

Faculty of Social Sciences  
University of Helsinki

**THINKING THROUGH THE TWENTIETH  
CENTURY WITH CARL SCHMITT AND  
HANNAH ARENDT**

ESSAYS ON POLITICS, LAW, AND TECHNOLOGY

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DOCTORAL DISSERTATION

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## ABSTRACT

This study analyzes and compares the political thought of Carl Schmitt (1888–1985) and Hannah Arendt (1906–1975). Consisting of six peer-reviewed articles and of a broad introductory/summary chapter, the study provides a series of critical interventions that offer novel analyses and comparisons of the works of Schmitt and Arendt. The research utilizes a broad array of research materials that have remained underused or unacknowledged in previous studies on the subject. The basic methodological starting point of the dissertation is the conviction that one must approach the works of Schmitt and Arendt from a holistic perspective – from a point of view that considers the writings of these authors in a historically contextualized manner while also being aware of the contents of their works as broader totalities. In analyzing and comparing the works of Schmitt and Arendt from this holistic point of view, the study combines insights and approaches from different fields of research ranging from political theory and political science to intellectual history and philosophy.

The first key contribution of the study is to re-examine Carl Schmitt's Nazi engagement between the years 1933 and 1945. The great plurality of the previous studies that examine Schmitt's thought and activities during the Nazi era have most often relied on a limited number of textual resources. Drawing on novel and recently published research materials – Schmitt's rarer writings, journals, correspondence, and other contemporary materials – the study examines in detail how Schmitt's thinking transforms after he joins the Nazi party in 1933. Through detailed readings of Schmitt's Nazi era works, the study demonstrates how and why Schmitt transforms from an authoritarian and conservative thinker sympathetic to Italian Fascism into a convinced Nazi – a transformation that is reflected in Schmitt's own concepts and terminology. The study illustrates how Schmitt's Weimar era "decisionism" gradually transforms into what he himself called "concrete order thought." This change is illustrated in two different ways: First, by examining the way Schmitt aims to develop a novel conceptual framework for Nazi legal science during and after 1933, and second, by exploring how Schmitt's openly political use of the reception history of Roman law changes from the 1920s to the 1940s. In analyzing Schmitt's Nazi engagement, the purpose of the study is to both to broaden our understanding of national socialism as a historical phenomenon and to make headway toward a more nuanced and holistic understanding of Schmitt's political thought.

The second main contribution of the dissertation is to offer a new interpretation of the intellectual relationship between Schmitt and Arendt. The basic starting point of virtually all existing comparative research on the topic has been the presumption that while Arendt both read and commented on Schmitt's works, Schmitt neither knew nor expressed his opinions about Arendt's political thought. The study demonstrates that the intellectual relationship of Schmitt and Arendt is, in fact, much more multifaceted than thus far presumed. By analyzing the contents of Schmitt's and Arendt's (reconstructed) personal libraries and the way both commented on each other's works, the study demonstrates that Schmitt was not only familiar with many of Arendt's central works, but that he also read and commented on them in his lesser-known writings, notebooks, and letters. Arguing against earlier studies on the subject and by relying on novel textual materials, the study reconstructs a discussion in absence between the political theories of Schmitt and Arendt, focusing on such topics as (Nazi) totalitarianism, political power, banality of evil and on such broader themes as the political meaning of language and race as a political concepts. Beyond theoretical comparisons, the study also draws novel biographical contrasts between the careers and lives of Schmitt and Arendt by utilizing their own autobiographical reflections and other relevant historical materials. In reconstructing this

discussion in absence between Schmitt and Arendt, the study seeks to offer a historically nuanced and contextualized interpretation of the different ways in which these authors understand the central political problems and crises of the first part of the twentieth century.

The third key contribution of the study is to analyze the question of technology in the postwar works of Schmitt and Arendt. The study argues that both thinkers came to develop an original narrative concerning the development of modern technology and its changing relationship to politics as a response to the major catastrophes of the twentieth century, Nazi totalitarianism in particular. In the case of Schmitt, the study examines in detail his prophetic and dystopic visions concerning the coming age of technological revolutions, whose nature Schmitt elaborates by drawing extensively on the canon of Western utopian and dystopian literature, ranging from Plato to Thomas More and Aldous Huxley. Bringing Schmitt's ideas into a discussion with the contemporary debates on biopolitics and posthumanism, the study examines Schmitt's dystopic claim that modern Western societies are standing at the threshold of a new era of technological totalitarianism defined by radical biomodification and the destruction of human nature itself. The study demonstrates that in distinction to Schmitt, Arendt argues that future technological development will eventually liberate human beings from the basic necessities of the realm of labor, thus laying the foundations for an entirely new kind of democratic politics. Arguing against much of the existing literature on Arendt and her much-debated analysis of the so called "social question," the study demonstrates that Arendt was not only profoundly concerned with the question of poverty, but that her ideas can be fruitfully interpreted as an early vision of what is today called basic income. Contrasting Schmitt's dystopic visions of the future with Arendt's opposing ideas on technology, the study aims to both deepen our understanding of the role of technology in the late works of Schmitt and Arendt and to augment our comprehension concerning the relationship of technology and politics in postwar European political thought.

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Before starting this Ph.D. project in Helsinki in early 2018, I was previously affiliated with the University of Jyväskylä, where my research was supervised by Professor Mika Ojakangas and Dr. Jussi Backman, of whom the latter was also previously my master's thesis supervisor. I am also greatly indebted to both for their vast knowledge, encouraging support and generous advice that I received

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In Kallio, Helsinki.  
October 28<sup>th</sup>, 2021

Ville Suuronen

# TABLE OF CONTENTS

1. Foreword: A lawyer and a political theorist in the twentieth century.....	1
2. General outline of the dissertation, research objectives, and research questions .....	3
3. Method, languages, and novel research materials .....	7
3.1. On language and translations .....	8
3.2. The research materials of substudies 1 and 2.....	9
3.3. The research materials of substudies 3 and 4.....	10
3.4. The research materials of substudies 5 and 6.....	10
4. Substudies 1 and 2: Re-examining Carl Schmitt's Nazi engagement .....	11
4.1. The apologetic image of Schmitt's Nazi engagement: A critique of George Schwab, Joseph Bendersky, and Andreas Koenen .....	14
4.2. Previous critical research and the novel contributions of substudies 1 and 2.....	20
5. Substudies 3 and 4: New comparisons of Schmitt and Arendt .....	26
5.1. Previous comparative studies of Schmitt and Arendt.....	26
5.2. The novel contributions of substudies 3 and 4.....	30
6. Substudies 5 and 6: Totalitarianism and technology in the postwar era.....	36
6.1. The question of technology in the works of Schmitt and Arendt .....	36
6.2. Previous research and the novel contributions of substudies 5 and 6 .....	37
7. Methodological appendix: An analytical overview of Carl Schmitt's publications from 1933 to 1936.....	41

# LIST OF ORIGINAL ARTICLE PUBLICATIONS

This thesis is based on the following publications:

- A1 “Carl Schmitt as a theorist of the 1933 Nazi revolution: ‘The difficult task of rethinking and recultivating traditional concepts’.” *Contemporary Political Theory* 20, 2021, 341–363. <https://doi.org/10.1057/s41296-020-00417-1>
- A2 “Mobilizing the Western tradition for present politics: Carl Schmitt’s polemical uses of Roman law, 1923–1945.” *History of European Ideas* 47:5, 2021, 748–772. doi: 10.1080/01916599.2020.1818115
- A3 “Carl Schmitt Reads Hannah Arendt: A Hidden Discussion on Totalitarianism, Power, and the Banality of Evil.” Manuscript. Revise and resubmit.
- A4 “Nazism as Inhumanity: Carl Schmitt and Hannah Arendt on Race and Language.” *New German Critique*. Accepted and forthcoming.
- A5 “The Rise of the Homme Machine: Carl Schmitt’s Critique of Biotechnology and Utopias.” *Political Theory* 48:5, 2020, 615–643. doi:10.1177/0090591719890831
- A6 “Resisting Biopolitics: Hannah Arendt as a Thinker of Automation, Social Rights, and Basic Income.” *Alternatives: Global, Local, Political* 43:1, 2018, 35–53. doi:10.1177/0304375418789722



## 1. Foreword: A lawyer and a political theorist in the twentieth century

It would be challenging to name two twentieth century political thinkers, who would have been as influential as Carl Schmitt (1888–1985) and Hannah Arendt (1906–1975). This fact is testified by an immense ocean of secondary literature that no single individual could study in its entirety. Fascinatingly, it is equally true that it would be very challenging to find two figures of a similar intellectual stature, whose lives would have been more different from one another than those of Schmitt and Arendt – a fact that is also clearly visible in the very different kinds of ways these two thinkers thought through the last century.

The two different ways in which Schmitt and Arendt witnessed, experienced, and thought through the twentieth century and its unforeseen political catastrophes can be fruitfully elaborated by examining how both understood their own thinking and rootedness into different intellectual traditions.<sup>1</sup> While Schmitt always understood himself as a *lawyer*, Arendt would highlight that she was a *political theorist*.

Schmitt was raised in the conservative and Catholic Rhineland and became an educated lawyer.<sup>2</sup> Although he had initially planned on studying philology, on the advice of his uncle, he eventually signed up to the faculty of law. After his studies began with an introduction to Roman law, with the *Corpus Juris* and the Latin language, Schmitt found it wonderful and decided to stay.<sup>3</sup> Consequently, Schmitt always maintained that he had “only always spoken and written as a lawyer (*Jurist*)”<sup>4</sup> and that a specifically “juridical way of thinking and speaking” had become ingrained into his “flesh and blood.”<sup>5</sup> As a “teacher and researcher” his intellectual home was in two particular fields of legal science; international law and constitutional law. And since both were fields pertaining to public law, they were necessarily exposed to questions of both domestic and international politics.<sup>6</sup> This was the “dangerous road of public law” that Schmitt would choose for himself, as he once describes his own field in a letter to his fellow constitutional lawyer, Rudolf Smend.<sup>7</sup>

Arendt, who was born in 1906, no less than a generation later than Schmitt, grew up in a secularized Jewish family. She “always knew” that she would study philosophy, ever since she was fourteen years

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<sup>1</sup> For more comprehensive biographical comparisons, I refer the reader to the broader biographical studies on Schmitt and Arendt. The best biography of Schmitt is Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall* (München: C.H. Beck, 2009). Other biographies include Paul Noack, *Carl Schmitt. Eine Biographie* (Berlin: Propyläen Verlag, 1993); Christian Linder, *Der Bahnhof von Finnentrop. Eine Reise ins Carl-Schmitt-Land* (Berlin: Matthes & Seitz, 2008). The best biography of Arendt is undoubtedly Elisabeth Young-Bruehl, *Hannah Arendt: For the Love of the World* (New Haven: Yale University Press, 2004). For other perspectives, see for instance Laure Adler, *Dans les pas de Hannah Arendt* (Paris: Gallimard, 2005) and Kurt Sontheimer, *Hannah Arendt: Der Weg einer grossen Denkerin* (München: Piper, 2005).

<sup>2</sup> For Schmitt’s own periodization and description of the various stages of his life see Carl Schmitt, *Glossarium. Aufzeichnungen aus den Jahren 1947 bis 1958* (Berlin: Duncker & Humblot, 2015), 370. On Schmitt as a lawyer, see especially the comprehensive work by Volker Neumann, *Carl Schmitt als Jurist* (Tübingen: Mohr Siebeck, 2015).

<sup>3</sup> Frank Hertweck and Dimitrou Kisosidis, eds., “*Solange das Imperium da ist*”: *Carl Schmitt im Gespräch 1971* (Berlin: Duncker & Humblot, 2011), 55.

<sup>4</sup> Schmitt, *Glossarium*, 13–4.

<sup>5</sup> Carl Schmitt, “Welt grossartigster Spannung”, in *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916–1969*, ed. Günter Maschke (Berlin: Duncker & Humblot, 1995), 513–517 (513).

<sup>6</sup> Carl Schmitt, *Ex Captivitate Salus. Erfahrungen aus der Zeit 1945/47* (Berlin: Duncker & Humblot, 2002), 55. Schmitt of course always emphasized that politics could never be reduced to law, because “the political ascends over the juridical” (Carl Schmitt, *Der Schatten Gottes. Introspektionen, Tagebücher und Briefe 1921 bis 1924*, ed. Gerd Giesler, Ernst Hüsmert and Wolfgang H. Spindler [Berlin: Duncker & Humblot, 2014], 400).

<sup>7</sup> Carl Schmitt and Rudolf Smend. “*Auf der gefahrenvollen Strasse des öffentlichen Rechts*.” *Briefwechsel 1921–1961*, ed. Reinhard Mehring (Berlin: Duncker & Humblot), 8.

old.<sup>8</sup> Consequently she would study philosophy, theology and the Greek language under Martin Heidegger, Rudolf Bultmann and Karl Jaspers. At the time when Arendt finished her dissertation *Der Liebesbegriff bei Augustin* (1929) on the concept of love in the thought of St. Augustine<sup>9</sup> and had begun to work on what would later become her biography of Rahel Varnhagen,<sup>10</sup> Schmitt had already established himself as one of the most prominent and original legal theorists in Weimar Germany.<sup>11</sup>

While the last years of the Weimar era marked the pinnacle of Schmitt's practical and concrete influence in German politics – first in the capacity of representing the state in the infamous *Preußen contra Reich* -trial<sup>12</sup> and then in the initial phases of the Nazi dictatorship under which Schmitt established himself as one of the leading intellectuals<sup>13</sup> – it was the catastrophe of the Nazi seizure of power in Germany that would make Arendt the political theorist she is known today.<sup>14</sup> With Adolf Hitler's rise to power during early 1933, Schmitt, the self-proclaimed “intellectual adventurer,” enthusiastically joined the NSDAP and attempted to give his “own meaning” to Nazi ideology,<sup>15</sup> while Arendt was not only compelled to conceptualize her own Jewishness in political terms, but ultimately also forced to flee the country, becoming a stateless refugee until receiving the American citizenship in 1951.<sup>16</sup>

While Schmitt celebrated the expulsion of Jewish intellectuals from Germany<sup>17</sup>, supported the Aryanization of German public life<sup>18</sup> and was most likely also present at a book burning event at the University of Cologne on the 17<sup>th</sup> of May 1933 in which the writings of Arendt were burnt<sup>19</sup>, Arendt

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<sup>8</sup> Hannah Arendt, “‘What Remains? The Language Remains’ A Conversation with Günter Gaus,” in Hannah Arendt, *Essays in Understanding 1930–1954: Formation, Exile, and Totalitarianism*, ed. Jerome Kohn (New York: Schocken, 1994), 1–23 (8); Hannah Arendt, “Fernsehgespräch mit Günter Gaus,” in Hannah Arendt, *Ich will Verstehen. Selbstausskünfte zu Leben und Werke*, ed. Ursula Ludz (München: Piper, 2012), 46–72 (55).

<sup>9</sup> As Jaspers reported to Heidegger in 1929, “the work as a whole did not turn out so brilliant as we had expected after the first part, but still philosophically good” (Martin Heidegger and Karl Jaspers, *Briefwechsel 1920–1963*, eds. Walter Biemel und Hans Saner [München: Piper, 1990], 121).

<sup>10</sup> Hannah Arendt, *Rahel Varnhagen. Lebensgeschichte einer deutschen Jüdin aus der Romantik* (München: Piper, 2013).

<sup>11</sup> On Schmitt and his influence in Weimar, see especially Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland. Weimarer Republik und Nationalsozialismus* (München: Piper, 2002), 37–245; Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham: Duke University Press, 2004); Stefan Breuer, *Carl Schmitt im Kontext. Intellektuellenpolitik in der Weimarer Republik* (Berlin: Akademie Verlag, 2012).

<sup>12</sup> Cf., David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (Oxford: Clarendon Press, 1997); Kennedy, *Constitutional Failure*; Mehring, *Aufstieg und Fall*, 281–302.

<sup>13</sup> Schmitt initially drafted the *Reichstatthaltergesetz* (1933) that unified the federal structures of the Weimar Republic into a unified German *Reich*; Carl Schmitt, *Reichstatthaltergesetz* (Berlin: Carl Lehmanns Verlag, 1933). For commentary on how this work formed the concrete pathway for Schmitt's way into the Nazi party, see Mehring, *Aufstieg und Fall*, 319–321.

<sup>14</sup> Arendt, “A Conversation,” 4–5; Arendt, “Fernsehgespräch,” 49–50. However, it is rarely noted that Arendt's self-definition as a political theorist would change in the last years of her life. By the time Arendt was working on the unfinished *The Life of the Mind*, she herself stated in a 1970 letter to Joachim Fest that “I have returned to philosophy a little bit” (Hannah Arendt and Joachim Fest, *Eichmann war von empörender Dummheit. Gespräche und Briefe*, eds. Ursula Ludz and Thomas Wild [München: Piper, 2013], 94). Arendt also made similar remarks to Hans Jonas during this same time (see Margaret Canovan, *Hannah Arendt. A Reinterpretation of her Political Thought* [New York: Cambridge University Press, 1992], 253). In fact, in a conference from January 1972 Arendt explicitly notes: “my field is rather something like political philosophy”; see Emilio Ambasz, ed., *The Universitas Project. Solutions for a Post-Technological Society* [New York: MoMA Publications, 2006], 373). Arendt's return to philosophy by 1972 is also noted by her biographer (Young-Bruehl, *For the Love of the World*, 327).

<sup>15</sup> It is in these terms that Schmitt described his own Nazi engagement when interrogated in Nuremberg after the war; Carl Schmitt, *Antworten in Nürnberg*, ed. Helmut Quaritsch (Berlin: Duncker & Humblot, 2000), 60, 65.

<sup>16</sup> Young-Bruehl, *For the Love of the World*, 113.

<sup>17</sup> Carl Schmitt, “Die deutschen Intellektuellen,” *Westdeutscher Beobachter*, IX, 126, 31. May 1933.

<sup>18</sup> Carl Schmitt, “Das gute Recht der deutschen Revolution,” *Westdeutscher Beobachter*, IX, 108, 12. May 1933.

<sup>19</sup> For more details on this event, see substudy 4 of this dissertation.

was forced to realize that the mere fact of being a Jew had become her “own problem” that was “purely political.” The Nazi seizure of power forced Arendt to realize something that would define her own political identity for the rest of her life: “If one is attacked as a Jew, one must defend oneself as a Jew.”<sup>20</sup> For the rest of her life, she would always emphasize that if she was forced to give up her political identity she would always define herself as a Jewess<sup>21</sup> – a fact that remains inextricably connected to her becoming a political theorist.

Whereas Schmitt offered his extraordinary intellectual capacities to the service of the Nazis, providing the regime with a “philosophical exaltation of the brutal reality,” as noted by the legal historian Michael Stolleis,<sup>22</sup> all of Arendt’s political thought would form as a “continued reflection upon totalitarianism” as Margaret Canovan aptly describes the matter.<sup>23</sup> This dissertation tells the story of how the lawyer Schmitt and the political theorist Arendt lived and thought through the major crises of the twentieth century, analyzing, in particular, the epochal crisis of National Socialism and its repercussions for European intellectual life. Taking its bearings from this historical context, the study examines and compares how Schmitt’s and Arendt’s political thinking became inextricably intertwined with the faith of Germany and the faith of Europe and its withering intellectual traditions in the twentieth century.

## **2. General outline of the dissertation, research objectives, and research questions**

This dissertation consists of six separate peer reviewed article publications and of this introductory/summary chapter. The articles have either already been published (4 articles out of 6 articles), have been accepted for publication and are forthcoming (1 article), or have received a preliminary acceptance for publication pending the evaluation of revisions (1 article) in peer reviewed scientific journals. The purpose of this introductory and summary chapter is to introduce the reader to the topic, to offer a contextualization for the research conducted, and to summarize the central findings of the study. I will begin by offering a brief overview of the contents of the dissertation by exploring the central research objectives and research questions of the study. The second section offers a note on methodology, an explanation concerning the languages and translations, and an overview concerning the research materials used in the study (which is augmented in a separate methodological appendix found at the end of this study). Moving chronologically, the subsequent sections provide a detailed contextualization of the central research themes, of the relevant academic discussions, and of the individual articles and their contributions in relation to previous research. Each of these sections offer a short summary of the central findings of the dissertation.

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<sup>20</sup> Arendt, “A Conversation,” 12; Arendt, “Fernsehgespräch,” 59–60

<sup>21</sup> Hannah Arendt and Karl Jaspers, *Briefwechsel 1926–1969*, eds. Lotte Köhler and Hans Saner (München: Piper, 1993), 106. That her Jewish identity had a tremendous importance to Arendt is also demonstrated by the fact that when the novelist Uwe Johnson wanted to publish a fictional novel in which one of the characters was inspired by Arendt, she protested against the publication precisely by noting that the character hid the fact of her Jewishness (Hannah Arendt and Uwe Johnson, *Der Briefwechsel 1967–1975*, eds. Eberhard Falke and Thomas Wild [Frankfurt am Main: Suhrkamp, 2004], 39–40). On Arendt’s Jewish political identity, see Richard J. Bernstein, *Hannah Arendt and the Jewish Question* (London: Polity, 1996); Martine Leibovici, *Hannah Arendt, une Juive: Expérience, politique et histoire* (Paris: Midrash, 1998). Later in her life, Arendt would also emphasize her Americanness, since for her, quite idealistically, the United States was a country that had realized “the freedom of becoming a citizen without having to pay the price of assimilation.” Hannah Arendt, “Prologue”, in Hannah Arendt, *Responsibility and Judgement*, ed. Jerome Kohn (New York: Schocken books, 2003), 3–14 (4). On Arendt and America, see Richard H. King, *Arendt and America* (Chicago, IL: The University of Chicago Press, 2015).

<sup>22</sup> Cf., Stolleis, *Geschichte des öffentlichen Rechts*, 410, 414; Michael Stolleis, *Recht im Unrecht. Studien zur Rechtsgeschichte des Nationalsozialismus* (Frankfurt am Main: Suhrkamp, 1994), 32, 91.

<sup>23</sup> Canovan, *Hannah Arendt*, 276.

This dissertation has three closely interrelated research objectives, and accordingly, the six articles of this dissertation are divided into three subgroups. Each subgroup consists of two peer reviewed articles that focus on analyzing the same subject and theme from diverging but nevertheless substantially similar perspectives. The three core subjects and themes of the dissertation overlap with each other and form a coherent whole that is contextualized in a summarized form in this introductory/summary chapter.

**The first research objective of the dissertation is to re-examine Carl Schmitt's Nazi engagement between the years 1933 and 1945.** This objective is tackled primarily in substudy 1 ("Carl Schmitt as a theorist of the 1933 Nazi revolution: 'The difficult task of rethinking and recultivating traditional concepts.'" *Contemporary Political Theory volume 20* [2021]: 341–363) and substudy 2 ("Mobilizing the Western tradition for present politics: Carl Schmitt's polemical uses of Roman law, 1923–1945." *History of European Ideas*, 47:5 [2021]: 748-772.). In addition, the re-examination of Schmitt's Nazi engagement is also a secondary research objective in substudies 3 and 4. Both substudies 1 and 2 focus on examining and scrutinizing Carl Schmitt's Nazi engagement in detail from different points of view and provide new readings of Schmitt's theoretical work between 1933 and 1945. In doing so, these studies also aim to broaden our understanding of national socialism as a historical phenomenon. Both substudies draw on a large number of new documents and materials, as will be explained in detail in a separate section below.

Substudy 1 focuses primarily on offering a new reading of Schmitt's writings from the period of his most intensive Nazi years, lasting roughly from March 1933 to December 1936. In doing so, the study examines how Schmitt aimed to revolutionize Nazi legal science, to eliminate all liberal influences from German thought, and to theorize the new Nazi state from an openly racial perspective. Broadening the analytical horizon, substudy 2 examines how the Nazification of Schmitt's thinking is reflected in his changing uses of the reception history of Roman law from 1923 to 1945. The study shows how Schmitt's initially positive understanding of the reception of Roman law in the Weimar era changes radically after he joins the Nazi party in 1933 and begins to contradict the universalistic system of Roman law with a racially grounded vision of Germanic law. It is shown that ultimately Schmitt recalibrates his position during World War II and begins to use Roman law, again, in an entirely new fashion: as the intellectual basis for a novel European legal science after the failure of the Nazi war effort. In addition to offering new insights in understanding the intellectual history of National Socialism, substudies 1 and 2 answer the following research questions:

**Research questions, substudy 1:** How should we evaluate Schmitt's Nazi engagement when his publications from 1933 and 1936 are analyzed from a holistic perspective? How does Schmitt's Weimar era decisionism differ from his Nazi era concrete order thought and how is this "break" reflected in his constitutional and political theories? Can Schmitt's "concrete order thought" be analyzed as a relatively coherent way of thinking that is grounded on the systematic attempt to formulate entirely new concepts and categories for the Nazi movement?

**Research questions, substudy 2:** Is it possible to argue that Schmitt's Nazi engagement is directly reflected in his different uses of history and historical imagery, especially in his different uses of Roman law and its reception history? Can this changing use of Western legal history be used to demonstrate how Schmitt transforms from an author sympathetic to Italian fascism into a racist and devoted Nazi during 1933? How should one evaluate Schmitt as an author, given his different ways of narrating the reception of Roman law in Germany and in Europe?

**The second research objective of the dissertation is to re-examine the intellectual relationship between Carl Schmitt and Hannah Arendt.** This second research objective is analyzed both in

substudy 3 (“Carl Schmitt Reads Hannah Arendt: A Hidden Discussion on Totalitarianism, Power, and Banality of Evil, accepted with minor revisions pending their evaluation) and in study 4 (“Nazism as Inhumanity: Carl Schmitt and Hannah Arendt on Race and Language,” accepted and forthcoming in *New German Critique*). The second research objective (the comparison of the political theories of Schmitt and Arendt) has a significant substantial overlap with the first research objective (the re-examination of Schmitt’s Nazi engagement). Like studies 1 and 2, also studies 3 and 4 are engaged in re-evaluating Schmitt’s Nazi era works by drawing on a plethora of new research materials. However, while the two first studies focus singularly and primarily on this research objective, studies 3 and 4 broaden the analytical horizon by comparing Schmitt’s ideas and publications with Arendt’s analysis of totalitarianism and the crises of Western modernity. Reading Schmitt’s ideas critically in the light of Arendt’s theory of totalitarianism and of the modern human condition, it is demonstrated that the intellectual relationship of Schmitt and Arendt was much more multifaceted than thus far presumed. Like studies 1 and 2, also studies 3 and 4 aim to broaden our understanding of National Socialism as a specific historical phenomenon. Studies 3 and 4 offer a re-consideration of the intellectual relationship between Schmitt and Arendt by drawing on a large number of sources, both published and unpublished, as will be explained in detail below. Against earlier studies, it is demonstrated that Schmitt’s Nazi era works can be deconstructed and parsed out in an interesting manner when put into a conversation with Arendt’s critical analysis of totalitarianism, and that, consequently, the relationship of Schmitt’s and Arendt’s political theories is much more multifaceted than previously assumed.

Study 3 begins by challenging the existing comparative research on the topic, which has universally presumed that Schmitt did not read Arendt and that he was not familiar with her works. Examining the contents of the personal libraries of both Schmitt and Arendt and by showing that Schmitt had indeed read Arendt’s central historical works, *The Origins of Totalitarianism* (1951) and *Eichmann in Jerusalem* (1963) as well as other works, study 3 lays the empirical grounds for a fresh comparison of these two authors. Using Schmitt’s extensive and thus far unacknowledged comments on Arendt and her works, study 3 reconstructs a “discussion in absence” between these two authors on the topics of totalitarianism, political power, and the banality of evil. Study 4 broadens this comparative horizon by focusing on the way both Schmitt and Arendt experienced the Nazi seizure of power in Germany during 1933. It is demonstrated that Schmitt’s and Arendt’s autobiographical reflections on this topic offer a fruitful starting point for comparing the works of these authors. Focusing on the way Schmitt and Arendt understood the political functions of the concepts of race and language, the article argues that Arendt’s political theory of human plurality can be read as a critique of Schmitt’s deeply racist Nazi writings. The article also examines some of Arendt’s own prejudiced statements in the light of this comparison. Beyond offering novel perspectives in understanding the historical phenomenon of National Socialism, studies 3 and 4 aim to answer the following research questions:

**Research questions, study 3:** How must we reconsider the intellectual relationship between Schmitt and Arendt, when it is established that Schmitt was not only aware of Arendt’s works, but also commented on them extensively? In which way did Schmitt and Arendt understand the nature of (Nazi) totalitarianism and how is this difference reflected more generally in their political thinking? How did Schmitt and Arendt understand the phenomena of Nazi totalitarianism, political power, and banality of evil?

