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### Synopsis

*The argument for the role of various crises of modernity in the totalitarian violence of the 20<sup>th</sup> century is well known. At the heart, however, of Carl Schmitt's own role in this troubling history, lies a certain irony which complicates the reading, recognition and reckoning of his fearsome and confronting work. This paper aims to remedy that omission. Schmitt deliberately used irony to feign distance from his own deeply held attitudes as expressed and implied both in his work and through his actions. Paradoxically, nothing so much foreshadows the fate of Schmitt's intellectual life than his own critique on the one hand, and embrace, on the other, of the uses and misuses of the posture of irony.*

### The Ironic Cage of Modernity

In the last years of his life, Max Weber warned of an impending spiritual and intellectual crisis. An 'iron cage' of bureaucratic machinery was encasing Europe.<sup>1</sup> Not summer's bloom lies before us, he prophesied in lectures delivered during the last days of the Great War, 'but rather a polar night of icy darkness and harshness.'<sup>2</sup> Goethe was the starting point of Weber's Cassandra-like ruminations. Twice he quotes the same passage from *Faust*: 'Reflect, the Devil

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<sup>1</sup> Weber (1958), p 181.

<sup>2</sup> Weber (2004), p 93.

is old, so become old if you would understand him.’<sup>3</sup> This reaching out for a religio-literary figure was no mere aberration, for as he elsewhere wrote, ‘anyone who wishes to engage in politics at all ... is entering into relations with satanic powers that lurk in every act of violence’.<sup>4</sup> He was not alone in his fears and foreboding. The hideous and meaningless violence of the Great War had made the phrase the ‘crisis of modernity’ common-place.<sup>5</sup> The complacency of the long nineteenth century had been broken: its promises of technological mastery marching hand-in-hand with peace and social progress had been shown to be naïve, indeed fraudulent. In the arts, too, the certainties of European civilization gave way to a profound sense of loss – a fear that the ashen Europe of *The Wasteland* (1922)<sup>6</sup> had been shorn of all faith: in God, certainly, but in Man too, in progress and science and reason and history. So D.H. Lawrence warned in his war-time letters:

I feel as if the whole thing were coming to an end – the whole of England, of the Christian era.... The world is gone, extinguished, like the lights of last night’s Café Royal... So it seems our cosmos is burst, burst at last, the stars and moon blown away.... So it is the end – our world is gone, and we are like dust in the air.<sup>7</sup>

But what then was to replace these spent faiths? The modernist literature of the post-war years is full of this rejection of tradition, structure, and objectivity, and betrays instead a constant puzzling search for some new Archimedean point. Herman Hesse’s *Siddhartha* (also 1922) was only one of many such novels of inwardness. But only an abyss seemed to wait the

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<sup>3</sup> Weber (2004), pp 27, 91

<sup>4</sup> Weber (2004), p 90

<sup>5</sup> Collingwood (2008a), pp 105, 142; Collingwood (2008b), p 233; Simmel (1968), p 23.

<sup>6</sup> Eliot (1963)

<sup>7</sup> DH Lawrence (1979) as quoted in P Delany, *D.H. Lawrence’s Nightmare*, Harvester Press, p 385; DH Lawrence to Lady Ottoline Morrell, 9 September 1915, in J Boulton (ed), *Selected Letters* One World Classics, pp 105-106.

unprepared citizens of the twentieth century, an abyss which was given literal form in the dark mystery of the Malabar Caves at the heart of E.M. Forster's *A Passage to India* (1924):

She had come to that state where the horror of the universe and its smallness are both visible at the same time – the twilight of the double vision in which so many elderly people are involved.... [I]n the twilight of the double vision, a spiritual muddledom is set up for which no high-sounding words can be found; we can neither act nor refrain from action, we can neither ignore nor respect Infinity. Visions are supposed to entail profundity, but—Wait till you get one, dear reader! The abyss also may be petty, the serpent of eternity made of maggots....<sup>8</sup>

These turbulent times radically altered the art, literature, and philosophy of the inter-war years. They created no less a disturbance in the field of jurisprudence. Weimar Germany was the crucible of the 'crisis of modernity' in legal thought, where, within the span of a few short years, major works addressed just these questions of structural impotence, emptiness and fear.<sup>9</sup> For law too had to face not only the death of God and Empire but the death of systems. If the bureaucratic rationality of positivism was not an answer but a cage, then what could be done? Hans Kelsen, whose major work on sovereignty and law appeared in 1920,<sup>10</sup> made conscious reference to the recent work of Freud, with which he was intimately familiar,<sup>11</sup> in defending formal legal structures designed to achieve the '*repression* of sovereignty.'<sup>12</sup> He seems to have had the primal scene in *Totem and Taboo* in mind.<sup>13</sup> Walter Benjamin wrote his

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<sup>8</sup> Forster (2000), p 184.

<sup>9</sup> Agamben (2005); Scheuerman (1999); Dyzenhaus (1997); Kennedy (2004).

<sup>10</sup> Kelsen (1920).

<sup>11</sup> Kelsen (1924); Jabloner (1998); Losano (1977).

<sup>12</sup> Schmitt (1985), p 21.

<sup>13</sup> Freud (1999); Fitzpatrick (2001), pp 11-36.

enigmatic ‘Critique of Violence’ the following year.<sup>14</sup> The same year, Carl Schmitt wrote *The Dictator*<sup>15</sup>, and in 1922 *Political Theology*.<sup>16</sup> Together Benjamin and Schmitt were the harbingers of a Weberian doom when it came to liberal conceptions of the relationship between law, sovereignty and violence. *Political Theology* unequivocally rejected Kelsen’s repression thesis and instead sought to let the genie of untrammelled sovereignty out of the bottle.

