate wars, both parties were by default recognized as legitimate belligerents. This practice, Schmitt argues, had a number of beneficial consequences that restrained the destructive force of war. The refusal to apportion blame for war made it easier for states to make peace. States not directly involved in a conflict, moreover, were free to adopt a posture of neutrality or to side with either belligerent. This freedom allowed states to contain conflicts by balancing or simply by staying out of the fight. Finally, the mutual recognition of legitimate belligerency permitted states to agree, on the level of the *ius in bello*, on stringent constraints on the permissible means of warfare.

This containment of war, Schmitt argues, was contingent on the willingness to bracket the question of whether wars had a just cause or not (Schmitt, 2011: 30–74). If one adopts the view that a war is usually legitimate or just on one side, but illegitimate or unjust on the other, one is forced to conclude, Schmitt argues, that it must be morally wrong to grant the status of legitimate belligerency to both parties. But in that case, it will no longer be possible to hold on to the view that third parties have a right to side with either belligerent or to remain neutral. One will have to hold, rather, that they are obliged to side with the belligerent that fights justly. Moreover, it will become more difficult to make lasting peace

after a war if one side is to be punished for having waged an unjust war. Most importantly, the refusal to accept mutually legitimate belligerency will put pressure on the protections afforded by the *ius in bello*. If one party to a violent conflict is perceived to fight unjustly, it will seem legitimate to use more destructive methods against it than would otherwise appear permissible. Any attempt to create an international order based on a 'discriminatory concept of war' that will subject a political community's decision to use force to substantive criteria of legal or moral legitimacy, Schmitt concludes, is only going to undercut the containment of war achieved by the *ius publicum Europaeum*.

In the *Nomos of the Earth* (Schmitt, 2003), Schmitt tried to answer the question how a regime of the containment of war might come to be constructed on a global level. Groups that are related by mutual enmity can come to coexist in a shared framework that limits the destructive consequences of war, Schmitt proposes, if their enmity does not reach the level of absolute enmity. Enmity, in other words, must take a form that does not require the complete destruction of the enemy's political or even physical existence. Absolute enmity can be prevented, Schmitt holds, if friend–enemy distinctions are aligned with territorial boundaries. If the forms of life of two opposing groups are each tied to and expressed in a particular territory, the friend–enemy distinction between them will have become spatialized. As a result, the defense of a group's political existence can take the form of a defense of its own territory. It will not require the group to interfere with the internal organization of some other polity or to eliminate the latter's political existence.

To spatialize the friend–enemy distinction it is necessary, however, that all and only the people who share one and the same political identity live in the same territory. Some political identities resist such a spatialization of the political. A political community, for instance, whose identity is based on the promotion of liberal-humanitarian values that it takes to be universal, is unlikely to accept a reduction of political conflict to territorial conflict. It will want to interfere where another polity's internal order fails to live up to those values. A stable international order that limits the destructive consequences of political conflict will thus remain out of reach, Schmitt believes, as long as the world's foremost powers are committed to ideologies that imply a rejection of the spatialization of conflict. The way forward to the construction of a durable international order, Schmitt concludes, must consist in division of the globe into several hegemonial spheres that are characterized by internal ideological homogeneity and that recognize each other as mutually legitimate belligerents despite their ideological differences (Schmitt, 2011: 75–124).

Schmitt's theory of the basis of international order is closely related to his account of the conditions under which a domestic constitution can function well. The spatialization of conflict requires political communities capable of enforcing internal political homogeneity. Political communities are likely to be unable to enforce internal homogeneity, however, if they have to live in an international environment that lacks a clear spatial order, because it is controlled by powers committed to universalistic ideologies. Legitimate domestic and legitimate international order, then, are two sides of the same coin for Schmitt (Vinx, 2013). Both require a defense of the political.

It should not occasion surprise that the significance and value of Schmitt's work are hotly contested. But there is a consensus in the growing scholarly literature on Schmitt that Schmitt's work put forward an important challenge to liberal approaches in political and constitutional theory. This challenge deserves to be taken seriously, even while Schmitt's own counterproposals are often unattractive. Schmitt's work clearly offers provocative and sophisticated discussion of a number of issues in legal and political theory – such as the nature and limits of emergency powers, the nature of constituent power, the limits of constitutional amendment, just war theory, the legitimacy of international criminal law and of humanitarian intervention – that are still the subject of extensive debate. In all these areas, Schmitt's arguments have the potential to enrich contemporary debate, precisely by going against the grain of received opinion.

**See also:** Collective Identity; Cosmopolitanism; Democracy: Normative Theory; Democratic Theory; Dictatorship; Geopolitics; Liberalism: Political Doctrine and Impact on Social Science; Parliamentary Government; Pluralism; Rule of Law (and Rechtsstaat); World Republic.

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