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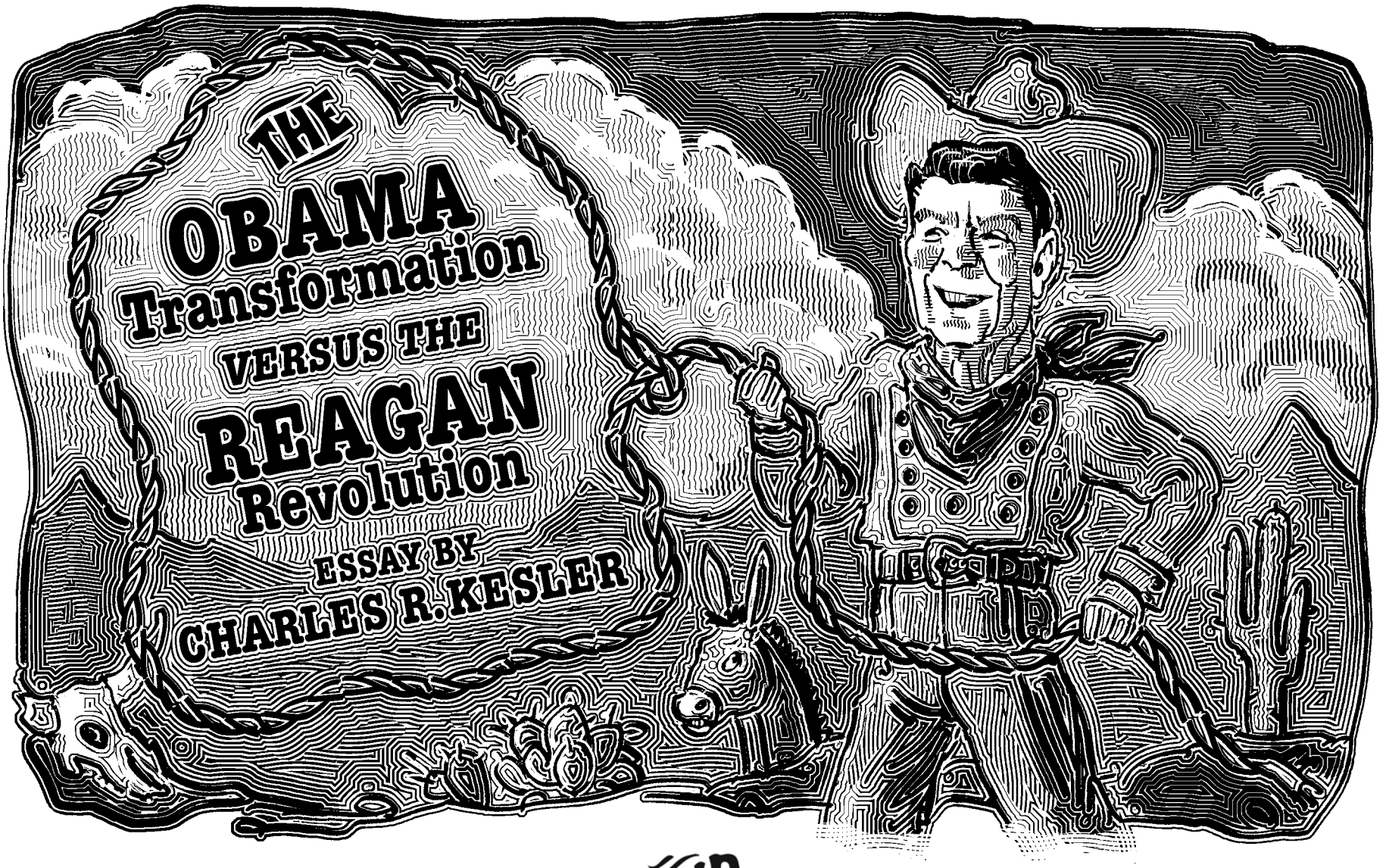