## Die Buribunken

*Die Buribunken* (translated in this Special issue as *The Buribunks*) ‘is primarily a satire on scholarship’.<sup>17</sup> Schmitt, barely in his thirties, published it as an essay in the Catholic-leaning journal *Summa*.<sup>18</sup> A Buribunk – a word of Schmitt’s coinage – self-reflexively keeps a compulsory diary compulsively.<sup>19</sup> In *The Buribunks* Schmitt ‘mocks a self-referential scholarly machinery in which everything and everyone is researched’.<sup>20</sup> As seen in the extract below, this man of many ironies utilised irony as an art form in this, one of his earliest and most unusual works:

If the value of every methodological discussion about the status of intellectual activity as a science lies only in reflection on the intellectual means and aims of the work, then this requires a body of work in the first place – in the same way, it is self-evident that there would be no study of America if America had not been discovered, and no buribunkology if there were no buribunkologists. [Schmitt inserts a footnote here: ‘In this way, the existence of the Buribunks themselves, which is occasionally denied by

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<sup>14</sup> Agamben (2005), pp 52–64; Benjamin (1920); Benjamin (1986), pp 277-300.

<sup>16</sup> Schmitt (1921), Schmitt (2012).

<sup>16</sup> Schmitt (1985).

<sup>17</sup> Mehring (2014), p 82.

<sup>18</sup> Schmitt (1918).

<sup>19</sup> Payne et al (2007), p 184.

<sup>20</sup> Mehring, (2014), p 82.

hypocritical doctrinists in a manner that can hardly be taken seriously, is *a priori* put beyond doubt. As the existence of America follows out of the fact that American Studies exists, the existence of the Buribunks follows from the fact that buribunkology exists.'] At first glance, such historicity planted with both feet on solid ground is certainly convincing without fear of any objections.

The philosophical tenets of the Buribunks include 'I write, therefore I am'.<sup>21</sup> A Buribunk is consequently his 'own master'<sup>22</sup> through a continual process of self-archiving. The 'realm of Buribunkerism' is an institution inspired by Schmitt's wartime bureaucratic experience in the Army General Command in Munich.<sup>23</sup> *The Buribunks* crams references to such disparate themes as Goethe's *Faust*, the scientific method, reflexivity, technology, the world court and many others.

If we focus on the use of essentially a single word (not just any word but the n-word) in an ironic passage of a satirical work – we can readily acknowledge that on the face of it, Schmitt appears to be sending up racial eugenics:

If, however, we consider that lesser peoples, Polynesians, Terra del Fuegoans, Ba-Ronga-Niggers, and other tribes incapable of an education, have a relatively small mouth, even though they are cannibals, the close connection between a larger mouth and a higher intellect becomes a probability. This probability reaches its ethical certainty through the further assertion that if a small mouth is already sufficient to elevate those primitive races above the level of apes and birds, an accordingly bigger mouth (again according to the theory of quantity becoming quality) has to lead to a decisive divide between two different sorts

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<sup>21</sup> Kittler (1999), p 241.

<sup>22</sup> Kittler (1999), p 233.

<sup>23</sup> Mehring (2014), p 82.

of humans so that the sort on this side (on the side of the large-mouthed buribunkologists) relates to the unkempt kind on the other side no differently than that kind does to apes and birds.

Joseph W Bendersky for one stated that Schmitt ‘never succumbed to a belief in the biological racism of National Socialist ideology. He always considered such ideas absurd’.<sup>24</sup> On closer inspection, however, Schmitt is playing a double game. His ironic use of the word, while seeming to mock a boorish and unsophisticated racist strain, barely conceals a bourgeois variant of the same malady. The irony allows him to support opinions while at the same time scorning the ignorance of those who hold them too overtly. The irony gives Schmitt permission to insinuate views while refusing to take responsibility for them. It is a kind of double-bluff, like Lacan’s reference to Poe’s purloined letter, hidden in plain sight.

Schmitt melded together two unrelated forms of creative writing – storytelling by parable on the one hand,<sup>25</sup> fact-creation through legal fiction on the other.<sup>26</sup> He did this by identifying, highlighting and then demonstrating powerfully through example that the standard legal fictions were fundamentally allegorical and spiritual in nature. Revitalising concepts that had become sterile clichés – the state, the sovereign, democracy etc. - he highlighted the close kinship of law to the humanities, mythology, religion, literature, and aesthetics. ‘In Germany,’ he wrote, ‘the mind has once again outmanouvered [*überspielt*] the Leviathan. I conclude from this that the humanities will outmaneuver the natural sciences and will force them to transform themselves into humanities.’<sup>27</sup> No wonder then that Schmitt ‘had something about him that led some to compare him to... Mephistopheles’: alchemical, unnatural, unstoppable.<sup>28</sup>

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<sup>24</sup> Bendersky (1983), p 208.

<sup>25</sup> Linder (2016), p 157.

<sup>26</sup> Teschke (2016), p 389.

<sup>27</sup> Schmitt (2017), p 21.

<sup>28</sup> Müller (2003), p 91.

Paradoxically, Schmitt uses seemingly crystal-clear writing to both disguise and present his meaning or multiple meanings. This is a kind of deep irony operative on the level of his style. Johan Tralau says simply ‘Carl Schmitt is a master of ambiguity,’ when he looks at Schmitt’s ‘enigmatic interpretation of Hobbes’s puzzling use of the Leviathan imagery’.<sup>29</sup> Joseph Bendersky refers to him as ‘this enigmatic thinker’<sup>30</sup> and ‘this enigmatic jurist’.<sup>31</sup> The *Oxford Handbook of Carl Schmitt* sees their task as ‘[l]ocating Schmitt beyond both stigma and enigma’.<sup>32</sup> The work of Schmitt, by which is meant its vertiginous textual power and not just its political implications, therefore demands a closer reading.