**Research questions, study 4:** How is the fact that Arendt was forced to escape Nazi Germany in 1933, while Schmitt became one of the leading legal theorists of the new regime, reflected in their respective political theories? How does the experience of exile define Arendt’s response to racist forms

of political thinking, exemplified by Schmitt's concrete order thought? What roles do race and language have in the political theories of Schmitt and Arendt and how are these differences reflected in their different analyses of (Nazi) totalitarianism?

**The third research objective of this dissertation is to analyze the question of technology in the postwar works Schmitt and Arendt.** While substudy 5 (“The Rise of the Homme Machine: Carl Schmitt’s Critique of Biotechnology and Utopias.” *Political Theory*. 2020;48(5): 615–643) analyzes the role of technology in the postwar works of Schmitt, substudy 6 (“Resisting Biopolitics: Hannah Arendt as a Thinker of Automation, Social Rights, and Basic Income,” *Alternatives*. 2018;43(1): 35–53) explores this same question in the Arendt’s postwar works. Whereas the first research objective of this dissertation focuses mainly on analyzing Schmitt’s Nazi writings, and while the second examines how Arendt’s political theory of human plurality can be read as a response to Schmitt and his Nazi writings, the third research objective focuses on analyzing the postwar writings of Schmitt and Arendt from a novel angle. It is argued that both thinkers came to develop an original narrative concerning the faith of modern technology and politics as a response to the catastrophes of the twentieth century, Nazi totalitarianism in particular. In addition, substudies 5 and 6 also contribute toward understanding the broader discussions concerning technology in postwar Europe.

Substudy 5 argues that Schmitt’s postwar works have often been interpreted from a reductive perspective. While most of the commentators have focused on the way Schmitt developed a comprehensive history of European public law, most famously in *Der Nomos der Erde* (1950), substudy 5 demonstrates that Schmitt’s postwar writings also offer an interesting parallel philosophical analysis concerning the modern era and its unprecedented technological nature. As is shown, Schmitt not only proclaimed the downfall of the Westphalian political order, but also projected the equally relevant death of “Western man,” whose normality had been the self-evident proposition for all Western thought for over two millennia. By drawing on new documents and materials, substudy 5 offers a detailed elaboration of the prophetic and dystopic visions concerning the coming technological revolutions, whose nature Schmitt elaborated by drawing extensively on the canon of Western utopian and dystopian literature, ranging from Plato to Thomas More and Aldous Huxley. It is shown that after distancing himself from National Socialism, Schmitt sought to offer an apologetic ex post facto explanation for the atrocities of the regime by portraying Nazi ideology as the very apex of modern technological development and Darwinian ideology – aspects, which, as Schmitt provocatively claims, were also equally present in modern communism and even Western liberalism.

Substudy 6 offers a counter argument to substudy 5. In distinction to Schmitt’s bleak and pessimistic vision of the future of technology and politics, substudy 6 examines how Arendt came to understand the future of politics in a world that would be defined by unforeseen technological development. Unlike Schmitt, who proclaimed nothing less than the death of the “Western man,” Arendt saw that technological development would liberate future human beings from the basic necessities of the realm of labor, thus laying the foundations for an entirely new kind of democratic politics. Arguing against much of the existing literature on Arendt and her analysis of the so called “social question,” substudy 6 demonstrates that Arendt was not only profoundly concerned with the question of poverty, but that her ideas can be fruitfully interpreted as an early vision of what is today called basic income. In elaborating the intellectual history of postwar Europe and the discussions concerning technology in this era, substudies 5 and 6 answer the following research questions:

**Research questions, substudy 5:** What is the purpose and objective of Schmitt’s postwar works and is it possible to discover in them more than his narrative concerning the dissolution of the Eurocentric world order and public law? How is Schmitt’s narrative concerning the entanglement of politics,

technology, and human biology related to his former Nazi engagement; does this narrative work as a veiled apology for his own former support for Nazism? How do Schmitt's arguments appear from the perspective of contemporary social sciences, especially from the point of view concerning the discussions around biopolitics (exemplified by Michel Foucault) and posthumanism (exemplified by Donna Haraway)?

**Research questions, substudy 6:** How does the question of technology appear in Arendt's political thought and how is this question related to totalitarianism? How did Arendt see that technology could and would change the political realm in the near future and what relevance do Arendt's analyses of technology have for our understanding of her thinking more generally?

### 3. Method, languages, and novel research materials

The methodological approach of the study consists of a careful textual analysis and reading of writings, archival materials, and other relevant documents. From a methodological and thematic perspective, the study positions itself at the crossroads of intellectual history<sup>24</sup> and political theory.<sup>25</sup> The approach

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<sup>24</sup> For illuminating works on the various meanings and interpretations of intellectual history, cf., Quentin Skinner, *Visions of Politics: Vol. 1, Regarding Method* (Cambridge: Cambridge University Press, 2002); Peter E Gordon, "What is intellectual history? A Frankly Partisan Introduction to a Frequently Misunderstood Field," available online: [https://projects.iq.harvard.edu/files/history/files/what\\_is\\_intell\\_history\\_pgordon\\_mar2012.pdf](https://projects.iq.harvard.edu/files/history/files/what_is_intell_history_pgordon_mar2012.pdf) (accessed 23.05.2021); Anthony Grafton, "The History of Ideas: Precept and Practice, 1950-2000 and Beyond," *Journal of the History of Ideas*, vol. 67 no. 1, 2006: 1–32; Samuel Moyn and Andrew Sartori, *Global Intellectual History* (New York, NY: Columbia University Press, 2013); Richard Whatmore, *What Is Intellectual History?* (Malden, MA: Polity Press, 2016).

<sup>25</sup> As is the case with the term "intellectual history," also the concept of "political theory" remains highly contested. Descriptively, even the studies that explore the methods that Schmitt and Arendt used in their works disagree profoundly on the methodological starting points of these authors. Here I will name some of the different trends in understanding the method(s) of Schmitt and Arendt, found in the most relevant research literature. For studies that emphasize the meaning of political theology and its lasting methodological implications for Schmitt, see Heinrich Meier, *Die Lehre Carl Schmitts. Vier Kapitel zur Unterscheidung Politischer Theologie und Politischer Philosophie* (Stuttgart: J. B. Metzler, 1994); Andreas Koenen, *Der Fall Carl Schmitt. Sein Aufstieg zum "Kronjuristen des Dritten Reiches"* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1995); Celina María Bragagnolo, "Secularization, History, and Political Theology: The Hans Blumenberg and Carl Schmitt Debate," *Journal of the Philosophy of History*, vol. 5, no. 1 (2011): 84–104; Miguel Vatter, "The Political Theology of Carl Schmitt," in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (Oxford, Oxford University Press, 2017), 245–266. For works that analyze Schmitt's theory of concepts and compare his ideas with those of Reinhart Koselleck, see Timo Pankakoski, "Conflict, Context, Concreteness: Koselleck and Schmitt on Concepts," *Political Theory*, vol. 38, no. 6 (2010): 749–79; Niklas Olsen, "Carl Schmitt, Reinhart Koselleck and the foundations of history and politics," *History of European Ideas*, vol. 37, no. 2 (2011): 197–208. More broadly on the influence of Schmitt's conceptual theory, see Timo Pankakoski, "The Language of Postwar Intellectual Schmittianism," *The European Legacy* vol. 23, no.6 (2018): 607–27. On Schmitt's understanding of history more broadly, see Matthias Lievens, "Carl Schmitt's Concept of History," in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2017), 401–425. In the case of Arendt, the question of her method has also been debated extensively. For studies that understand her method as form of critical "storytelling," see Lisa Disch, "More truth than fact: Storytelling as critical understanding in the writings of Hannah Arendt," *Political Theory*, vol. 21, no. 4 (1993): 665–94; Julia Kristeva, *Le génie féminin 1. Hannah Arendt* (Paris: Gallimard, 1999); George Kateb, "Ideology and storytelling," *Social Research*, vol. 69, no. 2, 2002: 321–57; Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt* (New York: Rowman and Littlefield, 2003); Steve Buckler, *Hannah Arendt and Political Theory: Challenging the Tradition* (Edinburgh: Edinburgh University Press, 2012). For works that emphasize Arendt's philosophical anthropology as her methodological starting point, see for instance Hans-Peter Krüger, "Die condition humaine des Abendlandes. Philosophische Anthropologie in Hannah Arendts Spätwerk," *Deutsche Zeitschrift für Philosophie*, vol. 55, no. 4 (2007): 605-626; Joachim Fischer, *Philosophische Anthropologie – Eine Denkrichtung des 20. Jahrhunderts* (Freiburg: Karl Alber, 2008); Stefan-Ludvig Hoffman, "Koselleck, Arendt and The Anthropology of Historical Experience," *History and Theory*, vol. 49, no. 2 (2010): 212–236; Ned Curthoys, "Ernst Cassirer, Hannah Arendt, and the twentieth century revival of philosophical anthropology," *Journal of Genocide*

of each substudy is explained in greater detail in each of the individual publications. In order to introduce new perspectives and interpretations of the works of Schmitt and Arendt, the study makes use of a wide array of underutilized, lesser-known, and unpublished resources. The basic methodological starting point of the dissertation is the conviction that one must approach the works of Carl Schmitt and Hannah Arendt from a *holistic perspective* – from a point of view that considers the writings of these authors in a historically contextualized manner while also being aware of the contents of their works as broader totalities.<sup>26</sup>

The study consistently utilizes either entirely new research materials or ones that have been neglected in previous research. The purpose of this holistic approach is to offer a balanced estimation of Schmitt's and Arendt's research works and to introduce new ways of reading their best-known works. The following sections elaborate the empirical and material premises of the individual article studies. While the following section will offer (3.1.) a short note on the practical question concerning languages and translations, the subsequent section (3.2.) provides an overview of the research materials and methods used in article publications included to the dissertation. A broader description and explanation of the novel research materials used is found in the methodological appendix that can be found at the end of this dissertation.

### 3.1. On language and translations

The study uses a broad array of research materials in different languages, always relying on the original sources when possible. All of the translations from German (and, more seldomly, from Italian, Spanish, French, Latin, and Greek) are my own unless explicitly otherwise stated. While I have used original texts in the case of both Schmitt and Arendt, with the secondary literature, I have relied more broadly on translations (mostly from another language into English, although this is not always the case). However, I have relied on the original texts (in English, German, French, Spanish, Italian and Finnish), always when this has been convenient and possible.

In the case of Schmitt, I have always used the original German texts instead of the available English translations. This is due to several reasons. First of all, the great plurality of the materials only exist in German and have not been translated into English. Second, and perhaps equally importantly, the available translations are often problematic. Third, the decision to rely on the original texts is also a methodological choice since it aims to create a linguistic consistency to the study. However, there are some exceptions to these rules. First of all, some of Schmitt's texts only exist in translations, and when

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*Research*, vol. 13, no.1–2 (2011): 23–46. For a recent work that locates Arendt rather convincingly within the phenomenological tradition, see Sophie Loidolt, *Phenomenology of Plurality. Hannah Arendt on Political Intersubjectivity* (London: Routledge, 2018). For other perspectives that analyze methodological issues in Arendt, see among others Jakub Novák, "Understanding and Judging History: Hannah Arendt and Philosophical Hermeneutics," *Meta: Research in Hermeneutics, Phenomenology, and Practical Philosophy*, vol. 2, no. 2 (2010): 481–504; Hans-Jörg Sigwart, "Political Characterology: On the Method of Theorizing in Hannah Arendt's Origins of Totalitarianism," *American Political Science Review*, vol. 110, no. 2 (2016): 265–277; Taran Kang, "Origin and Essence: The Problem of History in Hannah Arendt," *Journal of the History of Ideas*, vol. 74 no. 1 (2013): 139–60; Ari-Elmeri Hyvönen, "Genealogy of Experiential Frames: Methodological Notes on Arendt," *Genealogy* vol. 5, no. 42 (2021).

<sup>26</sup> For studies that emphasize the importance of a holistic reading in the case of Arendt, see for instance: Canovan, *Hannah Arendt: Bernstein, Hannah Arendt*; Benhabib, *The Reluctant Modernism*; Ayten Gündoğdu, *Rightlessness in an Age of Rights* (Oxford, UK: Oxford University Press, 2015). In the case of Schmitt, there are only two studies that utilize and analyze all of his writings: Mehring, *Carl Aufstieg und Fall*; Koenen, *Der Fall*. The two broadest comparative studies of Schmitt and Arendt available are Andreas Kalyvas, *Democracy and the Politics of the Extraordinary Max Weber, Carl Schmitt, and Hannah Arendt* (New York: Cambridge University Press, 2008); Francesca Raimondi, *Die Zeit der Demokratie: Politische Freiheit nach Carl Schmitt und Hannah Arendt* (Paderborn: Konstanz University Press, 2014).



this is the case, I have always relied on the existing versions. In one case, I was not able to locate the original German publication, and I was forced to rely on a Spanish translation of the German original.<sup>27</sup>

In the case of Arendt, the question of language is more multifaceted than in the case of Schmitt, as she herself translated some of her own key works into German, which is why the different versions of these works also diverge from each other in crucial ways. This is the case most prominently with *The Origins of Totalitarianism* (1951) and its later German version *Elemente und Ursprünge totaler Herrschaft* (1955) as well as with Arendt's central work *The Human Condition* (1958) and its later German version *Vita Activa oder Vom tätigen Leben* (1960), but also with Arendt's book that analyzes the major Western revolutions (1963/1964), her report on the banality of evil and Eichmann (1963/1964), and with some of her shorter works and essays, such as her famous, long essay on the concept of violence.<sup>28</sup> For this reason, I have utilized and compared both the English and German versions of Arendt's works, when this has been necessary. In some rare cases, I have also used both the English translations and the original German text in order to give the reader the possibility of comparing a translated passage that has been rendered in a selective manner in the English version.

### 3.2. The research materials of substudies 1 and 2

In re-examining Carl Schmitt's Nazi engagement from different perspectives, the study utilizes a broad array of Schmitt's lesser-known Nazi era writings, in particular from the period between 1933 and 1936. Given Schmitt's strong influence in the Nazi legal academia itself (especially from 1933 to 1936) and the fact that today Schmitt has become nothing less than a canonized twentieth century thinker, it is nothing short of astonishing that the great plurality of Schmitt's Nazi era writings from 1933 to 1936 remain almost completely inaccessible to scholars even in 2021.<sup>29</sup> Since these writings are not easily accessible even in their original German, and since some of these works only exist in other languages (French and Italian), it should not be surprising that especially those, who are forced to rely on the English language translations of Schmitt's writings, often do not have a sufficient picture of the existing materials nor of their contents. In fact, it is not an overestimation to state that most Anglo-American scholars, who have often even written on Schmitt rather extensively, are most likely not even aware of the existence of these crucially important materials. Due to the exceptional scholarly significance of these texts and materials in understanding and reading Schmitt, I offer an extensive analysis of their contents, meaning, and substance in a separate methodological appendix that can be found at the end of this dissertation. In offering a new interpretation of Schmitt's Nazi writings, substudies 1 and 2 (and also substudies 3 and 4) draw their arguments from these underutilized materials.

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<sup>27</sup> This is the case in substudy 5 (footnote 69), in which I utilize the Spanish translation of one of Schmitt's texts: Carl Schmitt, "La oposición entre comunidad y sociedad como ejemplo de una distinción bimembre. consideraciones sobre la estructura y el destino de tales antítesis," trans. Alexis Emanuel Gros. *Anacronismo e Irreupción. Revista de Teoría y Filosofía, Política Clásica y Moderna*, vol. 4, no. 7 (2014): 171–188.

<sup>28</sup> On the question of language in Arendt's works, see for instance Marie-Luise Knott, *Unlearning with Hannah Arendt*, trans. David Dollenmayer (London, UK: Granta, 2013).

<sup>29</sup> When writing this dissertation, Schmitt's Nazi era writings remained inaccessible to almost all researchers. The author acquired the texts which are analyzed in the methodological appendix of this dissertation from numerous libraries in Germany and in the US during a period of many years. This archival research forms the basis of this dissertation. However, this status has changed very recently as Schmitt's collected writings from the years 1933–1936 have now (in May 2021) been republished. See, Carl Schmitt *Gesammelte Schriften 1933–1936. Mit ergänzenden Beiträgen aus der Zeit des Zweiten Weltkriegs* (Berlin: Duncker & Humblot, 2021). A broad commentary of these texts will appear in the Italian language in the following months. Substudy 2 of this dissertation has been translated into Italian and will appear in this collection.

### 3.3. The research materials of substudies 3 and 4

As noted above, also substudies 3 and 4 draw broadly on Schmitt's works from 1933 to 1936, analyzed in the separate methodological appendix. In using these materials, substudies 3 and 4 draw new parallels between the works of Schmitt and Arendt. Beyond using these materials, the dissertation also aims to offer a new empirical starting point for comparing the works of Schmitt and Arendt. Arguing against previous comparative research on the topic, by relying on a broad set of new textual resources, substudies 3 and 4 demonstrate that the intellectual relationship of Schmitt and Arendt was much more complex than imagined in previous literature. While the basic starting point of all previous research on this topic has been the fact that Arendt commented on Schmitt's works sporadically in her own works, substudies 3 and 4 offer a necessary correction to these previous debates by demonstrating that Schmitt was familiar with Arendt's works and commented on her ideas extensively. Substudy 3 takes its bearings from the analysis of the (reconstructed) contents of the personal libraries of both Schmitt and Arendt, which demonstrate that both owned and read a broad array of each other's works.<sup>30</sup> Substudies 3 and 4 utilize a wide array of recently published Schmitt's writings, diaries, and letters, which demonstrate that Schmitt both read Arendt and commented her works. In addition, by drawing on a broad variety of Arendt's lesser-known works on the topic of totalitarianism<sup>31</sup> as well as on her unpublished manuscripts and papers, which have today been made available for researchers online,<sup>32</sup> substudies 3 and 4 establish a new textual basis for comparing these two authors. In this way, substudies 3 and 4 offer a necessary correction to the previous literature on Schmitt, Arendt, and their intellectual relationship.

### 3.4. The research materials of substudies 5 and 6

The two last substudies of this dissertation utilize a different set of textual resources. While substudies 1, 2, 3, and 4 focus on analyzing Schmitt's Nazi engagement and on offering a critique of Schmitt's ideas through the political theory of Arendt, the two last substudies turn toward analyzing the postwar works of these authors.

However, also substudies 5 and 6 draw their arguments from such materials that have not been widely utilized in previous research. In the case of substudy 5 that focuses on analyzing the repercussions of Schmitt's Nazi engagement by exploring his visions concerning technology and politics, I draw broadly on Schmitt's recently published, enlarged version of *Glossarium 1947–1958* that rectifies the errors of the earlier published version of this thought-diary and also broadens its scope with several years. In addition, I also utilize Schmitt's lesser-known postwar books and essays, such as *Die Tyrannei der Werte* (1959/1967) and *Politische Theologie II* (1970). As substudy 5 demonstrates, these materials form the basis for a new reading of Schmitt's postwar works. They demonstrate that Schmitt was not only an original historian of European public law, but also a political philosopher and a cultural critic, whose ideas transcend the borders of legal theory and history.

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<sup>30</sup> The contents of Arendt's library at Stevenson Library (Bard College) are accessible at the Arendt Collection webpage: <http://www.bard.edu/arendtcollection/>. For the contents of Schmitt's library, see the Schmitt-Gesellschaft <http://www.carl-schmitt.de/biblio-cs.php>.

<sup>31</sup> For a bibliography of Arendt's writings, see Ursula Ludz, "Bibliographie," in Hannah Arendt, *Ich will Verstehen. Selbstauskünfte zu Leben und Werk*, ed. Ursula Ludz (Piper: München, 2012), 257–341.

<sup>32</sup> See: <https://memory.loc.gov/ammem/arendhtml/arendthome.html>.

In reading Hannah Arendt as a theorist of technology and politics, substudy 6 also draws on a broad set of recently published materials. The aim of the study is to demonstrate that Arendt's works include original reflections concerning the future of technology and politics – ideas that appear in a very interesting contradiction to those developed by Schmitt and analyzed in substudy 5. In doing so, substudy 6 demonstrates that the arguments of her lesser-known essays and lectures allow us to reread the well-known arguments that she provides in her most-read works, such as *The Human Condition* (1958) and *On Revolution* (1963). By reading these works and their arguments concerning the relationship of “the social” and “the political” in the light of her lesser-known essays, substudy 6 aims to demonstrate that Arendt was not so dismissive of the “social question” as has been often argued and that her postwar works even allows us to interpret Arendt as an early theoretician of basic income.<sup>33</sup>

The following sections position each of the three research objectives of the dissertation within their specific academic debates and discussions. These sections that follow below have both an introductory and a summary function. In addition to presenting the main findings, conclusions, and interpretations of the study, these summary sections provide a broader historical contextualization to the arguments that are laid out in greater detail in the singular article publications.

#### 4. Substudies 1 and 2: Re-examining Carl Schmitt's Nazi engagement

An overwhelming amount of material has been written on Carl Schmitt and his Nazi engagement. As has been virtually generally acknowledged by his commentators, the period of Schmitt's greatest influence within the Nazi academia lasted from his entry into the Nazi party on the 27<sup>th</sup> of April, officially becoming a to force on the 1<sup>st</sup> of May 1933, until his downfall after an attack against him by the SS journal *Das Schwarze Korps* in December 1936.<sup>34</sup> While even the most critical studies on the subject acknowledge that after his downfall in 1936, Schmitt's publications are no longer defined by such a keen revolutionary fervor as before,<sup>35</sup> it would also be very misleading to claim that Schmitt would have lost his influence or his belief in Nazism entirely after his ousting. By February 1937, Schmitt was already lecturing again. In this context, Mehring speaks of a “return to academic prominence,”<sup>36</sup> while Stolleis notes that although Schmitt's writings on the *Grossraum* created a buzz both nationally and internationally, Schmitt would no longer attain such a central position he had occupied in the Nazi legal academia until the end of 1936.<sup>37</sup>

Historically speaking, the first articles on Schmitt and his Nazi era thought were written already in the middle of the 1930s, before Schmitt's downfall in late 1936. These included works by Schmitt's own

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<sup>33</sup> In doing so, substudy 6 utilizes the following lesser-known essays from Arendt: “The Cold War and the West” (1962) and “Public Rights and Private Interests” (1977); her lectures “Revolution and Freedom” (1961), “Labor, Work, Action” (1964), “On the Human Condition” (1966), and “The Freedom to be Free” (1966–1967); and the autobiographical interview “Hannah Arendt on Hannah Arendt” (1972). All of these writings are included in the collection: Hannah Arendt, *Thinking without a Banister: Essays in Understanding 1953–1975*, ed. Jerome Kohn (New York: Schocken, 2018). Substudy 6 was written before the publication of the aforementioned collection. The author acquired these materials during a visit to the Hannah Arendt archives at the University of Oldenburg, Germany, and to a number of different libraries in Germany.

<sup>34</sup> See the anonymous articles “Eine peinliche Ehrenrettung” (3 December 1936) and “Es wird immer noch peinlicher” (10 December 1936) in *Das Schwarze Korps* 49: 14, 50.

<sup>35</sup> Eg., Mehring, *Aufstieg und Fall*, 380; Dirk Blasius, *Preussischer Staatsrat in Hitler Reich* (Göttingen: Vandenhoeck und Ruprecht, 2001), 180, 183.

<sup>36</sup> Mehring, *Aufstieg und Fall*, 389

<sup>37</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 323; cf., Mehring, *Aufstieg und Fall*, 396.

students, such as the articles written by Günter Krauss<sup>38</sup>, and commentaries by third parties of which Hans Krupa's dissertation on Schmitt, published in 1937, offers an interesting example.<sup>39</sup> but perhaps more important were writings by those emigrants from Germany, whom Schmitt had polemically and brutally attacked in his condescending and racist article, ironically entitled "the German intellectuals."<sup>40</sup> Most prominently it was Waldemar Gurian, who not only popularized the term "Crown Jurist" in relation to Schmitt, but also drew attention to the contradictions of Schmitt's earlier works and his Nazi era writings, which had a crucial effect in destabilizing Schmitt's position within the party hierarchy.<sup>41</sup> Also Karl Löwith offered a well-known criticism of Schmitt's political "occasionalism," which still makes for an interesting reading.<sup>42</sup>

That Schmitt was an influential thinker in the Nazi academia was broadly recognized also internationally. The Swiss journal *Baseler Volkszeitung* referred to Schmitt as the "Crown Jurist" of the Third Reich in an article from November 1934.<sup>43</sup> In 1936, a French commentator, Robert d'Harcourt, referred to Schmitt (next to Hans Frank) as the "highest legal authority in of the new Germany."<sup>44</sup> When a collection of Schmitt's central Nazi era texts were published in Italy in 1935, Schmitt was introduced to the Italian readers as "one of the official theorists of national socialism."<sup>45</sup> One American commentator saw things slightly differently and estimated that it was Otto Koellreuter's theory that had gained the upper hand in this battle, whilst, "the existential school around Carl Schmitt, distinguished by its totalitarian ideals, is only one among the many schools of theoreticians in Nazi Germany contributing their academic reputations and skill in the effort to bulwark National Socialism with an intellectual system."<sup>46</sup> Also the French philosopher Jacques Maritain referred to Schmitt as "one of the most intelligent theoreticians of National Socialism."<sup>47</sup> It would be easy to continue this list with numerous other similar remarks.

From very early on, Schmitt was also included in many of the more comprehensive attempts at analyzing Nazism before, during, and after World War II. Aurel Kolnai, a philosopher turned political theorist, was one of the first authors, who would rely extensively on Schmitt in order to explain the

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<sup>38</sup> The most comprehensive of these articles was Günther Krauss, "Zum Neubau deutscher Staatslehre. Die Forschungen Carl Schmitts," *Jugend und Recht*, vol. 10 (1936): 252–3, which already highlighted the different periods of Schmitt's thinking. Ironically, Krauss's article became crucial in the "polycratic" battle that Schmitt would soon lose against the SS, as Krauss's reflections were used by the SD against Schmitt (see *SD-Akten*, 142–3) and then became central in the SS attacks against Schmitt in the two December 1936 articles published in *Das schwarze Korps*.

<sup>39</sup> Hans Krupa, *Carl Schmitts Theorie des Politischen. Mit einem Verzeichnis der Schriften Carl Schmitts* (Leipzig: Verlag S. Hirzel, 1937). Krupa also distinguishes between three different periods in Schmitt's thought. This book is also mentioned in Schmitt's *SD-Akten*, 287. See also the rather positive reviews of this work by Eric Voegelin, "Carl Schmitts Theorie des Politischen," *Zeitschrift für Öffentliches Recht*, vol. 17 (1937): 665; Otto von Schweinichen, "Carl Schmitts Theorie des Politischen," *Archiv des öffentlichen Rechts*, vol. 68 (N.F. 29), no. 3 (1938): 373–377.

<sup>40</sup> Schmitt, "Intellektuellen."

<sup>41</sup> Alfons Söllner, *Deutsche Politikwissenschaftler in der Emigration. Studien zu ihrer Akkulturation und Wirkungsgeschichte. Mit einer Bibliographie* (Opladen: Westdeutscher Verlag, 1996), 98; Koenen, *Der Fall*, 623, 632–3.

<sup>42</sup> Karl Löwith, "Der okkasionelle Deizisionismus von Carl Schmitt", in Karl Löwith *Sämtliche Schriften. Band 8: Heidegger - Denker in dürftiger Zeit* (Stuttgart: J.B.Metzler, 1984), 32–71.

<sup>43</sup> Koenen, *Der Fall*, 622 footnote 107.

<sup>44</sup> Robert d'Harcourt, "Psychologie Hitlérienne," *Revue des Deux Mondes*, vol. 32, no. 4 (1936): 771–784 (781).

<sup>45</sup> Arnaldo Volpicelli, "Prefazione," in Carl Schmitt, *Principi Politici del Nazionalsocialismo*, texts chosen and trans. Delio Cantimori (Firenze: G. C. Sansoni, 1935), v–x (v).

