

Introduction

Schmitt's Self-Understanding

In his work, Carl Schmitt clearly understands himself to be a jurist. He goes so far as to claim the following: "I have always spoken and written as a jurist, and hence also genuinely only for and to jurists."¹ The same self-definition appears in *Political Theology*, *The Concept of the Political*, *The Nomos of the Earth*, *Ex Captivitate Salus*, *The Tyranny of Values*, and *Political Theology II*.² But is Schmitt actually a jurist? Or is he rather a political theologian, or perhaps a thinker bound to a form of technological rationality, as some have said? And in what sense should one understand Schmitt's words, namely, "being a jurist"?

In *The Nomos of the Earth* there is a strange thesis—repeated in "The Plight of European Jurisprudence," *Ex Captivitate Salus*, and the *Glossarium*—namely, that the law lies between technology and theology.³ Schmitt advances this thesis in the context of a threefold scheme comprising all available epistemological possibilities. Technology is inclined toward "complete functionalism," whereas theology is inclined, says Schmitt, toward the extreme of a "complete substantialism."⁴ The law—and Schmitt as jurist—lies between them. The ideal of technology aims at a calculating and controlling rationality, in which knowledge is attained via the construction of the object or the subsumption of cases under general rules.⁵ Theology, in turn, is bound to substantialism in the sense that it entails the wholesale acceptance of a transcendent reality.⁶

The intermediate position held by Schmitt does not follow from a compromise between the extremes, but from a hermeneutical and epistemological consideration. Schmitt criticizes technology for ignoring the exceptionality and meaning of concrete existence. On the other hand, theology is criticized for favoring the "result" over "method"—in other

words, for surrendering to an alleged substantial existence without exercising due epistemological controls.

The law's superior position in relation to both technology and theology is what justifies the unusual identification Schmitt defends between the law and human understanding in general, on one hand; and between juridical thought and "a philosophy of concrete life," on the other.⁷ Juridical thought is held as the most fundamental way of understanding existence, because it is capable of thematizing existence including its "seriousness" and of reflexively considering the tension and relation between rule and case, the abstract and the concrete, the general and the exceptional.⁸

Two Contemporary Interpretations

Schmitt's thought has been understood either as bound to technological rationality or as theologically determined. Each of these readings bears further consideration. If either were correct, Schmitt's characterization of himself would be false. He could not be understood as a jurist, and the hermeneutical scope of his thought would be restricted. As for the interpretation that links Schmitt's thought to the rationality of technology, I shall concentrate on the works of Jacques Derrida; for the interpretation that sees Schmitt eminently as a theologian, I shall focus on the works of Heinrich Meier. Notwithstanding the fact that the theological interpretation has had earlier exponents, Meier has been particularly successful in placing it at the center of Schmitt scholarship. Because Derrida and Meier have been enormously influential in shaping current studies on Carl Schmitt, singling them out for discussion as representative authors of the interpretations that link Schmitt respectively with technology and theology rests on the paradigmatic character of their readings.

According to Jacques Derrida, Schmitt's thought should be seen as bound to technology. Derrida believes that Schmitt's thought is an expression of a form of rationality that depends on the modern distinction between an autonomous subject and an object determined by an inquiring gaze. The subject is conceived as a spontaneous identity that is invulnerable—insofar as it is active and inquiring—to the irruption of the other.

According to Meier, Schmitt's thought should instead be mainly understood as political theology: "'Political theology' is the apt and solely appropriate characterization of Schmitt's *doctrine*."⁹ Political theology is, for Meier, ultimately incompatible with philosophy. Actually, it

is incompatible with any attempt to elucidate existence critically, insofar as it is based on religious dogma. Meier affirms that political theology is defined, as a discipline, by the claim that “divine revelation is the supreme authority and the ultimate ground.”¹⁰ “Human wisdom,”¹¹ does not play a determining role in its “foundation.”¹² Schmitt’s task, then, as a political theologian, is not limited to showing some relations between political or juridical concepts and a certain religious tradition, but consists in an effort to ground politics and law upon faith.

