

ARTICLE

Eichmann in Plettenberg: Carl Schmitt reads Hannah Arendt

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This article makes use of primary sources to reconstruct Carl Schmitt's engagement with the work of Hannah Arendt. It focuses on Eichmann in Jerusalem (1963): a book that Schmitt called "exciting" and that made him sick "for a couple of weeks." The article examines marginalia to explore the reasons behind this ambiguous reaction. It situates Schmitt's reading of Arendt in the aftermath of his 1945 defense writings in which he had come close to legitimizing the international criminal prosecution of Nazi officials: a position he feared could backfire against himself in light of the Eichmann trial. Despite points of agreement in their critiques of depoliticized legality, Schmitt's reading of Arendt remained limited by anti-Semitic hatred and his fear of persecution. Driven by a sense of antagonism rather than dialogue, Schmitt's meticulous Arendt collection reveals above all that he turned to her work in search of theoretical weapons of self-defense.

Hannah Arendt wrote: "Real power begins where secrecy begins."

Carl Schmitt¹

Introduction

The idea that Carl Schmitt engaged in "hidden dialogues" is widely accepted among his contemporary readers. In recent years, his work has been reread as addressed to unnamed partners in conversation, placing Schmitt in a web of connections to be

¹"Real power begins where secrecy begins, schreibt Hannah Arendt in ihrem Buch 'The Burden of our Time' (p. 386, London 1951)." Carl Schmitt, "Nomos—Nahme—Name," in Siegfried Behn, ed., *Der beständige Aufbruch: Festschrift für Erich Przywara* (Nuremberg, 1959), 92–105, at 93. All translations from German are my own. Schmitt included this quote in his dedications of *Gespräch über den Macht und den Zugang zum Machthaber* (Pfullingen, 1954) to Reinhart Koselleck (10 Oct. 1954) and Nicolaus Sombart (Dec. 1954). See Jan Eike Dunkhase, ed., *Reinhart Koselleck—Carl Schmitt: Der Briefwechsel, 1953–1983* (Berlin, 2019), 65; Nicolaus Sombart, *Carl Schmitt: Die Sammlung Dr. Nicolaus Sombart* (Berlin, 1996), 19–20; Martin Tielke, "Geniale Menschenfängerei": *Carl Schmitt als Widmungsauteur* (Berlin, 2020), 9–12.

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recovered. This approach was famously championed by Heinrich Meier, who demonstrated the existence of a “hidden dialogue” with Leo Strauss through a reading of esoteric references in between the lines.² Others have written about connections with Hans Morgenthau,³ Alexandre Kojève,⁴ and Erik Peterson,⁵ producing a wave of scholarship that has led Jan-Werner Müller to speak of an “inflation” of constructed “and in fact sometimes completely inaudible” dialogues.⁶ One might wonder to what extent a focus on secret conversations helps to give credence to Schmitt’s self-image as a mythical theorist of *arcana imperii*, protected, as Ernst Bloch mockingly put it, by the “resounding silence of an awe-inspiring cunning.”⁷ But the reconstruction of hidden dialogues does not need to consolidate Schmitt’s aura as a right-wing mastermind. Indeed, the most recent wave of scholarship has productively turned to letter exchanges between Schmitt and his interlocutors; to his voluminous notebooks, the *Glossarium*; or, like Daniel Steinmetz-Jenkins in his exemplary reconstruction of Schmitt’s dialogue with Raymond Aron, to unpublished material in Schmitt’s estate, the *Nachlass*.⁸ This historical turn in recent studies on Schmitt—or what Reinhard Mehring has called “the archival provocation” [*Nachlassprovokation*—has helpfully pushed the debate beyond a binary of Schmittiana devotees on the one hand and moral outrage about the “Crown jurist” of the Third Reich on the other.⁹

A unique site of productive complication arises from Schmitt’s relationship to Hannah Arendt. Democratic theorists have for long quarreled over the unexpected proximity between Arendt’s thought and a Schmittian conception of “extraordinary new beginnings.”¹⁰ As Andreas Kalyvas notes, “Arendt, much like Schmitt, focused on the relationship among radical breaks, revolutionary changes, and constitutional transformations.”¹¹ Both authors criticized liberal proceduralism for its claims to a

²Heinrich Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue* (Chicago, 1995).

³William E. Scheuerman, “Another Hidden Dialogue: Carl Schmitt and Hans Morgenthau,” in Scheuerman, *Carl Schmitt: The End of Law* (Lanham, 1999), 225–53.

⁴Jean-François Kervégan, ed., *Alexandre Kojève face à Carl Schmitt*, *Revue Philosophie* 135 (2017).

⁵György Geréby, “Political Theology versus Theological Politics: Erik Peterson and Carl Schmitt,” *New German Critique* 35/105 (2008), 7–33.

⁶Jan-Werner Müller, *A Dangerous Mind: Carl Schmitt in Post-war European Thought* (New Haven, 2003), 251 n. 5.

⁷Ernst Bloch, *Naturrecht und menschliche Würde* (Frankfurt, 1961), 307: “Tönendes Schweigen ehrfurchtgebietender Gerissenheit.”

⁸Cf. Daniel Steinmetz-Jenkins, “Why Did Raymond Aron Write That Carl Schmitt Was Not a Nazi?,” *Modern Intellectual History* 11/3 (2014), 549–74.

⁹Reinhard Mehring, *Vom Umgang mit Carl Schmitt: Die Forschungsdynamik der letzten Epoche im Rezensionsspiegel* (Baden-Baden, 2018), 17. The historical turn in recent anglophone Schmitt scholarship includes Joshua Smeltzer, “‘Germany’s Salvation’: Carl Schmitt’s Teleological History of the Second Reich,” *History of European Ideas* 44/5 (2018), 590–604; Samuel Garrett Zeitlin, “Indirection and the Rhetoric of Tyranny: Carl Schmitt’s *The Tyranny of Values* 1960–1967,” *Modern Intellectual History* 18/2 (2021), 427–50; Ville Suuronen, “Mobilizing the Western Tradition for Present Politics: Carl Schmitt’s Polemical Uses of Roman Law, 1923–1945,” *History of European Ideas* 47/5 (2021), 748–72; Lars Vinx, “Carl Schmitt on the Limits of Direct Democracy,” *History of Political Thought* 42/1 (2021), 157–83.

¹⁰Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (Cambridge, 2008), 194.

¹¹*Ibid.*

'non-political' neutrality; they also share a critique of mass society as driven by instrumental rationality that undermines public affairs and marks modernity as an age of crisis.¹² At the very least, Schmitt and Arendt share what David Scott has called "a problem space": "a context of dispute" that emerges around "particular questions that seem worth asking and the kinds of answers that seem worth having."¹³ Beyond theoretical stakes, their relationship continues to derive its importance from their radically diverging experiences of what Schmitt, in his 1947 interrogations in Nuremberg, referred to as Nazi Germany's "totalitarian system."¹⁴

Despite a large number of attempts to read Arendt's political theory in light of Schmitt, and vice versa, little has been written about the *historical* links between both authors. With regard to Arendt's reading of Schmitt, Kalyvas enumerates "some few, scattered remarks about Schmitt" that nevertheless reveal "more than an accidental interest" in his theories,¹⁵ which Arendt, in a footnote to the *Origins of Totalitarianism*, calls "very ingenious" and which "still make arresting reading."¹⁶ In her essay dedicated to Waldemar Gurian, she refers to the latter as "a pupil of Max Scheler, the philosopher, and of Carl Schmitt, the famous professor of constitutional and international law who later became a Nazi."¹⁷ Likewise, her essay "What Is Freedom?" contains an appreciation of Schmitt as "the most able defender of the notion of sovereignty. He recognizes clearly that the root of sovereignty is the will: Sovereign is who wills and commands."¹⁸ Arendt's critique of sovereignty thus bears the trace of Schmitt as her hidden opponent. In a landmark contribution, Samuel Moyn has shown that Arendt's account of modern politics can be fruitfully read as a critical engagement with Schmitt, in parts replicating his theological reading of sovereignty while insisting on a secular alternative in American revolutionary politics.¹⁹ As Jean Cohen and Andrew Arato put it, Arendt's strategy in *On Revolution* "was to use the Americans against Schmitt (whose stand-in textually is Sieyès, interpreted in the same one-sided manner of Schmitt himself!)." ²⁰

Such cross-readings, as illuminating as they have been for democratic theory, have largely relied on conjecture. Yet as sources related to Arendt's reading practices have become available, the extent of her familiarity with Schmitt has emerged

¹²Another notable example of such cross-reading is William E. Scheuerman, "Revolutions and Constitutions: Hannah Arendt's Challenge to Carl Schmitt," in David Dyzenhaus, ed., *Law as Politics: Carl Schmitt's Critique of Liberalism* (Durham, NC, 1998), 252–81.

¹³David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Durham, NC, 2004), 3–4.

¹⁴Carl Schmitt, *Carl Schmitt: Antworten in Nürnberg*, ed. Helmut Quaritsch (Berlin, 2000), 59, 103.

¹⁵Kalyvas, *Democracy and the Politics of the Extraordinary*, 194.

¹⁶Hannah Arendt, *The Origins of Totalitarianism* (New York and San Diego, 1973), 339. Arendt's first reference to Schmitt occurs in "The Image of Hell," *Commentary* 2/3 (1946), 291–5, reprinted in Arendt, *Essays in Understanding, 1930–1954: Formation, Exile, and Totalitarianism* (New York, 1996), 197–205, at 201. Cf. Samuel Moyn, "Hannah Arendt on the Secular," *New German Critique* 105 (2008), 71–96, at 80 n. 12.

¹⁷Hannah Arendt, *Men in Dark Times* (New York and San Diego, 1970), 252.

¹⁸Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (1961) (New York, 1977), 296 n. 21. Arendt's reference is to Carl Schmitt, *Verfassungslehre* (Munich, 1928), 7, 146.

¹⁹Moyn, "Hannah Arendt on the Secular," 83–5.

²⁰Andrew Arato and Jean Cohen, "Banishing the Sovereign? Internal and External Sovereignty in Arendt," *Constellations* 16/2 (2009), 307–30, at 310.

more clearly. Drawing on the extensive marginalia in Arendt's copies of Schmitt's *Nomos of the Earth*, Anna Jurkevics has argued that "Arendt formed, but never published, a coherent and incisive critique of Schmitt's narrative on geopolitics and international law."²¹ Although it remains dubious whether Arendt's critique takes the form of neo-Kantian contractualism, as Jurkevics hopes to show based on ambiguous source material, she establishes beyond doubt that Arendt engaged with Schmitt deeply and critically.²² While Jurkevics has thus provided a starting point to reconstruct Arendt's side of a dialogue, Schmitt's engagement with Arendt has—with the exception of Sinja Graf's recent work—not been the object of inquiry.²³ This article addresses this lacuna through primary sources, most importantly Schmitt's book collection at the Landesarchiv NRW in Duisburg, Germany, thus further building on the "archival provocation" in recent Schmitt scholarship.

Schmitt's library included at least four books by Arendt, which all contain marginalia: *Sechs Essays* (1948), *The Burden of Our Time* (1951), and two copies—in English (1963) and German (1964)—of *Eichmann in Jerusalem*.²⁴ This evidence of his detailed engagement with Arendt stands in stark imbalance to his published works. Only two articles mention her name and only one contains a citation, which occurs in the 1957 article "Nomos—Nahme—Name:" "Hannah Arendt wrote: 'Real power begins where secrecy begins.'"²⁵ This quote is taken from *The Burden of Our Time* (1951), the British edition of *Origins of Totalitarianism*. Schmitt carefully studied the book and knew, of course, that Arendt was discussing a "new and unprecedented concept of power" under totalitarianism, entirely at odds with her

²¹Anna Jurkevics, "Hannah Arendt Reads Carl Schmitt's *The Nomos of the Earth*: A Dialogue on Law and Geopolitics from the Margins," *European Journal of Political Theory* 16/3 (2017), 345–66, at 346.

²²Jurkevics moves from marginalia on "the content of law, justice" ("Inhalt des Gesetzes, der Gerechtigkeit") to a neo-Kantian reading of Arendt. In doing so, she runs the risk of stretching limited primary sources beyond the breaking point, perhaps in defense of a contested position in Arendt scholarship (that of Seyla Benhabib's turn to Kantian moral philosophy).

²³Sinja Graf, "Carl Schmitt Reads Hannah Arendt's *Eichmann in Jerusalem*: Archival Perspectives on Convergences and Divergences," *American Journal of Political Science* (2021), <https://doi.org/10.1111/ajps.12682>. Although Graf relies on some of the same archival material, her approach differs from the one taken in this article, as she primarily compares Arendt and Schmitt as theorists of international law with diverging doctrines. But Graf's conceptually driven method leaves little room for historical context and largely brackets the role of Schmitt's anti-Semitism. Importantly, she fails to consider Schmitt's self-identification with Eichmann and his own fear of prosecution as determinative factors for his reading of Arendt.