<sup>46</sup> Samuel Rosenberg, "Three Concepts in Nazi Political Theory," *Science & Society*, vol. 1, no. 2, (1937): 221–230 (226). In contrast to Rosenberg (and Schwab, Bendersky, and Koenen), Stolleis estimates interestingly that Otto Koellreuter remained in the shadow of "the greatly superior" Schmitt until late 1936 (Stolleis, *Geschichte des öffentlichen Rechts*, 347).

<sup>47</sup> Jacques Maritain, "The Pagan Empire and the Power of God," *The Virginia Quarterly Review*, vol. 15, no. 2 (1939): 161–175 (162).

nature of Nazism as a radically antiliberal and anti-Western ideology in his lengthy and forgotten work *The War against the West* (1938). Kolnai presents the “concrete order thought” that Schmitt had begun developing in 1933/1934 as central to understanding Nazi ideology.<sup>48</sup> Beyond utilizing his ideas extensively, Kolnai calls Schmitt “Goering’s ‘Crown lawyer’” and describes him as the “‘Crown lawyer’ of Nazism,” who, whoever, by the time Kolnai was writing his book (in 1938) was “out of favor owing to his Jewish connections.”<sup>49</sup> Similar arguments in relation to Schmitt were made early by Ernst Fraenkel in his work *The Dual State* (1942), which is full of references to Schmitt and describes him as one the leading Nazi intellectuals,<sup>50</sup> and by Franz Neumann in his classical study *Behemoth* (1942) that argued for the idea that Nazism never truly established a “strong state,” but merely a facade underneath which arbitrary lawlessness and chaos reigned supreme.<sup>51</sup>

Numerous other commentators also referred to Schmitt in a similar manner but did so without actually analyzing his writings. For instance, in his well-known work, *The Road to Serfdom* (1944), Friedrich Hayek, who seeks to explain Nazi totalitarianism as the logical outcome of economic central planning, calls Schmitt as “the leading Nazi expert on constitutional law” and as “the leading Nazi theoretician of totalitarianism.”<sup>52</sup> In his book *Omnipotent Government: The Rise of Total State and Total War*, also published in 1944, Ludvig von Mises echoed Hayek’s statements by contrasting the “omnipotent government” and the “total state” of Nazism with the freedom of liberalism and by referring to Schmitt as the “the foremost Nazi jurist.”<sup>53</sup>

Approaching the topic from a different perspective that highlighted the role of the permanent state of exception created by Nazi totalitarianism, Sigmund Neumann also arrives at a similar conclusion and maintains in his *Permanent Revolution. The Total State in a World at War* (1942) that Schmitt was a “belated partisan and for a time crown jurist of the Third Reich.”<sup>54</sup> An analogous remark can be found from Jacob Talmon’s book *The Origins of Totalitarian Democracy* (1952) – a work that sought to convince the reader that the modern era had witnessed not only the development of Enlightenment liberalism but also its darker side, a whole tradition of totalitarian thinking that had subterraneously coexisted

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<sup>48</sup> Aurel Kolnai, *The War Against the West* (New York: The Viking Press, 1938), 111, 124, 143–9, 155–9, 166–7, 171, 176, 301–3, 411, 416, 436, 577, 618, 682.

<sup>49</sup> Kolnai, *The War Against the West*, 111, 143.

<sup>50</sup> Ernst Fraenkel, *The Dual State. A Contribution to the Theory of Dictatorship*, trans. E. A. Shils, in collaboration with Edith Lowenstein and Klaus Knorr (New York: Oxford University Press, 1941), 131. For a recent work that both rehabilitates Fraenkel’s analysis and analyzes Schmitt’s Nazi era writings in relation to this work, see Jens Meierhenrich, *The Remnants of the Rechtsstaat. An Ethnography of Nazi Law* (Oxford: Oxford University Press, 2018).

<sup>51</sup> Franz Neumann, *Behemoth, The Structure and Practice of National Socialism* (London: Victor Gollancz LTD, 1943), 42–8, 59–60, 67, 107, 130, 134, 137, 364–6, 383. Neumann describes Schmitt as a “totalitarian” thinker and calls him “the most intelligent and reliable of all National Socialist constitutional lawyers,” who made a “decisive contribution” to the Nazi doctrine (Neumann, *Behemoth*, 47, 59). On the Frankfurt School and Schmitt, see the much-debated essay by Ellen Kennedy, “Carl Schmitt und die ‘Frankfurter Schule.’ Deutsche Liberalismuskritik im 20. Jahrhundert,” *Geschichte und Gesellschaft*, vol. 12, no. 3 (1986): 380–419.

<sup>52</sup> F.A. Hayek, *The Road to Serfdom* (London: Routledge, 1945), 132 footnote 1, 139. On Hayek and Schmitt, see William E. Scheuerman, *The End of the Law: Carl Schmitt in the Twenty-First Century* (London: Rowman & Littlefield, 2020), 247–265.

<sup>53</sup> Ludvig von Mises, *Omnipotent Government: The Rise of Total State and Total War* (New Haven: Yale University Press, 1945), 93. One finds a similar line of argumentation with less emphasis on Schmitt in Wilhem Röpke, *The German Question*, trans. E. W. Dicks (London: George Allen & Unwin, 1946), 69–70. For historically contextualized analytical explorations of the argumentation pursued by (neo)liberals like Hayek, von Mises and Röpke, see Michel Foucault, *The Birth of Biopolitics*, trans. Graham Burchell (New York: Picador, 2008); Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, MA: Harvard University Press, 2018).

<sup>54</sup> Sigmund Neumann, *Permanent Revolution. The Total State in a World at War* (London: Harper & Brothers, 1944), 66.

with the more official liberal tradition – in which Talmon maintains that “Schmitt was the main theoretician of the National Socialist philosophy of law.”<sup>55</sup>

While these early works on Nazi totalitarianism give the impression that Carl Schmitt enjoyed a significant position and a very broad influence within the Nazi system, not everyone saw things in this way, however. While some referred to Schmitt only in passing,<sup>56</sup> there were also numerous very influential theoretical works like Karl Popper’s *The Open Society and its Enemies* (1945) or Theodor Adorno’s and Max Horkheimer’s *Dialektik der Aufklärung* (1944) that did not mention Schmitt at all.

However, none of the works above offered what could be called a textually grounded analysis of Schmitt’s Nazi engagement from a holistic perspective.<sup>57</sup> The first studies that took some steps toward this direction and focused more explicitly on Schmitt’s Nazi engagement were written by Peter Schneider and Jürgen Fijalkowski.<sup>58</sup> However, the very first book that offered what can be called a textually critical treatment of Schmitt’s Nazi engagement was the book by Hasso Hofmann, *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts* (1964).<sup>59</sup> Before taking a more careful look into the more specialized critical research literature on Schmitt and Nazism that Hofmann’s early study also represents, we must, however, first, offer a critical analysis of the less critical approaches, which have had a particularly strong influence in the Anglo Saxon academia.

#### 4.1. The apologetic image of Schmitt’s Nazi engagement: A critique of George Schwab, Joseph Bendersky, and Andreas Koenen

The first comprehensive academic study in the English language that aimed to offer a more holistic picture of Schmitt’s Nazi engagement was the monograph by the American historian George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt Between 1921 and 1936* (1970).<sup>60</sup> As Mehring notes, from very early on, Schmitt had “great hopes” on Schwab’s book and he took an active interest in his work. Interestingly, one of the supervisors of Schwab’s work was one of Schmitt’s previous students, Otto Kirchheimer, who had been forced to emigrate from Germany due to his Jewish background and leftwing political positions. Kirchheimer not only blamed Schwab for writing an apologetic work, but specifically criticized his distinction between “true” Nazi antisemitism

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<sup>55</sup> Jacob Talmon, *The Origins of Totalitarian Democracy* (London: Mercury Books, 1961), 263.

<sup>56</sup> Eg, Rohan O’Butler, *The Roots of National Socialism 1783–1933* (London: Faber and Faber, 1941), 272.

<sup>57</sup> Interestingly, the (rather unscholarly) claims that define the early literature on Schmitt and Nazism are still sometimes repeated even in the most contemporary research. A very recent article that analyzes Schmitt and “Schmittianism,” included in a collection that carries the very prominent sounding title *The Oxford Handbook of the Theory of International Law*, declares in its very opening sentence that Schmitt was “Hitler’s chief legal official in the 1930s” (Robert Howse, “Schmitt, Schmittianism and Contemporary International Legal Theory,” in *The Oxford Handbook of the Theory of International Law*, eds. Anna Orford and Florian Hoffmann [Oxford: Oxford University Press, 2016], 212–30 [212].)

<sup>58</sup> Peter Schneider, *Ausnahmezustand und Norm: Eine Studie zur Rechtslehre von Carl Schmitt* (Stuttgart: Deutsche Verlags-Anstalt, 1957); Jürgen Fijalkowski, *Die Wendung zum Führerstaat: Ideologische Komponenten in der politischen Philosophie Carl Schmitts* (Köln: Westdeutscher Verlag, 1958). One could perhaps also mention the early comparative work written by Christian Graf von Krockow, *Die Entscheidung. Eine Untersuchung über Ernst Jünger, Carl Schmitt, Martin Heidegger* (Stuttgart: Ferdinand Enke Verlag, 1958).

<sup>59</sup> Hasso Hofmann, *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts* (Neuwied und Berlin: Hermann Luchterhand Verlag GmbH, 1964).

<sup>60</sup> For more information on the postwar secondary literature on Schmitt, see Mehring, *Aufstieg und Fall*, 544ff, and for a detailed study on Schmitt’s influence in West-Germany, see Dirk van Laak, *Gespräche in der Sicherheit des Schweigens: Carl Schmitt in der politischen Geistesgeschichte der frühen Bundesrepublik* (Berlin: Akademie Verlag, 2002). On Schmitt’s global influence, see Jan-Werner Müller, *A Dangerous Mind: Carl Schmitt in Post-War European Thought* (New Haven: Yale University Press, 2003); Alain de Benoist, *Carl Schmitt: Internationale Bibliographie der Primär- und Sekundärliteratur* (Graz: Ares, 2010).

and the supposedly more innocent “Catholic” antisemitism represented by Schmitt – a contention that eventually forced Schwab to write a new dissertation and, on the other hand, led Schmitt to cut all ties with Kirchheimer.<sup>61</sup>

That this study would offer an objective picture of the subject matter should already be questioned by the fact that *Schmitt himself* endorsed this book for print to Duncker & Humblot as “thoroughly critical” against himself, claiming that Schwab’s book was certainly not an apology and praising the book for the fact that it “concealed nothing” that could appear as incriminating against himself.<sup>62</sup> In reality, like much of the initial historical writing that dealt with the unaddressed German past, also Schwab’s work was clearly influenced by the apologetic points of view of those, who had been involved in the events themselves.<sup>63</sup> Schwab’s book is interesting still today precisely for the reason that it was so heavily influenced by Schmitt himself. To a large extent this book offers the picture of Schmitt’s Nazi engagement that Schmitt himself accepted and wanted to convey to the public. This is why one reads, numerous times, in Schwab’s book the following kind of remarks: “The author gathered some of this information as a result of his extensive conversations with Professor Schmitt.”<sup>64</sup> And this is precisely the problem that one must address if one wants to understand the problematic image of Schmitt’s Nazi engagement that was initially formed, and which, to an extent, continues to persist, in the secondary literature. Since this short introduction cannot pretend to offer an all-comprehending treatment of the issues at hand in the secondary literature concerning Schmitt’s Nazi engagement, I will use the studies of Schwab, Joseph Bendersky, and Andreas Koenen, as prisms through which I will engage in criticism with this literature – a discussion that I will undertake mostly in the footnotes.

It is striking that even in those sections of Schwab’s book that are supposed to deal with Schmitt’s most racist and problematic writings, Schwab not only praises Schmitt’s “brilliance” and his “important legal theoretical contributions,”<sup>65</sup> but also openly bemoans how “regrettable” it is that “Schmitt, this unusually gifted thinker, embarked upon an anti-Jewish course.”<sup>66</sup> In Schwab’s reading, Schmitt was never a real Nazi, but rather “paid some lip service to the terminology National Socialist propaganda.” Rather conveniently for Schmitt, this is supposed to be somehow especially true with Schmitt’s most racist statements – with his references to “blood and soil” and the concept of “race” – which, as the reader learns from the outset, are usually not “in harmony with the general tone” of Schmitt’s works. Supposedly, it is especially with the concept of “race” that “Schmitt did not follow the Nazi line.”<sup>67</sup> The reader learns that Schmitt joined the “National-Socialist bandwagon of anti-Semitism,” because this “newly acquired” antisemitic “outlook” constituted “a last effort” on Schmitt’s part to “succeed in life.”<sup>68</sup> Schwab constantly contrasts Schmitt with other authors, who are

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<sup>61</sup> Mehring, *Aufstieg und Fall*, 544–5.

<sup>62</sup> Schmitt, cited in Mehring, *Aufstieg und Fall*, 545.

<sup>63</sup> On the problems of bias in historical writing in German legal history after the war, see for instance Stolleis’s critical portrayal of the works that deal with the Nazi era *Wehrmachtjustiz* (Stolleis, *Recht im Unrecht*, 221–32). Another well-known example of this kind of biased postwar historical writing was offered by Gerhard Ritter, who argued for the uncorrupted nature of German science; Gerhard Ritter, “Der deutsche Professor im ‘Dritten Reich’,” *Die Gegenwart*, vol. 1, no. 1 (1945): 23–26.

<sup>64</sup> Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt Between 1921 and 1936* (Berlin: Duncker & Humblot, 1970), 106 footnote 18.

<sup>65</sup> Schwab, *The Challenge of the Exception*, 149.

<sup>66</sup> Schwab, *The Challenge of the Exception*, 138.

<sup>67</sup> Schwab, *The Challenge of the Exception*, 101.

<sup>68</sup> Schwab, *The Challenge of the Exception*, 107; cf., 138, 140.

labelled as “authentic” and “genuine” Nazis<sup>69</sup> and he argues that instead of truly believing in Nazi ideology, Schmitt merely “had the vanity to play the role of the crown-jurist of National Socialism.”<sup>70</sup>

Schmitt’s personal influence is even more clear in the details of the study, in which Schwab creatively explains away the racist foundations of Schmitt’s concrete order thinking. While in his 1933 book *Staat, Bewegung, Volk* (1933), Schmitt argues that the whole Nazi system of thought is based on the racial homogeneity (*Artgleichheit*) of the German people and on the fact that Hitler’s unique “leadershipness” (*Führertum*) incarnates this racial homogeneity organically and naturally,<sup>71</sup> Schwab argues that Schmitt’s use of the term “*Artgleichheit*”<sup>72</sup> is actually a veiled reference to the “direct democratic process,” which Schmitt supposedly hoped the Nazis would institute.<sup>73</sup>

Even more creative, however, is Schwab’s explanation for Schmitt’s racist and antisemitic statements in his self-organized conference on “Jewishness in legal science” from October 1936, in which Schmitt argued, among other things, that “racial science” had revealed the differences between Jews and other peoples, and that it was for this reason that one needed to purify German legal science from Jewish influences. This practice necessitated the removing of Jewish writings in special collection in the German libraries and it also required that if one needed to cite a Jewish author, it would be necessary to mention the ethnic background<sup>74</sup> – a practical task that Schmitt himself systematically adheres to in his Nazi era writings. Schwab describes Schmitt’s statements in this conference as “quite” antisemitic and argues that although these statements may appear as biologically racist, in reality, Schmitt was, however, “concerned with the widespread German practice of plagiarizing Jewish authors,” and that, “by insisting on this Schmitt had hoped to raise the respectability of German scholarship which had received mortal blows since 1933.”<sup>75</sup> And what is the source for this claim made by Schwab? As we read in the footnote: “On this information I rely on my conversations with Professor Schmitt.”<sup>76</sup>

Finally, the reader learns what Schwab now openly calls “Schmitt’s own interpretation” of his own Nazi engagement according to which Schmitt had simply tried to “steer the party away from racialism and, if at all needed, direct it into the channel of traditional anti-Judaism.”<sup>77</sup> In the end, Schwab continues, Schmitt himself supposedly resigned from his party offices in “November” 1936 after he could no longer bear the more directly racist language of true Nazis.<sup>78</sup> Ultimately, Schmitt then retreated into an intellectual silence and supposedly even offered “veiled” critiques of the Nazi system with his anti-dynamic and “statist” writings on Hobbes.<sup>79</sup>

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<sup>69</sup> Schwab, *The Challenge of the Exception*, 105, 132, 138.

<sup>70</sup> Schwab, *The Challenge of the Exception*, 107.

<sup>71</sup> Schmitt, *Carl Schmitt, Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933), 32ff.

<sup>72</sup> On the directly racist meaning of this term, see Substudies 1 and 4.

<sup>73</sup> Schwab, *The Challenge of the Exception*, 111–2. None of Schmitt’s works from the Nazi era even mention in passing the possibility of instituting “direct democracy.” However, it is true that Schmitt had indeed reflected upon the problem of direct democracy in the context of the Weimar constitution (see especially Carl Schmitt, *Volksentscheid und Volksbegehren* [Berlin: Duncker & Humblot, 2014]). It is crucial to remember that Schmitt declared the death of the Weimar constitution right after the *Ermächtigungsgesetz* of 24th March 1933.

<sup>74</sup> Carl Schmitt, “Eröffnung” and “Schlusswort,” in *Das Judentum in der Rechtswissenschaft. 1. Die Deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist* (Berlin: Deutscher Rechts-Verlag, 1936): 14–17 and 28–34 (28–31).

<sup>75</sup> Schwab, *The Challenge of the Exception*, 135–6.

<sup>76</sup> Schwab, *The Challenge of the Exception*, 136, footnote 7.

<sup>77</sup> Schwab, *The Challenge of the Exception*, 136–7. It is telling that here even Schwab is skeptical of this “self-interpretation.”

<sup>78</sup> Schwab, *The Challenge of the Exception*, 138. In reality Schmitt was forced to resign in December.

<sup>79</sup> Schwab, *The Challenge of the Exception*, 146–7. This reading, which has also been supported by Heinrich Meier, has been appropriately criticized by Reinhard Mehring, *Aufstieg und Fall*, 380–97.



Schwab's study was followed roughly a decade later by the very influential intellectual biography by Joseph Bendersky, *Carl Schmitt. Theorist for the Reich* (1983). This book was the first study to utilize and analyze Schmitt's Nazi engagement through a broader scope of materials, including Schmitt's letters and rarer Nazi writings. As Mehring notes, since Bendersky was Schwab's student and thus not directly involved in the polemics in Germany that concerned Schmitt's Nazi past, Schmitt allowed him access to his own archives. Bendersky also made a "good impression" on Schmitt during his first visit to Germany in 1972. Schmitt still read the biography before his death.<sup>80</sup>

It is also worthwhile to analyze Bendersky's intellectual biography because this study offers a more nuanced systematization of the very same apologetic arguments first elaborated by Schwab's work, directly influenced by Schmitt himself.<sup>81</sup> The very language that Bendersky uses to describe Schmitt's Nazi engagement consistently deprives Schmitt himself of agency and not only belittles the racist contents of his writings, but even goes as far as to portray Schmitt *himself* as one of the victims of the Nazi regime.<sup>82</sup> Instead of speaking about Schmitt's revolutionary fervor after he joined the Nazis, Bendersky speaks of Schmitt's "complicity," which was supposedly the "safest" option for Schmitt.<sup>83</sup> Indeed, Schmitt supposedly "feared for his own life"<sup>84</sup> after the purge of the SA on June 30<sup>th</sup> 1934. Although Schmitt legitimized this purge in his own well-known article, Bendersky claims that Schmitt nevertheless considered "emigration" and even "withdrawal from public life" – it goes without saying that no proof is cited for any of these claims<sup>85</sup> –, but only reluctantly decided to, nevertheless, "entrench" himself further into Third Reich.<sup>86</sup>

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<sup>80</sup> Mehring, *Aufstieg und Fall*, 548.

<sup>81</sup> Bendersky has supported his interpretation also in a series of other publications. See for instance Joseph Bendersky "The Expendable Kronjurist: Carl Schmitt and National Socialism, 1933–36," *Journal of Contemporary History*, vol. 14, no. 2 (1979): 309–328.

<sup>82</sup> This is indeed how Schmitt perceived his own position as his own thought-diary notes show: He claimed that also those, who, with "good intentions," joined the Nazis in 1933, could not yet have seen all of the violence that was unleashed by the Nazi movement. In making these claims, he also notes that in "persecuting" the *Märzgefallener* like Schmitt himself, the allied were no better than the Nazis themselves. (see Schmitt, *Glossarium*, 164, 181; cf., 162.)

<sup>83</sup> Bendersky, *Theorist for the Reich*, 203.

<sup>84</sup> Bendersky, *Theorist for the Reich*, 213. Schwab speaks of Schmitt's "somewhat dangerous" position (Schwab, *The Challenge of the Exception*, 142). Mehring notes that anyone attacked by an SS organ was obviously in danger (Mehring, *Aufstieg und Fall*, 379). Koenen argues that Schmitt was lucky in that he was not physically harmed (Koenen, *Der Fall*, 732). Also, one of Gurian's articles from December 1936 speculated whether Schmitt was now on his way to "emigration or the concentration camp" (Koenen, *Der Fall*, 734; Mehring, *Aufstieg und Fall*, 379). However, given the support of Frank and Göring, I believe one should not over-emphasize the danger of Schmitt's position. After all, if Schmitt *truly* feared for his life, why did he continue to publish articles and books actively, returning to lecturing already by February 5<sup>th</sup> 1937? If he *truly* was in such a precarious position, why was he allowed to keep his Berlin professorship and the title of *Staatsrat*, which Göring stripped away from Hermann von Lünick due to his Catholicism (Blasius, *Preussischer Staatsrat*, 178) – the very same argument that was used against Schmitt by the SS? In reality, Schmitt's life remained relatively comfortable under the Third Reich – a fact that clearly deducible from his correspondence. For example, in his letters to Gretha Jünger, Schmitt describes in October 1939 how his life in Berlin is "*nicht ungemütlich*" as long as there is enough wine in his cellar; in 1941 he describes his "wonderful" trip to Paris, and in 1943 he describes his stay in Spain with the word "paradise-like." It is only in the last years of the war, when Germany was mass bombed by the Allied air force, that Schmitt begins to bemoan his "difficult times." (Carl Schmitt and Gretha Jünger, *Briefwechsel 1934–1954*, eds. Ingeborg Villinger and Alexander Jaser [Berlin: Akademie Verlag, 2007], 33, 51, 78, 96.)

<sup>85</sup> Bendersky probably takes these arguments from Schwab, who, however, emphasizes that Schmitt never truly considered emigration or retirement (cf., Schwab, *The Challenge of the Exception*, 141, 143).

<sup>86</sup> Bendersky, *Theorist for the Reich*, 217; cf., 241.

Instead of truly expressing and supporting racist views, Bendersky claims that Schmitt made “obvious opportunistic compromises”<sup>87</sup> and agreed to “more and more concessions”<sup>88</sup> – Schmitt made racist and antisemitic remarks in order to “protect himself.”<sup>89</sup> Instead of consciously attacking the Jews with a venomous and brutal rhetoric, Schmitt “found himself articulating ideas about race and the Jews which he thought were truly absurd.”<sup>90</sup> Schmitt was simply “trying to sound like a devoted National Socialist,”<sup>91</sup> and although he indeed “attempted to make his ideas compatible with National Socialism,”<sup>92</sup> he nonetheless never truly acquired a real “sympathy for National Socialism.”<sup>93</sup> Schmitt was paying purely opportunistic “lip service to Nazi views by inserting the odd anti-Semitic remark into his publications.”<sup>94</sup> Instead of being a Nazi, Schmitt represented “a typical conservative aversion to National Socialism.” Schmitt’s intellectual “scheme was not embraced by party ideologues,”<sup>95</sup> and he “could scarcely be allowed... to occupy a central position, even among the theorists.”<sup>96</sup> Ultimately, Bendersky, then, summarizes his position as follows:

But although [Schmitt] mentioned such terms as race and blood, he never succumbed to a belief in the biological racism of National Socialist ideology. He had always considered such ideas absurd. And according to Nazi biological criteria, his own wife, who was of Serbian descent, would be subject to exclusion from the planned national community of Aryans. These early references to race, irrelevant to the content of his work and artificially placed within the text, reveal his desire to show himself in tune with the new order. As an officeholder in a National Socialist legal organization he was, of course, expected to conform to the party line. By doing so he might also avoid embarrassing questions about his past close professional and personal involvements with Jews. But he never became an ideological convert to Nazism.<sup>97</sup>

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<sup>87</sup> Bendersky, *Theorist for the Reich*, 227.

<sup>88</sup> Bendersky, *Theorist for the Reich*, 207.

<sup>89</sup> Bendersky, *Theorist for the Reich*, 227.

<sup>90</sup> Bendersky, *Theorist for the Reich*, 228, my emphasis.

<sup>91</sup> Bendersky, *Theorist for the Reich*, 235.

<sup>92</sup> Bendersky, *Theorist for the Reich*, 207.

<sup>93</sup> Bendersky, *Theorist for the Reich*, 207.

<sup>94</sup> Bendersky, *Theorist for the Reich*, 207–8.

<sup>95</sup> Bendersky, *Theorist for the Reich*, 208.

<sup>96</sup> Bendersky, *Theorist for the Reich*, 210. Against Bendersky’s claims, in the more reliable histories on Nazi legal thought, Schmitt’s position among the theorists, at least from 1933 to 1936, is described as “central” (Stolleis, *Recht im Unrecht*, 133; Stolleis, *Geschichte des öffentlichen Rechts*, 323) and as “paradigmatic” (Bernd Rüter, *Entartetes Recht. Rechtslehen und Kronjuristen im Dritten Reich* [Munich: C. H. Beck, 1989], 101ff.). The more specialized studies on Schmitt’s Nazi engagement also recognize Schmitt’s central importance in this period, but nevertheless locate his broadest influence on the earliest Nazi years from 1933 to 1934. They also highlight the fact that Schmitt’s career in the Nazi party depended directly and almost fully on “the party lawyer” Hans Frank (Koenen, *Der Fall*, 487, 494–5, 499–501, 505. Mehring, *Aufstieg und Fall*, 302, 340–1, 355, 358). In positioning himself on the side of Hans Frank, Schmitt not only remained directly dependent on his Nazi superior (Mehring, *Aufstieg und Fall*, 359, 373), but also implicitly positioned himself on Frank’s side against the SS and the Gestapo in the broader battles within the Nazi polity (Stolleis, *Recht im Unrecht*, 193–4; Blasius, *Preussischer Staatsrat*, 173).

<sup>97</sup> Bendersky, *Theorist for the Reich*, 208. None of these claims are true. As I demonstrate in this dissertation, Schmitt uses the terms of “race” and “blood” (and even the term “Aryan”) rather systematically and in harmony with his notion of “racial homogeneity” (*Argeleichheit*). Second, Schmitt’s diaries are full of racist and antisemitic ideas, especially after his 1928 move to Berlin. Third, Schmitt’s wife was not excluded from the national community due to biological criteria. On the contrary both Schmitt and his wife acquired an official proof of their “Aryanness” (the so called “*Ariernachweis*”) by gathering documents dating back several generations, which proved they had no Jewish blood in their veins. (Mehring, *Aufstieg und Fall*, 350; Schmitt also makes a note about this “*Stammbuch*” in his diaries on the 10<sup>th</sup> of May 1934; Carl Schmitt,

When reading Bendersky's book, one begins to wonder how such a fierce anti-Nazi like Carl Schmitt could have even ended up in the Nazi party. Bendersky's book almost reads like a variation of Kafka's novel *Das Schloss* (1926) in which the unlucky protagonist "K" becomes trapped in a village full of hostile inhabitants, who, time and again, refuse to help K in his relentless and lonely struggle against the faceless aristocracy that inhabits the mystical castle and dominates the life of the desperate villagers.

As in the case of Schwab, all of this is just as problematic as it seems. Anyone familiar with the idea of Occam's razor is forced to ask the question: Could it be that the explanation to the fact that Carl Schmitt joins the Nazi party in 1933, is not to be found in some incredibly complex and tragic self-delusion, but is rather much more obvious; that the openly proclaimed political goals of the Nazi movement – its radical racist antisemitism and the fully openly planned destruction of the liberal-democratic Weimar Republic and its future transformation into a total one-party-state –, quite simply, appealed to Schmitt, which, then, led him to join the Nazi party? This question is never even considered seriously by Schwab nor Bendersky.<sup>98</sup>

Many of these very same arguments first put forward by Schwab and Bendersky were later presented in a different way by Andreas Koenen in his monstrously broad intellectual biography of Schmitt's Nazi engagement *Der Fall Carl Schmitt. Sein Aufstieg zum "Kronjuristen des Dritten Reiches"* (1995). Even today in 2021, this book, together with Reinhard Mehring's biography, can be described as the most comprehensive treatment available of Schmitt's Nazi era writings and activities. And yet, this book is ultimately almost as problematic as Schwab's and Bendersky's studies on the subject. While Koenen provides an enormous wealth of historically relevant information, he nevertheless drowns the reader into unnecessary and even fully irrelevant details that often have virtually nothing to do with Schmitt.