The enigmatic ironies of his texts are not hard to find. Thinkers of both the left and the right continue to show strong interest in his work.<sup>33</sup> Of course as a conservative thinker he has followers from the right wing of politics.<sup>34</sup> Yet despite his deep antipathy to communism, he remains an object of fascination on the left.<sup>35</sup> Schmitt also openly lamented the demise of the European colonial age,<sup>36</sup> but he is often relied upon by post-colonial theorists.<sup>37</sup> His diaries document lifelong anti-Semitism in spite of intense friendships with and at times financial dependence upon Jews.<sup>38</sup> Indeed, his work was held in high esteem by such distinguished Jewish intellectuals as Walter Benjamin<sup>39</sup> and Jacob Taubes.<sup>40</sup> What is more, Schmitt joined the Nazi party then was denounced and almost put in a concentration camp by them; but he is now referred to as ‘crown jurist of the Reich’ after narrowly escaping being put on trial at

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<sup>29</sup> Tralau (2010), p 435.

<sup>30</sup> Bendersky (1988).

<sup>31</sup> Bendersky (1987), p 91.

<sup>32</sup> Meierhenrich and Simons (2016), p 58.

<sup>33</sup> Wolfe (2004).

<sup>34</sup> Hooker (2009), p 63; Schwab (1992) p 99.

<sup>35</sup> Specter (2016), p 58; Bargu (2014).

<sup>36</sup> Schmitt (2003).

<sup>37</sup> Koskenniemi (2016), p 607.

<sup>38</sup> Mehring (2014), pp 66, 189; Schmitt (1996).

<sup>39</sup> Weber (1992), p 5; Bredekamp (2016).

<sup>40</sup> Taubes (2013).

Nuremberg.<sup>41</sup> He seems strangely malleable – everybody's friend and everybody's enemy, to adopt the tragic polarity he made so famous.<sup>42</sup>

His writing is consistently arresting. Phrases like: 'Sovereign is he who decides the exception', or 'All significant concepts of the modern theory of the state are secularized theological concepts', or 'All political concepts, images, and terms have a polemical meaning' and 'The specific political distinction to which political actions and motives can be reduced is that between friend and enemy',<sup>43</sup> once read are not easily forgotten. His use of satire and irony are provocative in the extreme: 'Humanity is such an abstract idea that even Catholicism appears comprehensible by comparison'.<sup>44</sup> And in the course of his implacable critique of liberal internationalism, the same juxtapositions of irony, understatement, and oxymoron can be found: 'Humanity as such cannot wage war because it has no enemy, at least not on this planet';<sup>45</sup> '[a]ll modern theories of direct action and the use of force rest more or less consciously on an irrationalist philosophy'.<sup>46</sup> Wit and contempt forever jostled for pre-eminence in his writing. A liberal Pontius Pilate would simply defer the choice between Christ and Barrabas to a committee, he suggested; the liberal dream of a war to end all wars was like 'eating the last cannibal'.<sup>47</sup> These literary manoeuvres are surprising, disorienting, confounding.

### **Political Romanticism**

To better understand Schmitt's attitude to the relationship between intention, meaning, and responsibility - characterised here in terms of irony – let us turn to another early work,

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<sup>41</sup> Bikundo (2016).

<sup>42</sup> Schmitt (2007).

<sup>43</sup> Schmitt (2005).

<sup>44</sup> Schmitt (2008).

<sup>45</sup> Schmitt (2007).

<sup>46</sup> Schmitt (1998).

<sup>47</sup> Diken and Laustsen (2004), p 101.

published just a year after *Die Buribunken – Political Romanticism* (1919).<sup>48</sup> What makes this book particularly revealing is the fact that Schmitt here sets out to diagnose and to skewer not an idea but a *feeling*. Romanticism is not about particular things, like mountains or sunsets, he says, because anything can be viewed romantically. Neither can it be associated with a particular politics, since both the revolutionary and the monarchist wrap themselves in its mantle.<sup>49</sup> It is rather a disposition, a way of approaching the world. The romantic is not an object but a subject. What characterizes this subject, according to Schmitt, is a ‘metaphysical narcissism.’<sup>50</sup> The romantic, he argues, is not interested in rules or judgments or decisions, which attempt to confront the reality of disagreement and conflict, but only in subjective experience, which romanticism elevated to a creative deity. He indulges ‘the sphere of irresponsible private feeling’<sup>51</sup> to such an extent that his own response to events serves as his sole criteria for judgment. Action is not done but felt. Judgment is based not on outcomes or morals but only on the intensity and interest of the emotional states it produces.<sup>52</sup> Conflict or difference are not resolved by decisive action but rather circumvented: the retreat to subjectivity and the retreat to aesthetics are both ways of creating a fantasy of ‘aesthetically balanced harmony.’<sup>53</sup> ‘Viewed romantically,’ as Schmitt puts it – wit and scorn again in equal measure - ‘injustice is only a dissonance that is aesthetically resolved in a sacred music, an endless feeling of the higher life.’<sup>54</sup>

Indeed the distancing effect of romantic feeling entirely disables the romantic from taking decisive action in the world. On the one hand, according to Schmitt, the romantic adopts an *ironic distance* from the world the better to cherish and chart, without ever taking

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<sup>48</sup> Schmitt (1986).

<sup>49</sup> Schmitt (1986), pp 2-10.

<sup>50</sup> Schmitt (1986), p 139.

<sup>51</sup> Schmitt (1986), p 15.

<sup>52</sup> See in particular, Oakes’ ‘Translator’s Introduction’ to Schmitt (1986), p xxvi.

<sup>53</sup> Schmitt (1986), p 55.