²⁴Martin Tielke, "Die Bibliothek Carl Schmitts," in *Schmittiana I* (Berlin, 2011), 257–332. Additional material has been continuously listed by the Carl-Schmitt-Gesellschaft, at www.carl-schmitt.de/biblio-cs.php (accessed 25 Sept. 2021).

²⁵Carl Schmitt, "Nomos—Nahme—Name," 93. The only other direct reference to Arendt in Schmitt's published writings occurs in a 1957 postscript to his 1933 article "Further Development of the Total State in Germany," where Schmitt accepts Arendt's idea of totalitarianism as resembling his own concept of totalitarian systems, first developed in *Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre* (Tübingen, 1930). Arendt's work on totalitarianism is briefly evoked alongside "Talmon, C. J. Friedrich, Brzezinski," in Carl Schmitt, "Weiterentwicklung des totalen Staates in Deutschland," in Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (Berlin, 1958), 359–66, at 366. The English translation in "Further Development of the Total State in Germany," in Schmitt, *Four Articles, 1931–1938*, ed. and trans. Simona Draghici (Corvallis, OR, 1999), 19–27, does not contain the postscript and hence no reference to Arendt.

own emphasis on plurality and visibility.²⁶ Yet he ominously repeated this de-contextualized Arendt quote on secrecy in his dedication to his 1954 *Dialogue on Power and Access to the Holder of Power* that he offered to Nicolaus Sombart—the person who, according to a 1951 letter, had sparked his interest in Arendt's *Origins* to begin with.²⁷ Schmitt also referenced the same quote in a book dedication to the young Reinhart Koselleck in 1954.²⁸ One is therefore struck by the discrepancy between Schmitt's thorough knowledge of Arendt, on the one hand, and his deployment of one single quotation that deliberately misrepresented her views, on the other. Yet his association of Arendt—the thinker of public action—with *secrecy* points to a set of carefully concealed views that come out in the combination of Schmitt's obsessive readings of Arendt and his anti-Semitic marginalia. These findings shed new light not only on the extent of a mutual engagement between Arendt and Schmitt but also on Schmitt's continuing anti-Semitic views in postwar Germany.

This article proceeds in two steps. The first section contextualizes Schmitt's reading of *Eichmann in Jerusalem* by linking it to the juridical aftermath of his own support of the Nazi regime. This aftermath took the form of three arrests and four interrogations at the Nuremberg trials in 1947, during which Schmitt's status shifted from potential defendant to expert witness.²⁹ Schmitt authored expert opinions that provide insight into his views on Nazi crimes: first, a legal brief, entitled "The International Crime of War of Aggression and the Principle 'Nullum crimen, nulla poena sine lege'," which Schmitt wrote in 1945 on behalf of the industrialist Friedrich Flick, who was tried (and convicted) as a war criminal in Nuremberg;³⁰ and second, a set of four statements, written in response to questions posed by American prosecutor Robert Kempner in 1947.³¹ I suggest that Schmitt's defense writings approximate Arendt's later views in two important points. First, Schmitt, in the self-interest of not being placed in the same category as "actual" Nazi criminals, contradicted his views on state sovereignty and moved remarkably close to a legitimization of international prosecutions of war

²⁶In Schmitt's copy, the sentence is underlined in red. Landesarchiv NRW, RW 0265, No. 22551. Hannah Arendt, *The Burden of Our Time* (London, 1951), 396.

²⁷It seems likely that the recommendation of *Origins* goes back to Sombart's visit to Plettenberg, 1–2 Sept. 1951. Joint letter of Schmitt and his daughter Anima to Sombart, 8 Sept. 1951: "In which publishing house has Hannah Arendt, *Origins* etc., appeared? I recall with admiration both your presentations 1) on the 1. Part of the book by Hannah Arendt; 2) [on] the letter of the old de Maistre to the young Ballanche." Martin Tielke, ed., *Schmitt und Sombart: Der Briefwechsel von Carl Schmitt mit Nicolaus, Corina und Werner Sombart* (Berlin, 2015), 47. I thank Samuel Zeitlin for this information.

²⁸Dunkhase, *Reinhart Koselleck–Carl Schmitt: Der Briefwechsel, 1953–1983*, 65.

²⁹Cf. Dirk van Laak, *Gespräche in der Sicherheit des Schweigens: Carl Schmitt in der politischen Geistesgeschichte der frühen Bundesrepublik* (Berlin, 2002), 31–41; as well as Christian Linder, "Carl Schmitt in Plettenberg," in Jens Meierhenrich and Oliver Simons, eds., *The Oxford Handbook of Carl Schmitt* (Oxford, 2016), 147–69.

³⁰Carl Schmitt, *Das internationalrechtliche Verbrechen des Angriffskrieges und der Grundsatz "Nullum crimen, nulla poena sine lege"*, ed. Helmut Quaritsch (Berlin, 1994).

³¹Carl Schmitt, "Stellungnahme I: Untermauerung der Hitlerschen Großraumpolitik?," in Schmitt, *Antworten in Nürnberg*, 68–82; Schmitt, "Stellungnahme II: Teilnehmer des Delikts 'Angriffskrieg?'," in *ibid.*, 83–91; "Stellungnahme III: Stellung des Reichsministers und Chefs der Reichskanzlei," in *ibid.*, 92–101; "Stellungnahme IV: Warum sind die deutschen Staatssekretäre Hitler gefolgt?," in *ibid.*, 102–14.

criminals.³² As Arendt would argue in *Eichmann in Jerusalem*, Schmitt, too, insisted that the exceptional nature of Nazi crimes escaped existing legality and yet could not go unpunished, thereby calling for a new form of international criminal law. Second, in his 1945–7 writings, one can discern the outlines of a critical theory of depoliticized law that surprisingly echoes Arendt’s 1963 account of the “banality of evil.” Schmitt advanced the hypothesis that Nazi crimes were not the outcome of a genocidal fervor but derived from an underlying reduction of law to a mechanistic form of administration—what he called “the catastrophe of a purely state-centric, functionalist notion of legality.”³³ It was this depoliticized notion of the law—and *not* his own conception of “the political” as a distinction between friends and enemies—that predisposed German officials to a dangerously unthinking obedience. As the first part of this article attempts to show, Schmitt’s defense writings thus provide the sketch of a critical theory of depoliticized law that presents the formation of unthinking administrators as an enabling condition for Nazi crimes. Yet whereas Schmitt’s critique of mechanistic obedience mirrors Arendt’s account of “the banality of evil” in surprising ways, it also radically differs from her perspective insofar as his insights cannot be separated from the rhetorical exercise of self-exculpation that generated them.

The second part then turns to Schmitt’s marginalia on Arendt, suggesting ways in which his remarks can be read as an “expression of existential panic.”³⁴ Instead of simple underlinings and occasional comments, as one would find in Arendt’s library, Schmitt’s copies of Arendt are covered with page-long scribbles and collage-like newspaper clippings. These sources show that if Schmitt took an almost obsessive interest in Arendt, it remained focused on analyses of the Nazi regime, Jewishness, and the politics of white supremacy. While Schmitt studied *Eichmann in Jerusalem* and *Origins* line by line, in both German and English, there is no evidence that he ever read *The Human Condition*. But it seems clear that he did not find any comfort in reading *Eichmann in Jerusalem*—a work that has sometimes been caricatured as an effort to defend Eichmann and place blame on Jewish actors.³⁵ On the contrary, the source material suggests that Schmitt read Arendt’s work in a state of paranoia, as if he was living in fear that

³²On Schmitt’s endorsement of international prosecution of crimes against humanity in his 1945 Flick memo see Oona Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York, 2017), 274–5.

³³Schmitt, “Stellungnahme IV,” 108. “Stellungnahme IV” was reprinted in modified form as Carl Schmitt, “Das Problem der Legalität,” *Die Neue Ordnung* 4 (1950), 270–75; and Schmitt, “Das Problem der Legalität (1950),” in Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (Berlin, 1958), 440–51. For a careful analysis of Schmitt’s critique of the “brutal machinery” of bureaucratic organization in the context of World War I see Michael Rogers, “The Development of Carl Schmitt’s Political Thought during the First World War,” *Modern Intellectual History* 13/1 (2016), 123–49, esp. 133. Cf. Arendt’s underlinings in Schmitt, *Die Lage der Europäischen Rechtswissenschaft* (Tübingen, 1950). At 18–20, Arendt heavily underlined passages on the depersonalization of administrative decision making since World War I—what Schmitt called the rise of the decree (*Verordnung*) as a “motorized law” (*motorisiertes Gesetz*).

³⁴The phrasing is Schmitt’s student Joachim Ritter’s, in his review of the *Glossarium*, cited in Peter Uwe Hohendahl, *Perilous Futures: On Carl Schmitt’s Late Writings* (Ithaca, 2018), 30.

³⁵Cf. Richard J. Golsan and Sarah M. Misemer, *The Trial That Never Ends: Hannah Arendt’s Eichmann in Jerusalem in Retrospect* (Toronto, 2017).

the Israeli capture of Eichmann in Argentina could have spillover effects into the seemingly calm town of Plettenberg. While an interpretation of fragmentary primary sources always remains partial and inconclusive, Schmitt's marginalia establish his close familiarity with her writings. But they also suggest that Schmitt read Arendt in light of concerns about his own prosecution—that, in fact, he treated her work as an opportunity to project anti-Semitic hatred while at the same time mining it for tools for his own criminal defense.

Sickening memories of Nuremberg: a “lawyer declared an outlaw”

Schmitt's arrest and interrogation in the Nuremberg trial and his participation as an expert witness constitute the backdrop to his 1963 encounter with *Eichmann in Jerusalem*, according to his own account. As Schmitt wrote to Ernst Forsthoff, his former student, on 18 November 1963,

When I read Hannah Arendt's *Eichmann in Jerusalem*, I almost wrote something about it. The book is so exciting that I got sick from it for a couple of weeks; not that there would be any toxic attack [*Giftspritzer*] against me in it (the assistant of the defense lawyer Servatius, a certain Dr Dieter Wechtenbruch, who I do not know by the way and of whom I had never heard up to now is characterized as a “disciple of Carl Schmitt” on p. 129) but rather because it made me think back to my legal brief [*Gutachten*] from August 1945, in particular its final section [*Schlussbemerkung*]. But I prefer to keep my silence.³⁶

What is it in Arendt's work on the Eichmann trial that made Schmitt sick? One might suspect that it was the memory of his own persecution. Schmitt had been arrested three times after the fall of the National Socialist regime: first by the Soviet Army on 30 April 1945 for only a few hours; a second time on 25 September 1945 by American troops, to be released again only in October 1946; and finally, on 19 March 1947, to be brought to the Nuremberg trial.³⁷ Yet as much as these experiences weighed heavily on Schmitt and motivated him to write hundreds of embittered diary entries, they were not the primary memory that came to his mind upon reading *Eichmann in Jerusalem*.

The memory that had such a sickening effect on Schmitt in 1963 was the legal brief he had written in the summer of 1945—between his first and his second arrests—in defense of Friedrich Flick, a German steel tycoon and donor to Nazi causes, who had been arrested by American troops and was facing charges of “conspiracy to commit aggressive war.”³⁸ Schmitt had written a brief in Flick's defense (for a total of over 10,000 Reichsmarks) that included a memorandum on the impermissibility of charges against private citizens for the crime of a war of

³⁶Dorothee Mußnug, Reinhard Mußnug, and Angela Reinthal, eds., *Ernst Forsthoff und Carl Schmitt: Briefwechsel 1926–1974* (Berlin, 2007), 198 f.

³⁷On Schmitt's arrests see Van Laak, *Gespräche in der Sicherheit des Schweigens*, 31–5. An intimate perspective on Schmitt's incarceration can be gained from recently published letters to his wife Duschka. Martin Tielke, ed., *Carl Schmitt/Duschka Schmitt: Briefwechsel 1923 bis 1950* (Berlin, 2020).

³⁸Cf. Schmitt, *Das internationale Verbrechen*.

aggression (*Angriffskrieg*) as well as a note in English to be submitted to American judges.³⁹ The German industrialist Friedrich Flick had been responsible for the use of forced labor of Eastern Europeans, involving the deaths of more than 10,000 people in Flick-owned companies alone, and he had offered crucial financial support to the Nazi regime.⁴⁰ Although Schmitt's memo did not fulfill its purpose, as Flick was convicted for other charges than those regarding the war of aggression (i.e. war crimes and crimes against humanity related to forced labor), it builds the backdrop to Schmitt's 1963 encounter with *Eichmann in Jerusalem*. Reading Arendt on the Eichmann trial, Schmitt was reminded that he had himself provided arguments for the international prosecution of Nazi crimes—arguments that could now, in light of the Jerusalem trial, backfire against him.