Koenen's main argument is grounded on the highly problematic dissertation written by one of Schmitt's self-proclaimed students, Armin Mohler,<sup>99</sup> who was also the onetime personal secretary of Ernst Jünger. In his dissertation *Die Konservative Revolution in Deutschland 1918–1932* (1950), which as Mohler himself admits in a later introduction to the study, was an openly political book, he aims to draw a radical contrast between "real" Nazis and the more respectable conservative thinkers in order to salvage the latter from the former.<sup>100</sup> However, although Mohler describes Schmitt as one of the central thinkers of this supposed school of thought, he is mentioned only in passing in the book in question.<sup>101</sup> Mohler presented a systematic interpretation of Schmitt as a conservative revolutionary only after Schmitt's death<sup>102</sup> – the reason for this being the rather obvious fact that probably even Mohler himself knew that Schmitt himself would have been highly critical of his interpretation.<sup>103</sup>

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*Tagebücher 1930–1934*, ed. Wolfgang Schuller [Berlin: Akademie Verlag, 2010], 344). Duska also expressed antisemitic opinions (Mehring, *Aufstieg und Fall*, 308). However, it is true that Schmitt's Serbian wives are mentioned negatively in the *SD-Akten* (7).

<sup>98</sup> And yet, this deeply distorted perspective is still often taken at face value. For instance, Panu Minkkinen, cites both Schwab and Bendersky as the paradigmatic examples of "Schmitt scholarship proper," who, supposedly, escape the non-objective "entrenched camps" around supposed "apologists" and those who engage in "demonization" of Schmitt (Panu Minkkinen, "Political constitutionalism versus political constitutional theory: Law, power, and politics," *I•CON*, vol. 11, no. 3 (2013): 585–610 [588–9]).

<sup>99</sup> As the title denotes: Armin Mohler, *Carl Schmitt. Briefwechsel mit einem seiner Schüler* (Berlin: Akademie Verlag, 1995).

<sup>100</sup> Armin Mohler, *Die Konservative Revolution in Deutschland 1918–1932*. (Basel: Stocker, 1989), xxv.

<sup>101</sup> Mohler, *Die Konservative Revolution*, 113–17, 208–11.

<sup>102</sup> Armin Mohler, "Carl Schmitt und die 'Konservative Revolution,'" in *Complexio Oppositorum: Über Carl Schmitt*, ed. Helmut Quaritsch (Berlin: Duncker & Humblot, 1988), 129–158.

<sup>103</sup> On Schmitt's publicly expressed critique of Mohler's "conservative revolution" and Mohler's outdated nationalism. cf., Mehring, *Aufstieg und Fall*, 556ff.; Noack, *Biographie*, 293. Already Bendersky, despite of the grave problems in his own interpretation of Schmitt, rightly argued that if there even was such a school of thought that Mohler had invented, Schmitt

By mixing Mohler's arguments with Schmitt's own apologetic claims according to which his whole work had always revolved around the question of Catholicism,<sup>104</sup> Koenen tries to portray Schmitt as the most influential thinker of this school of thought in his intellectual biography. In Koenen's reading Schmitt was and always remained a Christian thinker influenced decisively by Christian "Reichstheologie" that aimed to establish a Christian empire in Europe; a grand narrative that allows Koenen to draw an unbroken continuity from Schmitt's Catholic childhood to his 1923 book *Römischer Katholizismus* and from here to Schmitt's Nazi concept of the "Reich" that he developed after 1933 all the way to his later concepts of *Grossraum* and *Nomos*. Blinded by this grand narrative, Koenen becomes fully unable to discover any change in Schmitt's thinking. In actual reality, there is not a single argument in Schmitt's Nazi writings from 1933 to 1936 that could be interpreted as "Christian."<sup>105</sup> Ironically, Koenen's study remains useful not because of its conclusions, but rather because it offers so much historical evidence for a more critical and nuanced interpretation that Koenen himself, blinded by his factually unsubstantiated grand narrative, was unable to muster.

Even if in highly different ways, the studies by Schwab, Benderksy and Koenen are associated by some common arguments; (1) the claim that Schmitt was not a "real" Nazi, but rather a conservative and a Catholic thinker (Schwab/Bendersky) or a catholic conservative revolutionary (Koenen, drawing on Mohler); (2) the notion that Schmitt's racism was not biological, but if it even truly existed, then culturally or historically grounded, and (3) the idea that Schmitt's works from the Weimar era through his Nazi engagement form a more or less coherent whole. While Schwab and Bendersky read Schmitt as a systematic defender of a "strong state" (against the "real" Nazis, who defended the more dynamic Nazi movement), Koenen argues that Schmitt was always a defender of a broader Christian-European empire (once again, against the real Nazis, who defended the more dynamic Nazi movement and a non-Christian, biological concept of the *Lebensraum*).

#### 4.2. Previous critical research and the novel contributions of substudies 1 and 2

Substudies 1 and 2 position themselves in a discussion with Schwab, Benderksy and Koenen and with the more critical literature on Schmitt and his Nazi engagement that has gradually emerged, especially in the last two decades.<sup>106</sup> The first such historically contextualized critical examination was offered by Hasso Hofmann's work *Legitimität gegen Legalität: Der Weg der politischen Philosophie Carl Schmitts* (1964).<sup>107</sup> This was the first work that clearly recognized (1) the discrepancy between Schmitt's Weimar era decisionism and his later concrete order thought and also (2) the first book that pointed to the centrality of racism in Schmitt's writings from 1933 to 1936. It is telling that while Schmitt had praised Schwab's book as "thoroughly critical" against himself, when Schmitt read Hofmann's work, he underlined the word "antisemitic" and wrote to the margins his own word: "*judenkritisch*" ("critical of the Jews").<sup>108</sup>

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certainly could not be counted as one of its thinkers. Joseph W. Bendersky, "Carl Schmitt and the Conservative Revolution," *Telos*, no. 78 (Winter 1988–89),: 27–42.

<sup>104</sup> Schmitt, *Glossarium*, 124.

<sup>105</sup> For instance, Koenen miscites and reads Schmitt's *Staat, Bewegung, Volk* (1933) as a "Christian" pamphlet although this work explicitly renounces Christian concepts in favor of racist Nazism (Koenen, *Der Fall*, 433–5; cf., substudy 1 of this dissertation).

<sup>106</sup> Here I will limit my analysis to the most relevant secondary literature.

<sup>107</sup> It is certainly not an accident that this book has now appeared in four editions, the latest, which includes a new introduction, being from 2002, which I use here.

<sup>108</sup> Hofmann, *Legalität und Legitimität*, xxviii.

Schmitt's Nazi era activities were also treated in a critical and contextualized light in the broader histories of Nazi legal science from rather early on. Here, the two pioneers are clearly Bernd Rüthers and Michael Stolleis, whose works not only highlight the central influence of Schmitt's Nazi era concrete order thought for the Nazi legal science, but also place Schmitt's ideas within the broader academic legal theoretical discussions of the era. Especially the works by Stolleis offer an indispensable source for understanding the German legal science during National Socialism.<sup>109</sup> While Stolleis emphasizes Schmitt's central position among the Nazi lawyers from 1933 until his downfall in late 1936 and also recognizes Schmitt's later, slightly less central position in the Nazi discussion concerning international law, he also highlights the fact that one should not overestimate the importance of legal science within a regime that was by definition "dynamic," despised intellectuals, and eventually created a virtually lawless reality, defined by arbitrary rule-of-decree by Hitler. The growing meaninglessness of legal science in Germany came to the fore especially after the radicalization of Nazi policies of annexation and the growth of state-applied domestic terrorism during 1938 and would eventually lose virtually all meaning with the outbreak of the war in 1939. To a certain extent, as Stolleis notes, all intellectuals who eagerly joined the Nazis in 1933 deluded themselves with the movement to some extent, as hardly anyone could profess the profundity of the reign of terror unleashed by the Nazis during World War II.<sup>110</sup> This historical background lays the starting point for analyzing Schmitt's contributions during the Nazi era and for understanding the limits of his influence more generally.

However, it is only during the 1990s and early 2000s that a series of specialized studies on Schmitt and his Nazi engagement were published. In 1999, William E. Scheuermann's book *The End of the Law* offered a fairly comprehensive treatment of Schmitt's Nazi engagement. Arguing against much of the previous literature, Scheuermann argued that there was not only a profound theoretical continuity in Schmitt's Weimar and Nazi thought, but that it was precisely his earlier thinking whose core elements "primed" Schmitt to join the Nazi cause; thus, Schmitt's decision to join the party was nothing less than a "logical choice."<sup>111</sup> Although Scheuermann did not offer a very detailed treatment of Schmitt's writings from 1933 to 1936, he nevertheless urged to take Schmitt's Nazi era writings seriously and to discover the inner logic that fueled them.<sup>112</sup> However, in discovering this logic, Scheuermann clearly overemphasized the problem of legal indeterminacy, which in reality, is fairly minor issue in Schmitt's Nazi thought – a rather problematic move that allowed Scheuermann to draw a connection between Schmitt's early neo-Kantian theoretical writings and his later Nazi thought.

Another major step in the research on Schmitt and the Nazi era was initiated with Raphael Gross's book *Carl Schmitt und die Juden. Eine Deutsche Rechtslehre* (2000) – a work that aroused a very widespread discussion in the reviews.<sup>113</sup> Gross's argument was radical: Antisemitism should be seen as nothing less than the very "basis" of Schmitt's thinking; as the all-encompassing, central element of Schmitt's thought as such.<sup>114</sup> However, while Gross's study deserves merit for arousing a broad critical discussion around Schmitt's Nazi works work and their problematic contents, there is no doubt, as

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<sup>109</sup> Stolleis; *Recht im Unrecht*; Stolleis, *Geschichte des öffentlichen Rechts*.

<sup>110</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 414. Schmitt himself emphasized this fact (Schmitt, *Glossarium*, 164; Hertwerck and Kisoudis, *Gespräch*, 91) Also Arendt speaks consistently of "monstrosities no one believed possible at the beginning" (Arendt, *Responsibility and Judgement*, 23) and refers to the shock that the knowledge of the holocaust was for her (Arendt, *Ich Will Verstehen*, 61).

<sup>111</sup> Scheuermann, *The End of the Law*, 134–5, 143–4, 146.

<sup>112</sup> Scheuermann, *The End of the Law*, 141

<sup>113</sup> For an overview of this discussions, see the contributions listed in Raphael Gross, "The 'True Enemy': Antisemitism in Carl Schmitt's life and work," in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2017): 96–116 (endnote 18).

<sup>114</sup> Gross, *Deutsche Rechtslehre*, 383.

Mehring notes, that this work suffers from “major weaknesses.”<sup>115</sup> In a follow up study in which Gross analyzes Schmitt’s more recently published diaries, Gross aims to explain the fact that Schmitt’s Weimar era works are not openly antisemitic by the fact that his antisemitic statements would be encrypted in a kind of code.<sup>116</sup> This is simply not credible and such statements are not provable by textual resources. Ultimately, the quality of Gross’s studies are undermined by his tendency to read back the substance of Schmitt’s most racist writings into his Weimar era publications, where such arguments do not exist.

Also, Dirk Blasius’s work *Carl Schmitt. Preussischer Staatsrat in Hitlers Reich* (2001) made important headway in analyzing Schmitt’s activities from the Nazi era. Blasius argues that Schmitt’s involvement in the institution of the Prussian state council, created by Hermann Goering, forms the key to understanding Schmitt’s Nazi engagement. Through careful archival work, Blasius demonstrates the following central points: (1) that Schmitt’s closeness to the National Socialists should not be dated, at least one-sidedly, to the *Ermächtigungsgesetz* of March 24<sup>th</sup> 1933, but rather already to the immediate aftermath of the *Preussenschlag* trial of 1932; (2) that Schmitt’s thinking from 1933 to 1936 was not essentially different from the supposedly more racist variants of Nazi ideology and that, in fact, Schmitt even influenced such racial hygienists as Falk Ruttke; (3) and that, consequently, Schmitt’s downfall in the party hierarchy in December 1936 should not really be seen as factually stemming from substantial differences between the Schmitt’s ideas and “real” Nazism. Rather, Schmitt’s downfall was purposefully “construed” by the SS as an indirect attack against Hans Frank; in order to stop Frank from advancing to the position of *Reichsjustizminister*, which could have also meant Schmitt could have become a *Staatssekretär* at Frank’s wake.<sup>117</sup>

Another important study in understanding Schmitt and his Nazi engagement, especially in the English-speaking world, was published by the Marxist author Gopal Balakrishnan in 2004. His book, descriptively entitled *The Enemy*, aimed to offer a more comprehensive and balanced account of Schmitt and his intellectual path from the Weimar era to his Nazi engagement than the previous English monographs of Schwab and Bendersky. Although this book indeed represented a step into a more critical direction in relation to earlier English research on the topic – the reason Balakrishnan’s book indeed has been highly influential in the reception of Schmitt in English –, the book is nevertheless troubled by some interpretational errors. First of all, Balakrishnan underestimates the profound systematicity that underlies Schmitt’s thinking<sup>118</sup> – a fact that is clearly disclosed by the fact that he offers no systematic analysis Schmitt’s most important book, *Verfassungslehre* (1928).<sup>119</sup> Second, Balakrishnan’s treatment of Schmitt’s Nazi era writings from 1933 to 1936 did not offer much more than a cursory overview of the topic and did not make significant new contributions in relation to the already existing literature.<sup>120</sup>

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<sup>115</sup> Mehring, *Aufstieg und Fall*, 670, endnote 12.

<sup>116</sup> Gross, “The ‘True Enemy’.”

<sup>117</sup> Blasius, *Preussischer Staatsrat*, 172–3. Blasius also argues very forcefully that Schmitt’s downfall could have not been caused by his Catholicism, for Göring indeed had removed people from the state council for this particular reason, but in the case of Schmitt Göring found no reason to do so (Blasius, *Preussischer Staatsrat*, 178).

<sup>118</sup> Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2002), 5, 51, 136–7.

<sup>119</sup> This is of course not only the problem of Balakrishnan. Even a recent book that proclaims to be an analysis of Schmitt’s “constitutional theory” hardly analyzes Schmitt’s central theses in *Verfassungslehre* and even makes the astonishing claim that Schmitt could be understood as an authoritarian liberal. see Benjamin A. Schupmann, *Carl Schmitt’s State and Constitutional Theory. A Critical Analysis* (Oxford: Oxford University Press, 2017). This profoundly erroneous line of interpretation has its roots in the study by Renato Cristi, *Carl Schmitt and Authoritarian Liberalism* (Cardiff: University of Wales, 1998).

<sup>120</sup> Balakrishnan, *The Enemy*, 190–208.

In addition to these studies, Schmitt reception has also been defined by the biographical literature. Whereas Paul Noack's early biography on Schmitt from 1993 was still ridden with errors – especially in the passages that supposedly translated his diary notes from the crucial year of 1933; translations that have later turned out to be rather inaccurate<sup>121</sup> – it was only Reinhard Mehring's comprehensive biography, published in 2009, that offered the a more reliable overview of Schmitt's activities during the Nazi era. This book is an indispensable source for anyone, who is interested in understanding Schmitt's activities during this period.

Engaging in a discussion with this literature, the substudies 1 and 2 of this dissertation offer new critical contributions to the research on Schmitt's and his Nazi engagement by analyzing two unacknowledged features of this period; (1) Schmitt's attempts at creating an entirely new conceptual universe and political language for the Nazi regime and (2) Schmitt's way of narrating the reception history of Roman law and contrasting this history with a mythical history of Germanic laws. Substudy 1 ("Carl Schmitt as a theorist of the 1933 Nazi revolution: 'The difficult task of rethinking and recultivating traditional concepts'." *Contemporary Political Theory* volume 20 [2021]: 341–363) analyses Schmitt's writings from March/April 1933 to December 1936 in detail and argues that during this period Schmitt was a fiercely convinced and racist Nazi, who aimed to develop an entirely new legal-political language for the national socialist regime – a political language cleansed from the "un-German" liberal thought of the nineteenth century.

While it is generally acknowledged that the Nazi revolution attempted to "re-evaluate all values" and therewith strove toward a "new semantical order"<sup>122</sup> – a battle that was waged mainly against the liberal-positivistic conceptual system of the nineteenth century<sup>123</sup> –, substudy 1 of this dissertation is the first study that examines this topic in detail in Schmitt's Nazi era works. Substudy 1 maintains that this attempt to formulate new concepts and categories for the Nazi movement discloses how Schmitt's Weimar era "decisionism" transforms into what he begins to refer to as "concrete order and formation thinking"; a crucial shift that also reveals how Schmitt gradually transforms from an authoritarian thinker, sympathetic to Italian fascism, into a convinced and racist Nazi during 1933. Against previous studies on the subject it is argued that Schmitt's concrete order thought is a both a radically racist way of understanding politics and a more systematic attempt at formulating new concepts for the Nazi regime than previously presumed.

This argument proceeds on three levels. It is argued that Schmitt's conceptual revolution is captured in three major conceptual shifts; (1) the shift from recognizing the liberal-democratic state of the Weimar Republic and its constitution as the existing legal-political framework in Germany toward theorizing the entirely new and qualitatively different *Führer*-State under Hitler; (2) the shift through which Schmitt renounces traditional sovereignty in favor the *Führer*-principle, or what Schmitt calls alternatively as "*Führertum*" or as "leadership-sovereignty," and (3) the shift from understanding the homogeneity of the German people in terms of the Weimar constitution towards conceptualizing this homogeneity in the racial-racist terminology of Nazi ideology.<sup>124</sup> In making these arguments, substudy

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<sup>121</sup> Noack, *Eine Biographie*.

<sup>122</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 326, 360.

<sup>123</sup> Stolleis, *Recht im Unrecht*, 96.

<sup>124</sup> Schmitt's keyword here is *Artgleichheit*; on the specific Nazi meanings of this term, see also substudy 4, footnote 78 of this dissertation. Even the most recent research on this topic does not clearly recognize the racist basis of Schmitt's concrete order thought. See for instance, David Pan, "State, Movement, People: Representation and Race in the Construction of Political Identity," *Telos*, no. 189, Winter 2019: 87–108.

1 aims to demonstrate that Schmitt's Weimar era decisionism is qualitatively different from his Nazi era "concrete order thought."

In previous research it has often been argued that Schmitt would have always remained a classical statist inspired by Hobbes and Hegel.<sup>125</sup> However, this is nothing more than Schmitt's own postwar propaganda and Schmitt's writings from 1933 to 1936 do not provide textual resources for such an interpretation. On the contrary, Schmitt clearly declares that Hitler's rise to power coincided with the "death of Hegel" and that although the new Nazi regime may be inspired by the tradition of German thinking, mainly inspired by Hegel, the Nazi system of thought is also something qualitatively different from Hegelian traditions.<sup>126</sup> As substudy 1 also shows, this major shift in conceptualizing the German state – the shift from Schmitt's fascist *statism* toward his openly racist and Nazi support for the Nazi *movement* – corresponds with his attempts at developing a new concept that could replace the traditional notion of sovereignty, as developed historically by Jean Bodin and Thomas Hobbes. Drawing on Michel Foucault's analysis of biopolitics, the article argues that in his revolutionary fervor, Schmitt truly thought that with Hitler's rise to power, an entirely new era of politics had begun; an era in which the time had finally come to "cut off the head of the king," to paraphrase one of Foucault's famous statements.<sup>127</sup>

The second article of the dissertation offers a new perspective on Schmitt's Nazi engagement by providing a systematic interpretation of his works on legal history from this era. No previous study has examined Schmitt's changing uses of Roman law nor is there a study that would analyze his contributions on legal history from the Nazi period. Substudy 2 ("Mobilizing the Western tradition for present politics: Carl Schmitt's polemical uses of Roman law, 1923–1945." *History of European Ideas*, 47:5 [2021]: 748-772) argues that Schmitt's transformation from an authoritarian thinker into a racist Nazi is clearly mirrored in his changing uses of Roman law and in his different ways of narrating its reception history. By analyzing in detail how Schmitt narratives concerning the reception history of Roman law change from his 1923 book *Römischer Katholizismus und politische Form* all the way into his 1943/44 book *Die Lage der europäischen Rechtswissenschaft*, I demonstrate that Schmitt's changing uses of the history of the reception of Roman law reflect and disclose the major shifts in his political positions.

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<sup>125</sup> As argued by such notable commentators as Mehring, *Aufstieg und Fall*, 321; Koenen, *Der Fall*, 540; Stolleis *Recht im Unrecht*, 133, 164; Stolleis, *Geschichte des öffentlichen Rechts*, 370, 391. Schmitt's treatment of Hegel is explained differently by Balakrishnan, who claims that Schmitt first rejected Hegel in his *Staat, Bewegung, Volk* (1933) and then suddenly again turned back to him in his *Über die Drei Arten* (1934) (Balakrishnan, *The Enemy*, 197, 209). This explanation is also incorrect; what Schmitt did in reality was that he systematically renounced the idea that Hegel's philosophy could have any *direct* effect on Nazism, while maintaining on a purely rhetorical level that Hegel always was and remained one of the pre-Nazi intellectual figureheads, who *inspired* the entirely new system of Nazi ideology.

<sup>126</sup> Cf., Schmitt, *Staat, Bewegung, Volk*, 12, 31 – 32, 42, 45; Carl Schmitt, "Der Neubau des Staats- und Verwaltungsrechts," in *Deutscher Juristentag 1933*, ed. Rudolf Schraut (Berlin: Deutsche Rechts- und Wirtschafts-Wissenschaft Verlags-Gesellschaft, 1933), 242–52 (247).

<sup>127</sup> Michel Foucault, *The History of Sexuality. Vol. 1: An Introduction*, trans. Robert Hurley (New York: Pantheon, 1978), 89. This fact and the radical changes in Schmitt's thought in 1933 are misunderstood in a large amount of commentary literature that is not sufficiently familiar with Schmitt's Nazi writings, and yet, confidently makes broad claims concerning the supposed unchanged continuity of Schmitt's thinking. See for instance; Richard Wolin, "The Conservative Revolutionary Habitus and the Aesthetics of Horror," *Political Theory*, vol. 20, no. 3 (1992): 424–47; Andreas Musolf, "How (not) to resurrect the body politic: the racist bias in Carl Schmitt's theory of sovereignty, Patterns of Prejudice," *Patterns of Prejudice*, vol. 45, no. 5 (2011): 453–468; Kathrin Braun, "From the Body of Christ to Racial Homogeneity: Schmitt, Carl's Mobilization of 'Life' against 'the Spirit of Technicity,'" *The European Legacy*, vol. 17, no. 1 (2012): 1–17; David Ohana, "Carl Schmitt's Legal Fascism," *Politics, Religion & Ideology*, vol. 20, no. 3 (2019): 273–300. Even the critical account of Scheuerman overemphasizes these continuities; Scheuerman, *The End of the Law*. On the problem of continuity in Schmitt's Nazi thought, see the illustrative remarks by Hofmann, *Legitimität und Legalität*, xvvi.



Most crucially, the changing uses of Roman law in Schmitt's works clearly demonstrate the radical transformation and Nazification of his thinking in 1933 just as they disclose how Schmitt aims – in a deeply apologetic manner – to distance himself from his former espousals of National Socialism after he realizes that Germany will lose the war in 1942.

While in the early 1920s Schmitt initially deploys this history of Roman law and its receptions in order to defend the Catholic Church as a pan-European political model, poised especially against the threat of Russian nihilism, by the end of the 1920s he begins to use the history of Roman law and its images in a different manner. After becoming alienated from the Church in the mid-1920s, Schmitt now begins to deploy these historical narratives and images of Rome in defense of the strong, qualitative total state, which is exemplified by Benito Mussolini's fascist Italy – the state that for Schmitt offered a potential pathway for the restoration of classical European statehood more generally during the late 1920s and early 1930s. In distinction to his almost singularly positive uses of the history of Roman law and its images in the Weimar era, the article demonstrates that after joining the Nazis in 1933, Schmitt suddenly turns against the reception history of Roman law and now begins to portray this history of receptions as one that is essentially “Jewish” and anti-German; a shift that is in harmony with the more general tendencies of Nazi legal science and its attempts at replacing the influence of Roman law with a true, Germanic law – something that was already envisioned in the Nazi party program from 1920 (point 19 of the program). However, in the early 1940s, after the tide of the war turned against Germany, Schmitt once again shifts his narrative concerning the reception of Roman law and now begins to portray this history of European-wide receptions as nothing less than the very foundation of all future European legal science – a theoretical venture that discloses how Schmitt aims to apologetically distance himself from Nazism and to re-narrate the facts of his own earlier racist narratives concerning the reception history of Roman law. From criticizing Friedrich Carl von Savigny and his historical school in the 1930s, by the early 1940s, Schmitt begins to portray Savigny's discoveries as crucial for understanding the historical meaning of Roman law and the spiritual-historical unity of Europe. Once again, this shift in Schmitt's positions reflects the more general tendencies in Nazi legal history.

Beyond the particular research results of substudies 1 and 2, mentioned above, several more general conclusions emerge. First, substudies 1 and 2 challenge the wide-spread notion that one could interpret Schmitt's Weimar era works and their ideas as a direct explanation for his later Nazi engagement. A central problem in the existing Schmitt research is the prevalent tendency to see the immense diversity of Schmitt's works from a “unilateral” point of view, as Alexandre Franco de Sá rightly notes.<sup>128</sup> As a close reading of Schmitt's works from 1933 to 1936 demonstrate, no literary evidence toward such a “unilateral” reading of Schmitt's textual corpus exists – a fact which has been sidelined in previous research precisely due to the reason that Schmitt's writings from the period of his most intensive Nazi engagement have remained unavailable for the great plurality of researchers.<sup>129</sup>

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<sup>128</sup> Alexandre Franco de Sá, “The Event of Order in Carl Schmitt's Thought and the Weight of Circumstances,” *Telos*, no. 147, 2009: 14–33 (15).

<sup>129</sup> Just to name some well-known examples of this problematic tendency that reads into Schmitt's Nazi writings ideas that are not there: Richard Wolin, “The Conservative Revolutionary Habitus”; Heinrich Meier, *Die Lehre Carl Schmitts*; Koenen, *Der Fall*; Richard Faber, *Lateinischer Faschismus: Über Carl Schmitt den Römer und Katholiken* (Berlin: PHILO, 2001); Ellen Kennedy, *Constitutional Failure*. A recent article by Mariano Croce and Andrea Salvatore has criticized my own reading of Schmitt's Nazi writings by arguing that Schmitt was always an “institutional thinker” concerned with legal order. However, the problem with this argument is precisely its empty generality. Croce and Salvatore repeat many of the unscholarly clichés of the existing literature. They do not cite Schmitt's most important work on institutions, his *Verfassungslehre* (1928), just as the authors do not analyze Schmitt's concrete order thought beyond a few references to his most well-known Nazi works. Again, Schmitt's Nazi era works are bypassed without proper textual analysis; Mariano Croce and Andrea Salvatore

In his Nazi writings, Schmitt no longer adheres to the central terminology of his own Weimar era writings. When Schmitt claims that his “concrete order thought” is an entirely different way of thinking about politics, he truly means what he is saying – a fact that is reflected in the entirely novel terminology of the Nazi movement itself as shown in substudies 1 and 2 of this dissertation.

