

Human Rights and Carl Schmitt's Challenge of 'the Political'

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Abstract

The recognition of human dignity is the hallmark of human rights. The nature and scope of human rights is such that human persons find in them the inspiration to be truly human. A challenge to the concept of human rights rests on a skeptical understanding that these rights can be suspended. Carl Schmitt's work provides a theoretical resource to those who seek to challenge the inviolable status of human rights. In an attempt to secure the conceptual priority of prudential reasons over moral considerations, Schmitt introduces his notion of 'the political' which hinges on 'logic of exclusion'. In this paper, I highlight some points in Schmitt's writings to show that his political philosophy stands in utter opposition to the central assumptions of human rights.

Keywords: Human Rights; Inviolability; Universalism; Schmitt's Challenge; The Political.

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1. Introduction

This article aims to explain the tension between universal human rights and Carl Schmitt's theory of politics. The critical force of human rights rests in their capacity to locate dignity in human persons. Human rights embody a struggle against social injustice, inequality, humiliation and exploitation. Schmitt's work challenges the core tenets of human rights—universality, inviolability and inalienability. Schmitt's 'politics of exclusion' reveals that one's right to justice is contingent upon one's place in the polemical human grouping. But, the understanding and practice of human rights is such that it does not fit into the framework where the conception of justice is relativized. Human rights cannot be suspended in 'extraordinary' circumstances and such suspension cannot be justified for 'prudential reasons'. In order to optimize respect for human rights, we will have to accept the inherent human dignity that constitutes the primary source and reference point for human rights. We cannot take our cues from 'prudential reasons' to maintain human rights aspirations. Once it is clarified then it becomes easier to understand as to why the protection of human rights demands an unconditional fidelity. The project of human rights is credited with bringing significant improvements in human life. Nonetheless, we see people experiencing inequality, discrimination, exclusion, oppression and exploitation. It has become commonplace to lament the violations of human rights. But it is here in the choosing of sides, for it is not possible to stand in the middle or assume a dubious position. Schmitt's political views are antithetical to human rights at their core, but they cannot be brushed aside in the name of unintelligible prejudices. Schmitt is a highly influential political theorist and his work exerts an enormous influence on key debates on politics, law, sovereignty, political theology and constitutionalism. Schmitt's work is a source of inspiration for those who see the liberal paradigm essentially flawed. It also inspires those who see human rights abstract, fictitious, or at best, push them to a secondary status.

2. Schmitt's Notion of the Political

In *The Concept of the Political*, Carl Schmitt introduces his flagrantly bellicose notion of 'the political' in a rhetorically forceful manner. As established by Schmitt, the political entails violence, intensity, hostility and a real possibility of physical killing. The specific attribute of the political is the friend-enemy distinction which denotes "the utmost degree of intensity of a union or

separation, of an association or dissociation.”¹ Schmitt’s assertion is that peaceful politics is anything but politics. He perceives “politics as conflict, politics-as-war, as enmity, as perceiving the other as ‘potential enemy’ is a fundamental and recurrent mode of political life, of living in, and surviving as, a polity.”² By linking politics with enmity, Schmitt maintains that politics terminates when hostility disappears. He reminds us that all political concepts are bound to a concrete situation and they become devoid of content, the moment the distinction between friends and enemies ceases. Schmitt writes:

All words such as state, republic, society, class, as well as sovereignty, constitutional state, absolutism, dictatorship, economic planning, neutral or total state, and so on, are incomprehensible if one does not know exactly who is to be affected, combated, refuted, or negated by such a term.³

Since the realm of politics is inherently conflictual, there is nothing unusual about the open war between human collectivities. Schmitt’s use of ‘us’ and ‘them’ motifs are aimed at clarifying ways in which we can understand our existence in the political arena. It is a question of mapping our sensibilities onto our position in human collectivities. This, in turn, necessitates a radical break with the universal principles of justice, equality and non-discrimination. Following the fulfillment of the political, a new set of practices appears that demands security to friends against enemies.

Schmitt resorts to a bifurcated form of reasoning when dealing with the complexity of the political world. He specifies that the categories of the friends and enemies underlie existential meanings. Hence, when a human group is unwilling or fails to make the friend-enemy distinction, “it ceases to exist politically.”⁴ Schmitt’s political system does not settle down to any consensual mechanism and it belies the idea of peaceful coexistence and the force of normativity. His theory outlines “a cultural and politically exclusive practice of defining who belongs to the friends and who to the enemies.”⁵ The conflict is definitive of the political and it acts as a guiding principle for the existential self-assertion. Hence, the possibility of war corresponds to the political

1. Carl Schmitt, *The Concept of the Political: Expanded Edition* (Chicago: The University of Chicago Press, 2007), 25.

2. Giovanni Sartori, “The Essence of the Political in Carl Schmitt,” *Journal of Theoretical Politics* 1, no.1 (1989): 73.