In 1945, Schmitt not only used the Flick memo as an opportunity to develop his views on what he took to be the Allies' illegitimate trial of "private citizens." He also formulated Flick's defense as if it was his own. Schmitt's main argument concerned the disputable status of the crime that Flick was accused of, questioning the idea that "the international criminalization of the war of aggression, as claimed by the American side, had already been implemented by the summer of 1939."⁴¹ Since "every sovereign state prior to this point had a *jus ad bellum* according to hitherto existing, recognized international law, without there being a distinction between a war of aggression and a war of defense,"⁴² Schmitt challenged the Allies' interpretation of international law.⁴³ Citing the Italian occupation of Ethiopia in 1936, which was recognized as legitimate by most member states of the League of Nations,⁴⁴ Schmitt pointed at the hypocrisy that he saw in criminalizing Germans for essentially the same act, i.e. that of a sovereign right to wage war.⁴⁵ Against the idea of a consolidated prohibition of wars of aggression within a pacified international arena, Schmitt insisted that a Hobbesian state of nature among nation-states had never come to an end. If *jus ad bellum* was the sovereign right

³⁹On the circumstances of Schmitt's contact to Flick and his payment, cf. Quaritsch in Schmitt, *Das internationale Verbrechen*, 125–30.

⁴⁰Thomas Range, *Die Flicks: Eine deutsche Familiengeschichte um Geld, Macht und Politik* (Frankfurt, 2004), 131.

⁴¹Schmitt, *Das internationale Verbrechen*, 17.

⁴²*Ibid.*

⁴³Schmitt's critique of just-war theories—what he called a "discriminating concept of war"—goes back to *Die Wendung zum diskriminierenden Kriegsbegriff* (Munich, 1938), reprinted in Günter Maschke, ed., *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik, 1924–1978* (Berlin, 2005), 518–97. For helpful commentary on the differences and continuities between his Nazi era critique and his postwar writings see Joshua Derman, "Carl Schmitt on Land and Sea," *History of European Ideas* 37/2 (2011), 181–9, 182. On Schmitt's critique of a "discriminating concept of war" see Hjalmar Falk, "Carl Schmitt and the challenges of interwar internationalism: Against Weimar—Geneva—Versailles," *Global Intellectual History* (2020), <https://doi.org/10.1080/23801883.2020.1830497>.

⁴⁴Schmitt, *Das internationale Verbrechen*, 56.

⁴⁵One can read the Flick memo as a point of passage between *Die Wendung zum diskriminierenden Kriegsbegriff* (Munich, 1938) and his argument in *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin, 1950) that "the enemy simply became a criminal." Cf. Schmitt, *Der Nomos der Erde*, 93. On Schmitt's critique of a "discriminating concept of war" within a genealogy of the concept of "crimes against humanity" see Sinja Graf, *The Humanity of Universal Crime: Inclusion, Inequality, and Intervention in International Political Thought* (Oxford, 2021), 11–16.

of Italy in Ethiopia, why should it not have been that of Germany in Poland three years later?

Schmitt's argument did not stop at the defense of an *external* right to engage in warfare but extended to the idea that the guarantee of security *within* the state obliged subjects to obey. As Schmitt wrote with a tongue-in-cheek pleasure, "even Kant rejects any right to resistance against the government and speaks of the responsibility of the people 'to bear even the unbearably issued misuse of the utmost violence.'"⁴⁶ If one were to argue that regular citizens and an "economically active ordinary businessman" had any obligation to disobey the positive law for its injustice, one would place the individual in a "terrible conflict" between obligations.⁴⁷ For a citizen of a "totalitarian one-party system," "this effectively means nothing other than imposing on him a legal obligation to a hopeless attempt at civil war on the one hand or a legal obligation to martyrdom on the other."⁴⁸ He could only conclude that the "unpolitical individual citizen" who "placed himself on the side of his national government"—Flick or Schmitt himself—could not possibly be convicted by an international court.⁴⁹ This reasoning followed from the Hobbesian principle of the reciprocal relationship between protection and obligation, which "belongs to the elementary fundamentals of all human life in community."⁵⁰

In large part, Schmitt's legal brief does not consist of formal argument but rather builds a stage for a rhetorical performance. Strikingly un-Schmittian appeals to the Magna Carta of 1215, the 1789 Declaration of the Rights of Man, and the Maryland Constitution of 1776 get mobilized in favor of the interdiction of retroactive criminalization—and hence the impossibility of prosecuting acts which, under National Socialism, had been a matter of legality.⁵¹ While Schmitt had in his infamous 1934

⁴⁶Schmitt, *Das internationale Verbrechen*, 75: "Mit Rücksicht darauf, dass in der gesamten pazifistischen Literatur der Name des großen Philosophen Kant als Autorität gegen den Krieg zitiert wird, wird man auch die Tatsache nicht ignorieren können, dass gerade Kant jedes Widerstandsrecht gegen die Regierung ablehnt und von der Pflicht des Volkes spricht, 'selbst den für unerträglich ausgegebenen Missbrauch der obersten Gewalt dennoch zu ertragen.'" ("Considering that the name of the great philosopher Kant is cited as an authority against war in the whole pacifist literature, one will not be able to ignore the fact that Kant in particular rejects any right of resistance against the government and speaks of the duty of the people 'to put up with even what is held to be an unbearable abuse of supreme authority.')" Cf. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge, 1996), 299.

⁴⁷Schmitt, *Das internationale Verbrechen*, 70. On the "terrible conflict between national and international obligation" ("furchtbare Konflikt zwischen nationaler und internationaler Pflicht"), see *ibid.*, 78.

⁴⁸Schmitt, *Das internationale Verbrechen*, 78: "Der Staatsbürger eines totalen Einparteien-Systems aber befindet sich in einer noch viel schwierigeren Lage als der Bürger eines Gemeinwesens mit einer liberalen Verfassung ... Verpflichtet man den einzelnen, einem solchen totalitären System unterworfenen Staatsbürger zum Widerstand, so bedeutet das in der Sache nichts anderes, als ihm eine Rechtspflicht zu dem aussichtslosen Versuch eines Bürgerkrieges oder aber eine Rechtspflicht zum Martyrium aufzuerlegen." ("But the state citizen of a total one-party system is in an even much more difficult situation than the citizen of a polity with a liberal constitution ... If one obligates the individual state citizen, subject to such a totalitarian system, to resist, this effectively means nothing other than imposing on him a legal obligation to a hopeless attempt at civil war on the one hand or a legal obligation to martyrdom on the other.")

⁴⁹Schmitt, *Das internationale Verbrechen*, 79.

⁵⁰Schmitt, *Das internationale Verbrechen*, 79: "den elementaren Grundlagen allen menschlichen Zusammenlebens."

⁵¹Schmitt, *Das internationale Verbrechen*, 22. Schmitt's self-serving history of liberal constitutionalism is illustrative of his polemical deployment of intellectual references. Suuronen, "Mobilizing the Western

defense of Hitler, “The Führer Protects the Law,” ridiculed “liberal legal thought” for trying to “convert criminal law into the grand charter, into the ‘Magna Carta of the criminal,’”⁵² he turned around in his 1945 Flick memo to strategically cast his views in light of a liberal natural-law tradition. “*Nulla poena sine lege*,” Schmitt argued, would be nothing less than “a maxim of natural law and morality that the state citizen who is not party to the atrocities can unconditionally call upon.”⁵³ Schmitt therefore defended *the right to obey* as an inalienable human right: that of not being subject to *ex post facto* laws on war crimes, refigured as the apex of “a secular tradition” of natural rights, supposedly linking protection and obligation.⁵⁴

But when reading *Eichmann in Jerusalem* eighteen years later, Schmitt knew that in defending private citizens, he had also opened up another door: that of convicting Nazi officials for participation in “atrocities,” or what he calls, as if invoking a category of Roman law, a “*scelus infandum*.”⁵⁵ When Schmitt refers to his *Schlussbemerkung* in his 1963 letter to Forsthoff, it thus seems likely that he was referring to his underdeveloped but potentially explosive concept of the *scelus infandum* in the English note, attached to the 1945 memo, which now, in the face of the Eichmann trial, could come back with a vengeance. In this note, Schmitt asserted, “It goes without saying that—at the end of this second world war—mankind is obliged to pass a sentence upon Hitler’s and his accomplices’ ‘*scelus infandum*’ [crime of unspeakable wickedness]. This sentence must be solemn in

Tradition for Present Politics,” 767, has written incisively about the “chameleon-like nature” of Schmittian intellectual history. Derman, “Carl Schmitt on Land and Sea,” 182, likewise describes Schmitt’s postwar writings as “a shifting field of polemical positions in search of theoretical support.”

⁵²Carl 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), 199–203. Schmitt, “The Führer Protects the Law,” trans. Clara Teresa Picker and John McCormick, at <https://arplan.org/2019/06/15/schmitt-fuhrer-law> (accessed 7 Feb. 2021).

⁵³Schmitt, *Das internationale Verbrechen*, 80: “[*Nullum crimen, nulla poena sine lege*] ist nicht nur ein Satz des geltenden positiven Rechts, sondern auch eine naturrechtliche und moralische Maxime, auf die sich der nicht an den atrocities beteiligte Staatsbürger unbedingt berufen kann.” (“[*Nullum crimen, nulla poena sine lege*] is not only a principle of valid positive law but also a maxim of natural law and morality that the state citizen who is not party to the atrocities can unconditionally call upon.”)

⁵⁴The reader can only be amazed at Schmitt’schutzpah when he purposefully misattributes the Hobbesian doctrine of “Protego, ergo obligeo” to G. D. H. Cole, “the well-known English socialist and representative of a pluralist theory of the state” (“der bekannte englische Sozialist und Vertreter einer pluralistischen Theorie des Staates”). Schmitt, *Das internationale Verbrechen*, 79.

⁵⁵“Note,” in Schmitt, *Das internationale Verbrechen*, 80–81. According to Quaritsch, Schmitt’s notions of “atrocities” and *scelus infandum* denoted “that which was later called genocide.” Although *scelus* (ruthless deed) and *infandum* (despicable, unspeakable) were both used in ancient Latin, their combination into a category of law is a Schmittian idiosyncrasy. He borrows the phrase from the index of a 1726 edition of Lucan’s *Pharsalia*. Cf. Quaritsch in Schmitt, *Das internationale Verbrechen*, 86 f. Schmitt comments on the Lucanian source in Schmitt, *Glossarium*, 288 (9 Jan. 1950). His request (6 April 1947) to receive his rare eighteenth-century edition of Lucan’s *Pharsalia* in his Nuremberg prison cell is documented in Tielke, *Carl Schmitt/Duschka Schmitt*, 273. As Timothy Nunan notes, in Lucan’s *Pharsalia*, “*scelus infandum*” refers to the beheading of Pompey by the boy king Ptolemy XIII”—a learned reference to an ancient anecdote that one might indeed find “pretentious and disturbing ... when describing the murder of the European Jews.” Timothy Nunan, “Translator’s Introduction,” in Carl Schmitt, *Writings on War* (Cambridge, 2011), ed. and trans. Timothy Nunan, 1–26, at 20–21.

its form and striking in its effect.”⁵⁶ In condemning the crimes of the Nazi regime, Schmitt was attempting to keep the “monstrous atrocities of the SS and the Gestapo,” which “cannot be classified in their real essence by the rules and the categories of the usual positive law,” distinct from both the spurious accusation of the crime of aggressive warfare and the unfounded conviction of private citizens, such as Flick.⁵⁷ In this effort of self-exculpation, the sharp line that Schmitt wished to draw between the obedience of private citizens and the atrocities of “real” crimes against humanity involved a surprisingly decisive condemnation of the Holocaust. Schmitt’s tone of moral indignation about Nazi crimes is unparalleled in the rest of his work:

The rawness and bestiality of these crimes transcends normal human comprehension ... They explode the framework of all the usual and familial dimensions of international law and penal law. Such crimes proscribe the perpetrator in his or her entirety by placing him [*sic*] outside the law and making him into an outlaw. The order of a superior cannot justify or excuse such crimes; it can, at the most and under certain circumstances, give occasion to raise the question whether the perpetrator found himself in an emergency in light of this order and whether the emergency excuses him. By no means shall the fact of the abnormality of the crimes become an object of a discussion that turns away from the monstrosity of these crimes and that diminishes the consciousness of their abnormality.⁵⁸

To be sure, Schmitt’s moral tone should not blind the reader to his self-serving conclusion that public discussions of “unspeakable crimes” should be avoided or even be banned. As Samuel Garrett Zeitlin has compellingly demonstrated, Schmitt would indeed continue this argumentation in *The Tyranny of Values* (1960) and, even more explicitly, in the earlier anonymous op-ed campaign “Amnesty or the Force of Forgetting,” which likewise aimed at the “defense and exculpation of Nazi war criminals against those who might ascribe to them ‘any guilt or responsibility ex post.’”⁵⁹ Schmitt argued in anonymous journal articles published between 1949 and 1959 that a Nazi amnesty should not only involve an end to the legal prosecution of war crimes but also a “strict ban on digging in the past and on searching there for an occasion for further acts of revenge and demands for

⁵⁶“Note,” in Schmitt, *Das internationale Verbrechen*, 80.

⁵⁷Ibid., 81.