Both interpretations differ in their results, but also in the way their authors proceed. In Meier’s case, his starting point is a conception of philosophy according to which philosophy is fundamentally opposed to theology. If philosophy follows the path of argumentative justification and “human wisdom,” theology follows the path of “faith.”¹³ Once these two disciplines are distinguished, Meier locates Schmitt within the sphere of theology. To prove his thesis, Meier collects a number of texts that he interprets as documentary evidence. Meier’s proceeding is questionable. It seems unlikely that Schmitt’s thought was not only motivated but actually determined by dogmatic theology, if one considers the impressive reception his thought has had, and still has, in both philosophy and the theory of politics and law. Further, this interpretation could end up encapsulating Schmitt’s thought, which should be ultimately abandoned as dogma and disqualified for rational assessment regarding its eventual intrinsic validity. On the contrary, Schmitt’s texts contain many relevant and differentiated arguments, as well as significant methodological reflections, along with passages where Schmitt justifiably distances himself from theology—passages Meier tends to ignore.

Derrida proceeds in a different manner, though he does take a critical distance from what he sees as an inclination on the part of Schmitt toward a form of technical or manipulative rationality. Derrida acknowledges Schmitt’s thought as having theoretical weight. According to him, Schmitt’s work is “deeply rooted in the richest tradition of the theological, juridical, political and philosophical culture of Europe,” and deserves a “serious reading.”¹⁴ The problem with Derrida’s interpretation appears on a different level, and it may be seen as twofold. On one hand, there are aspects of Derrida’s reading that require qualification. According to Schmitt, neither in the exceptional nor in the normal situation should the law be necessarily seen as a form of manipulative rationality. For Schmitt, the law does not shut itself off from what is to come. Although he plausibly argues in favor of an irreducible “distance” in which the subject must find herself,

and in favor of a spontaneous conceptualizing activity she must perform if she is to become conscious, Schmitt does recognize a heteronomous aspect of existence. On the other hand, it should be noticed that there are important similarities between Schmitt's and Derrida's conception of the law. These similarities are particularly clear if one heeds a text Derrida omits, where Schmitt develops ideas that closely resemble those later found in Derrida's "Force of Law."

Despite their differences regarding results and procedure, the theological and technological interpretations agree in a fundamental respect, in that Schmitt's thought is removed from its place within the threefold scheme of human understanding. It is no longer found between the substantialism of theology and the calculating rationality of technology, but tilts toward either extreme. Beyond the merits of each interpretation and the light they shed upon many aspects of Schmitt's thought, I think they do not sufficiently reflect on his conception of the law, and on the different ways in which he tries to legitimize the juridical form of understanding as fundamental.

The hermeneutical superiority of the law compared to theology and technology is ultimately based on the fact that, from the very start, the law considers a tension lying at the ground of all human understanding.¹⁵ This tension is a central subject for juridical science. The problem Schmitt addresses from the beginning (already in 1912) is that of the relation and difference between rule and case, norm and situation; or, more broadly, between the general and the particular—between normality and exception.¹⁶ Taking these aspects into account, and conceiving them as members in tension, are proper to a form of understanding that Schmitt calls "jurisprudence."¹⁷ There are a difference and relation between rule and case, and it is by seeing them and thematizing them that juridical understanding emerges. By virtue of that difference and relation, the validity of the rule appears relative. The case, in turn, seems to be more than a mere instantiation of the rule.¹⁸

Juridical understanding, for Schmitt, takes on the character of an understanding of existence as such, not only of its juridical aspect. The broadening of juridical understanding is grounded on the claim that the problem of the relation and tension between generality and singularity, implied in the problem of the relation and tension between rule and case, is to be ultimately identified with the problem of the tension and the relation between thought and reality.¹⁹ Thus, the law is a form of understanding that embraces the whole of existence. Its problem and its

methodological approach to existence coincide with the question regarding the conditions for human understanding. The law achieves its highest hermeneutical level, and coincides with the “philosophy of concrete life,” when it explicitly thematizes this question.²⁰