<sup>54</sup> Schmitt (1986), p 161.

responsibility for, his own feelings in relation to it. This irony—key to the Romantic character, he insists—results in a poisonous incapacity to act since it creates an unbridgeable distance between self and world.<sup>55</sup> The courage of commitment, of acknowledging disagreement and accepting the necessity to decide on a course of action through the application of norms or principles, is replaced by a retreat to egotistical feeling. Human activity consists entirely in emotions, not in the application of judgments, evaluations, or criticism.<sup>56</sup>

On the other hand, the romantic yearning for some future unity and synthesis replaces all conflict with a vague ‘conversation.’<sup>57</sup> ‘A class that shifts all political activity onto the plane of conversation in the press and in parliament,’ wrote Schmitt, ‘is no match for social conflict.’<sup>58</sup> He scornfully dismissed this ‘conversation’ as a way of shirking conflict—‘the enemy of enemies.’<sup>59</sup> ‘The essence of liberalism,’ he wrote, ‘is negotiation, a cautious half measure in the hope that the definitive dispute, the decisive bloody battle, can be transformed into a parliamentary debate and permit the decision to be suspended forever in an everlasting discussion.’<sup>60</sup> In the real world, argues Schmitt, enemies must be made and decisions must be taken. But the romantic ultimately retreats to fiction and fantasy, ‘without decision, without a final court of appeal, continuing into infinity’.<sup>61</sup> Romanticism, argues Schmitt, is a cult of indeterminacy since it is only prior to an actual decision that all possibilities remain open. Thus, the glorification of primitivism and of childhood,<sup>62</sup> both realms in which human societies on the one hand and human beings on the other hand, are marked as ‘not yet determined, not yet limited.’<sup>63</sup> For the romantic, that is a kind of untainted perfection. ‘Limited reality,’ by way of

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<sup>55</sup> Schmitt (1986), pp 54-56.

<sup>56</sup> Schmitt (1986), p 94.

<sup>57</sup> Schmitt (1986), p 139.

<sup>58</sup> Schmitt (1985), p 59.

<sup>59</sup> Dyzenhaus (1997), pp 41–5; Schmitt (1986), pp 17.

<sup>60</sup> Schmitt (1985), p 63.

<sup>61</sup> Schmitt (1986), p 19.

<sup>62</sup> Ariès (1979); Plotz (2001).

<sup>63</sup> Schmitt (1986), p 69.

contrast, ‘is empty, a realized possibility, a decision that has already been made; disenchanting, disillusioned, it has the dull melancholy that a lottery ticket has after the drawing.’<sup>64</sup> If to be human is to choose, the romantic—like *Bartleby the Scrivener*—prefers not to.

There is much that is plausible in Schmitt’s diagnosis of irony as the fatal flaw of romanticism. Schmitt was not alone in connecting romanticism to romance and the *roman*, and thus to the role played by fiction and imagination both in rewarding the intensely private feeling of the reader and in absorbing without ever confronting all substantive oppositions and differences.<sup>65</sup> M.H. Abrams famously concluded that ‘romantic philosophy is thus primarily a metaphysics of integration, of which the key principle is that of the ‘reconciliation’ or synthesis of whatever is divided, opposed, and conflicting’.<sup>66</sup> This search for harmony and fusion was both a feature of romantic intellectual life, for example in Coleridge and Wordsworth,<sup>67</sup> and of the New Romantics who in the early years of the twentieth century turned their back on the technical and bureaucratic ‘separation thesis’ or division of powers that characterized modern social life.<sup>68</sup>

Above all, the romantic tradition throughout the nineteenth century sought *transcendence*, the ability of the singular to overcome all rules and constraints and thus to carve out a new and higher unity that would resolve all conflict. The genius in Kant or Goethe, Nietzsche’s ‘superman’, or Weber’s charismatic leader are all similar figures. So is Nature and the Artist, one the high priest of the other, in Wordsworth or Shelley or Coleridge or Friedrich.<sup>69</sup> What was sought through these transcendent figures was the attainment of some fantasy world in which human conflict and human choice would be dissolved and unified on a

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<sup>64</sup> Schmitt (1986), p 69.

<sup>65</sup> Miller (1989).

<sup>66</sup> Abrams (1971), p 182.

<sup>67</sup> Abrams (1971), p 182.

<sup>68</sup> Mosse (1964).

<sup>69</sup> Abrams (1971).

higher plane. Throughout the romantic tradition the sublime stands against the everyday world and transcends it. New laws, new creations, and a new harmony are realized, not by working within work-a-day laws and limits but by an appeal to a wholly unregulated mastery to be found outside of them. Schmitt insists on this point in his characterization of romanticism too. The romantic shies away from the human resolution of definite conflicts, always ‘constantly escaping from one sphere into another, to the alien ‘higher’ third factor’, whose ‘higher and true unity’ would perfectly satisfy both sides of a problem—a synthesis without remainder, without sacrifice, without violence, and without compromise.<sup>70</sup> ‘The higher third,’ he writes, ‘is always a way out of the either-or.’<sup>71</sup>

M.H. Abrams terms the romantics’ transcendent impulse, the lure of ‘natural supernaturalism.’ Schmitt dismisses it as nothing but ‘subjectified occasionalism.’<sup>72</sup> The term is critical for Schmitt’s diagnosis of romanticism. By occasionalism he means the theological doctrine which maintains that finite beings have no efficient causality of their own; whatever happens in the world comes about only through the continuing intervention of God. On the one hand, this emphasises precisely the transcendent element I am identifying here as essential to the late romantics in particular. They made a choice to purify their thought from the influence of modern civilisation, as Leo Strauss said, and placed their faith in agents of salvation that would transcend the limits of the mundane world.<sup>73</sup>

On the other hand, for the occasionalist, an event is not the consequence of an action that leads to a particular result. It is not structured by norms whose applications are predictable causes in the world. An event is rather the vehicle for a feeling to be examined and documented, archived narcissistically and obsessively—exactly as Schmitt set out to satirize

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<sup>70</sup> Schmitt (1986), pp 87, 145.

<sup>71</sup> Schmitt (1986), p 117; Schmitt (1985), pp 54-55.

<sup>72</sup> Schmitt (1986), pp 17, 78-108.