⁵⁸Schmitt, *Das internationale Verbrechen*, 16: “Die Rohheit und Bestialität dieser Untaten überschreitet das normale menschliche Fassungsvermögen ... Sie sprengen die Rahmen aller üblichen und gewohnten Maße des Völkerrechts und des Strafrechts. Solche Verbrechen ächten den Täter in vollem Umfang, indem sie ihn außerhalb des Rechts setzen und zum outlaw machen. Der Befehl eines Vorgesetzten kann solche Untaten nicht rechtfertigen oder entschuldigen; er kann höchstens in einer bestimmten Sachlage Veranlassung geben, die Frage aufzuwerfen, ob sich der Täter infolge eines solchen Befehls in einem Notstand befand und ob der Notstand ihn entschuldigt. Auf keinen Fall darf der Grundsatz, dass es sich hier um abnorme Untaten handelt, zum Gegenstand einer Diskussion gemacht werden, die von der Ungeheuerlichkeit dieser Vorgänge ablenkt und das Bewusstsein ihrer Abnormalität abschwächt.”

⁵⁹Zeitlin, “Indirection and the Rhetoric of Tyranny,” 444. For a carefully translated and commented English edition of both sources see Carl Schmitt, *The Tyranny of Values and Other Texts*, trans. Samuel Garrett Zeitlin, ed. Russell Berman and Samuel Garrett Zeitlin (Candor, NY, 2018), 3–44, 91–3.

reparation.”⁶⁰ Indeed, as Zeitlin has shown in recent work, the 1954 *Dialogue on Power and Access to the Holder of Power*—the book Schmitt gifted to Koselleck and Sombart with the inscription of an Arendt quote—also repeated a self-exculpatory argument from his Nuremberg interrogations in the half-disguised form of a radio play.⁶¹ Schmitt suggested that he had never had access to Hitler, the holder of power, making him both powerless and innocent.⁶² In light of such striking continuity across Schmitt’s self-exculpatory moves in the postwar period, there is a certain irony to the fact that Flick was not convicted on charges related to a war of aggression but precisely for those acts that Schmitt himself had condemned in the moral language of *scelus infandum*: Flick was sentenced for his role in war crimes and crimes against humanity, as was Adolf Eichmann in Jerusalem in 1961.⁶³

What Schmitt’s remark to Forsthoff regarding the 1945 memo suggests is that he might have recognized his own reasoning in the position of the Israeli prosecutors and Arendt’s conclusions about why Eichmann “must hang.”⁶⁴ Arendt, like Schmitt, insisted that “the altogether unprecedented” could not be “judged according to precedents and the standards that went with them.”⁶⁵ There is hence evidence suggesting that Schmitt, upon reading about the Eichmann trial, could have realized that he had provided dangerous arguments to put Nazi officials on trial.⁶⁶ What made him sick was the memory of his own argumentation: it meant that the case against Eichmann could be made and that he himself had made it. When Schmitt’s prison writings (from his time in an American internment camp in Berlin in 1946) came out in 1950 under the title *Ex Captivitate Salus*, Arendt acquired a copy. In the book, she underlined a passage in which

⁶⁰Carl Schmitt, “Amnestie oder die Kraft des Vergessens,” in Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, ed. Günter Maschke (Berlin, 1995), 218–21, at 218: “Das strenge Verbot, in der Vergangenheit herumzuwühlen und dort Anlass zu weiteren Racheakten und weiteren Entschädigungsansprüchen zu suchen.” As Zeitlin notes, “by anonymously advocating for oblivion, Schmitt is arguing for the criminalization of discussion of atrocities and crimes committed under National Socialism.” Zeitlin, “Indirection and the Rhetoric of Tyranny,” 429 n. 10.

⁶¹Samuel Garrett Zeitlin, “Carl Schmitt’s Postwar Dialogues,” conference paper at APSA 2021, “Democracy and Dictatorship” panel, 1 Oct. 2021.

⁶²Cf. Carl Schmitt, “Dialogue on Power and Access to the Holder of Power,” in Schmitt, *Dialogues on Space and Power*, trans. Samuel Garrett Zeitlin, ed. Andreas Kalyvas and Federico Finchelstein (Cambridge, 2015), 23–50, at 27. “Stellungnahme III” already articulates central ideas of his 1954 *Dialogue on Power*. An updated version was published as “Der Zugang zum Machthaber, ein zentrales verfassungsrechtliches Problem (1947),” in Carl Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954: Materialien zu einer Verfassungslehre* (Berlin, 1958), 430–39.

⁶³Cf. William Schabas, “The Contribution of the Eichmann Trial to International Law,” *Leiden Journal of International Law* 26/3 (2013), 667–99.

⁶⁴Arendt, *Eichmann in Jerusalem*, 279.

⁶⁵*Ibid.*, 136.

⁶⁶This reading notably differs from Graf’s interpretation of the 1945 *Schlussbemerkung* as a wholesale rejection of international prosecution. Overemphasizing the contrast between Schmitt and Arendt, Graf loses sight of the fateful nuance in Schmitt’s situationally motivated argument: his wish to distinguish a supposedly innocent Flick from the perpetrators of Nazi atrocities. Not only do the latter stand in need of an “a-legal judgment and punishment,” as Graf supposes, but their “solemn and effective” sentencing also constitutes, in Schmitt’s uncharacteristic view, the “specific task” of an international trial. Graf, 10. Cf. “Note,” in Schmitt, *Das internationale Verbrechen*, 81.

Schmitt remarked that “an especially bitter supplement on top of all the other physical and psychic ordeals” was reserved to the “lawyer declared an outlaw.” Next to it, Arendt noted sarcastically, “Vorher hat ihn das ganz u. gar nicht gekümmert!” (“Before he didn’t care about that at all!”)⁶⁷

But the Flick memo was not the only Nuremberg memory in the back of Schmitt’s mind when reading *Eichmann in Jerusalem*. Out of all his four statements in Nuremberg in 1947, the last one, in which Schmitt was responding to the question “why did the German ministerial secretaries follow Hitler?” as an expert witness, provides a discussion of the “totalitarian party-system” that resembles Arendt’s views on many points.⁶⁸ In fact, Schmitt’s response to Robert Kempner resonates with Arendt’s reflections on what she called “a thoroughness that usually strikes the observer as typically German, or else as characteristic of the perfect bureaucrat,” and which, in the words of Eichmann, paved the way for *Kadavergehorsam*, “the ‘obedience of corpses.’”⁶⁹ For Schmitt and Arendt alike, the atrocities of the Holocaust could not be traced back to an error in an otherwise functioning legal system; the crimes were not the effect of a diversion from norms. Instead, it was the very rationality of a depoliticized law that conditioned an unthinking emptiness through which obedience could devolve into genocide in the first place.⁷⁰ As Arendt commented, “Whatever Kant’s role in the formation of ‘the little man’s’ mentality in Germany may have been, there is not the slightest doubt that in one respect Eichmann did indeed follow Kant’s precepts: a law was a law, there could be no exceptions.”⁷¹ Schmitt’s Nuremberg responses hence contain the outlines of a critical theory of law that, similar to Arendt, draws a link between the depoliticization of legal procedures and the formation of subjects that become unable to think for themselves.

The ministerial secretaries (and with them the ministerial bureaucracy and the large majority of higher state officials) followed Hitler because they obeyed him due to a purely functionalist understanding of *legality* that is typical of this professional class. They then, still in the context of this type of legality, came into a condition of a paralyzed conscience and of self-deception about their responsibility and in the end they functioned as bureaucrats in a habitual manner even in the realization of evident acts of inhumanity.⁷²

⁶⁷Arendt marginalia in Carl Schmitt, *Ex Captivitate Salus* (Cologne, 1950), 60, available at www.bard.edu/library/arendt/pdfs/Schmitt-Captivitate.pdf (accessed 22 March 2020).

⁶⁸Schmitt, “Stellungnahme IV,” 103.

⁶⁹Arendt, *Eichmann in Jerusalem*, 135.

⁷⁰Whether Arendt’s argument offers an accurate picture of Eichmann has been powerfully put into question by Bettina Stangneth, *Eichmann vor Jerusalem: Das unbehelligte Leben eines Massenmörders* (Hamburg, 2011).

⁷¹Arendt, *Eichmann in Jerusalem*, 137.

⁷²Schmitt, “Stellungnahme IV,” 102: “Die Staatssekretäre (und mit ihnen die Ministerialbürokratie und das Gros des höheren Beamtentums) sind Hitler gefolgt, weil sie sich ihm aufgrund eines rein funktionalistischen, für ihre Berufsschicht typischen Begriffes von Legalität unterworfen haben. Sie sind dann, ebenfalls im Zusammenhang mit dieser Art Legalität, in einen Zustand der Bewusstseinslähmung und der Selbsttäuschung über ihre Verantwortlichkeit geraten und haben schließlich auch bei der Durchführung offensichtlicher Unmenschlichkeiten in gewohnter Weise als Beamte funktioniert.”

Yet whereas Arendt insisted that an analysis of totalitarianism could never proceed by identifying a causal necessity for what she saw as the politically contingent outcome of quotidian choices, Schmitt makes strong claims about the structural origins of National Socialists' "paralyzed conscience."⁷³ In Schmitt's view, a mechanistic conception of the law produced a set of pathologies insofar as underlying "class and caste interests" among German bureaucrats,⁷⁴ as well as "the generalized motorization that is characteristic for the pure functionalism of this apparatus,"⁷⁵ resulted in the subject formation of obedient criminals. For Schmitt, "legality" here "signifies by no means a material-legal content but a method of working and functioning in the thoroughly administered society."⁷⁶ It is an explanatory factor *for* (rather than an antidote *to*) totalitarian crime.

Legality, in Schmitt's iteration of Weber, therefore does not merely refer to a sphere of positive laws but rather denotes a mode of social organization that extends "bureaucratic-functionalistic" relationships to the whole of society, instilling subjects with a "need to take 'cover' in the face of responsibility."⁷⁷ In this regard, the loyalty of state officials to Hitler is not explained by the fact that Germany had a "state of bureaucrats [*Beamtenstaat*]," but, more drastically, that it was populated by "a people of bureaucrats [*Beamtenvolk*]."⁷⁸ When Schmitt read Arendt's account of Eichmann sixteen years later, he must have been reminded that he had similarly argued that bureaucrats who participated in "acts of inhumanity" could not be reduced to "mentally ill, moral idiots, or born criminals," and thereby discharged of their responsibility.⁷⁹ For Schmitt as for Arendt, the ruthless enactment of mass murder was a banal evil that had its roots in the bureaucratization of social life and the loss of the political. Yet all similarities between Arendt's and Schmitt's critiques of depoliticized law notwithstanding, their visions of the political remain fundamentally at odds. Arendt's marginalia in *Der Begriff des Politischen* could not be clearer on this point. Where Schmitt writes, "The definition of the political given here is neither belligerent nor militaristic, neither imperialist nor pacifist," Arendt laconically notes, "Sie ist barbarisch" ("It is barbaric").⁸⁰ Where Arendt defended a vision of action in concert with plural others as an alternative to the "unwavering precision" of bureaucratic organization, Schmitt's

⁷³"Gewissenslähmung." Schmitt, "Stellungnahme IV," 102.

⁷⁴"Standes- und Kasteninteressen." Schmitt, "Stellungnahme IV," 102.

⁷⁵Schmitt, "Stellungnahme IV," 104: "die allgemeine Motorisierung ist kennzeichnend für den reinen Funktionalismus dieser Apparatur." The critique of "motorized law" is further developed in Carl Schmitt, *Die Lage der Europäischen Rechtswissenschaft* (Tübingen, 1950), 18–20. Arendt's library contains an annotated copy.

⁷⁶Schmitt, "Stellungnahme IV," 105: "für meine Betrachtung deutscher Zustände und Entwicklungen bedeutet Legalität überhaupt nichts materiell-rechtlich Inhaltliches, sondern eine Methode des Arbeitens und Funktionierens in einer durchorganisierten Gesellschaft."

⁷⁷Schmitt, "Stellungnahme IV," 105–6: "Das Bedürfnis nach einer 'Deckung' gegenüber der Verantwortlichkeit, nach einer Abwälzung der Verantwortlichkeit und jedes ernsthaften Risikos, das alles gehört zu dem Komplex einer bürokratisch-funktionalistisch aufgefassten Legalität."

⁷⁸*Ibid.*, 107.

⁷⁹*Ibid.*

⁸⁰Arendt marginalia in Carl Schmitt, *Der Begriff des Politischen* (Hamburg, 1933), 16, at www.bard.edu/library/arendt/pdfs/Schmitt-Begriff.pdf (accessed 26 Sept. 2021).

analysis hinges on the unstated commitment to a sovereign who designates an existential enemy.⁸¹

Unlike Eichmann, Schmitt did not aim to distance himself from the “actual” perpetrators of the Holocaust by insisting that he was just a “tiny cog” in the machinery of the Final Solution.⁸² On the contrary, he emphasized his big name. As he implicitly put the question to Kempner in his second interrogation: could Rousseau be made responsible for Jacobin terror?⁸³ Schmitt imagined his involvement with National Socialism at an immense remove from the regime. In his self-narration, he had warned against a “state-centric, functionalist notion of legality” all along and thereby *fought* the rise of Hitler on theoretical terrain. What Schmitt did not mention, however, is the extent to which he had not changed his views about his anti-Semitism, either.⁸⁴ It must have therefore been with an explosive mix of emotions—between intellectual recognition and an anxiously concealed anti-Semitic hate—that Schmitt read and reread *Eichmann in Jerusalem*: a book that he found “exciting” and that, in 1963, made him sick for weeks.