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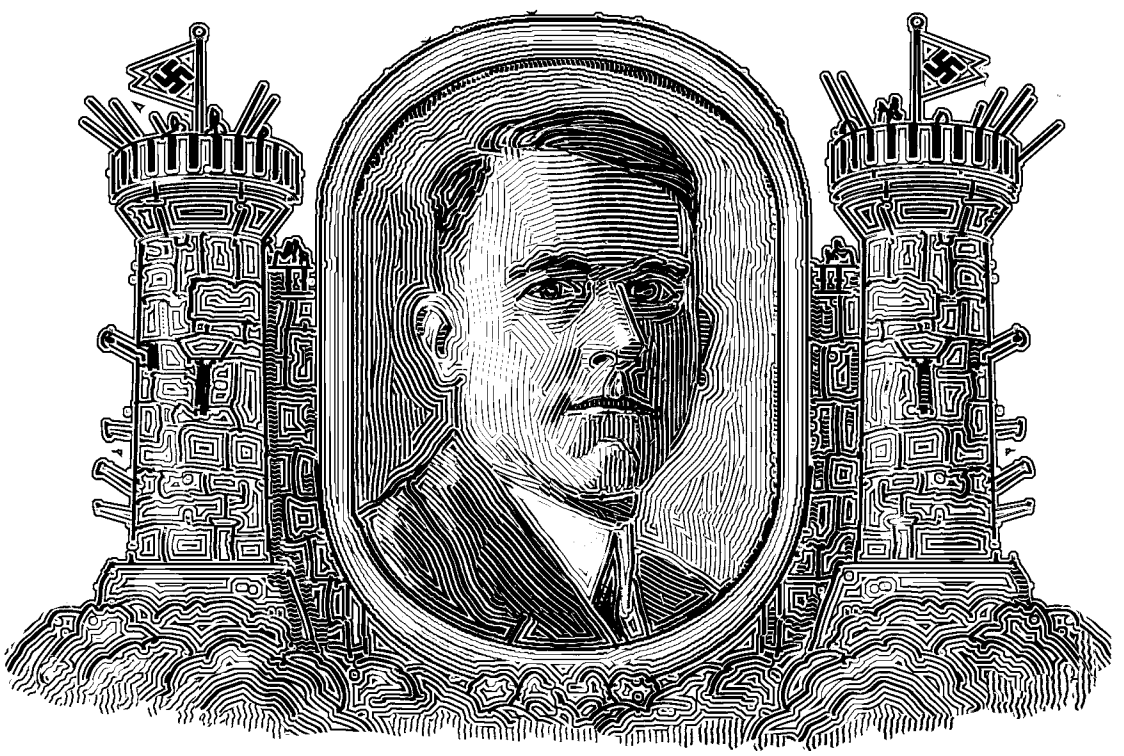
Book Review by Benjamin Balint

The Nazi Jurist

Carl Schmitt: A Biography, by Reinhard Mehring, translated by Daniel Steuer.
Polity, 700 pages, $45



In april 1933, carl schmitt, germany's most brilliant jurist and political theorist, joined the Nazi Party. The next month, he published a piece laying the groundwork for the forced expatriation of German intellectuals (including Albert Einstein). "Germany has spat them out for all time," he wrote. Several months later, Hermann Göring, whom he had called "maybe the right type for these times," appointed Schmitt to the Prussian State Council. Shortly thereafter, Schmitt became president of the Union of National Socialist Jurists.

A decade earlier, he had dismissed Hitler as "a hysteric." But after "The Night of the Long Knives" in June 1934—the murderous purge that consolidated Hitler's power—Schmitt published "The Führer Protects the Law," a vindication arguing that Hitler's act "was itself the highest justice." "The Führer protects the law against the worst forms of abuse," he explained, "when in the moment of danger, he immediately creates law by force of his character as Führer as the supreme legal authority." He then celebrated the Nuremberg laws as a return to "German constitutional freedom." "The National Socialist state is a just state," he announced.

Finally, to bolster his reputation as "crown jurist" of the Third Reich and further ingratiate himself with the regime, he convened in October 1936 a conference on purging German jurisprudence of Jewish influence. In his opening speech, he blamed the Jews for "the systematic hollowing out of the healthy, *völkisch*-German thinking of the state." He also called for the "purification of libraries," including a separate system of citation for Jewish authors.

In the first comprehensive biography of Carl Schmitt to appear in English, Reinhard Mehring inquires how a man—and by extension a society—comes by stages to turn law from a restraint on power into a tool of terror, a means of expulsion and ultimately of extermination.