<sup>73</sup> Strauss (1999), p 371.

fictitiousy in *Die Buribunken*, and to condemn polemically in *Politically Romanticism*.<sup>74</sup> What separates theological occasionalism from its romantic counterpart is that the ‘first cause’ of this transformative moment ceases to be God or normativity – some firm commitment to right and wrong<sup>75</sup> - and becomes instead nothing but the self-performance of the romantic ego itself. The *occasio* is not realized through responsible action but through irresponsible creative play.<sup>76</sup>

Schmitt’s *Political Romanticism* is a psycho-portrait, a vitriolic diatribe against the weakness and the perils of a certain character type—an aesthete who does not belong, who has no State, who stands to one side, who cultivates an ironic distance from the conflicts around him, who sees ethical grey areas, who is suspicious of authority, who is devoted to conversation and to the interminable interpretation of texts—futile ‘word play’<sup>77</sup>—at the expense of decisive social action. (And the name given to this character type amongst the German New Romantics was, too often to be a coincidence, The Jew.) Both the romantic’s appeal to a transcendental solution *outside* the mundane world, and his ironic refusal of any embodied commitment *within* it, signify two sides of the same refusal to take responsibility.

This makes it all the more shocking that the psycho-portrait that Schmitt paints and the political romanticism he reveals is none other than his own. Schmitt has been aptly termed a ‘reactionary modernist’: like Spengler and Junger, or like W.H. Auden, Ezra Pound, or D.H. Lawrence, Schmitt responded to the horrors of the war and the instability of the post-war years by turning his back on modernity.<sup>78</sup> But this reactionary modernism was itself simply the last gasp of romanticism. Schmitt’s jurisprudence is undoubtedly decisionist: he condemns rules and he glorifies action; he sees in the sovereign the very locus of a decision and a normative

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<sup>74</sup> Schmitt (1986), pp 17-18.

<sup>75</sup> Schmitt (1986), p 116.

<sup>76</sup> Schmitt (1986), pp 82-85.

<sup>77</sup> Schmitt (1986), p 139.

<sup>78</sup> Herf (1984).

force which neither rules nor structures nor discourse can realize. At first glance this seems exactly the *opposite* of his claim that the romantic is incapable of decision. But the central feature is that the decision, when and if it comes, is transcendent – it emerges miraculously from *outside* the quotidian world, unpredictable and unconstrained, opposed to all merely human institutions and established social structures. Recall that for Schmitt not only was ‘Sovereign is he who decides on the exception’,<sup>79</sup> but also ‘The exception in jurisprudence is analogous to the miracle in theology’.<sup>80</sup> Which would render the sovereign decision as transcendent as transcendent can be. As we have seen, Schmitt diagnoses the romantic as attempting to escape the iron logic of political reality by appealing to a ‘higher third’ or transcendent power that would, in the name of History or Absolute Spirit or Nature, accomplish ‘the romantic suspension of antitheses by means of another higher factor’.<sup>81</sup> And that is exactly the move – the romantic move – that Schmitt makes in the figure of the sovereign. Schmitt’s decisionist philosophy is thus the apotheosis of late romanticism. For the sovereign is none other than the romantic ‘other’ – God or Nature or Spirit or Genius – in human guise. If Schmitt dismissed political romanticism as ‘the sovereignty of the ego’, he merely substituted for it the *egotism of the sovereign*.

Schmitt’s personification of romanticism and his institutionalization of transcendence sharply differentiate his treatment of sovereignty from that of Walter Benjamin. In ‘Critique of Violence’ the latter acknowledges that Schmitt’s ungovernable ‘decision’ is a necessary implication of ‘the curious and at first discouraging experience of the ultimate undecidability of all legal problems’.<sup>82</sup> So Benjamin and Schmitt agree that the exception is endemic to legal decision-making and a logical consequence of the indeterminacy of law. The violence of a free

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<sup>79</sup> Schmitt (2005) p 5.

<sup>80</sup> Schmitt (2005) p 36.

<sup>81</sup> Schmitt (1986), pp 80-88.

<sup>82</sup> Benjamin (1986), p 293.

decision, not the passive application of a prior norm, is the necessary predicate of legal judgment. But Benjamin then attempts (perhaps unsuccessfully) to distinguish between different manifestations of violence: between law-preserving violence and law-making violence in the first place, two forms of human power, and then between a pure or divine violence outside of the law which is ecstatic in instead *deposing* the law and thus making real revolution possible. This dream of divine violence finds concrete expression in Benjamin's distinction between the 'proletarian general strike' and the 'political general strike'.<sup>83</sup> While the latter is programmatic and instrumental, the former is not. It only annihilates the present in order to open society to an unknowable future. The end of Benjamin's critique reads:

But all mythic, law-making violence, which we may call 'executive,' is pernicious. Pernicious, too, is the law-preserving, 'administrative' violence that serves it. Divine violence, which is the sign and seal but never the means of sacred dispatch, may be called 'sovereign' violence.<sup>84</sup>

In Benjamin, 'sovereign' is an abstract adjective that characterizes a certain sub-set of violence. But Schmitt *literalizes* the sovereign; it becomes a noun, indeed a 'he who decides', the sole authorized vehicle of that violence. By conferring the inevitable violence of decisions beyond-the-rules on a particular human figure, instrumentalism and political violence become infeasible. Schmitt's romanticism, his transcendent solution to the problem of indeterminacy, finally reduces everything to human control operating entirely in the interests of the power of the State; whereas Benjamin's transcendence remains irreducible to human control and entirely *outside* the control of the State or the legal order. Sovereign violence for Benjamin is essentially radical and destabilizing. Sovereignty for Schmitt is essentially

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<sup>83</sup> Benjamin (1986), pp 291-92.

<sup>84</sup> Benjamin (1986), p 300.

reactionary and authoritarian. The Schmittian sovereign thus appropriates and tames the Benjaminian divine.