The hunters and the hunted: Schmitt reads Eichmann in Jerusalem (again)

“The dead will not be safe from the enemy if he wins ...” (On this point *my* question: Neither will I and neither will we, we will be hanged, the dead body will be burnt, the ashes will be thrown into the sea, as with Eichmann. 23/10/75 C. S., after reading G. Scholem.⁸⁵

This handwritten remark, referencing Walter Benjamin’s sixth thesis *On the Concept of History* (1940),⁸⁶ can be found in Schmitt’s copy of Theodor W. Adorno’s 1968 book on Benjamin. The fact that Schmitt dated and initialed it is not particular to this note but a widespread characteristic of many books in his library. One might speculate whether Schmitt kept these dated entries for his

⁸¹Arendt, *Eichmann in Jerusalem*, 316: “The extermination machinery had been planned and perfected in all its details long before the horror of war struck Germany herself, and its intricate bureaucracy functioned with the same unwavering precision in the years of easy victory as those last years of predictable defeat.”

⁸²*Ibid.*, 289.

⁸³Linder, “Carl Schmitt in Plettenberg,” 149. Cf. Carl Schmitt, “Das zweite Verhör,” 21 April 1947, in Schmitt, *Antworten in Nürnberg*, 60.

⁸⁴The most comprehensive account of Schmitt’s anti-Semitism remains Raphael Gross, *Carl Schmitt and the Jews: The “Jewish Question,” the Holocaust, and German Legal Theory*, trans. Joel Golb (Madison, 2007).

⁸⁵Schmitt marginalia in Landesarchiv NRW, RW 0265 No. 25542: “Die Toten werden vor dem Feind, wenn er siegt, nicht sicher sein ...’ (Dazu meine Frage: auch ich und wir alle nicht, wir werden gehängt, die Leiche dann verbrannt, die Asche ins Meer geworfen, wie bei Eichmann). 23/10/75 C.S. Nach der Lektüre G. Scholem.” Theodor Adorno, *Über Walter Benjamin* (Frankfurt, 1968). Schmitt repeatedly fantasized about himself as persecuted and akin to Jewish victims of the Holocaust via a reading of Benjamin. See the entry on 15 Aug. 1955 in Schmitt, *Glossarium*, 318–19. Schmitt’s *Hamlet oder Hekuba: Der Einbruch der Zeit in das Spiel* (Munich, 1956) contains his only published engagement with Benjamin in “Excursus 2,” 62–9.

⁸⁶“The only writer of history with the gift of setting alight the sparks of hope in the past, is the one who is convinced of this: that not even the dead will be safe from the enemy, if he is victorious. And this enemy has not ceased to be victorious.” Walter Benjamin, “On the Concept of History (1940),” trans. Dennis Rodmond, at www.marxists.org/reference/archive/benjamin/1940/history.htm (accessed 7 Feb. 2021).

own use or whether he prepared his library for future readers, be they prosecutors (as his earlier collection had been confiscated in 1945) or researchers.⁸⁷ Neither can Schmitt's interest in Benjamin's work come as a surprise, as a letter of admiration that Benjamin addressed to Schmitt in December 1930 is well known.⁸⁸ What is truly remarkable about Schmitt's note is its date: 23 October 1975. More than thirty years after the end of the war and almost fourteen years after Eichmann's conviction, Schmitt felt threatened not only by the idea of being brought to justice but rather of being "hanged" and disgraced "like Eichmann."

His remark occurs "upon reading Gershom Scholem"—a friend of Benjamin's and acquaintance of Arendt's, and a leading scholar of Kabbalah mysticism—whose eight books in Schmitt's personal library contain not a single reference to Eichmann.⁸⁹ Instead, the link between Scholem, Eichmann, and Benjamin's phrase about the "dead" who will not be safe from "the enemy" originated exclusively in Schmitt's own mind.⁹⁰ His 1975 "question" thus confirms that even years after the war, he imagined the category of "the enemy" in the shadow of Nazi politics, placing himself and Eichmann on the side of friends, if perhaps united by tragic circumstances.⁹¹ More than a confirmation of Schmitt's anti-Semitism, what emerges from this note—and Schmitt's marginalia more generally—is a deep sense of fragility that finds its expression in "a barely hidden obsession, bordering on paranoia."⁹² As this second section aims to suggest, this *political* paranoia takes the form of a fear of another Eichmann trial in which Schmitt would play the role of the defendant: an existential fear that, for decades, seemed to have shaped his readings of Arendt. Schmitt's sense of exposure, evident in his marginalia on Arendt and Benjamin, was not only a Hobbesian "fear of violent death" but a

⁸⁷The confiscation of his earlier library by American troops in 1945 is mentioned in Schmitt, *Antworten in Nürnberg*, 24.

⁸⁸Cf. Samuel Weber, "Taking Exception to Decision: Walter Benjamin and Carl Schmitt," *Diacritics* 22/3–4 (1992), 5–18. On Schmitt and Benjamin see Susanne Heil, *Gefährliche Beziehungen: Walter Benjamin und Carl Schmitt* (Stuttgart, 1996); Reinhard Mehring, "'Geist ist das Vermögen, Diktatur auszuüben': Carl Schmitts Marginalien zu Walter Benjamin," *Benjamin-Studien* 2 (2011), 239–56.

⁸⁹The Scholem books in Schmitt's library can be located at Landesarchiv NRW RW 265 Nos. 25727, 25775, 25725, 25550, 25726, 25728, 28514, 28674. Almost all of them contain significant marginalia. Schmitt's reading of Scholem in the 1970s must be understood in relation to his dialogue with Scholem's student Jacob Taubes over three decades. Cf. Herbert Kopp-Oberstebrink, Thorsten Palzhoff, and Martin Treml, eds., *Jacob Taubes–Carl Schmitt: Briefwechsel mit Materialien* (Munich, 2012), 30–31, 43; as well as Jamie Martin, "Liberalism and History after the Second World War: The Case of Jacob Taubes," *Modern Intellectual History* 14/1 (2017), 131–52.

⁹⁰The connection might have been mediated by Arendt's three-part essay on Benjamin in *Mercur*, Feb.–April 1968. The first two parts were sent to him by Ernst Forstthoff. Cf. Forstthoff to Schmitt, 23 March 1968. Mußgnug, Mußgnug and Reinthal, *Ernst Forstthoff und Carl Schmitt*, 257. Cf. Schmitt's notes at the Max Planck Society Archives Berlin, Va/013 Va. Abt., Rep. 13 Sammlung Carl Schmitt, No. 7.

⁹¹This is not to say that Schmitt's friend/enemy distinction would necessarily amount to a "structurally antisemitic" point of view, as Gross seems to believe. Cf. Gross, *Carl Schmitt and the Jews*, 9. Christian J. Emden has convincingly criticized Gross for his "'Schmittianism in reverse,' characterized by the assumption that any critique of universalism is necessarily Schmittian and continues the latter's antisemitism." The material presented in this article nevertheless confirms much of Gross's argument insofar as it relates to the persistence of Schmitt's anti-Semitism after 1945. Cf. Christian J. Emden, "How to Fall into Carl Schmitt's Trap," *H-German, H-Net Reviews*, July 2009, at www.h-net.org/reviews/showrev.php?id=24782 (accessed 25 Sept. 2021).

⁹²*Ibid.*

fear beyond death: a fear of extermination, of anonymized murder, burnt bodies, and thrown-away ashes,⁹³ which turned Arendt's work into a crystallization point for anti-Semitism, a tool kit for a future self-defense, and, if only in the bounds of Schmitt's Plettenberg study, a projection screen for imaginary battles in defense of white supremacy.⁹⁴

It is difficult to determine whether Schmitt first read Arendt's *The Burden of Our Time* (1951) or *Sechs Essays* (1948).⁹⁵ In response to Ernst Forsthoff, recommending *Elemente und Ursprünge totaler Herrschaft*, Schmitt wrote that he would love to read Arendt's book but that he suspected (correctly) that it would be the German translation of *Origins*, which he had already read "with great attention" "more than five years" earlier.⁹⁶ While Nicolaus Sombart had recommended *Origins* in 1951 and Schmitt quotes from it as early as 1954 in his dedications of his *Dialogue on Power and Access to the Holder of Power* to Sombart and Koselleck,⁹⁷ his dated annotations begin only in March 1956, with notes and material added over the following ten years.⁹⁸ *Sechs Essays*, on the other hand, contains marginalia dated "Frankfurt, 29 January 1953," and Schmitt later glued a 1959 book review of Arendt's *Rahel Varnhagen* into the book, just as he kept a copy of a 1966 review of *On Revolution* in *The Burden of Our Time*, as part of an oddly meticulous personal Arendt archive.⁹⁹ Letter exchanges with Ernst Forsthoff further document his knowledge of Arendt's 1956 article "Was ist Autorität?"¹⁰⁰ (which Schmitt called "very much worth reading"¹⁰¹) and her 1968 essay on Walter

⁹³The image of burnt bodies is a recurring theme in Schmitt's notebooks, shifting between Jewish victims and the corpses of hanged Nazi criminals. Cf. Schmitt's note on 29 Aug. 1951 (ten days before his entry on Arendt), entitled "On the unburied corpses, on the terrible poisoning of the atmosphere through the scattering of the ashes in the air." ("Über die nicht begrabenen Leichen, über die entsetzliche Vergiftung der Atmosphäre durch Zerstreung der Asche in die Luft.") Schmitt, *Glossarium*, 248 f.

⁹⁴On Schmitt and global white supremacy see Hohendahl, *Perilous Futures*, 87–117.

⁹⁵The six essays contained in this work consist of the imperialism chapter later included in *Origins of Totalitarianism* as well as the essays "Organisierte Schuld," "Was ist Existenzphilosophie?," "Die verborgene Tradition," "Die Welt von gestern," and "Franz Kafka."

⁹⁶Schmitt to Forsthoff, 2 Jan. 1956, in Mußgnug, Mußgnug, and Reinthal, *Ernst Forsthoff und Carl Schmitt*, 117.

⁹⁷Cf. Tielke, *Schmitt und Sombart*, 47.

⁹⁸Cf. Landesarchiv NRW, RW 265, No. 22551. Schmitt added newspaper clippings to *The Burden of Our Time* (1951) at least until 1966.

⁹⁹The reviews are Clara Menck, "Die Paria und die Gesellschaft: Rezension zu Hannah Arendt, *Rahel Varnhagen*," 1959, in Hannah Arendt, *Sechs Essays* (Heidelberg, 1948), Landesarchiv NRW, RW 265, No. 26642; as well as Helmut Klages, "Rezension zu Hannah Arendt, *Über die Revolution*," in Hannah Arendt, *The Burden of Our Time* (London, 1951), Landesarchiv NRW, RW 265, No. 22551. Next to underlinings in the review of *On Revolution*, Schmitt noted and underlined in two colors: "Homo homini homo." The phrase "The human is human to the human" takes up a central place in Schmitt's *Gespräch über die Macht und den Zugang zum Machthaber* (1954). Cf. Schmitt, *Dialogue on Power and Access to the Holder of Power*, 30–32.

¹⁰⁰Hannah Arendt, "Was ist Autorität?," *Der Monat* 8 (1956), 29–44. English translation: Arendt, "What Is Authority?," in Arendt, *Between Past and Future*, 91–141.

¹⁰¹"Hannah Arendt has in the meantime [since the publication of *Origins*] published an essay very much worth reading in the last issue of *Der Monat* about the connection between religion, tradition, and authority." ("Hannah Arendt hat inzwischen im letzten Heft des *Monat* einen sehr lesenswerten Aufsatz über den Zusammenhang von Religion, Tradition und Autorität veröffentlicht.") Schmitt to Forsthoff, 15 Feb. 1956, in Mußgnug, Mußgnug, and Reinthal, *Ernst Forsthoff und Carl Schmitt*, 120.

Benjamin.¹⁰² The latter gave rise to three handwritten notes, conserved in the archives of the Max Planck Society, Berlin, that specifically link Arendt and Benjamin, dated 5 August 1969 and 31 May 1970.¹⁰³ One of these notes—brief but significant examples of Schmitt’s engagement with Arendt on a theoretical level—suggests his approval of Arendt’s understanding of language, as developed in the section “The Pearl-Diver” of her Benjamin essay.¹⁰⁴ A second note quotes and comments on Benjamin’s first thesis from *On the Concept of History* (1940) on historical materialism and theology,¹⁰⁵ whereas the third and final note consists of a full page of nonlinear sketches on enmity and *pólemos* in both German and Greek, including many variations on the phrases “I think because I have enemies,” “I think therefore I have enemies,” and “I *think* my enemy therefore we are not two, but one.”¹⁰⁶ Given their proximity to explicit commentary on Arendt and Benjamin, these suggestive remarks could be read in light of Schmitt’s deeply ambiguous relationship to both thinkers; they seem to confirm the impression that his views oscillated between fascination and anti-Semitic hatred. In an effort to reconstruct and explain Schmitt’s reaction to *Eichmann in Jerusalem*, this section, however, limits itself to an analysis of Schmitt’s marginalia in Arendt’s writings, preserved in the *Nachlass* in Duisburg.