A political science professor at Heidelberg University of Education, Mehring proceeds by shading in Schmitt's enduring obsessions and drives, which bleed into one another like morbid watercolors. The first obsession fused the psychological with the juridical. In 1910, Schmitt, born to a conservative Catholic family of modest background, completed his doctorate in law with a dissertation, "On Guilt and Types of Guilt." "The theme of 'guilt,'" Mehring writes, "stood at the beginning of his work, a fact not without interest in the case of someone who became implicated in guilt and was later hardly ever able to admit it."

Schmitt's earliest guilt, in Mehring's telling, swirled around his compulsive sexuality. His first wife, Cari Dorotić, was a vaudeville dancer who claimed to be a countess. His friends, dismissing her as a "Tingel-Tangel girl," tried to dissuade him from marrying her. Only in 1922, ten years after meeting her, did he discover that she was an imposter, an illegitimate daughter of a craftsman who had faked her aristocratic background. He obtained an annulment of the marriage from the state authorities on the grounds of willful deceit and promptly fell in with the translator at his divorce proceedings (which involved

evidence from Croatia of Dorotić's imposture), a Serbo-Croatian 19-year-old named Duška Todorović, who would become his second wife. Living in what Mehring calls an "erotic state of exception," Schmitt continued his hectic promiscuity with several mistresses, and kept a diary of his "ejaculations."

Guilt and eros combined for Schmitt in Carl Theodor Dreyer's silent movie *The Passion of Joan of Arc*. With an almost sadistic use of close-ups, Dreyer depicts the doomed heroine, a daughter of God charged with being a child of the devil, as she pleads that she has fought only for God and country. In 1928, Schmitt watched the film a dozen times. Mehring reports that on several occasions, in both Berlin and Rome, he picked up a prostitute to watch it with him. It seems that his longing for redemption from his own psychic turmoil fueled a need for a higher, absolute obligation, which could only come from a commitment to the law promulgated by God or by the state.

Schmitt's second lifelong obsession compelled him to find in the state an answer to that need. Early on, he affirmed that the individual only attains dignity in the state, specifically in its demand for self-transcending self-sacrifice. His book *The Value of the State and the Significance of the Individual* (1914) comes down decidedly on the side of the former. He inverts the notion that "we the people" precedes and legitimates a state that exists to serve individuals.

As he launched a university career that would take him to posts in Greifswald, Bonn, Berlin, and Cologne, he began to examine what he called "the antiquated alliance between the throne and the altar." His early works, like *Political Theology* (1922), were explicitly theological. "All significant concepts of the modern theory of state," he writes there, "are secularized theological concepts."

Given that "all genuine political theories presuppose man to be 'evil,'" as Schmitt said, men need a strong (or theologically sanctioned) state. He took Thomas Hobbes to mean that it is authority and not truth that makes the law. As he made his name as a scholar of constitutional law in the Weimar era, Schmitt stressed that the legal order ultimately rests on the authoritarian decisions of the sovereign, who has "the power to decide on the exception," and who alone can meet the needs of an exceptional time of emergency. Those decisions need not be justified themselves in rational or moral terms. He compared the sovereign ruler's suspension of law (when "the power of real life breaks through") to God's interruption of natural law through miracle. Turning the liberal project on its head, he theorized not the creation of law, but its suspension.

Schmitt was far from alone in seeing Weimar as the paradigm of an enfeebled, sovereignty-less state. But he was well positioned to take advantage of the widespread proclamations of the death of the liberal democratic idea. (Mehring, accentuating Schmitt's opportunism, calls him a Zeitgeistsurfer.) He had already attacked parliamentary government in *The Crisis of Parliamentary Democracy* (1923). By the late 1920s he had come to admire Italian fascism. "The fascist state, with the honesty of the classical age, wants to be a state again." (In 1936, he had a private audience with Mussolini in the Palazzo di Venezia in Rome to talk about the relationship between party and state. "The conversation with him was a great intellectual pleasure," Schmitt reported without irony.)

But what exactly is a state, in Schmitt's view? "The concept of the state presupposes the concept of the political," he declared in *The Concept of the Political* (first published as an article in 1927, then significantly revised in 1932 and 1933). To understand the state is to understand the political, and, for Schmitt, at the essence of the political is the distinction between friend and enemy. He argued in *Roman Catholicism and Political Form* (1923) that the Catholic Church was inherently political and at least knew how to make alliances and declare enemies.