An Argumentative Roadmap

This book is divided into three chapters. The first, in three parts, deals with the relation between law and technological rationality. In the first part, I expound Derrida’s interpretation, which links Schmitt’s thought to technology. The second part contains an analysis of Schmitt’s texts in which he compares the law with technological rationality. For Schmitt, more than mere technique or simple artifact, technology is a manner of understanding that distinguishes itself by prescinding from what is exceptional, from the meaning of experience, from the singularity of the individual (the other), and from the concrete peculiarity of the situation. Juridical understanding, on the contrary, recognizes those aspects of existence. Unlike technology, which does not sufficiently thematize the conditions for understanding, and hence for itself as a manner of understanding, juridical thought does. In the third part of the chapter, I return to Derrida’s reading of Schmitt to answer some of his criticisms and to show significant points of agreement between these two authors.

The second chapter is also divided into three parts, structurally similar to the first, but the focus now is theology. In the first part, I expound Heinrich Meier’s interpretation of Schmitt’s thought as theologically determined. In the second, and based on the analysis of Schmitt’s texts, I attempt to mark a contrast between the law and theology. Provisionally, it may be said that, according to Schmitt, theology is characterized by its surrendering to the exceptional without due epistemological control, and to the meaning supposedly emanated from the divine. Moreover, theology is inclined to disregard the problem of the legitimacy of the means, of normality, and the other, for the sake of the end. Juridical thought, instead, recognizes transcendence as transcendence, attending not only to the “result,” but also to “method;” that is, it exercises intense epistemological control, yet without overstressing and becoming like technology.²¹ The law recognizes a meaning in existence, but with more methodological emphasis than theology. The law concerns itself with the end as much as with the means, with normality as much as with exception, and with

the other (it is “*ad alterum*”). Ultimately, unlike a substantialist theology, juridical thought thematizes the conditions for human understanding. In the third part, having all these differences in view, I return to Meier’s interpretation of Schmitt.

In the final chapter, based on the analyses of Schmitt’s texts and the discussion of the two contemporary interpretations just mentioned, I attempt to determine the main aspects of Schmitt’s hermeneutical thought, including the characteristics that he attributes to the law as a fundamental manner of understanding, and to demonstrate how Schmitt’s main works are expressions of such hermeneutical thought.

The Juridical and the Political

To determine the scope of my interpretation, it is important to briefly address the relation between Schmitt’s juridical thought (taken broadly) and his political thought, as the places they hold within Schmitt’s oeuvre are not symmetrical. Even if his political thought is discernible from the juridical, the former is not completely autonomous or independent from the latter, but is rather determined by it. His political thought is part of the juridical in the broad sense as philosophy of concrete life. This is for now a tentative claim, but in this book I strive to establish that the way in which Schmitt understands reality is fundamentally juridical, and this kind of understanding has a general scope; hence, it includes the political. Juridical understanding allows Schmitt to see, moreover, that human existence arises from an abyss of indeterminacy, and that it does not emerge as neutral, but bestowed with meaning. It is within this context that the political finds its proper place.²² The exceptional character of existence and its meaning function as conditions for politics. The political is affected, then, by the existential determinations Schmitt discerns in juridical understanding. In addition, the problem of human understanding has similar practical implications for both the law in a strict sense and politics. The situation must be understood, but it is also necessary to reach a decision—a right and just one, in the case of the law;²³ a legitimate one, in the case of politics.²⁴ Further, Schmitt’s texts allow for the thought that the manner of articulation of political conglomerates resembles or approaches the manner in which juridical institutions are formed: In both cases, there are certain ideas that actually shape reality (either in the juridical situation²⁵ or in the political existence of a people),²⁶ thus giving

it stable expression. The political can be characterized as the part of the practical realm that is determined by the intensification of the existential tension. The practical realm is a dimension of meaning. But the tension in it can be more or less intense. At the moment of intensification, when the seriousness increases, the practical becomes political. A difference “of quantity” regarding the tension’s degree of intensity results in the fact that “the point of the political is reached and with it a qualitatively new intensity of human groupings.”²⁷ However, the juridical structure of existence remains, as a tension and relation between rules and cases, where human understanding should aim at giving the case an adequate, right, or legitimate expression. The quantity of intensity is the quantity *of a quality*: the meaning of existence, tensioned between life and death.²⁸