Schmitt’s notes in *Sechs Essays* largely fall in one of two categories. A first set of marginalia shows a sexist ridicule for Arendt’s intellectual debt to Karl Jaspers.¹⁰⁷

¹⁰²Forsthoff sent Schmitt his own copy of *Merkur*, with the first two parts of Arendt’s Benjamin essay, on 23 March 1968. Mußgnug, Mußgnug, and Reinthal, *Ernst Forsthoff und Carl Schmitt*, 257. Schmitt’s “long, so significant letter” (“langen, so bedeutungsvollen Brief”) on Arendt and Benjamin, dated 26 March 1968, is unfortunately missing from the published letter exchange. Cf. *ibid.*, 257 f.

¹⁰³That Schmitt also read the final part of Arendt’s Benjamin essay is documented by his notes in Max Planck Society Archives Berlin, Va/013 Va. Abt., Rep. 13 Sammlung Carl Schmitt, No. 7.

¹⁰⁴Note 1 reads in full, “Die griechische Polis wird solange am Grunde unserer politischen Existenz, auf dem Meeresgrunde also, weiter da sein, als wir das Wort ‘Politik’ im Munde führen.” So Hannah Arendt in dem Aufsatz ‘Walter Benjamin’ in der Monatsschrift ‘Merkur’ No. 240 (Stuttgart, Klett Verlag, 1968, S. 313). X1 Das verstehen die Semantiker nicht, fährt sie fort, sie bekämpfen die Konfusion der Sprache; sie attackieren sie, die das einzige Bollwerk ist, hinter dem sich die Vergangenheit verbirgt; sie (die Semantiker) haben recht; alle Probleme sind schließlich sprachliche Probleme; sie wissen nur nicht, was sie damit sagen.—Arnold Kanne (1773–1824): ‘Die Sprache weiss es noch.’ Anlage: 2. X1: Πόλεμος = Feind kommt aus der Wurzel Πόλ-ις (der Gegner im Bürgerkrieg, Παις) (zum Unterschied von εχθρός).” Max Planck Society Archives Berlin, Va/013 Va. Abt., Rep. 13 Sammlung Carl Schmitt, No. 7. English: “The Greek polis will continue to exist at the bottom of our political existence—that is, at the bottom of the sea—for as long as we use the word ‘politics.’ Says Hannah Arendt in her essay ‘Walter Benjamin’ in the monthly review ‘Merkur’ No. 240 (Stuttgart, Klett 1968, p. 313). X1 This is what the semanticists do not understand, she continues, they fight the confusion of language; they attack it, the only bulwark behind which the past hides; they (the semanticists) are right; all problems are in the final analysis linguistic problems; they simply do not know the implications of what they are saying.—Arnold Kanne (1773–1824): ‘Language still knows it.’ Attachments: 2. X1: Πόλεμος [pólemos] = Enemy comes from the root Πόλ-ις [pól-is] (the adversary in a civil war, στάσις [stasis]) (in distinction to εχθρός [echthros]).”

¹⁰⁵Note 2 in Max Planck Society Archives Berlin, Va/013 Va. Abt., Rep. 13 Sammlung Carl Schmitt, No. 7.

¹⁰⁶Note 3 in Max Planck Society Archives Berlin, Va/013 Va. Abt., Rep. 13 Sammlung Carl Schmitt, No. 7.

¹⁰⁷Schmitt’s sexist reduction of Arendt to her connection with Jaspers is recurring in other sources, including the entry on 8 Sept. 1951 in Schmitt, *Glossarium*, 253. It reappears in a letter to Koselleck in December 1976 in which Schmitt accuses Nicolaus Sombart of “ritually performing a patricide” (against his own father, Werner Sombart) with his essay “Gruppenbild mit zwei Damen: Zum Verhältnis von

When Arendt, in “*Was ist Existenzphilosophie?*”, writes that Kantians, “in their logical consistency and their despair ... have mostly fallen a few steps behind him [Kant], for they have all, with the one great exception of Jaspers, at some point given up Kant’s basic concept of human freedom and dignity,”¹⁰⁸ Schmitt underlined “*großen Ausnahme Jaspers*” and noted “brave Hannah!” (“well-behaved Hannah!”).¹⁰⁹ The same tone is repeated next to the passage “the continuity of Jaspers’s thought remains unbroken; he is an active participant in modern philosophy, and he will continue to contribute to its development and speak with a decisive voice in it.”¹¹⁰ Here Schmitt comments, “*tanta fides, Tante Hannah*” (“so much faith, Aunt Hannah”).¹¹¹ Even where he might have agreed with Arendt’s position, for instance in her critique of the abstract quality of Kantian moral philosophy, the marginalia show Schmitt unable to engage with her text on its own terms, giving evidence of a belittling and paternalistic attitude. When Arendt argues that, with Kantian transcendental selfhood, “Man never seemed to have risen so high and at the same time to have fallen so low,”¹¹² Schmitt underlines the passage and writes, “! ho ho ho.”¹¹³

A second set of marginalia shows Schmitt struggling to derive argumentative tools from Arendt’s writings that might help him in a legal defense. When Arendt writes on the question of organized guilt, Schmitt heavily underlines “But the fabrication of corpses goes beyond *hostility* and *cannot be comprehended by political categories*,”¹¹⁴ in emphasis of the distance that he wants to mark between his concept of enmity and the industrialized mass murder of the Holocaust. Even in passages that are not immediately related to questions of guilt, Schmitt seems to constantly return to reflections about his recent past: “We cannot inquire into the What of man the way we can into the What of a thing,” Arendt writes. “We can only inquire into the Who of man.”¹¹⁵ But where she locates the possibility of self-knowledge in the space of a world shared with plural others, Schmitt’s laconic reply in the margins stands out as a

Wissenschaft, Politik und Eros im wilhelminischen Zeitalter,” *Merkur* 30/341 (1976), 972–90, which explicitly criticizes Schmitt. Although Arendt is never mentioned and Jaspers only briefly evoked, Schmitt read Sombart’s intervention within the “general context of a celebration in honor of Hannah Arendt and hence also of Karl Jaspers” (“im Grossrahmen einer Hanah-Arend [sic] und damit auch Karl Jaspers-Ehrung”), as the *Merkur* issue contained several articles on Arendt. Cf. Dunkhase, *Reinhard Koselleck–Carl Schmitt*, 303. For Sombart’s later critique of Schmitt’s anti-Semitism in relation to Wilhelmine patriarchy cf. Nicolaus Sombart, *Die deutschen Männer und ihre Feinde: Carl Schmitt—ein deutsches Schicksal zwischen Männerbund und Matriarchatsmythos* (Munich, 1991).

¹⁰⁸Hannah Arendt, “What Is Existential Philosophy?,” in Arendt, *Essays in Understanding, 1930–1954: Formation, Exile, and Totalitarianism* (New York, 1994), 163–88, at 171.

¹⁰⁹Schmitt marginalia in Arendt, *Sechs Essays*, Landesarchiv NRW, RW 265, No. 26642, 60.

¹¹⁰Arendt, “What Is Existential Philosophy?,” 182.

¹¹¹Schmitt marginalia in Arendt, *Sechs Essays*, Landesarchiv NRW, RW 265, No. 26642, 74.

¹¹²Arendt, “What Is Existential Philosophy?,” 171.

¹¹³Arendt, *Sechs Essays*, Landesarchiv NRW, RW 265, No. 26642, 59.

¹¹⁴Hannah Arendt, “Dedication to Karl Jaspers,” in Arendt, *Essays in Understanding* (1994), 212–17, at 215: “Aber die Fabrikation von Leichen hat mit *Feindschaft* nichts mehr zu tun und ist mit *politischen Kategorien nicht mehr zu fassen*.” Schmitt marginalia in Arendt, *Sechs Essays*, Landesarchiv NRW, RW 265, No. 26642, 9.

¹¹⁵Arendt, “What Is Existential Philosophy?,” 177.

declaration of sovereignty against his sense of exposure: “Qui judicabit? Ich selbst!” (“Who will judge? I myself!”).¹¹⁶

Schmitt’s marginalia to *The Burden of Our Time* (published 1951, marginalia from between 1951 and 1956) confirm this impression. One can almost sense the pleasure that Schmitt found in reading passages that showed Arendt in agreement with his own analyses. He underlined Arendt’s thesis that Nazi dictatorship “took advantage of the *complete breakdown of state worship*,”¹¹⁷ and placed an exclamation mark when she cites his 1934 essay “Staat, Bewegung, Volk,” underlining her phrase “The *‘totalitarian state’ is a state in appearance only*.”¹¹⁸ Arendt’s claim that “the totalitarian movements imitate all the paraphernalia of the secret societies but empty them of the only thing that could excuse, or was supposed to excuse, their methods—the necessity to safeguard a secret” met Schmitt’s particular approval, as it occasioned the note “gute Hannah” (“good Hannah”).¹¹⁹ Yet his most detailed commentary occurs, unsurprisingly, in response to her appraisal of Schmitt’s own work, which provides evidence of his precision, as if to deploy Arendt’s work in his own criminal defense. On the margins of the statement “Most interesting is the example of the jurist Carl Schmitt, whose very ingenious theories about the end of democracy and legal government *still make arresting reading*,” Schmitt carefully notes (with the ink of a fountain pen),

In the German edition of this book—published in 1955—by Hannah Arendt, *Elemente und Ursprünge totaler Herrschaft* (Europäische Verlagsanstalt Frankfurt, 782 pages) one finds on page 543 the slightly modified version of this Note 66: “For illustration one should remember the career of Carl Schmitt, without any doubt the most influential man in the field of constitutional and international law, who put the greatest effort into pleasing the Nazis. He never managed to do so. The Nazis quickly replaced him with talents of the second and third rank, such as Theodor Mainz, Werner Best, Hans Frank, Gottfried Neesse and Reinhard Höhn, and played him against the wall.” The phrasing “still makes an arresting reading” is removed in this edition that was “translated and newly edited by the author,” Th. Mainz is newly added.¹²⁰

¹¹⁶Schmitt marginalia in Arendt, *Sechs Essays*, Landesarchiv NRW, RW 265, No. 26642, 68.

¹¹⁷Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 265, No. 22551, 46.

¹¹⁸Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 265, No. 22551, 265.

Arendt’s reference is to Carl Schmitt, *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg, 1934).

¹¹⁹Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 265, No. 22551, 365.

¹²⁰My translation. German: “In der—1955 erschienen—deutschen Ausgabe dieses Buches von Hannah Arendt ‘Elemente und Ursprünge totaler Herrschaft’ (Europäische Verlagsanstalt Frankfurt, 782 Seiten) findet sich auf Seite 543 eine etwas veränderte Version dieser Anm. 66: ‘Zur Illustration sei an die Karriere Carl Schmitts erinnert, der zweifellos der bedeutendste Mann auf dem Gebiet des Verfassungs- und Völkerrechts war, und sich die allergrößte Mühe gegeben hat, es den Nazis recht zu machen. Es ist ihm nie gelungen. Die Nazis haben ihn schleunigst durch zweit- und dritrangige Begabungen wie Theodor Mainz, Werner Best, Hans Frank, Gottfried Neesse und Reinhard Höhn ersetzt und ihn an die Wand gespielt.’ Die Wendung ‘still makes an arresting reading’ ist in dieser ‘von der Verfasserin übertragenen und neubearbeiteten Ausgabe’ gestrichen; Th. Mainz ist neu eingefügt.” Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 332. Despite the fact that

What Schmitt was looking for seems to be above all a usable quote that he could later put to work in his defense, as if he wanted Arendt to confirm that he had not “actually” been a Nazi.

But where Schmitt is not engaging with Arendt in such an instrumental fashion, the large majority of notes and underlinings have to do with Jews and Judaism: be it Arendt’s claim that nation-states preserved “*the international status*” of Jews because “*financial services rested on it*,”¹²¹ the fact that the Rothschild family “*never permitted a scholar to work in its archives*” (Schmitt notes: !),¹²² comments on Jesuit anti-Semitism,¹²³ or, finally, a great number of underlined passages that quote anti-Semitic slurs or stereotypes (“*Jewish capital in the state*,”¹²⁴ “*these parasites*,”¹²⁵ “*scapegoats*,”¹²⁶ “*their ideal of unlimited competition*,”¹²⁷ “*on which they were parasites anyway*”¹²⁸). Between the pages of the chapter on anti-Semitism, Schmitt kept a book review of a work on court finance in the age of absolutism by historian Heinrich Schnee, underlining a passage on “*a great number of small court Jews [eine Fülle kleiner Hoffjuden]*” who (supposedly in confirmation of Arendt’s account) played an “important role in financial and economic history.”¹²⁹ Unsurprisingly, Schmitt also paid close attention to passages about British prime minister Benjamin Disraeli, underlining “*never a thorough Englishman and was proud of the fact*” and “*Never in his life did he give up this second notion of a secret and mysterious influence of the chosen men of the chosen race*.”¹³⁰ As Joshua Smeltzer and Samuel Garrett Zeitlin have shown in the context of Schmitt’s *Land und Meer: Eine weltgeschichtliche Betrachtung* (1942), Schmitt regarded Disraeli as embodying an “uprooted and de-territorialized”

Schmitt refers to *Elemente und Ursprünge totaler Herrschaft*, no German copy has been conserved as part of his book collection.