Second, substudies 1 and 2 also challenge the equally wide-spread idea that one could simply sideline Schmitt’s Nazi era writings because they would be of a significantly lower intellectual quality. A typical trend in the literature on Schmitt and his Nazi engagement after 1933 is to insist on “Schmitt’s lack of any systematic theorization” during this period<sup>130</sup> – an argument that typically works to justify a very selective treatment of Schmitt’s Nazi writings. Even knowledgeable commentators have tended to single out certain texts at the expense of seeing the systematic traits of his concrete order thought. Especially reductive in the various interpretations on Schmitt’s Nazism has been the tendency to single out his notorious essay “Der Führer schützt das Recht,” which Schmitt published as a commentary on Röhm-putsch of 30 June, 1934.<sup>131</sup> This highly selective way of reading Schmitt’s Nazi texts reading reaches back all the way to a book written by Helmuth Quaritsch, who already in the 1970s proposed that Schmitt’s Nazi writings may, in fact, be read as fully cynical and substantially empty propaganda. Quaritsch, argued that Schmitt’s Nazi era works simply testified to the fact that Schmitt felt like he somehow had to show his loyalty to the new regime by being more racist and antisemitic than all other Nazi jurists; that this, then, somehow involuntarily, led him to put so much “byzantine exaggeration” into his racist remarks that anyone truly close to Schmitt could see that his racism and antisemitism was simply a “play within a play” and mere ironical “self-parody.”<sup>132</sup> Astonishingly, even Schmitt’s biographer Reinhard Mehring is cautiously sympathetic to this very problematic interpretation.<sup>133</sup>

## 5. Substudies 3 and 4: New comparisons of Schmitt and Arendt

### 5.1. Previous comparative studies of Schmitt and Arendt

In one of the last interviews of his life, Michel Foucault famously declared that he was “simply a Nietzschean.” Just before making this statement, Foucault noted that for him Martin Heidegger was “the essential philosopher.” Foucault continued to explain that neither one of these thinkers had ever been the explicit subject of his most important studies; and yet, for Foucault, Nietzsche and Heidegger were *the* authors “with whom” he had been thinking all along.<sup>134</sup>

Both Schmitt and Arendt also recognized the crucial importance of such indirect influences in their own right. In a letter to Ernst Jünger, commenting on the Danish philosopher Søren Kierkegaard’s “indirect” influence on the French historian Leon Bloy, Schmitt notes the following words: “Such

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(2021), “Little room for exceptions: on misunderstanding Carl Schmitt.” Published online first in *History of European Ideas*, vol. 47, no. 7 (2021): 1169-1183.

<sup>130</sup> David Bates, “Political Theology and the Nazi State: Carl Schmitt’s Concept of the Institution,” *Modern Intellectual History*, vol. 3, no. 3, 2006: 415–42 (425).

<sup>131</sup> For instance, Koenen claims that this essay represents Schmitt’s most “far-reaching” support for the regime (Koenen, *Der Fall*, 599). This is simply untrue. On the problematic interpretation of this article, also see the appendix at the end of this introduction. Hasso Hofmann points out correctly that in order to evaluate Schmitt’s role within the Nazi system correctly, one must evaluate his writings as whole from this period (Hofmann, *Legitimität und Legalität*, xxx.)

<sup>132</sup> Helmuth Quaritsch, *Positionen und Begriffe Carl Schmitts* (Berlin: Duncker & Humblot, 2018), 101; cf., 79.

<sup>133</sup> Mehring, *Aufstieg und Fall*, 359–60; cf., 343.

<sup>134</sup> Michel Foucault, “Le retour de la morale” (entretien avec G. Barbedette et A. Scala, 29 mai 1984), *Les Nouvelles littéraires*, no. 2937, 1984: 36–41.

indirect influences, which escape all documentation are the strongest and by far most authentic.”<sup>135</sup> Given the fact that Schmitt himself argued that such influences that one cannot directly document are often the strongest and most authentic ones, it is not surprising that previous research has discovered many “hidden dialogues” from the works of Carl Schmitt, including ones with such authors as Leo Strauss<sup>136</sup> and Hans Morgenthau,<sup>137</sup> for instance. The fact that also Arendt engaged in such “hidden dialogues” is of course not new, as is testified by the small mountain of literature that compares Arendt with Martin Heidegger, for instance. Reminiscent of the statements of both Foucault and Schmitt, cited above, in a 1960 letter to his old teacher Heidegger, Arendt once wrote that *The Human Condition* “owed everything in almost every respect” to Heidegger, although he was not quoted in the book even once.<sup>138</sup>

While Hannah Arendt’s works were compared already very early on with those of Heidegger<sup>139</sup> – her former teacher and lover – the literature that compares Arendt with the other major Nazi intellectual, Schmitt, started to develop only much later. It is likely that the very first scholar, who both compared Schmitt with Arendt and even offered a curious kind of syncretization of their ways of understanding “the political” was the ancient historian Christian Meier, who was a (fairly distant) personal friend of Schmitt’s<sup>140</sup> and who also shortly corresponded with Arendt.<sup>141</sup> His analysis of the Greek antiquity not only relies heavily on Schmitt’s definition of the political, but also draws on the historical contrasts and parallels that Arendt had drawn between the Greeks and moderns.<sup>142</sup>

Beyond such singular works that offered comparisons of Schmitt and Arendt at an early point, the more contemporary comparative discussions of these two authors have their empirical background in the fact that Arendt cited Schmitt in her own works. As the Schmitt scholar George Schwab noted already in the 1980s, Arendt was, together with the likes of Leo Strauss, Clinton Rossiter and Frederick Watkins, one of the very few influential authors in the Anglophone academia, who would make at least “occasional objective references to the content of Schmitt’s work” at a time when Schmitt was

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<sup>135</sup> Carl Schmitt and Ernst Jünger, *Briefe 1930–1983*, ed. Helmuth Kiesel (Stuttgart: Klett-Cotta, 2012), 214.

<sup>136</sup> Heinrich Meier, *Carl Schmitt, Leo Strauss und “Der Begriff des Politischen”*: *Zu einem Dialog unter Abwesenden* (Stuttgart: Verlag J. B. Metzler).

<sup>137</sup> Schuermann, *The End of the Law*; Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2004), 436, 440.

<sup>138</sup> Later, Arendt also planned on dedicating *The Life of the Mind* to him. (Hannah Arendt and Martin Heidegger, *Briefe 1925 bis 1975 und andere Zeugnisse* [Frankfurt am Main: Klostermann, 2013], 149, 206).

<sup>139</sup> One of Heidegger’s students and a friend of Arendt’s, Hans Jonas, made this observation already in 1954 when he noted in a letter to Jacob Taubes that Arendt’s historical depiction concerning the faith of action in Western thought – a history that in Arendt’s presentation spans from Plato to Marx – greatly resembled Heidegger’s earlier ontological narrative that read Western philosophy as *Seinsgeschichte*, as a history of being ranging from Plato to Nietzsche (Letter from 22. February 1954, quoted by the editors in Hannah Arendt and Gershom Scholem, *Der Briefwechsel 1939–1964*, ed. Marie Luise Knott [Berlin: Jüdischer Verlag, 2010], 393 endnote 5). However, Arendt’s intellectual relationship with Heidegger came under broader intellectual scrutiny only after the publication of Elisabeth Young-Bruehl’s biography in 1982, which made the romantic relationship of Arendt and Heidegger public. The best studies on the relationship of Arendt and Heidegger include; Jacques Taminiaux, *La fille de Thrace et le penseur professionnel, Arendt et Heidegger* (Paris, France: Payot, 1992); Dana R. Villa, *Arendt and Heidegger: The Fate of the Political* (Princeton, NJ: Princeton University Press, 1996); Benhabib, *Reluctant Modernism*; Antonia Grunenberg, *Hannah Arendt und Martin Heidegger: Geschichte einer Liebe* (München, Piper, 2006); Jon Nixon, *Hannah Arendt and the Politics of Friendship* (London: Bloomsbury, 2015), 61–84; Paulina Sosnowska, *Hannah Arendt and Martin Heidegger: Philosophy, Modernity, and Education*. (Lanham, MD: Lexington Books, 2019).

<sup>140</sup> See “Christian Meier im Gespräch mit Gerd Giesler. Besuche bei Carl Schmitt in Plettenberg,” in *Carl Schmitt und Plettenberg. Der 90. Geburtstag*, ed. Gerd Giesler and Ernst Hüsmert (Plettenberg: Carl Schmitt Gesellschaft, Plettenberger Miniaturen, 2008), 6–16.

<sup>141</sup> As Meier himself notes in Christian Meier, “Zu Carl Schmitts Begriffsbildung—Das Politische und der Nomos,” in *Complexio Oppositorum: Über Carl Schmitt*, ed. Helmuth Quaritsch (Berlin: Duncker & Humblot, 1988), 537–556.

<sup>142</sup> Christian Meier, *Die Entstehung des Politischen bei den Griechen* (Frankfurt am Main: Suhrkamp, 1980).

seen as a very controversial author, to say the least.<sup>143</sup> As another essay by Schwab shows, this was only another way of claiming that Arendt would have argued that Schmitt “was not a true Nazi”<sup>144</sup> – something which is certainly untrue (but nevertheless very much in line with Schmitt’s own initial understanding of Arendt’s works as shown in substudy 3).<sup>145</sup>

Another American Schmittian, Gary Ulmen, who later translated Schmitt’s postwar magnum opus, *Der Nomos der Erde* (1950) into English, also emphasized already in the late 1990s that “Arendt had great respect for Schmitt’s work, which is evident in the marginalia to her copy of Schmitt’s *Der Nomos der Erde* and other works now available in her library located at Bard College.”<sup>146</sup> That Arendt had “great respect” for Schmitt’s works is indeed true. But both Schwab’s and Ulmen’s arguments are nevertheless deeply misleading, since if one actually looks into Arendt’s marginalia from the *Nomos* book, it becomes clear Arendt could have not disagreed more with the actual substance of Schmitt’s arguments.<sup>147</sup>

Ever since the late 1990’s Arendt’s and Schmitt’s works have been compared from numerous perspectives.<sup>148</sup> Usually, the unquestioned starting point for all of these comparative studies has been located into fact that Arendt cited Schmitt and made remarks about some of his published works. This realization is neatly summarized by Seyla Benhabib, who notes that it has today been broadly recognized that “Carl Schmitt’s challenge haunted Arendt no less than it did Leo Strauss, Berlin no less than Shklar.”<sup>149</sup> Beyond analysing Arendt’s references to Schmitt in her publications, it has also been shown that even though Arendt does not always cite Schmitt even when she is evidently using his ideas or arguing against him, many of her critiques are quite obviously targeted against the Schmittian realm of thought.<sup>150</sup>

However, given the incredibly broad influence that Schmitt and Arendt have had and continue to have in the realms of contemporary political and legal thought, it is a rather surprising fact that there are only very few more comprehensive monographs on this subject. The broadest and undoubtedly the most influential monograph-length study that compares Schmitt and Arendt (and, in addition, the ideas of Max Weber) is the theoretically and scholarly well-informed work by Andreas Kalyvas,

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<sup>143</sup> George Schwab, “Progress of Schmitt Studies in the English-Speaking World,” in *Complexio Oppositorum: Über Carl Schmitt*, ed. Helmut Quaritsch (Berlin: Duncker & Humblot, 1988), 447–459 (448).

<sup>144</sup> George Schwab, “Schmitt Scholarship,” *Canadian Journal of Political and Social Theory/Revue canadienne de théorie politique et sociale*, vol. 4, no. 2 (1980): 149–155 (153).

<sup>145</sup> By using the expression “objective references,” Schwab clearly implies that Arendt acknowledged that Schmitt’s works had more in them than mere fascism and Nazism. While this is the correct observation, unlike Schwab also implies, this certainly does not mean that Arendt would have defended Nazis like Schmitt, as shown in detail by the author of this dissertation in substudy 4.

<sup>146</sup> Gary Ulmen, “Schmitt as a Scapegoat: Reply to Palaver,” *Telos*, no. 106 (1996): 128–138 (130).

<sup>147</sup> As shown recently through a detailed and scholarly analysis of Arendt’s marginalia to Schmitt’s book by Anna 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*, vol. 16, no. 3 (2017): 345–66.

<sup>148</sup> For a comprehensive listing, analysis, and critique of these very numerous publications, see the introduction to substudy 3. In this introduction, I will focus only on the broadest monograph-length studies, mostly on the study by Andreas Kalyvas that, in addition to the article-length study by Anna Jurkevics, offers the broadest and most intellectually stimulating comparison of Arendt and Schmitt to date.

<sup>149</sup> Seyla Benhabib, *Exile, Statelessness and Migration: Playing Chess with History from Arendt, Hannah to Isaiah Berlin* (Princeton: Princeton University Press, 2018), 7.

<sup>150</sup> Jean Cohen and Andrew Arato have argued that in *On Revolution* Arendt used “the Americans against Schmitt—whose textual stand-in is Sieyès interpreted in the same one-sided manner of Schmitt himself!” (Andrew Arato and Jean Cohen “Banishing the Sovereign? Internal and External Sovereignty in Arendt,” *Constellations*, vol. 16, no 2 (2009), 307–330 [310]).

*Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (2008). Kalyvas's book not only sets out to compare the works of these three major German authors but also develops an original theoretical framework for doing so. By differentiating between three central "moments" of democratic politics – the moment of foundation that decides on the legitimate form of the constitution (Schmitt) and/or on the form of political freedom (Arendt); the moment of institutionalized, procedural politics defined by the reproduction of legitimacy and its form of representation (Schmitt) and/or by defining how to augment the existing power structures (Arendt), and third, the moment of "quasi or semi-extraordinary politics" that operate at the borders and limits of normal, institutionalized politics<sup>151</sup> – Kalyvas argues that Schmitt's notion of constituent power and Arendt's conception of new political beginnings can be read as variations of the same theme.<sup>152</sup> Or as Kalyvas puts it, both Schmitt and Arendt "shared a common interest in elucidating the vexing, sometimes obscure, relationship between the constituent power and those extraordinary instances of radical political and constitutional innovation."<sup>153</sup>

Instead of simply reading Arendt as Schmitt's theoretical adversary, Kalyvas maintains that this mutual interest in the question of political founding makes it possible to read her writings as attempts to disentangle the central problems and paradoxes that Schmitt left us with. Although in highly different ways, both were concerned in salvaging political action as an antagonistic praxis from the state in which it had been left by orthodox Marxism and depoliticized liberalism.<sup>154</sup>

To be sure, Kalyvas's comparison also takes note of some of the most crucial differences between Schmitt and Arendt. First, Kalyvas points to the fact that while Schmitt (and Weber) took for granted the relationship between the rulers and the ruled, one of the central and most ambitious theses of Arendt's political thought was to challenge the idea that politics was nothing but sovereignty and rule over others. In doing so Arendt would emphasize the performativity of action in self-organized political spaces.<sup>155</sup> Second, unlike Schmitt, who likened the sovereign act to a "miracle," Arendt would deny that such a thing as an "absolute beginning" even existed in politics; for her, the capacity of action remained a per definition limited capacity that could only emerge when acting in concert with others.<sup>156</sup> Third, bringing together these two other central differences toward their concrete conclusions and applications, Kalyvas demonstrates that Schmitt's and Arendt's proposed solutions to the crisis of liberalism were nothing short of opposite; while Arendt favoured the radically democratic idea of council democracy<sup>157</sup>, Schmitt offered his support for the strong, centralized sovereign state – a fact that Arendt's political theory attempted to overturn with a series of nuanced theses.<sup>158</sup>

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<sup>151</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 12–13. As Kalyvas reveals later in his book, this threefold distinction is clearly influenced by Schmitt's threefold description of the role of the people in his *Verfassungslehre*. As Schmitt puts it, in a (liberal-)democratic political entity, the people "are prior to and above the constitution, within the constitution, and finally next to the constitution" (Kalyvas, *Democracy and the Politics of the Extraordinary*, 85).

<sup>152</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 10–11.

<sup>153</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 195–6

<sup>154</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 9.

<sup>155</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 9.

<sup>156</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 191–2.

<sup>157</sup> For recent studies on Arendt and council democracy, see James Muldoon, "The Origins of Hannah Arendt's Council System," *History of Political Thought*, vol. 37, no. 4 (2016): 761–89; Shmuel Lederman, *Hannah Arendt and Participatory Democracy. A People's Utopia* (London: Routledge, 2019).

<sup>158</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 272, 274. Or as Kalyvas formulates the matter: "... [W]hereas he pushed the public assemblies to the margins of the second moment to locate them alongside rather than within the constituted reality, she, in a bold gesture, relocated them at the center of the normal republican constitutional order" (Kalyvas, *Democracy and the Politics of the Extraordinary*, 272)

While Kalyvas indeed manages to draw out some of the key contradictions and to map out some of the shared interests between Schmitt and Arendt, the work also suffers from some weaknesses. First, the main problem of Kalyvas's depiction lies in the rather ahistorical nature of the conducted comparisons. By comparing Schmitt's most important constitutional writings from the Weimar era with Arendt's writings that treat this same subject, most importantly her work *On Revolution* (1963)<sup>159</sup>, Kalyvas's comparisons are taken out of their respective historical contexts. While this is indeed a very general trait in the works that compare Schmitt and Arendt<sup>160</sup>, the road toward more historically grounded comparisons has only been opened in the most recent literature on the subject. First, in a study that puts Arendt's early writings in a discussion with Schmitt's Weimar era political thought, John Wolfe Ackermann demonstrates how her early writings can be read as a critique of Schmitt's "concept of the political."<sup>161</sup> Second, in a recent study that maps Arendt's comments on the margins of her copy of Schmitt's most important postwar book *Der Nomos der Erde* (1950), Anna Jurkevics demonstrates how profoundly Arendt actually disagreed with the basic theses of Schmitt's (later) political thought.<sup>162</sup> In offering new, historically and textually grounded readings of the way Arendt criticized Schmitt, these works open a new pathway toward a more comprehensive comparison of these authors.

Second, like all of the other existing comparative literature, also Kalyvas's comparisons are grounded on the fact that Arendt cited Schmitt and often did so in a positive manner.<sup>163</sup> Thus, also Kalyvas compares Schmitt's and Arendt's works in the form a monologue, presuming that it was solely Arendt, who responded to Schmitt's writings, but not the other way around. This gesture defines all the existing literature on the subject. And yet, as we will see, this is an inaccurate presupposition.

## 5.2. The novel contributions of substudies 3 and 4

The substudies 3 and 4 of this dissertation aim to offer an entirely new empirical basis for a more comprehensive textual comparison of the works of Schmitt and Arendt. Although so much weight has been given to Arendt's comments on Schmitt, no attention has been paid to the fact that Schmitt

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<sup>159</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 190–1.

<sup>160</sup> This ahistorical tendency defines virtually all of the literature on the subject. Just to name some examples: Hans Lindahl, "Give and Take: Arendt on the nomos of political community," *Philosophy and Social Criticism*, vol. 32, no. 7 (2006): 881–901; Hans Sluga, "The Pluralism of the Political: From Carl Schmitt to Hannah Arendt," *Telos*, no. 142 (2008): 91–109; Rafal Wonicki, "Politics of Power and Freedom in the Thought of Schmitt and Arendt," in *Man and His Enemies*, ed. Minkov Svetozar and Piotr Nowak (Bialystok, 2008); Jean L. Cohen and Andrew Arato, "Banishing the Sovereign? Internal and External Sovereignty in Arendt," *Constellations*, vol. 16, no. 2 (2009): 307–30; David W. Bates, "Enemies and Friends: Arendt on the Imperial Republic at War," *History of European Ideas*, vol. 36, no. 1 (2010): 112–24; Alexander B. Barder and François Debrix, "Agonal sovereignty: Rethinking war and politics with Schmitt, Arendt and Foucault," *Philosophy and Social Criticism*, vol. 37, no. 7 (2011): 775–93. The other available monograph that compares Schmitt and Arendt also suffers from this tendency: Raimondi, *Die Zeit der Demokratie*.

<sup>161</sup> John Wolfe Ackermann, "The Memory of Politics: Hannah Arendt, Carl Schmitt and the Possibility of Encounter," in *Concentrationary Memories*, ed. Griselda Pollock and Max Silverman (London: I. B. Tauris, 2013), 31–43. However, since the contents of Arendt's library show that Arendt owned the 1933 Nazi version of Schmitt's *Der Begriff des Politischen*, it seems somewhat unlikely that Arendt would have meant her early works that predate the publication of this book as direct and intentional critiques of Schmitt. This, however, does not invalidate the fact that Arendt's writings *can* be read in such a critical manner. For broader historical context and on the relationship between Arendt's thought and that of Leo Strauss (who also engaged with Schmitt's theories in detail), see Liisi Keedus, *The Crisis of German Historicism. The Early Political Thought of Hannah Arendt and Leo Strauss* (Cambridge: Cambridge University Press, 2015).

<sup>162</sup> Jurkevics, "Hannah Arendt Reads Carl Schmitt."

<sup>163</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 194.

both read Arendt's works and commented on them extensively. In offering a detailed analysis of Schmitt's thus far unacknowledged comments and by utilizing a broad set of other resources, substudies 3 and 4 demonstrate that the intellectual relationship between Schmitt and Arendt was much more complex than hitherto presumed.

In establishing this new textual starting point for the comparison of Schmitt's and Arendt's works, substudy 3 ("Carl Schmitt Reads Hannah Arendt: A Hidden Discussion on Totalitarianism, Power, and Banality of Evil") begins by examining the contents of their personal libraries – an examination that demonstrates that both were rather well-acquainted with each other's works, although some interesting gaps in their knowledge also emerge. The central presupposition in all previous literature is that while Arendt had read Schmitt's writings, Schmitt hardly knew Arendt or her works. As is shown, this is a false presupposition, and, in fact, Schmitt was rather broadly aware of Arendt's works, which he also comments in his letters, notebooks and some published works. Schmitt read *The Origins of Totalitarianism* (1951), *Eichmann in Jerusalem* (1963) and several essays from Arendt, commenting on them rather extensively. Substudy 4 demonstrates that these materials allow and force us to profoundly reconsider the relationship between Schmitt's and Arendt's political theories. It is demonstrated that both developed their post-war readings and understanding of (Nazi) totalitarianism in knowledge of each other's work and the arguments they make concerning the nature of totalitarianism are complexly intertwined with each other. While Arendt profoundly rejected Schmitt's (postwar) ideas, it is shown that, on the contrary, Schmitt was very enthusiastic about Arendt's work on totalitarianism, (mis)reading it as an exculpatory document that allowed him to draw an absolute contrast between "real Nazis" and "outstanding intellectuals" like himself and Martin Heidegger. Arendt's arguments concerning the limited ability and role of intellectuals under totalitarian rule, her understanding of the rootedness of the central "elements" of totalitarianism to European history, as well as her notion that Nazism (like all forms of totalitarianism) represented an entirely unprecedented political ideology that aimed at unquestioned world domination, made it possible for Schmitt to carefully map out his own presumably anti-Nazi positions in relation to "real Nazis." After examining in detail how and why Schmitt liked *The Origins of Totalitarianism*, I move on to demonstrate that when Schmitt read Arendt's work *Eichmann in Jerusalem*, he came to realize how wrong his one-sided reading of Arendt's theory of totalitarianism had been. Being highly critical of Arendt's theory concerning the banality of evil, rather interestingly Schmitt perceived precisely this book as an accusation against himself and other Nazi intellectuals – a fact that appears in an interesting light given the recent very critical examinations of Arendt's report on Eichmann.<sup>164</sup>

Drawing these contradictions further and into new directions, substudy 4 ("Nazism as Inhumanity: Carl Schmitt and Hannah Arendt on Race and Language," accepted and forthcoming in *New German Critique*) aims to broaden the comparison of Schmitt and Arendt in the context of National Socialism. The study argues that race and language have two profoundly different functions in the political theories of Schmitt and Arendt; while race becomes the foundational element in Schmitt's Nazi era concrete order thought after he joins the Nazi party in 1933, Arendt's political theory of human plurality emerges as a complex critique of racist Nazi thinking. Drawing new parallels between Schmitt and Arendt, starting from the fact that Schmitt not only openly attacked Jewish intellectual emigres in his publications during 1933, but was even (most likely) present at a book-burning event at the University of Cologne on the 17<sup>th</sup> of May 1933, in which Arendt's writings were burnt, the article draws a radical contrast between the political theories of Schmitt and Arendt. While Schmitt's concrete

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<sup>164</sup> See especially the historically interesting, but theoretically problematic work; Bettina Stangneth, *Eichmann Before Jerusalem. The Unexamined Life of a Mass Murderer*, trans. Ruth Martin (London, 2016). For a critical review of this work, see Roger Berkowitz, "Did Eichmann think?" *The Good Society*, vol. 23, no. 2 (2014): 193–205.

order thought is built upon a fundamentally racist anthropology that aims to deny the universality of human nature and reason as such, Arendt's political thought is built upon the notion of "human plurality" – a notion, whose immanently political nature comes to the fore when contrasted with Schmitt's racist Nazi writings. The study also demonstrates that Schmitt and Arendt had two fundamentally different notions of what political language means and implies. While Schmitt's Nazi era writings deny the fact that Jews have access to German substance and language – "the Jew lies when he speaks German," Schmitt argues repeatedly –, Arendt's famous remarks concerning the importance of German language to her appear in a radical and directly political contrast to Schmitt's racist arguments. By drawing on Arendt's extensive criticisms of totalitarianism, nationalism, and racism, the study not only offers a critical treatment of Schmitt's racist anthropology that underlies his Nazi era concrete order thought, but, in the light of the comparisons with Schmitt, also shortly considers some of Arendt's own problematic and prejudiced remarks. The study concludes by drawing a more general comparison between Schmitt and Arendt, focusing on the questions of race and language in politics. It is shown that due to her lack of knowledge concerning Schmitt's Nazi era writings and activities, while being highly critical of the so-called Nazi intellectuals, Arendt also underestimated the radicality of Schmitt's racism.

Beyond these explicit comparisons, also other interesting contrasts between Schmitt and Arendt emerge from substudies 3 and 4. First of all, Schmitt and Arendt offer two different perspectives on how to define "official" Nazi ideology, its sources and ideological content. Arendt was one of the very first to highlight the endless "dynamism" of Nazi ideology – a fact that has been confirmed again and again by subsequent research on Nazism<sup>165</sup> – and its corresponding feature, a curious, ideological emptiness that resulted from this dynamism. As already Arendt noted, the Nazis spoke "the language of every ism"<sup>166</sup> for the simple reason that despite of illusionary ideological rigor the inherently dynamic "total domination needs the most extreme flexibility."<sup>167</sup> Ultimately, with the beginning of totalitarian domination in Nazi Germany, which Arendt dates to 1938, "Nazism, as an ideology had been so fully 'realized' that its content ceased to exist as an independent set of doctrines, lost its intellectual existence, so to speak."<sup>168</sup> Like Arendt, also the legal historian Michael Stolleis emphasizes that Nazi ideology was never and nowhere defined in exact terms,<sup>169</sup> which together with the heterogeneous development of the practical applications of National Socialism in the various fields of law, made it simply impossible that there even could have been a clearly defined (legal) philosophy of Nazism.<sup>170</sup> As Stolleis also notes, Schmitt's concrete order thought nevertheless represented one of the most ambitious attempts to offer such a theoretical framework and definition to Nazism in the field of legal theory and philosophy.<sup>171</sup> The full-blown emergence of totalitarian traits in Nazi Germany, which both Stolleis and Arendt date to 1938, however, marks the specific moment after which the influence of the legal scientists (and perhaps of intellectuals in general) ceased to be truly meaningful for the regime.<sup>172</sup>

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<sup>165</sup> As noted by Ian Kershaw, *The Nazi Dictatorship. Problems & Perspectives of Interpretation* (London: Hodder Arnold, 2000), 24.

<sup>166</sup> Arendt, *Essays in Understanding*, 109.

<sup>167</sup> Arendt, *The Origins*, 426.

<sup>168</sup> Arendt, *The Origins*, 363–4.

<sup>169</sup> Stolleis, *Recht im Unrecht*, 156, 190; Stolleis, *Geschichte des öffentlichen Rechts*, 363.

<sup>170</sup> Stolleis, *Recht im Unrecht*, 32.

<sup>171</sup> Stolleis, *Recht im Unrecht*, 32.

<sup>172</sup> cf., Stolleis, *Recht im Unrecht*, 119, 151, 169, 204; Stolleis, *Geschichte des öffentlichen Rechts*, 330, 336, 348, 402, 408, 414. Most likely even Hitler noted that "these professors and ignorants with their Nordic myths mean nothing to us!" (Hitler, cited in Stolleis, *Recht im Unrecht*, 91). Whether or not this particular statement is true, Hitler's hatred of intellectuals in general and jurists in particular is nevertheless a broadly accepted fact (see Rüthers, *Entartetes Recht*, 21–22; Stolleis, *Recht im Unrecht*,



All of this is inextricably connected to the fact that before the emergence of the most radical totalitarian traits of Nazism, during the first years of the regime, different kinds of hopes and rivaling ideologies could be mirrored and projected to the political project of the Nazis.<sup>173</sup> As Stolleis highlights, virtually everyone in the field legal theory, including Schmitt, although in highly different ways, would delude themselves with the Nazi regime, since what the Nazis would ultimately bring about during World War II was something so extreme and lawless that it defied prediction.<sup>174</sup> As substudies 3 and 4 demonstrate, while Arendt used all of these facts to highlight that also intellectuals were responsible for their support of Nazis (even if in a limited manner due to their limited ability to influence practical politics), Schmitt used these very same facts in the postwar years to portray himself as a principled anti-Nazi, which was of course a clear falsification of reality.