The paradox is that, all protestations to the contrary, Schmitt was at once the most ‘political’ and the most ‘romantic’ of legal writers, in his literary style and his appeal to feeling. The Catholic yearning which underlies his theological works and which emerges in his metaphor of the ‘miracle’ in *Political Theology* betrays a search for the resuscitation of the mysteries and the emotions that legitimated the pre- and counter-Reformation church.<sup>85</sup> A contempt for liberalism drips from the pages of *The Crisis of Parliamentary Democracy*<sup>86</sup> and comes through in his consistent disdain of ‘the chattering classes.’<sup>87</sup> Liberalism and discourse are both, for Schmitt, cowardly in their avoidance of real, impassioned, winner-takes-all argument. They seek to defuse the intense feeling of political dispute, and remove it instead to the tame and deracinated forum of ‘conversation’. At the same time, what is clearest about *The Concept of the Political* is Schmitt’s deep anxiety over the instability of government and the indeterminacy of law to which his previous work had drawn our attention. This anxious desire for quietus, for ‘total peace . . . tranquility, security and order’<sup>88</sup> drives Schmitt to extraordinary lengths. And unsurprisingly, perhaps, his solution lies precisely in the realm of feeling. Having, in *Political Romanticism*, castigated Schlegel for arguing that the State ultimately depends on ‘feelings of love and fidelity,’<sup>89</sup> in *The Concept of the Political* Schmitt incites as necessary one set of feelings – that of hatred for ‘the enemy’ –in order to instil another set of feelings – that of belonging and fidelity – in members of the nation. In this reading, politics appears as all feeling all the way down: from anxiety and fear, to anger and hatred, and thence to his burning

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<sup>85</sup> Schmitt (1985), pp 53-66.

<sup>86</sup> Schmitt (1988).

<sup>87</sup> Schmitt (1985), p 59.

<sup>88</sup> Schmitt (2007), p 46.

<sup>89</sup> Schmitt (1986), p 113.

need to revive a collective existence from which all conflict and disagreement have been purged by supreme extra-legal fiat.<sup>90</sup>

The romantics finally did not yearn for the triumph of individual will any more than the triumph of nature. Rather they yearned for triumph itself – for the visitation of a god-like mastery over the world that would save us from our fallen nature. In that desire and yearning, in that intensely Christian ‘pathos of authority’, Schmitt undoubtedly partakes. If during the 1930s Schmitt sought ‘total peace’ through the ‘total State’<sup>91</sup> then this was his way of governing the riot of emotions within him—emotions that in *Political Romanticism* he first sought and failed to banish.

### *Ex Captivitate Salus*

Yet irony took two different and opposite forms in modernity. Magnus Zeller’s painting, *The Orator*,<sup>92</sup> for example, from 1920, depicts someone very much like Schmitt’s 1921 Dictator, his 1922 Sovereign or indeed the 1934 *Führer* who, Schmitt argued, ‘protects the law’<sup>93</sup> by overriding it. Zeller’s Orator, like them, is a charismatic figure who magnetically draws the rapt and frenzied crowd to him, feeding on their craving for unification and fulfilment. Yet the difference between Zeller’s art and Schmitt’s jurisprudence is immediately apparent. In *The Orator*, the focus of the picture is the speaker’s ecstatic rapture and not, of course, his ideas. In particular one notes the figure of a boy sitting at the very centre of the painting. He sits at the bottom of the frame gazing up at the orator. His line of sight parallels our own, yet he sits apart from both the crowd and the speaker, an ironic observer of its passions and not a

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<sup>90</sup> Schmitt (2007); Slomp (2009); Balakrishnan (2002).

<sup>91</sup> Schmitt (1999); Wolin (1990).

<sup>92</sup> Zeller, *Der Redner (The Orator)* (1920). Oil on canvas, 152.4 x 198.12 cm. Los Angeles County Museum of Art, Los Angeles.

<sup>93</sup> Schmitt, ‘Der *Führer* schützt das Recht [The Leader Protects the Law]’, 945-50.

participant. The figure is ironic and distanced from the impassioned action of the crowd, but this irony is by no means an excuse for inaction. On the contrary, irony here serves the purpose of a critique which shows all too clearly that the real need that the orator satisfies is not that of the crowd but his own craving for adulation.

Mikhail Bakhtin, writing in the 1920s and the 1930s, insisted upon irony as essential to the development of the modern novel.<sup>94</sup> His understanding of the effects of this distancing is very different from Schmitt. By juxtaposing the voices of different characters and discourses in the same frame, including those of the narrator telling the story and the author orchestrating it there is, argued Bakhtin, a necessary doubleness in the novel. This indirect and doubled speech constantly undercuts any claims to a monologic discourse made by any character within it. Any particular form of speech – particular that given to characters representing authority, tradition, establishment, or power - is consistently being challenged by the voices of others and the multiple discursive frames in which it is set.<sup>95</sup> This deep dialogism sets in train a chain reaction of diversity in meaning and language which sweeps away the ground beneath its own feet. *Irony undermines authority*. As Shoshana Felman writes,

Since irony precisely consists in dragging authority as such into a scene which it cannot master, of which it is not aware and which, for that reason, is the scene of its own self-destruction, literature by virtue of its ironic force, fundamentally deconstructs the fantasy of authority in the same way and for the same reasons that psychoanalysis deconstructs the authority of the fantasy.<sup>96</sup>

The role of irony then is necessarily as a foil to law's demands for finality, certainty, and obedience. Irony is 'a structure of failed resolution . . . an imperfect form of closure, an

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<sup>94</sup> Bakhtin (1981).

<sup>95</sup> Bakhtin (1981); Holquist (1990).

<sup>96</sup> Felman (1977), p 8.

imperfect form of justification.’<sup>97</sup> This unsettling power reveals the impossibility of all projects of transcendence, perfection and closure. There is some connection then between Benjamin’s divine violence and the unsettling violence of irony which likewise fatally undermines any established or authorized or complacent or absolute meaning.