¹²¹Underlinings in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 19.

¹²²Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 25.

¹²³Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 102.

¹²⁴“Investment of *Jewish capital in the state* had helped to give the Jews a productive role in the economy of Europe.” Underlinings in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 98.

¹²⁵“*These parasites* upon a corrupt body served to provide a thoroughly decadent society with an exceedingly dangerous alibi. Since they were Jews it was possible to make *scapegoats* of them when public indignation had to be allayed ... It did not matter to them [the anti-Semites] that the corruption of the body politic had started without the help of Jews; that the policy of businessmen (in a bourgeois society to which Jews had not belonged) and their *ideal of unlimited competition* had led to the disintegration of the state in party politics.” Schmitt placed a question mark next to the claim that Jews had not belonged to bourgeois society. Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 99.

¹²⁶Ibid.

¹²⁷Ibid.

¹²⁸“As long as the owners of superfluous capital were content with investing ‘large portions of their property in foreign lands,’ even if this tendency ran ‘counter to all past traditions of nationalism,’ they merely confirmed their alienation from the national body *on which they were parasites anyway*.” Underlining in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 149.

¹²⁹Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551, 32–3. The article is a review of Heinrich Schnee, *Die Hofffinanz und der moderne Staat: Geschichte und System der Hoffaktoren an deutschen Fürstenthöfen im Zeitalter des Absolutismus* (Berlin, 1954).

¹³⁰Schmitt marginalia in Arendt, *The Burden of Our Time*, Landesarchiv NRW, RW 0265, No. 22551

identity that he attributed to Jews and, by extension, to the maritime power of the British Empire.¹³¹

Now one could argue that these patterns do not in and of themselves constitute evidence of anti-Semitism, as they perhaps only point to the problematic aspects of Arendt's own phrasings.¹³² Yet their anti-Semitic meaning emerges clearly when placed next to Schmitt's marginalia in his two copies of *Eichmann in Jerusalem*. The cover of Schmitt's English copy is itself a baffling document of anti-Semitism: inside the cover, next to the author's name, Schmitt noted, "Eichmannjäger Wiesenthal, Eichmannjägerin Arendt,"¹³³ referring to Simon Wiesenthal, the Austrian Jewish Holocaust survivor, whose Jewish Historical Documentation Centre helped identify Nazis who were living in South America under false names.¹³⁴ Considering that Schmitt saw himself as the potential target of an Eichmann-like persecution, the comparison to Wiesenthal provides further evidence that his engagement with Arendt was a far cry from a "dialogue" but limited by anti-Semitic fantasies and the fear of suffering the fate of Eichmann. It might not have been insignificant for Schmitt's reading, either, that he had briefly considered moving to Argentina.¹³⁵

On the back of the book cover, where the book description refers to "Vitamin P, as the Israelis call protection in government circles and the bureaucracy," Schmitt heavily circled "Vitamin P" and, in massive letters, wrote "VITAMIN J" across the cover. Additionally, he drew on the photo of Arendt's face, in a pattern that arguably resembles the stigmata of Jesus Christ.¹³⁶ This visual statement is staggering in itself, but its potential meaning emerges against the backdrop of a 1947 *Glossarium* entry, in which Schmitt called "the assimilated Jew" "the true enemy"—a remark that is echoed four years later, when writing explicitly about Arendt.¹³⁷ On 8

¹³¹Cf. Carl Schmitt, *Land und Meer: Eine weltgeschichtliche Betrachtung* (Stuttgart, 1942), 94–5. On Disraeli in the context of Schmitt's anti-Semitism cf. Joshua Smeltzer, "Technology, Law, and Annihilation: Carl Schmitt's Critique of Utopianism," *Journal of the History of Ideas* 81/1 (2020), 107–29, at 110, as well as Samuel Garrett Zeitlin, "Propaganda and Critique: An Introduction to Land and Sea," in Carl Schmitt, *Land and Sea: A World-Historical Meditation*, trans. Samuel Garrett Zeitlin, ed. Russell A. Berman and Samuel Garrett Zeitlin (Candor, NY, 2015), xlv, xlvi.

¹³²Arendt's perhaps most ungenerous reader, Emmanuel Faye, has turned the juxtaposition of quotations into a method to "demonstrate" the ways in which Arendt supposedly agrees with or unknowingly repeats the anti-Semitic views of her German sources, including those of Heidegger and Schmitt. Faye pushes a "Schmittianism in reverse" (to quote Emden's critical characterization of Raphael Gross's approach) to an extreme level, accusing Arendt of structural anti-Semitism. He thereby silently confirms Schmitt's view that the only options for political theory would either be Schmittianism or universalist humanism. Cf. Emmanuel Faye, *Arendt et Heidegger: Extermination nazie et destruction de la pensée* (Paris, 2016).

¹³³Schmitt marginalia in Arendt, *Eichmann in Jerusalem* (New York, 1963), Landesarchiv NRW, RW 265, No. 22801.

¹³⁴Cf. Tom Segev, *Simon Wiesenthal: The Life and Legends* (New York, 2012).

¹³⁵Linder, "Carl Schmitt in Plettenberg," 149. Cf. editor's introduction to Carl Schmitt, *Dialogues on Power and Space* (Cambridge, 2015), ed. Andreas Kalyvas and Federico Finchelstein, trans. Samuel Garrett Zeitlin, 3.

¹³⁶Schmitt marginalia in Arendt, *Eichmann in Jerusalem* (New York, 1963), Landesarchiv NRW, RW 265, No. 22801.

¹³⁷Schmitt, *Glossarium*, 14: "Gerade der assimilierte Jude ist der wahre Feind" ("Especially the assimilated Jew is the true enemy"), 25 Sept. 1947.

September 1951, the day he expressed his interest in acquiring a copy of *Origins* to Nicolaus Sombart,¹³⁸ Schmitt noted, “On Hannah Arendt: There is nothing more lost than a European Jew outside the Ghetto. In his anxiety he calls his lack of *verecundia* [shame/modesty]: scientificity. Poor, lost *Emancipado*.”¹³⁹ This remark is followed by a reference to Arendt’s mention, in *Origins*, of Isachar Falkensohn Behr, the first modern Jewish poet writing in German.¹⁴⁰ Schmitt, in a tone of amusement, quotes a review of this work by Goethe from 1772 in which the latter points out the supposed mediocrity of Behr’s poetry if compared to non-Jewish German authors; the entry suggests that Schmitt sees Goethe’s judgment as applying to Arendt’s own work.¹⁴¹ Schmitt then adds, “Goethe belongs in front of the denazification tribunal [*Spruchkammer*]. Crime against humanity.”¹⁴² If read in light of the stigmata that Schmitt drew on Arendt’s face on the cover of *Eichmann in Jerusalem*, the 1951 *Glossarium* entry on Arendt provides a key for interpretation insofar as it contains an anti-Semitic account of converted Jews who, in Schmitt’s view, had cunningly infiltrated throughout modern history.¹⁴³ Within Schmitt’s imagined genealogy of converted Jews, Arendt (who never converted) stands in a tradition of hidden Jewish influence that includes Benjamin Disraeli, Friedrich Julius Stahl (whom Schmitt calls “Fr. J. Stahl-Jolson”¹⁴⁴), and Heinrich Heine.¹⁴⁵

Inside the cover of *Eichmann in Jerusalem* Schmitt glued a letter to the editor of the *Frankfurter Allgemeine Zeitung*, dated 29 November 1963, by no other than Robert Kempner, the American prosecutor who had interrogated him in Nuremberg in 1947, who, under the remarkable title “Jüdische Dolchstoßlegende” [Jewish Stab-in-the-Back Myth], now accused Arendt of insulting the memory of killed Jews.¹⁴⁶ Kempner argued that *Eichmann in Jerusalem*

¹³⁸Tielke, *Schmitt und Sombart*, 47.

¹³⁹Carl Schmitt, *Glossarium*, 252. Thanks are owed to Samuel Zeitlin for this valuable reference.

¹⁴⁰Cf. Arendt, *Origins of Totalitarianism*, 58.

¹⁴¹The review is mentioned by Arendt but Schmitt took the initiative to look it up in Goethe’s *Collected Works (Sämtliche Werke)*, published with Hesse & Becker Verlag. “Wie reizend: Gedichte eines polnischen Juden, Mietau und Leipzig 1772, besprochen von Goethe (Hesse 30, S. 25): ‘Es ist recht löblich, ein polnischer Jude zu sein, der Handelschaft entsagt, sich den Musen weihen, Deutsch lernen, Liederchen ründen; wenn man aber in allem zusammen nicht mehr leistet, als ein christlicher Etudiant en belles lettres auch, so ist es, deucht uns, übel getan, mit seiner Judenschaft ein Aufsehen [zu] machen ... und das alles so ohne Gefühl von weiblichem Wert.’” (“How lovely: Poems of a Polish Jew, Mietau and Leipzig 1772, reviewed by Goethe (Hesse 30, p. 25): ‘It is rather praiseworthy to be a Polish Jew who bids the trading farewell, dedicates himself to the muses, learns German, makes small songs; but if one overall does not achieve more than a Christian étudiant en belles lettres [student of the arts] would have done as well, then we get the feeling that one does badly if one makes a big deal out of one’s Jewishness ... and all of that without a feeling for female value.” Schmitt, *Glossarium*, 252.

¹⁴²Ibid.: “Goethe gehört vor die Spruchkammer, Verbrechen gegen die Menschlichkeit.”

¹⁴³Ibid., 253.

¹⁴⁴Ibid. Already in his Nazi-era work on Hobbes’s *Leviathan*, Schmitt had placed Stahl at the center of an anti-Semitic story about a hidden lineage—from Spinoza, passing through Marx and Heine to Schmitt’s own present—of converted Jews undermining sovereignty. *Glossarium* notes and archival evidence suggest that Schmitt saw Arendt in this Jewish tradition of anti-sovereign subversion. Cf. Carl Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines politischen Symbols* (1938) (Stuttgart, 1982), 108.

¹⁴⁵Schmitt, *Glossarium*, 253, including the reference to Stahl. For a separate entry that places Arendt alongside Heine, see *ibid.*, 268, 22 Dec. 1951.

¹⁴⁶Robert M. Kempner, “Jüdische Dolchstoßlegende,” *Frankfurter Allgemeine Zeitung*, 29 Nov. 1963, 10.

would be “a book full of errors and misrepresentations of historical, juridical, and administrative facts,” and that “basic documents on the ‘Final Solution’ remained unknown to her,” which Schmitt underlined.¹⁴⁷ But while he might have agreed with Kempner that *Eichmann in Jerusalem* was riddled with errors, he nevertheless seemed to have objected to the idea that Arendt somehow excused Eichmann and placed the blame on Jewish victims. For Schmitt, the opposite was true, as in his eyes Arendt was an *Eichmannjägerin*—a “hunter for Eichmann.”

More substantial commentary on Arendt’s argument can be found in Schmitt’s German copy of *Eichmann in Jerusalem*.¹⁴⁸ As he read the book against the backdrop of his potentially self-incriminating arguments on crimes against humanity, he again seemed to have turned to Arendt in a search for material in building a defense strategy. This is evident from the close interest he paid to a passage in which Arendt called Hitler “the only lone plotter of the Final Solution,” copying the phrase onto the book cover, underlining the translation (“*Hitler, den einen alleinigen Anstifter der ‘Endlösung’*”) and noting “the only lone plotter” in English.¹⁴⁹ In a passage in which Arendt cites Schmitt’s student Otto Kirchheimer as arguing that “non-participation in public life” could be “the only criterion by which one might have measured individual guilt” and “Professor [Hermann] Jahrreiss” (defense attorney in Nuremberg) with the words that an “inner emigrant” would be the one who lived “like freezing and an outcast from his own people,” Schmitt seemed to recognize himself in these descriptions.¹⁵⁰ He wrote the page numbers and the words “fröstelnd und wie ausgestorben” (“freezing and as if dead”) on the front cover and commented “Zeugen” (“witnesses”) in the margins, which suggests that Schmitt saw Kirchheimer and Jahrreiss as potential defense witnesses for himself.¹⁵¹

What stands out in Schmitt’s marginalia is thus a back-and-forth between the meticulous creation of a personal defense archive, on the one hand, and clear evidence of an obsession with anything Jewish that occasionally culminates in violent scribbles, on the other. Some of the marginalia even suggest that Schmitt took some delight in maneuvering between high-cultural scholarliness and references to bestiality. On the inside cover of his German copy of *Eichmann in Jerusalem*, Schmitt quoted from the poem “Die Jagd” (1841/2) (“The Hunt”)¹⁵² by Annette von Droste-Hülshoff, the Romantic poet, author of the 1842 novella *The Jews’ Beech Tree* (*Die Judenbuche*) and, like himself, a native of Westphalia, describing a fox hunt.¹⁵³

¹⁴⁷The German copy similarly contains a newspaper clipping: a report, dated 1968, that the publication of a book by Isser Harel (former head of Mossad) about the search for Eichmann could not move forward due to censorship by the Israeli government. Landesarchiv NRW, RW 265, No. 23461.