However, it is also true that Arendt was one of the first thinkers, who drew a rather problematic distinction between “real Nazis” and “outstanding intellectuals” like Schmitt and Heidegger. While she certainly did not make this differentiation in order to exculpate such intellectuals, as highlighted in substudies 3 and 4, it is also important to note that this distinction that was first made by Arendt and then taken up in much of the research on Schmitt and Nazism that would follow, can also be challenged on the grounds of Schmitt’s own life, publications, and political actions. To be sure, if seen from a perspective that transcends the limited time-span of the Nazi years, no one would seriously deny that there would not be a qualitative difference between Schmitt’s concrete order thought and the ideas propagated by the “racist jurists of the SS” like Höhn, Best or Lemmel.<sup>175</sup> Schmitt’s opposition to the SS in general and to Alfred Rosenberg in particular is a widely acknowledged fact and it was precisely this antagonism that eventually lead into Schmitt’s downfall.<sup>176</sup> There are obvious reasons as to why none of these racist jurists have become canonized classics of legal theory as Schmitt has. However, it is equally true that Schwab, Bendersky and Koenen, and numerous others conveniently forget the fact that also those “real Nazis,” who vehemently resisted Schmitt, would often experience very similar kind of downfalls as Schmitt did in late 1936. This was the case with

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19–21, 32–34, 91, 119, 141–144, 151, 156, 160; Johann Chapoutot, *The Law of Blood. Thinking and Acting as a Nazi*, trans. Miranda Richmond Muillot [Cambridge, MA: Harvard University Press, 2018], 94).

<sup>173</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 317, 320.

<sup>174</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 414. Schmitt himself would come to realize this in his postwar diary *Glossarium* when he once refers to Nazism as a “mixing-jug” of different ideologies and concepts (Schmitt, *Glossarium*, 193). However, the conclusion that Schmitt himself drew from the fact that in 1933 one indeed could not see how Nazism would eventually develop was the absurd notion that in questioning and blaming intellectuals like Schmitt himself, the Allied were actually worse than those Germans, who joined the Nazis in 1933. It was in this absurd sense that Schmitt pathetically referred to himself as one of the “true victims”! (Schmitt, *Glossarium*, 164, 181; cf., 162.)

<sup>175</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 387; cf., 322. For a detailed study on SS intellectuals, see Christian Ingrao, *Believe & Destroy. Intellectuals in the SS War Machine*, trans. Ander Brown (Cambridge: Polity, 2015). That Schmitt himself obviously realized that there was a difference between his works and the more “official” Nazism, is also testified by the fact that when trying to establish a new Nazi journal with Huber, Schmitt demanded that the word “National Socialism” must stand in the title “already for the sake of the distance (*schon der Distanz wegen*)” (Carl Schmitt and Ernst Rudolf Huber, *Briefwechsel 1926–1981: Mit ergänzenden Materialien*, ed. Ewald Grothe [Berlin: Duncker & Humblot, 2014], 148.)

<sup>176</sup> The *SD-Akten* on Schmitt highlight Schmitt’s opposition to the SS (*SD-Akten*, 35–6). As Ingrao notes in relation to the position of the SS: “In fact, the SS embodied Germany’s future... for the Nazis, what was valid for the SS today would be valid for the whole of Germany tomorrow” (Ingrao, *Believe and Destroy*, 62) – a fact that also explains why racialist “nordicism” was much more pronounced in the SS than in other Nazi organizations (Ingrao, *Believe and Destroy*, 83). This ideological conflict between the SS and other Nazi organizations became more pronounced as the SS gradually developed into “state within a state” (Stolleis, *Geschichte des öffentlichen Rechts*, 383). Quite interestingly, all of these facts were already observed by Arendt (Arendt, *The Origins*, 412). But in the case of Schmitt, the important thing to remember is that none of these developments were obvious *before* his downfall in the Nazi ranks.

both Reinhard Höhn in 1937–8<sup>177</sup> and Otto Koellreutter somewhat later.<sup>178</sup> As Mehring notes, under the Nazi regime no one was safe.<sup>179</sup> Moreover, it is important to note that Schmitt's writings and the biographical facts of his life do not support a clear-cut division between Schmitt and the more racist Nazis. As Mehring notes, even after his December 1936 downfall, caused by the SS and the SD, Schmitt continued to associate with SS-men.<sup>180</sup> All of this shows that the idea that there would be a one-sided and a clear-cut division between Schmitt and the "more racist" strains of Nazism must be challenged today.

Beyond these differences in understanding Nazism and totalitarianism, another major difference between Schmitt and Arendt emerges from substudies 3 and 4. Both understood their relationship to the Western and European intellectual traditions in a radically different manner. As already highlighted in the foreword to this dissertation, while Schmitt always understood himself as a lawyer, Arendt would rather consistently define herself as a political theorist. These self-definitions are, in fact, inextricably connected to the political theories both developed. After World War II, Schmitt would famously describe himself as a lonely defender of the European political and juridical traditions. Unlike real Nazis, who had ignored and even despised these traditions, Schmitt would proclaim that he was the "last conscious representative of the *ius publicum Europaeum*, its last teacher and scholar."<sup>181</sup> While Jean Bodin and Thomas Hobbes had been the great founders of modern European international politics and law, grounded on the notions of sovereignty and the state, Schmitt was now portraying

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<sup>177</sup> Ingraio, *Believe and Destroy*, 30, 58, 292 endnote 97. Schmitt's relationship to Reinhard Höhn seemed to be much more complex than one could easily presume. As Bendersky reports, even after the war Schmitt continued to have a very positive estimation of Höhn (Bendersky, *Theorist for the Reich*, 233).

<sup>178</sup> On Koellreutter's growing distance to Nazism, see Stolleis, *Recht im Unrecht*, 117. Because of his radical critiques against Schmitt, Koellreutter is often erroneously described as an "earlier convert to the Nazis" in relation to Schmitt (Balakrishnan, *The Enemy*, 190), although in reality his Nazi party number was actually higher (2.199.595) than that of Schmitt's (2.098.860).

<sup>179</sup> Mehring, *Aufstieg und Fall*, 379.

<sup>180</sup> Mehring, *Aufstieg und Fall*, 380. During the Nazi years, Schmitt's research assistant was an influential SS man, Herbert Gutjahr, who was not only a central organizer of the 1933 book burnings in Berlin, but who also rose into a rather high position in the ranks of the SS, and as Mehring notes, there were very few SS men of this caliber, who did not participate in war crimes (Mehring, *Aufstieg und Fall*, 363–4). While Mehring speculates that Gutjahr was an informant for the SD, this is, in fact, confirmed by the SD-files on Schmitt (*SD-Akten*, 84–5). Schmitt also had a very close personal relationship to the SS propagandist Johann von Leers. Already the SD files on Schmitt made the claim that Leers was a guest at Schmitt's house "very often" and was on very good terms with him, perhaps planning to use Schmitt in order to acquire a professorship (*SD-Akten*, 25). Von Leers was also one of the speakers at Schmitt's antisemitic conference "Jewishness in legal science" that Schmitt himself had organized in October 1936. The *SD-Akten* on Schmitt also include Schmitt's letter to Heinrich Himmler, dated 02.12.1936, with which Schmitt sent the four first brochures of the publication series based on the conference. In this letter Schmitt declares his willingness to fight the Jewry and praises von Leer's contribution on the "criminality" of the Jewry to this series (*SD-Akten*, 125). Schmitt only received a formal response and a thank you, on behalf of Himmler, written by [Otto] Ullmann, on the 29<sup>th</sup> of January, after his ousting (*SD-Akten*, 289). Without being aware of it, the SD had already investigated Schmitt and his planned *Judentagung*, while he was organizing it, by, for instance, warning the notorious antisemitic propagandist Julius Streicher not to participate (*SD-Akten*, 47–8, 62). According to Bendersky, Schmitt wrote this letter in order to save himself from the upcoming attack of the SS, which indeed began the following day (03.12.1936) with an aggressive publication against Schmitt in *Das schwarze Korps*. Mehring also reports that von Leers is one of the recurring names in Schmitt's 1938 *Taschenkalender* and that Schmitt also sent him a copy of his deeply antisemitic 1938 book on Hobbes (Mehring, *Aufstieg und Fall*, 383, 679 endnote 27). Schmitt cited von Leers and referred to the "idea of race" in an early version of his 1943/44 book on *The State of European Legal Science*, published in 1950 (Schmitt and Smend, *Briefwechsel*, 114 footnote 387). As the recent biography of von Leer's by Marco Sennholz demonstrates, Schmitt met von Leers through Jünger and maintained a close relationship with him at least in the late 1930s (Marco Sennholz, *Johann von Leers: Ein Propagandist des Nationalsozialismus* [Berlin: Be.Bra, 2013], 101–6, 147, 247).

<sup>181</sup> Schmitt, *Ex Captivitate Salus*, 75. See also the similar remarks in Reinhart Koselleck and Carl Schmitt, *Der Briefwechsel*, ed. Jan Eike Dunkhase (Berlin: Suhrkamp, 2019), 330

himself as the last theorist of this outdated tradition. In his postwar works, Schmitt claimed nothing less than that he had disclosed the core of what he called “Occidental political rationalism”<sup>182</sup>; a rationality that had achieved something unique in the history of mankind, namely the “containment of war” during the modern era.<sup>183</sup> It was precisely this rationality that Schmitt tried to transpose to his *Grossraum*-theory and to his later philosophy of the *nomos*, developed in *Der Nomos der Erde* (1950) and elsewhere.

On the contrary, for Arendt, thinking against totalitarianism also implied that one needed to think against all those “elements” that had eventually “crystallized” into the uniqueness of totalitarian domination.<sup>184</sup> While Arendt always argued that one could not blame the Western tradition of thought for the horrors of totalitarianism<sup>185</sup> – as had been argued polemically among others by Karl Popper in his *The Open Society and its Enemies* (1945) –, she nevertheless acknowledged that this tradition was “not completely innocent.” She would also blame the Western tradition for its inability to find a “pure concept of the political,” which it was unable to discover precisely because it “spoke of the man and dealt with the fact of plurality as a side matter.”<sup>186</sup> It was precisely in order to find out why “the West” had never found such a “proper political philosophy” that she began to read “philosophy from Plato to Nietzsche” after finishing her work on totalitarianism.<sup>187</sup>

Thus, Arendt would delve into the history of Western political thought precisely for the opposite reason than Schmitt: Not in order to salvage something that could not be salvaged, but because she realized that the absolute novelty of totalitarianism could no longer be explained by the traditional categories of Western political thought that had their roots in Greek philosophy, which demonstrated that these traditional categories had become outdated. While Schmitt not only framed himself as a defender of Occidental political rationalism, Arendt proclaimed that she attempted to “think without the bannisters” of all traditions.<sup>188</sup> That Schmitt always systematically referred to himself as lawyer was not an accident – it was at the very core of his defense of that occidental political rationality, whose unique nature Schmitt had tried to encapsulate in his theory of “the political” and in his historical depictions of European public law.<sup>189</sup> It was with the exact same necessity that the very core of Hannah Arendt’s thought was formed by a complex historical critique of Western political philosophy, which was precisely the reason she would (almost always) define herself as a political theorist.

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<sup>182</sup> Carl Schmitt, “Die Lage der europäischen Rechtswissenschaft,” in Carl Schmitt *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954. Materialien zu einer Verfassungslehre* (Berlin: Duncker & Humblot, 2003), 386–429 (394).

<sup>183</sup> Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin: Duncker & Humblot, 2011), 112, 158, 160–1, 194. Jan-Werner Müller rightly describes Schmitt as a “thinker of the transition, in particular the transition from a European to a post-European age” (Müller, *A Dangerous Mind*, 245).

<sup>184</sup> These are the terms Arendt uses to explain the development and uniqueness of totalitarianism; Hannah Arendt, “A Reply to Eric Voegelin,” in Hannah Arendt, *Essays in Understanding 1930–1954. Formation, Exile, and Totalitarianism*, ed. Jerome Kohn (New York: Schocken, 1994), 403.

<sup>185</sup> Hannah Arendt, “Approaches to the ‘German Problem,’” in Hannah Arendt, *Essays in Understanding 1930–1954: Formation, Exile, and Totalitarianism*, ed. Jerome Kohn. (New York: Schocken, 1994), 106–120 (108).

<sup>186</sup> Arendt and Jaspers, *Briefwechsel*, 203.

<sup>187</sup> Hannah Arendt and Kurt Blumenfeld, *Die Korrespondenz: In keinem Besitz verwurzelt*, eds. Ingeborg Nordmann and Iris Pilling (Hamburg: Rotbuch Verlag, 1995), 68.

<sup>188</sup> Arendt, “Hannah Arendt on Hannah Arendt,” 470, 473.

<sup>189</sup> There was of course an apologetic element to this, since as the reader of this dissertation will see, Schmitt’s Nazi thought was already defined by endless declarations of the idea that Nazism signaled the era of an entirely new way of thinking and of organizing the state.

## 6. Substudies 5 and 6: Totalitarianism and technology in the postwar era

### 6.1. The question of technology in the works of Schmitt and Arendt

Schmitt and Arendt reflected on the question of technology throughout their intellectual careers. Although neither wrote a comprehensive study that would have been singularly devoted to this subject alone, it has been rather widely accepted in the research literature that for both, the question of technology was a crucially important one. Both recognized, albeit in divergent ways, that ideologies specific to the twentieth-century, Nazism and Stalinism, created entirely new political formations that encompassed the lives of their subjects in an entirely unprecedented manner, and did so by relying largely on the new technological developments that had emerged only in the twentieth century. In the case of both Schmitt and Arendt, the question of technology is inextricably linked to the experience of totalitarianism, for it was this unparalleled entanglement of politics, technology, and human biology that prompted both to reflect on the future of politics in an era of constantly progressing technological development.

The aim of the substudies 5 and 6 of this dissertation is to provide new insights into the relationship of politics, technology, and totalitarianism in the thought of Schmitt and Arendt. I argue specifically that the political thought of both includes a thus far unnoticed, futuristic narrative and vision concerning the future of politics – a narrative, which both Schmitt and Arendt develop as a response to the experience of twentieth century totalitarianism. Schmitt argued that a radical technologization of human existence itself would not only define the twentieth century in general, but he also maintained that the development of (bio)technology would ultimately change the very preconditions of human bodily normality on which politics and law have been grounded on for the last two millennia. Arendt, on the other hand, offered a rather optimistic political vision concerning the development of technology, arguing that technological development is the only feasible solution to solving the question of mass poverty – a fact that could potentially make it possible to reconceptualize politics and human rights from an entirely new materialistic starting point.

In distinction to substudies 1, 2, 3, and 4, the two last substudies of this dissertation take the dissertation into a more philosophical direction. However, substudies 5 and 6 are nevertheless closely connected to the two other main research objectives and themes of the work. As is shown in both substudies, the narratives concerning politics and technology that Schmitt and Arendt develop in their works published after World War II are direct responses to the experience of (Nazi) totalitarianism and also direct attempts at criticizing the brutal atrocities that had taken place during the war. While in the case of Schmitt, this fact bestows a crucially apologetic nature to his reflections concerning technology,<sup>190</sup> in the case of Arendt the horrors of totalitarianism work as a kind of a negative mirror against which she develops the basic contours of her own ideas.<sup>191</sup>

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<sup>190</sup> Substudy 5 also forms a continuous line of inquiry with substudies 1 and 2. Whereas substudy 1 focuses on the most intensive years of Schmitt's Nazi engagement, from 1933 to 1936, and substudy 2 broadens this historical scope by examining Schmitt's publications from 1923 to 1945, substudy 5 focuses mainly on the repercussions of Schmitt's Nazi engagement by analyzing Schmitt's own postwar remarks and theories concerning National Socialism. In reading Schmitt's postwar writings, it is crucial to bear in mind that Schmitt never renounces his apologetic attitude and his way of offering misleading descriptions of his own Nazi engagement (contra Mehring, *Aufstieg und Fall*, 564).

<sup>191</sup> Despite of major differences, Arendt's "negative" approach to totalitarianism bears some similarity with the ideas developed by Theodor Adorno, *Minima Moralia: Reflexionen aus dem beschädigten Leben* (Frankfurt am Main: Suhrkamp, 1951). For a recent collection that explores the similarities and differences between Arendt and Adorno, see Lars Rensmann and Samir Gandesh, eds., *Arendt and Adorno. Political and Philosophical Investigations* (Stanford: Stanford University Press, 2012).

## 6.2. Previous research and the novel contributions of substudies 5 and 6

In comparison to the two other topics analyzed in this dissertation, the question of technology in the political theories of Schmitt and Arendt clearly appears like an under-researched topic that has only been scrutinized in the recent decades. No comprehensive study exists that would compare the very different ways in which Schmitt and Arendt understood the question of technology in their thinking. However, there are studies that explore this question by focusing either on Schmitt or Arendt.

In the case of Schmitt, the question of technology in his thought was first analyzed thoroughly by John. P. McCormick in a comprehensive work that was published in 1997. McCormick not only showed that the question of technology was a central one for Schmitt, but that his Weimar era works offered different kinds of treatments of this question.<sup>192</sup> Although McCormick connected the question of technology to the central questions of Schmitt's political thought – his critique of liberalism and his understanding of the sovereign state – his study nevertheless focused almost singularly on Schmitt's Weimar era works. After McCormick's extensive book, the literature that examines the question of technology in Schmitt's thought has remained rather limited.<sup>193</sup>

The fact that previous literature has analyzed Schmitt's understanding of technology mainly in his Weimar works corresponds to a very widespread presumption in the Schmitt scholarship more generally: This is the, in my opinion misguided, notion that "Schmitt's most impressive intellectual achievements date roughly from World War I until the early 1950s."<sup>194</sup> Even Schmitt's biographer Reinhard Mehring takes a similar position when he notes that Schmitt's later works – here he refers specifically to Schmitt's *Die Tyrannei der Werte* (1959/1967) – do not reach the *niveau* of Schmitt's writings "before 1933."<sup>195</sup> This of course does not mean that there would be no literature concerning Schmitt's postwar works. Especially Schmitt's influential work *Der Nomos der Erde* (1950) and its narrative of European public law has been studied very extensively in the last two decades.<sup>196</sup> However, there is no denying the fact that Schmitt's postwar works, especially those that he published after 1950, have received much less attention in the research literature and that even today when these materials are more readily available for researches, it is still rather common to presume that the last period of Schmitt's work would either only be a set of footnotes to his earlier works.<sup>197</sup>

However, as substudy 5 demonstrates, Schmitt's postwar works include much more. In distinction to previous literature on Schmitt and technology and in distinction to the studies that have analyzed the

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<sup>192</sup> John. P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997).

<sup>193</sup> See for instance, Hugo E. Herrera, "Schmitt vs. Derrida: The Distinction between the Juridical and the Technical Rationality," *Telos*, no. 187 (2019): 8–30.

<sup>194</sup> Scheuerman, *The End of the Law*, 2.

<sup>195</sup> Mehring, *Aufstieg und Fall*, 524.

<sup>196</sup> For studies that examine Schmitt's international thought, see for instance Martti Koskenniemi, *The Gentle Civilizer of Nations*, 413–509; Louiza Odysseos and Fabio Petito, eds., *The International Political thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order* (London: Routledge, 2007); William Hooker, *Carl Schmitt's international thought: Order and orientation* (Cambridge: Cambridge University Press, 2009); Claudio Minca and Rory Rowan, *On Schmitt and Space* (London: Routledge, 2016); Martti Koskenniemi, "Carl Schmitt and International Law," in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (Oxford, Oxford University Press, 2017), 592–611. For a recent attempt at offering a more comprehensive take on Schmitt's later works, see Peter Uwe Hohendahl, *Perilous Futures. On Carl Schmitt's Late Writings* (Ithaca: Cornell University Press, 2018). For historical context and influence in this era, see also Van Laak, *Gespräche in der Sicherheit des Schweigens*.

<sup>197</sup> To a certain extent, Schmitt himself invited this problematic interpretation. For instance, he himself described his last major monograph, *Politische Theologie II*, as a "desperately hermetic piece of writing" (Schmitt and Jünger, *Briefe*, 379).

late Schmitt's historical depiction of European international law, substudy 5 argues that Schmitt's political thought was specifically interested in what can be called *biotechnology*; on the way, technology will not only alter the surrounding and natural world inhabited by human beings, but also the human organism itself. It is maintained that Schmitt develops these ideas systematically in his postwar works, especially in his recently published thought diary, the *Glossarium*, which Schmitt kept from 1947 to 1958. Beyond demonstrating that Schmitt's ideas concerning biotechnology form an essential and thus far understudied perspective to his late political thinking, substudy 5 also explores how Schmitt's mobilizes this idea concerning the biological-political transformation of the human being as a conservative counternarrative against the modern liberal and leftist ideologies of progress.

Against the prevailing opinion in the research literature, the article argues that Schmitt's postwar works are not singularly focused on the dissolution of the Eurocentric and state-based system of public law – the *Jus publicum Europaeum* that in Schmitt's reading was born gradually with the age of discovery, the treaties of Westphalia (1648), and the peace of Utrecht (1713) –, but also on the dissolution of the anthropocentric propositions that have formed the ground of European politics and thinking for over two millennia. By utilizing utopian and dystopian literature from Plato to Thomas More and Aldous Huxley, it is shown Schmitt saw that the twentieth century as such was defined by unprecedented technological development, which gradually incorporated the human body itself into the realm of politics – an incorporation of human biology that saw its deadly apex in the murderous practices of National Socialism. It is shown that by offering this narrative Schmitt not only criticizes National Socialism, but also aims to relativize his own involvement within the regime by portraying the Nazi crimes against humanity as an integral part of European modernity as such. By positioning Schmitt's theories concerning the entanglement of technology, politics, and human biology in a discussion with the works of Michel Foucault and Donna Haraway, substudy 5 aims to demonstrate that Schmitt interestingly prefigured many of the central themes that have become better known in the contemporary discussions concerning “biopolitics” (Foucault) and “posthumanism” (Haraway). It is argued that Schmitt's ideas can be read as a conservative-Christian critique of modern biopolitics and posthumanism, which at the same time, work as a kind of a metaphysical apology for Schmitt's own actions during the Nazi regime.<sup>198</sup>

Substudy 6 moves on to analyze the question of technology in Arendt's postwar works. In the case of Arendt, the first studies on the question of technology in her thought also date back to the 1980s and 1990s<sup>199</sup> after which the topic has been analyzed in some studies.<sup>200</sup> Following the idea that Arendt's

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<sup>198</sup> After the publication of my own study, another article has appeared that analyzes these same themes in Schmitt's postwar thought: See Joshua Smeltzer, “Technology, Law, and Annihilation: Carl Schmitt's Critique of Utopianism,” *Journal of the History of Ideas*, vol. 81, no. 1 (2020): 107–129. Although Smeltzer's reflections are largely compatible with those that I present in substudy 5, Smeltzer's analysis also suffers from crucial problems. Although Smeltzer rightly notes that Schmitt's critique of biotechnology is “conservative,” he never elaborates what this actually entails. As I demonstrate in my own substudy, Schmitt's postwar works attempt to reconnect conservatism with his earlier political theology in a novel manner; an ambitious attempt that called for the “resacralization” of conservatism more generally. Second, although also Smeltzer relies on the new version of Schmitt's *Glossarium 1947–1958*, he nevertheless only focuses on the first years of this notebook. Similarly, Smeltzer also does not utilize any of Schmitt's other important postwar works that include similar ideas concerning technology. Third, Smeltzer does not recognize the fact that Schmitt's reflections on these questions – biotechnology and utopias – actually have their historical roots in Schmitt's early notebook entries from the 1920s, which only acquire a central role in Schmitt's thinking after the atrocities of World War II.

<sup>199</sup> For early studies on Arendt and technology, see Barry Cooper, “Hannah Arendt's Reflections on Technology,” in *Democratic Theory and Technological Society*, ed. Richard Day, Ronald Beiner and Joseph Masciulli (London: M. E. Sharpe, 1988): 316–35; Pieter Tijmes, “The Archimedean Point and Eccentricity: Hannah Arendt's Philosophy of Science and Technology,” *Inquiry*, vol. 35, no. 3 (1992): 389–406.

<sup>200</sup> Eg. Waseem Yaqoob, “The Archimedean Point: Science and Technology in the Thought of Hannah Arendt, 1951–

works must be read from a holistic perspective and not by focusing only on her major works<sup>201</sup>, the article utilizes new resources in rereading her major works.

Like Schmitt, Arendt saw that the twentieth century was defined by an unforeseen technological development, and like him, she argued that this monstrous merging of politics, biological life, and technology saw its violent apex in the murderous practices of National Socialism. However, in distinction to the conservative-Christian narrative that Schmitt develops about technology and the future of politics in his postwar works, it is demonstrated that Arendt saw the development of technology in a more complex and also more hopeful manner. In distinction to the singularly pessimistic and even dystopian visions of Schmitt that predict the downfall of European culture and its anthropocentric metaphysics as such, Arendt saw that the rise of technology and automation would likely make it possible that in the future human beings could be liberated from the traditional succumbing to labor and to the realm of the biological necessity more generally. Arguing against the well-known interpretations of Arendt as a thinker, who was supposedly hostile toward the realm of labor and biological life more generally,<sup>202</sup> substudy 6 demonstrates that Arendt, in fact, thought that future technological development would likely make broad-based democracy possible for the first time in human history.

I contextualize Schmitt's and Arendt's arguments by making use of the theoretical paradigm of "biopolitics," most famously developed by Michel Foucault in his late works and lectures.<sup>203</sup> In the case of Schmitt and his critique of modern biotechnology, I also utilize the contemporary philosophical discussions concerning "posthumanism."<sup>204</sup> Both of these discourses help us to contextualize and situate the ideas of Schmitt and Arendt to the discussions that analyze the relationship of technology and politics in postwar Europe.<sup>205</sup>

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1963," *Journal of European Studies*, vol. 44, no. 3 (2014): 199–224; Brian Simbirski, "Cybernetic Muse: Hannah Arendt on Automation, 1951–1958," *Journal of the History of Ideas*, vol. 77, no. 4 (2016): 589–613

<sup>201</sup> For studies that utilize a holistic approach in reading Arendt see footnote 26 of this introduction.

<sup>202</sup> The most comprehensive study of this kind is undoubtedly Hanna Fenichel Pitkin, *The Attack of the Blob: Hannah Arendt's Concept of the Social* (Chicago: University of Chicago Press, 1998). For other well-known contributions that have argued similarly, see for instance Peter J. Euben, "Arendt's Hellenism," in *The Cambridge Companion to Hannah Arendt*, ed. Dana Villa (Cambridge: Cambridge University Press, 2000), 151–64; Andrew Schaap, "The Politics of Need," in *Power, Judgment and Political Evil: In Conversation with Hannah Arendt*, eds. Andrew Schaap, Danielle Celermaier and Vrasidas Kalidis (Farnham: Ashgate, 2010), 157–70.

<sup>203</sup> For general introductions to the study of biopolitics, see for instance Thomas Lemke, *Biopolitics: An Advanced Introduction*, trans. Eric Frederick Trump (New York: New York University Press, 2011); Sergei Prozorov and Simona Rentea, eds., *The Routledge Handbook of Biopolitics* (London, UK: Routledge, 2017). On Foucault's conception of biopolitics, see Vanessa Lemm and Miguel Vatter, "Michel Foucault's perspective on biopolitics," in *Handbook of biology and politics*, Steven A. Peterson and Albert Somit, eds. (Glos, UK: Edward Elgar Publications, 2017), 40–52. Foucault's most relevant works that analyze this topic include Foucault, *The History of Sexuality*; Michel Foucault, *Society must be Defended*, trans. David Macey (New York: Picador, 2003); Michel Foucault, *The Birth of Biopolitics*, trans. Graham Burchell (New York: Picador, 2008); Michel Foucault, *Security, Territory, Population*, trans. Graham Burchell (New York: Picador, 2009). For my own interpretation and summary of Foucault's ideas concerning biopolitics, cf., substudy 5: 632–6; substudy 6: 36–7.