We might term this critical distance *echt* or modern irony. But while Schmitt gives voice to the desires and anxieties of his age, he does not thereby gain any psychological distance from them. Instead, as we have seen, while he condemns the political perils of irony he nonetheless uses it himself as a tactic of dissimulation and irresponsibility (let us call that *ersatz* or romantic irony). In jest at the end of the first world war in *The Buribunks*, but in deadly earnest at the end of the second in *Ex Captivitate Salus*, Schmitt instinctively retreated to this self-defensive position. Schmitt was initially arrested by the Russians in Berlin in April of 1945, interrogated and then released.<sup>98</sup> Subsequently in September of 1945 he was arrested by the Americans and interned until March of 1947 during which period they brought him to Nuremberg as a potential defendant in the ongoing international criminal trials.<sup>99</sup> This was with a view to investigating his alleged participation either directly or indirectly in ‘the planning of wars of aggression, of war crimes and of crimes against humanity’ by providing their ‘ideological foundation’.<sup>100</sup>

*Ex Captivitate Salus* is the title of the unapologetic prison writings Schmitt wrote during this period, collected and then translated in a small volume not all of which will presently concern us.<sup>101</sup> *Ex captivitate salus*, written in the summer of 1946, is also the title of an essay

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<sup>97</sup> Dimock (1996), p 176.

<sup>98</sup> Bendersky (1987), p 91.

<sup>99</sup> Bendersky (1987), p 91.

<sup>100</sup> Schmitt (1987), p 98.

<sup>101</sup> Schmitt (2017), p 21.

of the same name published as part of the work in which Schmitt said ‘I have spoken of myself here, actually for the first time in my life’.<sup>102</sup>

He goes on to say that:

What I say here is intended neither as a form of journalism nor as an apology. ... I speak because I want to send word to a few deceased friends, while, I, for one, am still in the clutches of this earthly life; because I want to give a sign to some living friends from whom I am separated and to loyal students in all countries; and, finally, because I think of my daughter Anima and my godchild Carl Alexander. Speaking with them violates no secret [*arcanum*]. We are all bound together by the stillness of silence and the inalienable secret of the godly origins of humanity.<sup>103</sup>

‘Conversation with Eduard Spranger’ collected in the same *Ex Captivitate Salus* volume was written in ‘Summer 1945’ and therefore a year earlier than *Ex captivitate salus*. It provides us with a good idea as to why Schmitt at this moment and for the first time in his life he should have tried to speak for himself. Eduard Spranger, ‘the German philosopher and pedagogue’<sup>104</sup> who Schmitt had even cited in *Concept of the Political*,<sup>105</sup> was his interrogator in this instance. Spranger faced Schmitt with the question ‘who are you,’ explaining that although Schmitt’s work was clear and interesting, Schmitt himself was opaque. Schmitt reported the encounter thus:

Who are you? *Tu qui es?* This is the unfathomable question. I plunged into it at the end of June 1945 as Eduard Spranger the famous philosopher and teacher, awaited my

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<sup>102</sup> Schmitt (2017).

<sup>103</sup> Schmitt (2017), pp 61-62

<sup>104</sup> Ulmen (1984), p 201.

<sup>105</sup> Schmitt (2007) p 59.

response to a questionnaire.<sup>106</sup> On this occasion he told me that my lectures were extremely spirited but that I myself—my personality and my essence—remained opaque. That was a serious accusation, which meant that: what you think and say may be interesting and clear; but what you are, yourself, your essence is murky and unclear.

I was shocked by this. What use are the most beautiful lectures, what help are the clearest concepts, what use is the mind? It is a matter of essence. Or of being and existence. In short a difficult problem, not yet solved by philosophy descended upon my soul.

...

What should I now do? Should I strive to become transparent? Or should I try to deliver the proof that I am in reality not so opaque but rather—at least for benevolent radiographers— [*Durchleuchter*]*—fully transparent?*

I looked at my interrogator and thought: Who are *you*, in fact, to question me? Whence your superiority? What is the essence of power that empowers and emboldens you to pose such questions to me—questions that are intended to challenge me and thus are, in their final effect, only snares and traps?

... Nevertheless I still prefer to be a defendant rather than a prosecutor. ...

To me, the prosecutorial is even more sinister than the inquisitorial. Perhaps in my case this can be traced back to theological roots. For *Diabolus* means “the prosecutor”[the

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<sup>106</sup> Schmitt answered more than one questionnaire see Carl Schmitt (1987) Interrogation of Carl Schmitt by Robert Kempner (I) 20 *Telos* 97.

translator notes that the word for ‘devil’ in Hebrew shares the same root with the word for ‘prosecutor’.<sup>107</sup>

...

I answered him as you answer a philosopher, not a questionnaire. I said to him: my essence may well not be fully transparent, but my case can be named with the help of a name discovered by a great poet. It is the poor unworthy but nevertheless authentic case of a Christian Epimetheus.<sup>108</sup>

Schmitt’s response to this intense period of questioning and reflection in relation to the extent of his wartime responsibility for German expansionist policy, his precise role in the National Socialist Party establishment and state and ‘the Jewish Question’<sup>109</sup> had two parts: first that he had to accommodate a tyrannical regime because any order is better than disorder; second that he had to do whatever was necessary to survive in an authoritarian regime and that it was permitted to deceive a tyrant.<sup>110</sup> In Schmitt’s own words:

The mind has its pride, its tactics, its ineluctable freedom, and, if you excuse the expression, even its guardian angel, and it has all this not merely in migration but also inwardly, even in the claws of Leviathan itself. In Europe, the mind has known until now how to find its crypts and catacombs, its new methods and forms. *Tyrannum licet decipere* [“one is allowed to deceive a tyrant”].<sup>111</sup>

Schmitt goes on to add:

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<sup>107</sup> Schmitt (2017), p 14.

<sup>108</sup> Schmitt (2017), p 15.

<sup>109</sup> Bendersky (1983), pp 268-72; Bendersky (1987), pp 91-96.

<sup>110</sup> Schmitt (2017), p 6.

<sup>111</sup> Schmitt (2017), p 18.