Political enmity (as inescapable as the enmity between God and Satan) culminates in war, "the most extreme realization of enmity." And we can expect the most extreme manifestation of war, "the definitively final war of humanity," to be necessarily brutal, because it will involve an enemy "that must be not only fended off but definitively annihilated." What Schmitt expected to be annihilated is not only the external enemy, but the pluralism and individualism that stand in the way of internal homogeneity.

The political philosopher Leo Strauss, who corresponded with Schmitt, commented that "Schmitt restores the Hobbesian concept of the state of nature to a place of honor." Schmitt turned Hobbes's "war of all against all"—the pre-political lawlessness of the state of nature (which Hobbes wished to escape)—into the inescapable essence of the political.

Hobbesian liberals, claimed Schmitt, have obscured or forgotten or repressed that essence. In assuming that man is perfectible, that humanity can overcome political enmity, they blind themselves to the antagonistic nature of politics, fail to distinguish properly between friends and enemies, and avoid fundamental political decisions. In subordinating politics to morals, law, economics, and entertainment, liberals deny what Schmitt called "the dignity of the state." In seeking to subject political power to a system of moral norms, as for example codified in a constitution, they indulge in a fiction. Hence his belief that the passage from the state of nature to civil society had produced depoliticized, unserious, and uncourageous men. Liberalism, he concluded, is the negation of the political.

Which brings us to a third obsession, which cast its silhouette most sharply over Schmitt's life. His abject anti-Semitism drew not from racial sources but from his anti-liberal convictions. Although Jews may not always be liberal, their historic lack of a state of their own had taught them to instinctively cloak their interests in universalist, egalitarian rhetoric. "[T]heir concrete situation among the other peoples forces them nevertheless to declare the ideas of 1789 as sacrosanct." For Schmitt, Jews (as liberals *par excellence*) are not so much the political enemy as the enemy of politics.

Historian Raphael Gross, in an important 2007 book, *Carl Schmitt and the Jews*, already laid bare the profound affinities between Schmitt's anti-Semitism and his political theory. Although Schmitt's published writings show signs of explicit anti-Semitism only after 1933, Mehring draws on his early diaries, written between 1912 and 1915, to show that Schmitt suffered long before from what he himself called his "Jewish complex." By the 1920s, this had curdled into delusions of persecution. In 1925, for instance, he complained about "the ridiculous situation that Wittmayer, Stier-Somlo, Mendelssohn-Bartholdy, and Nawiasky—four Jews against one Christian—attack me in all the journals, and no one notices what is going on." The same year, when a Jewish professor came up for appointment at the University of Bonn, Schmitt wrote a report to torpedo the hiring of the "disgusting, craven, dilettante Jew." On meeting the renowned sociologist Karl Mannheim in 1931, Schmitt commented: "Horrible, wretched Eastern Jew."

By the early '30s, as he moved from scholarship into polemics, Schmitt no longer directed his counter-revolutionary fervor against Weimar anarchism. "He now interpreted the situation in openly anti-Semitic terms as a 'battle against the Jewish spirit,'" Mehring writes. His friend-enemy distinction now fed into the contrast he drew between the homogeneous German *Volk* and the "alien" Jew. He hastily

severed his friendships and associations with Jews, including his longtime publisher, Ludwig Feuchtwanger, and the young scholar of Hobbes and Spinoza, Leo Strauss (whom he had recommended to the Rockefeller Foundation for the fellowship that allowed Strauss to leave Germany a year before).

Mehring shows that Schmitt's crude views on the Jews predated the Third Reich, and outlasted it. "Jews always remain Jews," Schmitt writes in his *Glossarium*, an intellectual diary he kept between 1947 and 1958, "while a Communist can improve and change…. The true enemy is the assimilated Jew." When his former friend Eduard Rosenbaum came out with a critical review of a book Schmitt published in 1950, Schmitt called it shameful "to subject a German Catholic to the categories of a Jewish emigrant."

Schmitt needed the nazis, as it turned out, more than the Nazis needed Schmitt. A casualty of bureaucratic infighting, his personal influence waned from 1936 on. "Totalitarianism in power," Hannah Arendt wrote of him, "invariably replaces all first-rate talents, regardless of their sympathies, with those crackpots and fools whose lack of intelligence and creativity is still the best guarantee of their loyalty."