¹⁴⁸Schmitt marginalia in Hannah Arendt, *Eichmann in Jerusalem* (Munich, 1964), Landesarchiv NRW, RW 265, No. 23461.

¹⁴⁹Schmitt marginalia in Arendt, *Eichmann in Jerusalem*, Landesarchiv NRW, RW 265, No. 23461, 193.

¹⁵⁰Schmitt marginalia in Arendt, *Eichmann in Jerusalem*, Landesarchiv NRW, RW 265, No. 23461, 164–65.

¹⁵¹Schmitt marginalia in Arendt, *Eichmann in Jerusalem*, Landesarchiv NRW, RW 265, No. 23461, 165.

¹⁵²Schmitt marginalia in Arendt, *Eichmann in Jerusalem*, Landesarchiv NRW, RW 265, No. 23461. The poem can be found in Annette von Droste-Hülshoff, *Historisch-Kritische Ausgabe: Werke/Briefwechsel I/1*, ed. Winfried Woesler (Tübingen, 1978), 36.

¹⁵³The anti-Semitic dimension in Schmitt’s appreciation of Droste-Hülshoff’s poetry is supported by the fact that he cited her name in his 1933 article “Die deutschen Intellektuellen,” in which Schmitt endorsed

Hängt den Schelm! Hängt den Schelm! Hängt ihn an die Weide!
 Mir den Balg und dir den Talg, dann freu'n wir uns alle beide. 21. 11. 64¹⁵⁴
 [Hang the rogue! Hang the rogue! Hang him on the willow tree!
 I take the skin and you take the meat, and then we will both be happy!]

Droste-Hülshoff's poem is characterized by a slow buildup of several stanzas that gives a vivid sense of barking dogs and gunshots disturbing the calm scenery of a rural Westphalian landscape.¹⁵⁵ But in Schmitt's imagination, *he* was the fox being hunted—and Arendt was out there, looking to outsmart him.

Alone in his Plettenberg study, Schmitt saw himself involved in a chase thriller: he was the protagonist of a battle with enemy forces, obliging him to find weapons for self-defense. The stakes were global. While there is no direct evidence that Schmitt knew Arendt's controversial essay on Little Rock,¹⁵⁶ he nevertheless associated her name with debates on white supremacy around the world. In his copy of *The Burden of Our Time*, Schmitt collected newspaper articles (in English and French) from March 1956 on the desegregation of the American South, underlining a passage that referred to *Brown v. Board of Education* as a “*net abus du pouvoir judiciaire*” (“clear abuse of judiciary power”) and placing an X next to the notion “*séparés, mais égaux*” (“separate but equal”).¹⁵⁷ Schmitt kept these reports inside the same Arendt book, next to an article on D. F. Malan, the prime minister of South Africa and one of the chief architects of the apartheid regime. Malan is mentioned in Arendt's *Origins/Burden*, where she notes that “when Mr. Malan introduced into Parliament a bill to expel all Jews from the Union he had the enthusiastic support of all poor whites and of the whole Afrikaner [*sic*] population.”¹⁵⁸ Schmitt cut out an article on the figure of Malan, entitled “Malan klagt England an” (“Malan accuses England”), dated 6 March 1956, in which the white-supremacist politician is cited as arguing that when the British Commonwealth only consisted of five member states, “the situation was easier, because the basis for solidarity was still there, which is to say common interest and the necessary homogeneity.” Schmitt underlined “*notwendige Homogenität*” in seeming agreement.¹⁵⁹

The juxtaposition of articles on desegregation and apartheid to Arendt's account of anti-Semitism in South Africa might further imply that Schmitt imagined her as a Jewish ally to black struggles against white rule.¹⁶⁰ Probably unfamiliar with

the Nazi book burning and contrasted the “un-German” Heine with Droste-Hülshoff. Carl Schmitt, “Die deutschen Intellektuellen,” *Westdeutscher Beobachter* 9/126 (1933), 1–2, at 1. Reprinted in Josef Becker and Ruth Becker, eds., *Hitlers Machtergreifung 1933: Vom Machtantritt Hitlers 30. Januar 1933 bis zur Besiegelung des Einparteienstaates 14. Juli 1933* (Munich, 1992), 323–5, at 324.

¹⁵⁴Schmitt marginalia in Arendt, *Eichmann in Jerusalem*, in Landesarchiv NRW, RW 265, No. 23461, inside cover.

¹⁵⁵For a helpful analysis of Droste-Hülshoff's poem see Gertrud Bauer Pickar, *Ambivalence Transcended: A Study of the Writings of Annette von Droste-Hülshoff* (Columbia, SC, 1997), 163–235, esp. 218 f.

¹⁵⁶Hannah Arendt, “Reflections on Little Rock,” *Dissent* 6/1 (1959), 45–56.

¹⁵⁷Schmitt clippings and underlinings in Arendt, *Burden of Our Time*, Landesarchiv NRW RW 265, No. 22551.

¹⁵⁸Arendt, *Burden of Our Time*, 205, Landesarchiv NRW RW 265, No. 22551.

¹⁵⁹*Ibid.*

¹⁶⁰The *Glossarium* entry on 22 Dec. 1951 approvingly compares Arendt's description of South African “race society” to nineteenth-century anti-Semitism against emancipated Jews. Schmitt thereby places Jews

Arendt's writings on desegregation,¹⁶¹ his intuitions seemed to have followed a racial logic in which Arendt's work on totalitarianism became associated with contemporary challenges to apartheid and segregation. As his elaborate archive suggests, Schmitt placed his obsession with Arendt in the context of a global conflict—that of a race war in which Schmitt, from the relative comfort of Plettenberg, fought in constant fear of Jewish revenge—of being “hanged,” and “burnt,” and disposed of like Eichmann.

Conclusion: “Nobody can catch up with me”

Carl Schmitt did not engage in a “hidden dialogue” with Hannah Arendt. Instead, his bizarrely meticulous Arendt collection suggests that his reading had little to do with an attempt at understanding. Arendt's work was a source of great interest for him, to be sure, even fascination, as Schmitt collected her works on totalitarianism and read them attentively in both German and English. But none of this reading managed to alter the fact that Schmitt, the anti-Semite, saw Arendt as a “lost ... European Jew outside the Ghetto,”¹⁶² and feared her as an enemy who had “won” the battle and who was still out there, on the hunt, waging an undecided war over life and death. The fearful self-enclosure of Schmitt's intellectual universe was noted by Arendt in a comment in *Ex Captivitate Salus* from 1947. Next to Schmitt's passage “Whom in the world can I acknowledge as my enemy? Clearly only him who can call me into question. By recognizing him as enemy I acknowledge that he can call me into question,” Arendt noted, “Wer mich in Frage stellt, ist mein Feind!” (“The one who puts me into question is my enemy!”)¹⁶³ More generous readers might insist that in the same passage in *Ex Captivitate Salus*, Schmitt clarifies that, as a jurist, in contrast to theologians, he did *not* believe that the enemy “must be destroyed”: recognition as an enemy would involve a form of respect.¹⁶⁴ At least on some level, it might have also been this kind of respect that found its expression in the deep interest that Schmitt had for Arendt's writings—an antagonistic interest that would be mischaracterized by the language of a “dialogue.” “I think *myself*, therefore I am doubled, 2x, divided. *I am the thought* (the one who is thought). *I think my enemy*, therefore we are not two but *one*. The enemy is 1) the Other, 2) my equal. I think therefore I am *not* (safe) because I am put in danger by *my equal*,” Schmitt wrote in the note dated 5 August 1969 and 31 May 1971, which he attached to his comments on Arendt's Benjamin essay.¹⁶⁵

As the first part of this article emphasized, there is a critical theory of depoliticized law to be recovered from Schmitt's defense writings, which in many points

and black Africans alongside each other and in opposition to white Europeans and South African Boers. Schmitt, *Glossarium*, 268.

¹⁶¹Cf. Kathryn T. Gines, *Hannah Arendt and the Negro Question* (Bloomington, 2014).

¹⁶²Schmitt, *Glossarium*, 252.

¹⁶³Arendt marginalia in Schmitt, *Ex Captivitate Salus*, 89, at www.bard.edu/library/arendt/pdfs/Schmitt-Captivitate.pdf (accessed 7 Feb. 2021).

¹⁶⁴*Ibid.*

¹⁶⁵Max Planck Society Archives Berlin, Va/013 Va. Abt., Rep. 13 Sammlung Carl Schmitt, No. 7: “Ich denke *mich*, also bin ich doppelt, 2x, geteilt, *ich bin das* (der) *Gedachte*. *Ich denke meinen Feind*, also sind wir nicht zwei, sondern *Eins* oder *Einer*. Der Feind ist 1) der Andere, 2) meinesgleichen. Ich denke, also bin ich *nicht* (sicher), denn ich bin gefährdet durch *meinesgleichen*.”

echoes Arendt's account of the "banality of evil." Both Schmitt and Arendt understood totalitarian crime as the product of a bureaucratized society, tracing Nazi atrocities not to the *diversion* from morality or the *erosion* of norms but to the all-too-smooth *functioning* of administrative procedures. This theoretical agreement might partially account for Schmitt's documented enthusiasm for *Eichmann in Jerusalem*, which he called an "exciting" book. Yet Schmitt also found Arendt's work sickening, as it brought back the memory of his *Schlussbemerkung* to his 1945 Flick memo. In this closing statement, Schmitt condemned the "inhumanity" of Nazi crimes in clear terms and demanded that perpetrators should be put on trial in an international criminal court. At least in this brief moment of a paid legal brief, Schmitt affirmed that those responsible in the *scelus infandum* of the Holocaust should be brought to justice in the name of humanity—even if this turned them into "outlaws."

But whereas Schmitt developed this argument with a strategic intent, in order to distinguish private citizens from state officials and crimes against humanity from the (non-)crime of aggressive warfare, he must have realized later (certainly upon Flick's conviction) that with the category of the "outlaw" he had also opened up a dangerous line of argument against himself. This led Schmitt to turn to Arendt's *Origins* and *Eichmann in Jerusalem* not in the spirit of dialogue but through the dual lens of anti-Semitism and the self-interested search for passages that might help his own defense. The metaphor that connects his 1945–7 notes with his marginalia is that of the hunt: Schmitt as the fox and Arendt as the hunter. Already in *Ex Captivitate Salus*, this imagery appears in a prison note from 1946: "How a person is supposed to behave in the position of hounded game is a sad problem in itself. I will say no more of it."¹⁶⁶ Arendt, in her copy, underlined this passage and remarked, "Hat offenbar nie zu den Hetzern gehört" ("Apparently he never was part of those who were doing the hunting").¹⁶⁷

Schmitt's marginalia on Arendt thus confirm the persistence of his anti-Semitism years after the war: an anti-Semitism which had already become visible in his posthumously published diaries, the *Glossarium*, but which all too often is still reduced to a footnote when contemporary theorists "rediscover" Schmitt's insights. His notes on Arendt show yet again that he continued to be obsessed with Jews and Jewishness in a way that his public persona after the war could not risk revealing; and as Arendt stressed on multiple occasions, *persona* signifies "mask" in Latin.¹⁶⁸ But what emerges from Schmitt's attentive Arendt readings is also the narcissistic passion of a man who, even if only in his imagination, had never retired from politics. Schmitt kept fighting his enemies in the margins of his book collection, trying to escape the fate of Eichmann and preparing his defense. In 1948, after his release from a Nuremberg prison and a move to his two sisters' cramped attic apartment in Plettenberg, he wrote,¹⁶⁹ "Nobody can catch up with me, because I am moving at high speed, but I am not fleeing from

¹⁶⁶Schmitt, *Ex Captivitate Salus*, 77.

¹⁶⁷"Wie sich ein Mensch in der Lage des gehetzten Wildes zu verhalten hat, ist ein trauriges Problem für sich. Ich will nicht weiter darüber sprechen." Arendt marginalia in Schmitt, *Ex Captivitate Salus*, 77.

¹⁶⁸Cf. Ayten Gündoğdu, *Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggle of Migrants* (Oxford, 2015), 99–101.

¹⁶⁹Cf. Van Laak, *Gespräche in der Sicherheit des Schweigens*, 33.

my enemies. How should they be able to catch up with me?”¹⁷⁰ Half delirious, Schmitt pictured himself both at high speed and deeply rooted: not fleeing from his enemies and yet constantly on the run.

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¹⁷⁰Schmitt, *Glossarium*, 15 Aug. 1948, 190.