<sup>204</sup> For recent works that offer comprehensive analyses on the debates concerning posthumanism, see for instance Rosi Braidotti, *The Posthuman* (Cambridge: Polity, 2013); Francesca Ferrando, *Philosophical Posthumanism* (London: Bloomsbury Academic, 2020).

<sup>205</sup> For an overview of these discussions in postwar Europe, see for instance Benjamin Lazier, "Earthrise; or, The Globalization of the World Picture," *The American Historical Review*, vol. 116, no. 3 (2011): 602–30. For an analysis of these discussions in Weimar and Nazi Germany, see Jeffrey Herf, *Reactionary Modernism: Technology, Culture, and Politics in Weimar and the Third Reich* (Cambridge: Cambridge University Press, 1984). To be sure, my intention is not to portray Schmitt's and Arendt's reflections on these topics as being entirely exceptional. The question concerning the development of technology and the necessary political implications have been nothing less than one of the central questions in Western

Both substudies 5 and 6 take their bearings from Foucault's analysis of the entanglement of politics and (biological) life in the modern era. As Foucault argued in his various lectures, published works, and essays from the 1970s and early 1980s, the modern era was defined by the transformation of traditional sovereign power, as theorized most notably by Jean Bodin and Thomas Hobbes, into something Foucault called "biopower" – a form of power that placed the existence of man himself in question "as a living being."<sup>206</sup>

As substudies 5 and 6 demonstrate, this question is also at the very heart of Schmitt's and Arendt's postwar works. In radically different ways, both recognized that Nazism was the most extreme version of this entanglement that brought political strategies into the sphere of human biology. As I argue in substudy 1, Foucault's paradigm of "biopolitics" offers a new way of reading Schmitt's Nazi era works that he published after 1933. With Hitler's rise to power, Schmitt became, at least initially, convinced that an entirely new era of politics had arrived; an era of politics in which the biological and cultural image of the Aryan race would become the central point of reference for conceptualizing the homogeneity of the German people. This new way of understanding of politics would be nothing less than epochal. Hitler's rule could no longer be understood in the terms Bodin, Hobbes, and even Schmitt himself in his Weimar era thought had developed; rather, an entirely new imaginary, a radically biological one, was needed to capture the radical novelty of the Nazi movement.

It is precisely this novel biological conceptual system and imagery and their repercussions that substudies 5 and 6 aim to analyze. All of Arendt's political thought is grounded on an attempt to save the human faculty of action from its entanglement with the realms of necessity and biology. After Schmitt had distanced himself from National Socialism in the postwar era, he also began to sense the danger that lied at the heart of this entanglement. Reframing his own Weimar era arguments concerning political theology and "the political," in his postwar thought Schmitt came to argue that the only feasible way for a sustainable political existence could be found in the resacralization of human relations; this would be the only thing that could potentially stop technological development from infringing on the human body itself and hinder "progress" from eventually turning the human organism itself into a machine.

Although substudies 5 and 6 do not include extensive comparisons of Schmitt and Arendt,<sup>207</sup> when read together and in the light of the comparisons executed in substudies 3 and 4, interesting new contrasts between these two authors emerge. Beyond showing that Schmitt's and Arendt's works offer two different takes on the merger of politics, technology, and biological life in the modern era, substudies 5 and 6 also show that these two authors had an entirely different way of understanding what political *neutrality* signifies. For Schmitt, there simply is no such thing as political neutrality; the more political something is and becomes, the less neutrality there can be. In his Nazi writings, one reads over and over again that the modern era has now recognized that "the political is the total" and that every decision concerning the neutrality of something is in itself always a political decision.<sup>208</sup>

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philosophical thought in the last century, as testified by the ideas of such well-known authors as Heidegger, Freud and Kojév: cf., Martin Heidegger, "Die Frage nach der Technik," in *Vorträge und Aufsätze*, ed. F.-W. von Hermann (Frankfurt am Main: Klostermann, 2000); Sigmund Freud, *Das Unbehagen in der Kultur* (Wien: Internationaler Psychoanalytischer Verlag, 1930), 49–53; Alexandre Kojév, *Introduction to the Reading of Hegel. Lectures on the Phenomenology of Spirit*, trans. James H. Nichols, Jr. (Ithaca: Cornell University Press, 1980), 158–162 footnote 6. My intention here is to demonstrate that both Schmitt and Arendt were directly involved in these discussions and that discovering this aspect from their thought offers a novel way of understanding their postwar thinking.

<sup>206</sup> Foucault, *The History of Sexuality*, 143.

<sup>207</sup> Cf., substudy 5: footnotes 76 and 79; substudy 6: footnote 103.

<sup>208</sup> Cf., Carl Schmitt, *Fünf Leitsätze für die Rechtspraxis* (Berlin: Verlags-Gesellschaft Deutsche Rechts- und Wirtschafts-Wissenschaft, 1933); Carl Schmitt, *Der Begriff des Politischen* (Hamburg: Hanseatische Verlagsanstalt, 1933), 21; Carl Schmitt,



While Schmitt praises this fact in his Nazi era writings, in his postwar works he becomes much more critical of this fact, as he begins to realize that the last realm of neutrality is the human body itself. For him, the ultimate and yet logical conclusion of the gradual totalization of politics in the modern era is nothing less than the modification of the human organism; differences that used to be political in nature, by way of technological development, threaten to become and transform into matters of biotechnological modification.

This conceptualization of the gradual disappearance of different realms of “neutrality” in Schmitt’s postwar works,<sup>209</sup> offers an interesting contrast with the entirely different image of political “neutrality” that emerges from the postwar works of Hannah Arendt. As shown in substudy 6, one of the central aspects of Arendt’s analysis of modern technology is the idea that technological development will create an entirely new sphere of political neutrality. Not only will technological development be the only solution to such major issues as mass poverty, but precisely this fact will also make broad democratic political participation possible for the very first time in human history. This major difference in conceptualizing what political neutrality means is especially interesting when seen in the light of substudy 4 of this dissertation, which contrasted Schmitt’s and Arendt’s diverging understandings of neutrality in terms of political language. Just as Schmitt argued that, ultimately, there is no such thing as neutral political language, Arendt maintained, in a critically Kantian manner, that political discussion must be imagined in terms of rhetorical persuasion and wooing, which not only presuppose universal human reason, but the ability of all human beings to think alike, if they choose to do so – an ability that Schmitt’s most racist Nazi writings reject in biological terms and which his non-racist writings deny as naïve and illusionary.

## **7. Methodological appendix: An analytical overview of Carl Schmitt’s publications from 1933 to 1936**

This methodological appendix offers an analytical overview and theme specific categorization of Schmitt’s publications between March 24<sup>th</sup> 1933 (the day of the Enabling Act that made Hitler the unchallenged and sole ruler of Germany, after which Schmitt first expressed his *public* support for the Nazis<sup>210</sup>) and December 1936 (when Schmitt was attacked by the SS journal *Das schwarze Korps* and was then forced to leave his most important party offices by the 1<sup>st</sup> of January 1937). A close reading of these often-neglected materials forms the textual starting point and basis of this dissertation.

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*Staatsgefüge und Zusammenbruch des zweiten Reiches: Der Sieg des Bürgers über den Soldaten* (Berlin: Duncker and Humblot, 2011) 20, 26, 44.

<sup>209</sup> Schmitt had of course diagnosed this disappearance already in his famous 1929 essay “Das Zeitalter der Neutralisierungen und Entpolitisierungen,” later added as an appendix to *Der Begriff des Politischen* (1932). However, as shown in substudy 5, Schmitt’s Weimar era works did not yet explicitly make arguments concerning biomodification as his postwar works do.

<sup>210</sup> It is unquestionable that Schmitt did not offer *public* support for the Nazis before March 1933 (Mehring, *Aufstieg und Fall*, 301, 306). That Schmitt was not a Nazi before this and clearly hesitated whether to join the party or not until he applied for membership on the 27<sup>th</sup> of April 1933, is clearly disclosed by Schmitt’s diaries (see substudy 1 of this dissertation). However, as Dirk Blasius has convincingly shown by relying on a broad array of archival documents, against Schmitt’s own claims on the matter, he was nevertheless clearly sympathetic to the Nazis already right after the fatal *Preussenschlag* trial (Blasius, *Preussischer Staatsrat*, 69–70, 224). Interestingly, also the anonymous attack on Schmitt in *Das Schwarze Korps* located Schmitt’s “opportunist” turn already to the 30<sup>th</sup> of January (“Es wird immer noch peinlicher” [10 December 1936] in *Das Schwarze Korps*).

Although I do rely heavily on the very useful bibliography of Schmitt's writings edited by Alain de Benoist,<sup>211</sup> I also diverge from his listing in some crucial ways. Most importantly, unlike de Benoist, who simply lists Schmitt's writings in a chronological order, my intention here is also to offer a short overview of the contents of these materials. The purpose of this analytical and methodological overview is both to introduce the reader to the materials, to offer a more holistic picture of Schmitt's activities from 1933 to 1936, and also to lay the empirical foundations for the critical examination of previous research literature on Schmitt's Nazi engagement, which is undertaken in the individual publications of this dissertation and in this introductory/summary chapter.<sup>212</sup> In total, during this period, Schmitt published five entirely new books, one short but important pamphlet, one very broad "*Stellungnahme*" for the reformation of Nazi criminal law and a total of over 50 articles. These materials can be classified as follows:

(1) *Monographs and other major individual publications.* This category includes one pamphlet length book that includes a broad commentary of a law cowritten by Schmitt himself, four entirely new books, one short pamphlet publication, and one comprehensive text that includes Schmitt's (unrealized) proposal for the reformation of Nazi criminal law.

Schmitt's first more comprehensive Nazi era publication was the *Reichstatthaltergesetz* (1933), which also marks the beginning of Schmitt's practical Nazi engagement.<sup>213</sup> This brochure includes the contents of a new law, which transformed the federalist system of the Weimar Republic into a unified German *Reich*. The *Reichstatthaltergesetz* was cowritten by Schmitt himself and the roughly 30-page brochure includes both the law itself and Schmitt's historical-analytical commentary of the topic. In 1933 and 1934, Schmitt also published four monographs: *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit* (1933),<sup>214</sup> *Über die drei Arten des rechtswissenschaftlichen Denkens* (1934)<sup>215</sup>, *Staatsgefüge und Zusammenbruch des Zweiten Reiches* (1934)<sup>216</sup> and *Nationalsozialismus und Völkerrecht* (1934).<sup>217</sup> The two first of these (together with his 1934 essay on the Röh-m-putsch) are surely Schmitt's most cited Nazi era works.

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<sup>211</sup> de Benoist, *Internationale Bibliographie*.

<sup>212</sup> Although here I will only examine Schmitt's own *publications* between 1933 and 1936, to be sure, Schmitt's Nazi activities were by no means constricted to publishing. The most reliable overviews are given by Mehring, *Aufstieg und Fall*; Blasius, *Preussischer Staatsrat* and Koenen, *Der Fall*. On Schmitt's revolutionary activities at the university of Berlin and on his involvement in the ousting of Jewish scholars Fritz Schulz and Erich Kaufmann after the Nazi revolution of 1933, see Anna-Maria Gräfin von Lösch, *Der nackte Geist. Die Juristische Fakultät der Berliner Universität im Umbruch von 1933* (Tübingen: Mohr Siebeck, 1999). On Schmitt's supervision of doctoral dissertations and *Habilitationen*, see Christian Tilitzki, "Carl Schmitt – Staatsrechtslehrer in Berlin. Einblicke in seinen Wirkungskreis anhand der Fakultätsakten 1934–1944," *Siebte Etappe. Zeitschrift für Politik, Kultur und Wissenschaft* [1991]: 62–118. For a correction to the sources used by Tilitzki, see Mehring, *Aufstieg und Fall*, 684–5, endnote 28). On Schmitt's conference trips during the later Nazi era see Christian Tilitzki, "Vortragsreisen Carl Schmitts während des Zweiten Weltkriegs," in *Schmittiana VI. Beiträge zu Leben und Werk Carl Schmitts*, ed. Piet Tommissen (Berlin: Duncker & Humblot, 1998), 191–270. For a(n incomplete) list of the various positions Schmitt held during the Nazi era, see Manfred Lauer mann, "Versuch über Carl Schmitt im Nationalsozialismus," in *Carl Schmitt und die Liberalismuskritik*, eds. Klaus Hansen and Hans Lietzmann (Opladen: Leske + Budrich, 1988), 37–52 (37–8).

<sup>213</sup> Mehring, *Aufstieg und Fall*, 319–321.

<sup>214</sup> Carl Schmitt, *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933). An excerpt of this book was published as "Führertum als Grundbegriff des nationalsozialistischen Rechts," *Europäische Revue*, IX, 11, November 1933: 676–9.

<sup>215</sup> Carl Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Hamburg: Hanseatische Verlagsanstalt, 1934).

<sup>216</sup> Carl Schmitt, *Staatsgefüge und Zusammenbruch des Zweiten Reiches. Der Sieg des Bürgers über den Soldaten*. (Hamburg: Hanseatische Verlagsanstalt, 1934).

<sup>217</sup> Carl Schmitt, *Nationalsozialismus und Völkerrecht* (Berlin: Junker und Dünnhaupt, 1934). An excerpt was published as Carl Schmitt, "Gleichberechtigung und Völkerrecht," *Völkischer Beobachter*, 2021, 21. July 1934.

*Staat, Bewegung, Volk* (1933) describes and envisions the nature and inner workings of the entirely new Nazi state after the Weimar constitution has lost its validity with the Nazi revolution of 1933. The book describes the overcoming of the liberal-constitutional *Rechtstaat* and its replacement with a new “tripartite” state structure, in which the Nazi movement and its *Führer* Adolf Hitler now assume an unquestioned and fully dominant political position. The book describes racial homogeneity (*Artgleichheit*) and the *Führer*-principle (*Führertum*) as the basic foundational elements of this entirely new kind of political structure, in which the Nazi movement (*Bewegung*) now forms the most central part. The themes of this work are further enlarged and elaborated in Schmitt’s follow up study, *Über die Drei Arten des rechtswissenschaftlichen Denkens* (1934), which aims to offer a deeper historical grounding to the specifically national socialist way of thinking about law and politics. Schmitt now begins to develop an entirely kind of political-legal thinking that he labels as “concrete order thought” – a specifically national socialist way of understanding law and politics that is distinguished from normativism and Schmitt’s own earlier Weimar era decisionism. This book offers a politically motivated genealogy of concrete order thought and its historical inspirations, which are located to Aristotle, Thomism, German thinking from the Middle Ages to modern German idealism, Hegel, and further, to Santi Romano, and in particular to Maurice Hauriou – none of whom are obviously national socialists per se, but nevertheless, in Schmitt’s reading, inspire the entirely new, specifically Nazi way of thinking that Schmitt is trying to envision.

In 1934 Schmitt also published another book *Staatsgefüge und Zusammenbruch des Zweiten Reiches* (1934), which develops Schmitt’s own, rather complex version of modern German history, in particularly Prussian history, arguing that the demise of modern Germany in the early twentieth century can be located to the degeneration of specifically Prussian militaristic traditions, which were gradually replaced and degenerated from within through the poisonous acceptance of the liberal-Western (that is: un-German) way of understanding the modern state and individual rights. This historical narrative, in explaining how Germany was destroyed “from within,” not only develops Schmitt’s own version of the *Dolchstoßlegende*, but also demonstrates the hopes Schmitt’s initially had with Hermann Göring’s project concerning the Prussian State Council, of which Schmitt was a member.<sup>218</sup>

Fifth, Schmitt also published a short brochure entitled *Nationalsozialismus und Völkerrecht* (1934), which Michael Stolleis describes as the first attempt to offer a systematic description of what a specifically National Socialist version of international law could look like.<sup>219</sup> This book is an interesting beacon in Schmitt’s reflections on international law, for, on the one hand, it gathers together some of the ideas Schmitt had already envisioned in the 1920s<sup>220</sup> and now remobilizes them for the national socialist cause, while on the other, the book already includes, *in nuce*, the central elements of his later and much more comprehensive *Grossraum*-theory.

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<sup>218</sup> For a recent analysis of this work, see Joshua Smeltzer “‘Germany’s salvation’: Carl Schmitt’s teleological history of the Second Reich.” *History of European Ideas*, vol. 44, no. 5 (2018): 590–604.

<sup>219</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 384.

<sup>220</sup> Schmitt anticipated the death of the Westphalian nation state model already early in the 1920s. For instance, his important 1926 book *Die Kernfrage des Völkerbundes* already envisions the centering of statehood to the hands of “five or six great Leviathans” (Carl Schmitt, *Die Kernfrage des Völkerbundes* [Berlin: Dümmler, 1926], 11, 54–5). The author has analyzed the development of Schmitt’s understanding of statehood and international law in detail in Ville Suuronen, “Politiikka kansallisuuden jälkeä. Carl Schmitt, Eurooppa ja uusi pluralismi.” *Politiikka*, vol. 4 (2018): 290–307. For a recent comprehensive presentation on Schmitt’s early ideas on international law in the Weimar era, see Giuseppe Perconte Licatese, *Le relazioni internazionali nel pensiero politico-giuridico di Carl Schmitt negli anni della Repubblica di Weimar*, Doctoral Dissertation, Università degli Studi della Campania Luigi Vanvitelli 2018/2019, available at: [https://www.academia.edu/44841164/Le\\_relazioni\\_internazionali\\_nel\\_pensiero\\_politico\\_giuridico\\_di\\_Carl\\_Schmitt\\_negli\\_anni\\_della\\_Repubblica\\_di\\_Weimar](https://www.academia.edu/44841164/Le_relazioni_internazionali_nel_pensiero_politico_giuridico_di_Carl_Schmitt_negli_anni_della_Repubblica_di_Weimar) (accessed online 22.09.2021).

In addition to these monographs, Schmitt also published two other brochures. The first of these is an unenumerated four page individual publication of Schmitt's "*Fünf Leitsätze*," his five "guiding principles" that should guide the process of renewal of German legal science under Nazi rule.<sup>221</sup> These "five guidelines," although they are very short, are of decisive importance both in their contents and in their rather broad impact on Nazi thought more generally.<sup>222</sup> Descriptively, these "guiding principles" were reprinted in a collection of writings that commented and analyzed the famous Nazi "Sterilization law." Both this commentary and the law itself were written by the leading German racial hygienists Arthur Gütt, Ernst Rüdin und Falk Ruttke, of which the latter also presented a paper at the antisemitic conference that Schmitt organized in October 1936. This offers very direct evidence concerning the very concrete implications of Schmitt's Nazi thought and of the closeness of Schmitt's ideas to what are often described as the more openly racist and biologicistic variants of Nazi thought.<sup>223</sup>

The least known longer contribution that Schmitt produced during this era is his practical proposal for the reformation of Nazi criminal law that Schmitt worked on during 1936. This "*Stellungnahme*," which according to de Benoist was dated to September 15<sup>th</sup> 1936 and encompassed 48 pages<sup>224</sup> was eventually published anonymously with modifications in March 1937,<sup>225</sup> that is, after Schmitt's downfall in the party ranks. This report has hardly been mentioned in the research on Schmitt and his Nazi engagement.<sup>226</sup>

(2) *Articles and shorter writings.*<sup>227</sup> From 1933 to 1936, Schmitt also published a rather astounding total of over 50 academic articles, shorter polemical texts, and other writings, which touched upon a very broad variety of different topics. These can be divided analytically in the following manner:

(2.1.) *Shorter newspaper articles and other similar publications in various Nazi periodicals.* These included 5 important polemical articles in the *Westdeutscher Beobachter*, which offer a short but a panoramic overview of Schmitt's initial revolutionary intentions within the Nazi movement. Schmitt celebrated the 1933 "national revolution" in Germany and the process of *Gleichschaltung* that would exclude "non-Aryan" elements from public life,<sup>228</sup> supported the violent expulsion of ethnically non-German scholars declaring triumphantly that they had been "spat out of Germany for all ages,"<sup>229</sup> envisioned

<sup>221</sup> Carl Schmitt, *Fünf Leitsätze für die Rechtspraxis* (Berlin: Verlags-Gesellschaft Deutsche Rechts- und Wirtschafts-Wissenschaft, 1933).

<sup>222</sup> De Benoist reports numerous reprints of these guidelines (de Benoist, *Internationale Bibliographie*, 107).

<sup>223</sup> This connection has been examined in detail in Blasius, *Preussischer Staatsrat*, 157–69, who argues convincingly that at least until 1936, Schmitt's thought did not truly diverge from the more radically racist forms of Nazi discourse.

<sup>224</sup> de Benoist, *Internationale Bibliographie*, 50.

<sup>225</sup> For details on the changes to this text, see Koenen, *Der Fall*, 702 footnote 281.

<sup>226</sup> The most comprehensive analyses of this document are Lothar Gruchmann, *Justiz im Dritten Reich 1933–1940 Anpassung und Unterwerfung in der Ära Gürtner* (München: Oldenbourg Wissenschaftsverlag, 2002), 994–1011; Lothar Gruchmann, „Dummheiten eines Genies?“ *JuristenZeitung*, vol. 60, nr. 15/16 (2005): 763–70. Mehring mentions this document shortly (Mehring, *Aufstieg und Fall*, 371) and Koenen notes that this *Stellungnahme* develops the same themes as Schmitt's interview in the SS journal *Der Angriff* from 01.09.1936, which both eventually contributed to Schmitt's downfall within the party, as these writings heightened the attacks against Schmitt (Koenen, *Der Fall*, 701–5). It is telling that in his own retrospective Schmitt openly admits his participation to the drafting of the *Reichstatthaltergesetz* and his work on the *Preussisches Gemeindegesetz*, also from 1933, but leaves his *Stellungnahme* to the reform of Nazi criminal law unmentioned – a fact that clearly points toward the gravitas of this document in evaluating the profundity of Schmitt's Nazi involvement (cf., Hertwerck and Kisoudis, *Gespräch*, 107). See also Schmitt's interesting remarks from 1935 on the question of enacting legislation and the ability to influence such matters in Schmitt and Huber, *Briefwechsel*, 227–8.

<sup>227</sup> In the case that an article has been republished in a readily available collection, I have always listed the republished source. This choice aims to highlight the very small number of Schmitt's articles from 1933 to 1936 that are available to researchers today.

<sup>228</sup> Carl Schmitt, "Das gute Recht der deutschen Revolution," *Westdeutscher Beobachter* IX, no. 108 (12. May 1933).

<sup>229</sup> Carl Schmitt, "Die deutschen Intellektuellen," *Westdeutscher Beobachter* IX, no. 126 (31 May 1933).

the “one-party-state” as the new political model for twentieth century,<sup>230</sup> idealized Hermann Göring’s project of the Prussian State Council, of which he himself was a member,<sup>231</sup> and offered a short elaboration of how Germany found its way to its “first German *Volkskanzler* Adolf Hitler” after Von Papen and Schleicher.<sup>232</sup> During 1933 and 1934, Schmitt also published three short articles in the *Völkischer Beobachter*, in which he examined various aspects of the renewal of German legal science,<sup>233</sup> one article in the *Bremer Nationalsozialistische Zeitung*,<sup>234</sup> and also one piece in a Nazi *Mitteilungsblatt* from the *Gau Köln-Aachen*.<sup>235</sup>

(2.2.) *Analyses of specific Nazi laws.* These included treatments of the Enabling Act from March 24<sup>th</sup> 1933,<sup>236</sup> an overview of the legal developments of National Socialism during the first year of the regime,<sup>237</sup> an analysis of the *Röhm-Putsch* from July/August 1934 and the laws that justified this purifications retrospectively<sup>238</sup> as well as two important essays on the Nuremberg laws, which Schmitt not only legitimized as the “constitution of freedom” for the new Germany,<sup>239</sup> but also analyzed as “defensive” measures for the protection of German blood within the broader horizon of European private international law.<sup>240</sup>

(2.3.) *Antisemitic propaganda.* This is, in fact, the only way to describe Schmitt’s violent attack against “Jewishness in legal science” in a conference that Schmitt himself organized in October 1936.<sup>241</sup> As the main organizer of this event, Schmitt was also very likely heavily involved in the editing of the planned 9-part series of antisemitic pamphlets (of which only 8 were eventually published) that consisted of the presentations and lectures held at the conference. That Schmitt’s contribution to the work on these pamphlets was not limited to his own “opening words” and “concluding remarks” published in volume 1, is testified by at least two things. First, that Schmitt also wrote a deeply

<sup>230</sup> Carl Schmitt, “Der Staat des 20. Jahrhunderts,” *Westdeutscher Beobachter* IX, no. 151 (28. June 1933).

<sup>231</sup> Carl Schmitt, “Die Bedeutung des neuen Staatsrats,” *Westdeutscher Beobachter* IX, no. 169 (16. July 1933).

<sup>232</sup> Carl Schmitt, “1. Jahr deutsche Politik – Rückblick vom 20. Juli 1932 – Von Papen über Schleicher zum ersten deutschen Volkskanzler Adolf Hitler,” *Westdeutscher Beobachter* IX, no. 176 (23. Juli 1933).

<sup>233</sup> Carl Schmitt, “Der Geist des neuen Staatsrechts,” *Völkischer Beobachter*, XLVI, no. 166, (14. April 1933): 2 (“Bericht Dr.L.”); Carl Schmitt, “Neubau von Staat und Reich,” *Völkischer Beobachter*, (31. Januar 1934); Carl Schmitt, “Das neue Verfassungsgesetz,” *Völkischer Beobachter*, (1. Februar 1934): 1–2. The latter of these has also been republished as an appendix to Schmitt, *Tagebücher 1930–1934*, 476–9.

<sup>234</sup> Carl Schmitt, “Richtertum und Politik,” *Bremer Nationalsozialistische Zeitung*, no. 335, 11. December 1933. The author was unable to locate this publication and relies on the information listed in de Benoist’s bibliography.

<sup>235</sup> Carl Schmitt, “Staatsrat Univ.-Prof. Pg Dr. C. Schmitt über den Staatsrat und die Führerfrage im nationalsozialistischen Gemeinwesen,” *Mitteilungsblatt der Ortsgruppe Braunsfeld* (Gau Köln-Aachen, Stadtkreis Linksrh. Süd der NSDAP), I, 2, 4. November 1933: 1–4. The author was unable to locate this publication and relies on the information listed in de Benoist’s bibliography.

<sup>236</sup> Carl Schmitt, “Das Gesetz zur Behebung der Not von Volk und Reich vom 24. März 1933,” *Deutsche Juristen-Zeitung*, XXXVIII, no. 7 (1. April 1933): 455–458; Carl Schmitt, “Das Staatsnotrecht im modernen Verfassungsleben. Aus einem Vortrage, gehalten Ende März in Weimar von Prof. Carl Schmitt,” *Deutsche Richterzeitung*, XXV, no. 8–9 (25. September 1933): 254–255.

<sup>237</sup> Carl Schmitt, “Ein Jahr nationalsozialistischer Verfassungsstaat,” *Deutsches Recht*, IV, no. 2 (25. January 1934): 27–30.

<sup>238</sup> Carl Schmitt, “Der Führer schützt das Recht. Zur Reichstagsreder Adolf Hitlers vom 13. Juli 1934,” *Deutsche Juristen-Zeitung*, XXXIX (1. August 1934): 945–50. De Benoist report a diverging version (de Benoist, *Internationale Bibliographie*, 106).

<sup>239</sup> Carl Schmitt, “Die Verfassung der Freiheit,” *Deutsche Juristen-Zeitung*, XI, no. 19 (1. October 1935): 1133–1135.

<sup>240</sup> Carl Schmitt, “Die nationalsozialistische Gesetzgebung und der Vorbehalt des ‘ordre public’ im internationalen Privatrecht,” *Zeitschrift für Deutsches Recht*, vol. III, no. 4 (1936): 204–211.