He retained his prized professorship at the University of Berlin until the end of the war, but even those politically sympathetic to him thought he had discredited himself. "Upon the ascent of illegitimate powers," his friend Ernst Jünger wrote, "the position of the crown jurist becomes vacuous, and the attempt at filling it is made at the expense of one's good reputation."

Schmitt was arrested by American forces in September 1945 and detained for more than a year. He told his wife that he refused to become "demoralized or dejected like so many of the others." In March and April 1947, he was put into custody a second time; this time he was brought to Nuremberg by assistant U.S. chief counsel Robert Kempner, who interrogated him four times over five weeks. Schmitt presented himself not as an apologist for authoritarianism but merely as an "intellectual adventurer."

"I wanted to give the term National Socialism my own meaning," Schmitt said.

Kempner: "Hitler had a National Socialism and you had a National Socialism."

"I felt superior."

"You felt superior to Adolf Hitler?"

"Intellectually, of course. He was to me so uninteresting that I do not want to talk about that at all."

"When did you renounce the devil?" Kempner asked.

"1936."

After his release, Schmitt refused to let himself be questioned again about National Socialism. "[A]ppalled by public rituals of confession and repentance," Mehring writes, Schmitt would maintain marmoreal silence about the Holocaust to his dying day.

In May 1947, the unrepentant and embittered Schmitt returned to his native Plettenberg to regroup, never again to set foot in Berlin. Comparing himself to "a U-boat that continuously rebuilds itself," he attempted a comeback. Although he was permanently stripped of his professorship, editors of major newspapers, including *Die Zeit* and *Der Spiegel*, opened their pages to his contributions.

Beginning in the 1960s and '70s, Schmitt's home in Plettenberg became a kind of pilgrimage site. A generation of postwar political thinkers accorded him recognition as the 20th century's most penetrating critic of the liberal state too frail to confront powerful illiberal enemies. Unlikely correspondents—including Raymond Aron and Alexandre Kojève—helped give his work a renewed lease on life and heralded a surge of fascination of which Mehring's monumental biography is but the latest example. Some, like Jacob Taubes, took Schmitt as a forerunner of political theology. Others appreciated Schmitt's prescience. Jacques Derrida, for instance, described him as a "terrified and insomniac watcher," lucid enough to see the coming political storms. Still others took to Schmitt's realism. Ulrich Preuss, one of present-day Germany's foremost liberal jurists, argued that "no one has formulated the anti-liberal alternative to the modern constitutional state as clearly, tersely, and pitilessly."

Since Schmitt's death in 1985, Hans Morgenthau, Giorgio Agamben, Jürgen Habermas, and Paul Kahn have each engaged deeply with Schmitt's thought.

By coloring in Schmitt's overlapping obsessions, Reinhard Mehring aims to portray his subject's life "as a paradigmatic story from a crisis-ridden time." In describing "a theoretician of political myths," as Mehring calls him, who succumbs to a most vulgar myth, the author unsparingly avoids the apologetic tones of Joseph Bendersky's *Carl Schmitt: Theorist for the Reich* (1983), which credits Schmitt with valiantly trying to save the Weimar Republic. But he also dispassionately steers clear of the interpretive hostility that marks *A Dangerous Mind* (2003), Jan-Werner Müller's look at Schmitt's influence on postwar European political thinking.

In its thin-lipped, hyper-factual style, deftly translated by Daniel Steuer, Mehring's biography, which originally appeared in German in 2009, is chiefly distinguished from its predecessors by the comprehensiveness of its scope and the attention it gives to the destiny of Schmitt's psychological drives (what Sigmund Freud called *Triebschicksal*). It is the first to draw on Schmitt's unpublished Weimar diaries.

Mehring never quite explains why Schmitt's critique of liberalism still resonates today, 30 years after his death, particularly in elite faculties of political theory and cultural studies. But this book excels above all as a study of a critic of political romanticism caught up in the most ruinous political fantasy.

Benjamin Balint is the author of a cultural history of Commentary *magazine,* Running Commentary: The Contentious Magazine that Transformed the Jewish Left into the Neoconservative Right *(PublicAffairs).*