The silent tried-and-tested tradition of withdrawal to a private interiority subsisted, along with a great readiness for conscientious cooperation with whatever the current legal government mandated.<sup>112</sup>

Both these responses have the air of explaining away or justifying evil. They appear too ingenuous by half. They also mirror the response of Goethe's Mephistopheles to Faust in when he was asked the same question: 'who are you?' Power, Mephistopheles defends himself, inevitably 'wills evil in order to do good'. There are other quotes or allusions to *Faust* in Schmitt's work.<sup>113</sup>

Schmitt's attempt to excuse his actions during the National Socialist era fundamentally depend on irony, on the gap between the outward actions he took and the words he wrote, on the one hand, and the inward meaning which refuses to take responsibility for them, on the other:

The mind and intelligence put forward multiple forms of politeness, correctness, and irony, and ultimately their silence, against the clamor of public activity. A judgment regarding achievements in such a situation can thus not simply be passed from the outside. The person judging must remain aware of a few basic sociological truths, above all things regarding the eternal link between protection and obedience'.

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<sup>112</sup> Schmitt (2017), p 20.

<sup>113</sup> The Buribunks contains at least 8: 'In the beginning was the deed' (not the word) approvingly cited. He at various points quotes from Goethe's Faust II, Act V, line 11 837. Faust I, line 2038 and 2039, Schmitt even creates a pun using the word for fist (Faust) which is also the title of Goethe's Faust to refer to the devil (Mephisto), Faust I, Line 1939, Faust II, Act V, Lines 12106 and 12107 and Faust II, Act V, Lines 11583 and 11584. Carl Schmitt (2015) *Dialogues on Power and Space*, Polity Press.

A researcher and scholar cannot select the political regime according to his wishes either. In general he accepts it initially as a loyal citizen, like every other person.<sup>114</sup>

Schmitt goes on to emphasise the impossibility of external judgment in this regard:

The duty to unleash a civil war, to conduct sabotage, and to become a martyr has its limits. Here one should grant something to the victims of such situations and should not be allowed to judge only from the outside.<sup>115</sup>

Drawing out this theme in his own work, Agamben engages explicitly with Yan Thomas, Carl Schmitt and Hans Kelsen in order to uncover ‘the bond that ties agents to their action.’<sup>116</sup> Agamben, like Schmitt before him, understands the essence of politics as theodicy – an inevitable descent into violence, inevitably a way of justifying evil.<sup>117</sup> Perhaps the Great War forced this tragic perspective on everyone, for Weber had asked much the same question: “Can the ethical demands made on politics really be quite indifferent to the fact that politics operates with a highly specific means, namely, power behind which *violence* lies concealed?”<sup>118</sup> The Sermon on the Mount provided no answer for either of them. Weber concludes with the startling observation that “the politician must abide by the *opposite* commandment [“resist not him that is evil with violence”]: “You shall use force to resist evil, for otherwise you will be *responsible* for its running amok”.<sup>119</sup> Weber arrives at this conclusion by distinguishing an ethic of responsibility from an ethic of conviction. Schmitt’s irony lies precisely in his purported willingness to protect his convictions by keeping them secret, and in

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<sup>114</sup> Schmitt (2017), p 21.

<sup>115</sup> Schmitt (2017), p 22.

<sup>116</sup> Agamben (2018), p 9.

<sup>117</sup> Agamben (2018), p 22.

<sup>118</sup> Weber et al (2004), p 81.

<sup>119</sup> Weber et al (2004), 83.

the process abjuring any public responsibility to act. The conviction is preserved but at the price of inaction. Perhaps it is worth noting that excerpts from *Political Theology* were published in 1923 in a volume dedicated to Weber's life and work.<sup>120</sup> Indeed Schmitt attended both *Vocation* lectures.<sup>121</sup> Balaskrishnan notes that indirectly they denounced the themes of *Political Romanticism*.<sup>122</sup>

## Conclusion

*Political Romanticism* serves as the sub-text that reveals the very aspect of Schmitt's thought that he most wanted to banish from it, and to demonstrate nevertheless the role it played in his writing and his life – a role made painfully clear in the exculpatory rhetoric of *Ex Captivitate Salus*. As in any philosophy, a line is drawn between the acceptable and the unacceptable, which is then with great effort concealed from view. Reading *Political Romanticism* against the grain or deconstructively, as it were—as a text which defines Schmitt's political position through his heated denial of it—renders this line visible and so allows us to observe the structural, metaphorical and aesthetic traces it left in his work. In fact, Schmitt marks the critical distinction between *echt* and *ersatz* irony himself, noting that romantic irony is 'essentially the intellectual expedient of the subject that keeps its distance from objectivity,' while at the same time observing that any *self*-irony would be thoroughly unromantic since it would undo the sovereignty and narcissism of the romantic ego.<sup>123</sup> As he showed already in *Die Buribunken*, it is possible to relentlessly document and archive oneself without ever developing any insight.

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<sup>120</sup> Balakrishnan (2002), p 101.

<sup>121</sup> Balakrishnan (2002), p 101.

<sup>122</sup> Balakrishnan (2000), p 21.

<sup>123</sup> Schmitt (1986), pp xxii, 72-73.

Indeed, *Political Romanticism* plots Schmitt's own trajectory through the 1920s and 1930s. The desire for a world beyond the world, for a perfect resolution to human conflict and social pluralism, to a 'higher third' judged by strong feeling, leads the romantic, he argued, to a place of acute political vulnerability. Romantic irony, he argued, invites an ideological 'plasticity'.<sup>124</sup> If politics is only the occasion for an aesthetic experience, romanticism can happily accommodate itself to whatever is the active political tendency of the time. The political romantic 'unconsciously submits to the strongest and most proximate power.'<sup>125</sup> At its heart, romanticism nurses a 'lack of inner resistance to the most powerful and immediate impression that happens to prevail at the time.'<sup>126</sup> The critique is devastating for its apparent lack of self-consciousness. Everyone is familiar with the first sentence of *Political Theology*. But perhaps the last sentence of *Political Romanticism* will equally repay our attention:

Everything that is romantic is at the disposal of other energies that are unromantic, and the sublime elevation above definition and decision is transformed into a subservient attendance upon alien power and alien decision.<sup>127</sup>

The irony is that in thus foreshadowing the terrible fate of political romanticism in the 20<sup>th</sup> century, Schmitt was writing his own epigraph.

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