<sup>241</sup> For Schmitt’s contributions, see Carl Schmitt “Eröffnung der wissenschaftlichen Vorträge” and “Schlusswort,” in *Das Judentum in der Rechtswissenschaft. 1. Die Deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist* (Berlin: Deutscher Rechts-Verlag, 1936), 14–17, 28–34. The concluding speech was published with slight modifications in *Deutsche Juristen-Zeitung*, vol. XLI, no. 20 (1936): 1193–9.

antisemitic opening remark to Edgar Tatin-Tarnheyden's presentation on the influence of Jewishness on German political science and constitutional law, which was then published in 1938 as brochure number 5 in the collection on "Jewishness in legal science."<sup>242</sup> Second, Schmitt also presented himself as being in charge of the matter in letter to none other than to Heinrich Himmler, dated to 2<sup>nd</sup> of December 1936 (one day before the SS attacked Schmitt publicly in *Das schwarze Korps*),<sup>243</sup> with which Schmitt sent the four first brochures of the publication series based on the conference. In this letter Schmitt declares his willingness to any form of collaboration in the fight against the Jewry and praises the biologicistic antisemitic contributions by the antisemitic SS propagandist Johann von Leers (who, at least for a time, was a friend of Schmitt's)<sup>244</sup> and the psychiatrist Dr. Max Mikorey, published in the pamphlet number 3 of the aforementioned series under the ominous title "Jewishness and criminality."<sup>245</sup>

(2.4.) *Writings on the general nature of Nazi legal science and analyzes concerning the central questions related to the Nazi "constitution" and "state."* These included Schmitt's enthusiastic speech at the 1933 *Juristentag* in which he was one of the main speakers together with Hans Frank, Helmut Nicolai and Heinrich Lange. In his presentation Schmitt declared that the will of the Führer was the "nomos" of the new Germany and subjugated himself to Hans Frank by noting that Frank was the *Führer* of the German *Rechtsfront*. The event concluded with a speech by Hitler himself.<sup>246</sup> In his other writings, Schmitt provided general analyses of the role and meaning of legal theory, broadly conceptualized, under the new regime, focusing on such question as the unprecedented concentration of power to the hands of Hitler.<sup>247</sup> There is also an important article that touched upon the central question and idea behind his five "guiding principles" of the new Nazi legal system; the question whether Nazi laws could be codified without destroying the dynamic nature of the Nazi movement itself.<sup>248</sup> There are also two very important articles in which Schmitt compares and distinguishes the non-racist Italian fascism from racist German Nazism – works which, astonishingly, have still today not been treated

<sup>242</sup> Carl Schmitt (anonymously), "Vorbemerkung" in *Das Judentum in der Rechtswissenschaft. Band 5. Der Einfluss des Judentums in Staatsrecht und Staatslehre* (Berlin, 1938), 3–4.

<sup>243</sup> According to Bendersky, Schmitt wrote this letter in "a desperate effort to safeguard his position" (Bendersky, *Theorist for the Reich*, 237). However, the more correct way to describe these events would be that Schmitt was so keen on maintaining his position of power within the Nazi academia that he had no problem in declaring his willingness to co-operation with the SS and Himmler.

<sup>244</sup> Sennholz, *Johann von Leers*, 101–6, 147, 247.

<sup>245</sup> The letter is included in *SD-Akten*, 125. Schmitt only received a formal response and a thank you, on behalf of Himmler, written by [Otto] Ullmann, on the 29<sup>th</sup> of January 1937 (*SD-Akten*, 289). Without being aware of it, the SD had already investigated Schmitt and his planned *Judentagung*, while he was organizing it, by, for instance, warning the hostile anti-Semite Julius Streicher not to participate and by claiming that with this event Schmitt simply wanted to be seen in the company of outspokenly radical and racist national socialists (*SD-Akten*, 47–8, 62).

<sup>246</sup> Carl Schmitt, "Der Neubau des Staats- und Verwaltungsrecht," in *Deutscher Juristentag 1933*, ed. Rudolf Schraut (Berlin: Deutsche Rechts- und Wirtschafts-Wissenschaft Verlags-Gesellschaft, 1933), 242–52. This volume includes all the presentations and Hitler's speech. De Benoist reports another, slightly diverging version of this text (de Benoist, *Internationale Bibliographie*, 108).

<sup>247</sup> Carl Schmitt, "Nationalsozialistisches Rechtsdenken," *Deutsches Recht*, vol. IV, no. 10 (1934): 225–9; Carl Schmitt, "Die Rechtswissenschaft im Führerstaat," *Zeitschrift der Akademie für Deutsches Recht*, vol. II (1935): 435–438. With a high likelihood also the two following publication addressed similar questions: Carl Schmitt, "Die Neugestaltung des öffentlichen Rechts. Bericht über den Ausschuss 'Staats- und Verwaltungsrecht,'" *Zeitschrift der Akademie für Deutsches Recht*, vol. I (1934): 63–4; Carl Schmitt, "Bildung eines Ausschusses für Staats- und Verwaltungsrecht," *Jahrbuch der Akademie für Deutsches Recht*, vol. 1 (1933–34): 207–11. The author was unable to locate these publications and relies on the information listed in de Benoist's bibliography.

<sup>248</sup> Carl Schmitt, "Kodifikation oder Novelle? Über die Aufgabe und Methode der heutigen Gesetzgebung," *Deutsche Juristen-Zeitung*, vol. XL, no. 15–16 (1935): 919–925

systematically in any commentary on Schmitt.<sup>249</sup> Schmitt also published two general overviews of the semantical meanings of the word “politics” and its novel kind of totality under the Nazi regime.<sup>250</sup> There is also an article in which Schmitt analyzed, through the example of paragraph 131 of the Weimar constitution, how the internal change of the federalist Weimar republic into the entirely different Nazi state affected practical questions of concerning the relationship of public and private law.<sup>251</sup> Schmitt also wrote a short retrospective of his own editorial activities after he was forced to renounce his editorial position of the *Deutsche Juristen-Zeitung*<sup>252</sup> which he had been editing since after the “Aryanization” of the journal in May 1934.<sup>253</sup>

(2.5.) *Articles that deal with the question concerning the “Rechtsstaat” (“rule of law”), its history, and potential use as a concept during the Nazi era*<sup>254</sup> – a debate in which Schmitt initially supported the full elimination of the whole notion of *Rechtsstaat*, but would later settle with Hans Frank’s use of the formulation “Adolf Hitler’s rule of law.”<sup>255</sup> To this same category of writings belongs an edited version of a public debate on the concept of the “rule of law” between two of Schmitt’s students, Günter Krauss and Otto von Schweinichen, published as *Disputation über den Rechtsstaat* (1935), to which Schmitt contributed the introduction and the afterword. This work has also not been analyzed extensively in any of the commentaries on Schmitt.<sup>256</sup>

(2.6.) *Writings on German legal history and on the “estate” of German lawyers.* In these writings Schmitt battled the invasion of foreign Roman law and inherently “Jewish” liberalism in Germany and offered elaborate historical accounts to backup these historically well-informed, but profoundly antisemitic narratives.<sup>257</sup> In addition, there are writings that analyzed the specific tasks concerning the “renewal”

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<sup>249</sup> Carl Schmitt, “Faschistische und nationalsozialistische Rechtswissenschaft,” *Deutsche Juristen-Zeitung*, vol. XLI, no. 10 (1936): 619–620; Carl Schmitt, “I caratteri essenziali dello Stato nazionalsocialista,” *Ordine nuovo. Mese di politica rivoluzionaria*, Roma II (5 Juni 1956; originally published in 1936): 18–24. The broadest commentary available is the substudy 1 included in this dissertation.

<sup>250</sup> Carl Schmitt, “Die Ära der integralen Politik,” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005) 464–468; Carl Schmitt, “Politik,” in Carl Schmitt, *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916–1969*, ed. Günter Maschke (Berlin: Duncker & Humblot, 1995), 133–138.

<sup>251</sup> Carl Schmitt, “Konfliktserhebung bei Schadenersatzansprüchen gegen Staat und Körperschaften des öffentlichen Rechts?” *Deutsche Juristen-Zeitung*, vol. XXXIX, no. 12 (1934): 776–780.

<sup>252</sup> Carl Schmitt, “Schlusswort des Herausgebers,” *Deutsche Juristen-Zeitung*, vol. XLI, no. (1936): 1453–6.

<sup>253</sup> Stolleis, *Geschichte des öffentlichen Rechts*, 300–1.

<sup>254</sup> Carl Schmitt, “Nationalsozialismus und Rechtsstaat,” *Juristische Wochenschrift*, vol. LXIII, no. 12–13 (14. März 1934): 713–718; Carl Schmitt, “Was bedeutet der Streit um den ‘Rechtsstaat?’” in Carl Schmitt, *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916–1969*, ed. Günter Maschke (Berlin: Duncker & Humblot, 1995), 121–132; Carl Schmitt, “Der Rechtsstaat,” in Carl Schmitt, *Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916–1969*, ed. Günter Maschke (Berlin: Duncker & Humblot, 1995), 108–20.

<sup>255</sup> This has been researched broadly from various perspectives: Stolleis, *Geschichte des öffentlichen Rechts*, 330–8; Jens Meierhenrich, *The Remnants of the Rechtsstaat. An Ethnography of Nazi Law* (Oxford: Oxford University Press, 2018), 95–158; Mehring, *Aufstieg und Fall*, 350–5.

<sup>256</sup> Carl Schmitt, “Einleitung,” and “Nachwort,” in Günter Krauss and Otto von Schweinichen, *Disputation Über den Rechtsstaat. Mit einer Einleitung und Nachwort von Carl Schmitt*, ed. Carl Schmitt (Hamburg: Hanseatische Verlagsanstalt 1935), 7–8, 84–88. According to Mehring, owing to the fact that the question concerning the use of the word *Rechtsstaat* had already been settled by 1935, Schmitt handed over the editing and shortening of this work to his “adjutant” von Mutius (Mehring, *Aufstieg und Fall*, 362).

<sup>257</sup> Carl Schmitt, “Unsere geistige Gesamtlage und unsere juristische Aufgabe,” *Zeitschrift der Akademie für Deutsches Recht I* (1. Juni. 1934): 11–12; Carl Schmitt, “Über die neuen Aufgaben der Verfassungsgeschichte,” in Carl Schmitt, *Positionen und Begriffe. Im Kampf mit Weimar–Genf–Versailles, 1923–1939* (Berlin: Duncker & Humblot, 2014), 261–267; Carl Schmitt, “Die geschichtliche Lage der deutschen Rechtswissenschaft,” *Deutsche Juristen-Zeitung*, XLI, no. 1 (1. Januar 1936): 15–21. The most comprehensive commentary on these writings is the substudy 2 included in this dissertation.

of German legal science, which supported and envisioned the creation of an entirely new German estate of lawyers that would be defined by German ethnicity.<sup>258</sup> Schmitt also published an essay entitled “the logic of spiritual subjugation” that offered the central theses of his 1934 book *Staatsgefüge und Zusammenbruch des Zweiten Reiches* in a concise and polemical form.<sup>259</sup> All of these writings are also heavily involved in the polemical attempt at defining an entirely new political-legal language for the Nazi movement.<sup>260</sup>

(2.7.) *Writings on international law* (broadly understood). These included a long essay that criticized American imperialism, portraying it as the newest version of all Western/European imperialisms, now directed against Germany.<sup>261</sup> Other works included two different essays on the constitutional position of the free city of Danzig,<sup>262</sup> which have not been analyzed at all in the literature on Schmitt, several essays highly critical of the Geneva League of Nations with a focus on the problematic role of the Soviet Union in the League,<sup>263</sup> including one piece in which Schmitt declared his support for Hitler’s referendum on whether Germany should leave the Geneva League of Nations – a referendum, in which a vote for Hitler would be “a yes for peace,” as Schmitt puts it.<sup>264</sup> Schmitt also wrote two articles in which he criticized the existing practice of forming military alliances and offering security guarantees to other nations as a veiled form of war preparation (against Germany)<sup>265</sup> and one essay in comparative law that compared the various forms of legislative delegations in Europe.<sup>266</sup> In 1934, Schmitt also published a re-edition of a collection of various documents and international treaties that pertained to

<sup>258</sup> Carl Schmitt, “Bericht über die Fachgruppe Hochschullehrer im BNSDJ,” *Deutsches Recht*, IV, no. 1 (1934): 17.

Carl Schmitt, “Der Weg des deutschen Juristen,” *Deutsche Juristen-Zeitung* XXXIX, no. 11 (1 Juni 1934): 691–8; Carl Schmitt, “Aufgabe und Notwendigkeit des deutschen Rechtsstandes,” *Deutsches Recht*, VI (9–10. Mai 1936): 181–185 This facet of Schmitt’s Nazi writings has been emphasized and analyzed in detail by Scheuerman, *The End of the Law*.

<sup>259</sup> Carl Schmitt, “Die Logik der geistigen Unterwerfung,” *Deutsches Volkstum* (1 März 1934): 177–82. Republished as an appendix in Carl Schmitt, *Staatsgefüge und Zusammenbruch des zweiten Reiches: Der Sieg des Bürgers über den Soldaten*, ed. Günter Maschke (Berlin: Duncker & Humblot, 2011), 109–17.

<sup>260</sup> As examined in substudy 1 of this dissertation.

<sup>261</sup> Carl Schmitt, “USA. und die völkerrechtlichen Formen des modernen Imperialismus,” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005), 349–77. However, this work stems from a presentation that Schmitt held in February 1932 and is thus essentially different from other publications mentioned here. There is also a radio presentation in which Schmitt addressed similar questions in 1934: “Ansprachen Dr. Stäbels und Prof. Carl Schmitts nach Amerika,” *Academia*, XLVII (1. April 1934): 11–12.

<sup>262</sup> Carl Schmitt, “Die Verfassungsmässigkeit der Einsetzung von Staatskommissaren,” *Danziger Juristen-Zeitung*, XIII, no. 11 (25. November 1934): 113–116; Carl Schmitt, “Avis juridique sur le caractère constitutionnel de la loi pour remédier à la détresse du peuple et de l’État du 24 juin 1933 (‘Bulletin des Lois’ de la Ville libre de Dantzig, 1933, page 273) adoptée et promulguée sous forme de loi ordinaire par le Volkstag et le Sénat de la Ville libre de Dantzig,” *Journal officiel de la Société des Nations*, Juni 1935, 86e session du Conseil, annexe 1551: 775–85.

<sup>263</sup> Carl Schmitt, “Sowjet-Union und Genfer VB,” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005), 424–435; Carl Schmitt, “Die siebente Wandlung des Genfer Völkerbundes. Eine Völkerrechtliche Folge der Vernichtung Abessiniens,” *Deutsche Juristen-Zeitung*, vol. XLI, no. 13 (1936): 785–89; Carl Schmitt, “Sprengung der Locarno-Gemeinschaft durch Einschaltung der Sowjets,” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005), 456–463.

<sup>264</sup> Carl Schmitt, “Frieden oder Pazifismus?” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005), 378–87.

<sup>265</sup> Carl Schmitt, “Paktssysteme als Kriegsrüstung - Eine völkerrechtliche Betrachtung,” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005), 436–446; Carl Schmitt, “Über die innere Logik der Allgemeinpakete auf gegenseitigen Beistand,” in Carl Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik*, ed. Günter Maschke (Berlin: Duncker and Humblot, 2005), 447–455.

<sup>266</sup> Carl Schmitt, “Vergleichender Überblick über die neueste Entwicklung der gesetzgeberischen Ermächtigungen (Legislative Delegationen),” in Carl Schmitt, *Positionen und Begriffe. Im Kampf mit Weimar–Genf–Versailles, 1923–1939* (Berlin: Duncker & Humblot, 2014), 214–229.



the problems of international law and peace – all of which included Schmitt’s short commentaries. Here Schmitt again emphasized the importance of the Monroe Doctrine and offered a short but interesting diagnosis of Germany’s (future) hegemonic position in central Europe.<sup>267</sup>

(2.8.) *Five book reviews.* These included reviews of works that analyzed questions of international and German law,<sup>268</sup> a critical take on a book that analyzed English parliamentarism,<sup>269</sup> and a highly interesting analysis of a work by one of Schmitt’s Spanish students, whose dissertation on Jean Bodin had supposedly found evidence for Bodin’s ethnical “Jewishness” – a reason that led Schmitt to criticize Bodin and his by now “outdated” concept of sovereignty.<sup>270</sup>

(3) *During the Nazi era, Schmitt also published re-editions of Schmitt’s own Weimar era works.* A substantially modified version of *Der Begriff des Politischen* (1933)<sup>271</sup> – which, as Schmitt’s diary reveals, he began “reworking” right at the same time as he joins the Nazi party<sup>272</sup> – was published by the Nazi *Hanseatische Verlagsanstalt* instead of *Duncker & Humblot* that had published the 1932 version of this book.<sup>273</sup> As Schmitt notes in a letter to his (Jewish) publisher Ludwig Feuchtwanger, he could no longer see himself published alongside (Jewish) authors like Arnold Bergsträsser and Gerhard Leibholz.<sup>274</sup> A new edition of *Politische Theologie* (1934) was also published by Schmitt. It now included a new introduction in which Schmitt explains how he no longer understood himself as a decisionist, but rather as a representative of “institutional thinking” (a term that was soon, by very early 1934, replaced by Schmitt’s more influential notion of “concrete order and formation thought”). However, these re-editions should not be given as much weight as they often receive in the commentary literature – a weight which they are no doubt given quite simply because of the lack of access to the primary literature Schmitt published after March 1933. This is hinted by Schmitt himself, who not only openly abandons his former “decisionism” after 1933, but also speaks of “the difficult but reliable test” that would take place in case “presentations and statements” from the Weimar era were published under the new regime.<sup>275</sup>

In addition to these primary materials, there are also other very important sources, which offer crucial insights into Schmitt Nazi era activities. These include Schmitt’s recently published diaries from the 1920s and 1930s<sup>276</sup> and his incredibly broad correspondence.<sup>277</sup> One could also add a number of other

<sup>267</sup> Carl Schmitt, *Der politische Problem der Friedenssicherung* (Leipzig-Berlin, 1934).

<sup>268</sup> Carl Schmitt, “Der Vorbehalt beim Abschluss völkerrechtlicher Verträge,” *Deutsche Juristen-Zeitung*, vol. XXXIX, no. 20 (1934): 1286–87; Carl Schmitt, “Auf dem Wege zum neuen Reich,” *Deutsche Juristen-Zeitung*, vol. XXXIX, no. 12 (1934): 1474; Carl Schmitt, “Die Bedeutung des Rheinbundes für die spätere deutsche Verfassungsgeschichte,” *Deutsche Juristen-Zeitung*, vol. XLI, no. 10 (1936): 624–5.

<sup>269</sup> Carl Schmitt, “Das englische Kabinettsystem,” *Deutsche Juristen-Zeitung*, vol. XL, no. 2 (1935): 107–9.

<sup>270</sup> Carl Schmitt, “El pensamiento político de Bodino,” *Deutsche Juristen-Zeitung*, vol. XLI, no. 3 (1936): 181–182. As examined in detail in the substudies 1 and 4 included in this dissertation.

<sup>271</sup> Carl Schmitt, *Der Begriff des Politischen* (Hamburg: Hanseatische Verlagsanstalt, 1933). An excerpt was published as Carl Schmitt, “Die Ohnmacht des Liberalismus,” *Westdeutsche Akademische Rundschau*, vol. LXII, no. 50 (16. December 1933): 2793–4.

<sup>272</sup> Schmitt, *Tagebücher 1930–1934*, 286. Mehring calls the 1933 version as Schmitt’s “declaration” of becoming a Nazi party member (Mehring, *Aufstieg und Fall*, 310).

<sup>273</sup> The author has analyzed the meaning and development of Schmitt’s friend/enemy thesis in extenso in Finnish; Ville Suuronen, “Carl Schmittin viholliset. Erottelu ystävään ja viholliseen individualismin ja universalismin kritiikkinä.” *Tiede & Edistys*, vol. 43, no. 4 (2018a): 271–305.

<sup>274</sup> Carl Schmitt and Ludwig Feuchtwanger, *Briefwechsel 1918–1935*, ed. Rolf Riess (Berlin: Duncker & Humblot, 2007), 393.

<sup>275</sup> Carl Schmitt, “Auf dem Wege zum neuen Reiche,” *Deutsche Juristen-Zeitung*, vol. XXXIX, no. 12 (1934): 1474.

<sup>276</sup> Carl Schmitt, *Der Schatten Gottes. Introspektionen, Tagebücher und Briefe 1921 bis 1924* (Berlin: Duncker and Humblot, 2014); Carl Schmitt, *Tagebücher 1925 bis 1929*, ed. Martin Tielke and Gerd Giesler (Berlin: Duncker & Humblot, 2018); Carl Schmitt, *Tagebücher 1930–1934*, ed. Wolfgang Schuller (Berlin: Akademie Verlag, 2010).

<sup>277</sup> Especially important is Schmitt’s correspondence with his closest student from the era, Ernst-Rudolf Huber. Other

materials that offer crucial insights into his activities during the Nazi years, such as the (sometimes highly unreliable) *Sicherheitsdienst* surveillance files, the “SD-Akten,” which provide some important information on Schmitt during this era.

Even today, only a selection of these writings and documents are available to researchers. Especially to those who are unable to read German, there is simply no way of attaining a firsthand, balanced estimation of Schmitt’s Nazi era activities and writings, which is clearly reflected in a great number of publications that treat Schmitt’s Nazi era activities drawing on an insufficient number of textual sources.<sup>278</sup> In fact, it is hardly an overestimation to state that the great plurality of Schmitt scholars are not even aware of the fact that Schmitt produced and published such a vast collection of different kinds of writings during this era. This is testified by the fact that only three existing studies examine Schmitt’s Nazi engagement and make use of (almost) all of the materials at hand. These are Reinhard Mehring’s comprehensive biography *Carl Schmitt. Aufstieg und Fall* (2009), Andreas Koenen’s broad study on Schmitt’s Nazi engagement *Der Fall Carl Schmitt. Sein Aufstieg zum ‘Kronjuristen des Dritten Reiches’* (1995) and Raphael Gross’s book *Carl Schmitt und die Juden. Eine deutsche Rechtslehre*. (2000)– and even these studies only analyze a limited number of aspects of Schmitt’s Nazi engagement until 1936 in greater detail.

Only a very small proportion of Schmitt’s Nazi era writings from this period have been republished even in German, which has led even the most knowledgeable scholars into offering problematic interpretations.<sup>279</sup> To be sure, all of this is the result of a certain, conscious way of controlling Schmitt’s legacy – a process initiated by Schmitt himself and continued by others. Schmitt himself only added a very small selection of his early Nazi era writings into his comprehensive essay collections published during his own lifetime. *Positionen und Begriffe. Im Kampf mit Weimar–Genf–Versailles, 1923–1939* [1940] and *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954. Materialien zu einer Verfassungslehre* [1958]) do not include Schmitt’s essays on the Nuremberg laws; they do not include his numerous articles about the substance and novelty of the Nazi “constitution” and legal system more generally; they do not include Schmitt’s deeply racist speeches at the conference “Jewishness in legal science” that Schmitt himself organized in October 1936 before his downfall, nor do they include Schmitt’s work on the *Reichstatthaltergesetz* and his other (unrealized) concrete proposals for Nazi legislation.<sup>280</sup> In fact, at least to some extent, both *Positionen und Begriffe* and *Verfassungsrechtliche Aufsätze* were no doubt conscious attempts by Schmitt himself to construe a certain image of his own Nazi engagement. In the case of *Positionen und Begriffe*, the selection of articles must have been defined by his earlier defeat to the SS in late 1936, which might explain the exclusion of essays pertaining to the questions of domestic and constitutional law.

It is, however, worthwhile to see what these collections *do* include. *Positionen und Begriffe* includes, most notably, Schmitt’s infamous defense of the 1934 *Röhm-Putsch*. To anyone, who has actually read all the materials that Schmitt wrote between 1933 and 1936, it should actually be obvious that this essay is very far from being the worst of what Schmitt published. In fact, we might legitimately suspect that

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relevant documents include Schmitt’s correspondence with Ludwig Feuchtwanger, Ernst Forsthoff and with both Ernst and Gretha Jünger.

<sup>278</sup> Even the most critical accounts written in English utilize only a fairly small portion of Schmitt’s Nazi writings, as for instance: Balakrishnan, *The Enemy*.

<sup>279</sup> Even the rather excellent book by Dirk Blasius, *Preussischer Staatsrat in Hitlers Reich*, only utilizes a very small array of Schmitt’s Nazi era writings from 1933 to 1936, which, in my opinion, leads Blasius to over emphasize the meaning of the (as such practically more or less meaningless) Prussian State Council for Schmitt’s Nazi thinking.

<sup>280</sup> It seems that Schmitt also worked on the reform of *Verein- und Verbandsrecht* in 1935 (Koenen, *Der Fall*, 538–9; Mehring, *Aufstieg und Fall*, 367).

Schmitt himself chose to include this essay into this collection *precisely for the reason* that the essay was received in a rather hostile manner within the Nazi academia.<sup>281</sup> In addition to this essay, *Positionen und Begriffe* also includes some of Schmitt's essay on questions pertaining to question of international law and order, but none of his most damning writings. It is striking that *Verfassungsrechtliche Aufsätze* does *not include a single example* of Schmitt's Nazi era writings from March 1933 to December 1936. What *Verfassungsrechtliche Aufsätze* does include, however, are Schmitt's essays on the concept of the "total state," which Schmitt wrote *before* his Nazi engagement<sup>282</sup> and his later legal-historical writings from the 1940s, in which Schmitt had already become, at least implicitly and indirectly, somewhat critical toward the Nazi regime, even if in a deeply apologetic manner. It should thus not surprise us that precisely these articles mentioned above are included into the collection.

Although two very broad posthumous collections of Schmitt's writings have been published in the recent decades (*Staat, Grossraum, Nomos. Arbeiten aus den Jahren 1916–1969* [1995] and *Frieden oder Pazifismus. Arbeiten zum Völkerrecht und zur internationalen Politik* [2005]), both edited by the very knowledgeable, but often problematically partial, Günter Maschke<sup>283</sup>), also these collections still only include a fairly minor portion of Schmitt's writings from 1933 to 1936. Both of these collections include mainly writings in which Schmitt deals with questions concerning international law and order – a fact which clearly explains, at least to some extent, the as such striking fact that Schmitt's Nazi era writings on international law have been examined much more thoroughly in recent studies than his actions and writings from 1933 to 1936.<sup>284</sup>

While this dissertation does not pretend to offer an all-comprehensive and full-fledged analysis of all of the materials mentioned above, all of the substudies, especially substudies 1, 2, 3, and 4, included in this dissertation take their bearings from a holistic treatment of Schmitt's Nazi era writings, especially from the period between 1933 and 1936, going up to 1945. By analyzing such perspectives that have thus far remained unacknowledged in previous studies the dissertation aims to make headway toward a more holistic understanding of Schmitt's thought. In this way, the substudies aim to offer a necessary substantial correction to the debates concerning Schmitt's Nazi engagement and its retrospective evaluation.

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<sup>281</sup> As Mehring notes, "Der Führer schützt das Recht" was met with hostility among many contemporaries (Mehring, *Aufstieg und Fall*, 353). Schmitt himself emphasizes this in his later postwar thought-diary and claims that the essay was an attempt to force Hitler to stay within the formal boundaries of law (Schmitt, *Glossarium*, 362). Schmitt's own claims are not reliable. In fact, as Lothar Gruchmann explains in detail, Schmitt's position – like the great plurality of his Nazi writings – was not only purposefully misunderstood by other Nazi academics, but as it turns out, was at this point *too radical* in its proposal that the Führer's actions did not even need a veiled cover by retroactive laws, which in turn would have meant that any German person could have been publicly murdered through Hitler's orders – a position that would indeed be realized only later. It is precisely in this sense that Schmitt's radical thesis of Hitler as the highest judge "preceded reality." (Gruchmann, "Dummheiten eines Genies?" 764–5.) It is also possible that Schmitt himself saw in 1940 that his thesis from 1934 had been presented too early.

<sup>282</sup> That Schmitt's concept and theory of the "total state," which was modelled on the contrary examples of liberal-democratic Weimar, on the one hand, and on fascist Italy, on the other, has, in fact, surprisingly little to do with his later Nazi engagement is revealed precisely by the writings in which Schmitt distinguishes the fascist *state* from the more radical and racist Nazi *movement*.

<sup>283</sup> That one should be skeptical of these collections and Maschke's commentaries should be self-evident based on his own rather apologetic (even if often well-informed) research on Schmitt. Just to give one example of the problems in Maschke's interpretations: In relation to Schmitt's 1936 antisemitic conference, Maschke simply notes that Schmitt's intentions remain "unclear" to him – an astonishing statement at the face of the most atrocious kind of antisemitism (Günter Maschke, *Der Tod des Carl Schmitt* [Wien: Karolinger, 2012], 49 footnote 75).

<sup>284</sup> See footnote 196 of this introductory chapter.