3. Schmitt, *The Concept of the Political*, 25.

4. Schmitt, *The Concept of the Political*, 25.

5. Jacob A Thomsen, “Carl Schmitt—The Hobbesian of the 20th Century?” *Social Thought and Research* 20, no. 2 (1997): 22.

existence of human beings. “A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction of friend and enemy and hence a world without politics.”⁶ However, Schmitt clarifies that, first, in the sphere of politics; the war is not between (private) individuals but between human collectivities. The concept of enemy presupposes the existence of human collectivities divided on the polemical lines. “The enemy is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relationship.”⁷ Secondly, the enemy does not refer to ‘a competitor’ or ‘a private adversary’. The enemy is ‘the existentially other’ and ‘the alien in an intensive sense’. Thus, ‘inimicus’ (private confrontation) and ‘hostis’ (public enmity) are not the same—it is only the latter that amounts to politics. Apparently, the real perception of a threat to the physical existence of a community justifies the annihilation of the enemy. But, if the perception of a threat to the physical existence of a community gives one group of people a license to kill another group, then as Vicente Medina points out, “there is no substantial difference between acts of aggression and self-defense.”⁸

From Schmitt’s standpoint, politics is a field of providential struggle and it maintains a concrete meaning insofar as it involves enmity. After all, the efficacy of the political lies in its ability to generate and maintain human grouping based on an extreme antagonism. Accordingly, in the sphere of politics, homogeneity becomes conformity and antagonism the norm. Schmitt’s existential view of politics does not leave space for rational consensus. To Schmitt, politics stands above all moral normativities and what constitutes the core of a political act is existential decision. Hence, a political activity is necessarily intense and fear and insecurity are constitutive of a political virtue. In the realm of politics, human beings are grouped into collectivities of friends and enemies and they make politically expedient choices. They do not face each other as abstractions, but “as politically interested and politically determined persons, as citizens, governors and governed, politically allied or opponents—in any case, therefore, in political categories.”⁹ Schmitt’s notion of the political treats peace and politics as mutually exclusive categories and

6. Schmitt, *The Concept of the Political*, 37.

7. Schmitt, *The Concept of the Political*, 37.

8. Vicente Medina, “Locke’s Militant Liberalism: A Reply to Carl Schmitt’s State of Exception,” *History of Philosophy Quarterly* 19, no. 4 (2002): 349.

9. Carl Schmitt, *The Crisis of Parliamentary Democracy* (Massachusetts: The MIT Press, 1985), 11.

hence, the absence of violence is identified with the termination of politics. "It dismisses 'tranquil politics', the peace-like politics in which might does not make right."¹⁰

The friend-enemy distinction is transcendent in as sense that it constitutes and guides our actions, thoughts and choices. It follows that the existential confrontation is a necessary corollary of politics. Though, the political does not engulf other spheres including religion, ethics, aesthetics, and economics; yet, it is primary and all-subsuming. On the one hand, "politics intervenes in all spheres of life," and "there is no neutral sphere."¹¹ On the other hand, the political does not stand by itself as "a specific category, a specific sphere, a particular domain of human activity, but consists of the degree of intensity at which other spheres, or better other antitheses (moral, economic, etc.) lose their identity and are politicized."¹² Furthermore, the political antithesis does not directly stem from "the purely religious, purely moral, purely juristic, or purely economic antithesis."¹³ But, any given antithesis can escalate to a political antithesis i.e. it has the potential to bring about the friend-enemy divide. Therefore, "whatever brings about a friend—enemy alignment is political, that whatever does not do that is nonpolitical, and that what is political cancels what formerly was nonpolitical."¹⁴

One of the most striking aspects of Schmitt's account of the political is that it introduces a breakaway with the universal principles of justice, peace and equality. The political relativizes the conception of justice—justice means helping friends and harming those who fall outside the circle of friendship—and it rejects a political order based on the principle of equality of all. Schmitt's notion of the political cannot be ignored as it poses a serious challenge to any analysis that orients us towards individual liberty, universal equality and shared goals based on human values. We must take Schmitt's challenge seriously to protect the inviolability of human rights. A rigorous critique Schmitt's political discourse is necessary for understanding the dilemmas of human rights. It puts us in a better position to defend the project of human rights. Schmitt's political theory offers a strikingly different interpretation of human actions. The distinction between the standpoint of human rights and

10. Sartori, "The Essence of the Political," 73.

11. Richard Wolin, "Carl Schmitt, Political Existentialism, and the Total State," *Theory and Society* 19, no. 4 (1990): 409.

12. Sartori, "The Essence of the Political," 65.

13. Schmitt, *The Concept of the Political*, 36.

14. Sartori, "The Essence of the Political," 67.

Schmitt's paradigm is necessary as it has serious implications for the realization of human rights. Human rights gain its legitimacy from the principle of equality which ascribes every individual equal moral worth. Schmitt's political thought relies on the particularity, that is, an outright negation of universal values and principles. Beyond the tension between the universality and particularity of the two standpoints, another nodal point is the friction between their emphasis on morality and expediency. Human rights are based on morality—the distinction between right (just) and wrong. In Schmitt, it is not morality but the political expediency of human actions that is paramount. Hence, a proclamation of faith in human rights is not possible within the Schmitt's paradigm. The continuing violations of human rights indicate a mindset that encourages non-compliance to the human rights norms. Schmitt's analysis of the political world leads inevitably toward "a justification of the 'total state' whose *raison d'être* is the ever-present possibility of war."¹⁵

3. Schmitt's Critique of Liberalism

Carl Schmitt challenges the theoretical foundation of liberalism. For Schmitt, the key political question is the fate of politics and he wants to 'guard' it against the 'individualist claims' of liberalism. Schmitt is considered to be a proponent of existentialism, a critic of political romanticism, a bearer of political nihilism, and a defender of Nazism. But, above all, he is a trenchant critic of the liberal democratic project. Schmitt accuses liberalism of eroding democracy, ignoring the state and encouraging moral individualism. He claims that the liberal ideas of universal equality and global peace are directed towards neutralizing politics. Schmitt fears the ascendancy of liberalism as he believes it will plunge us into a depoliticized world. Schmitt's critique of liberalism cannot be seen in isolation from his understanding of politics. Politics, argues Schmitt, is inextricably bound up with enmity—the existential negation of 'the other'. And, the opposite of the political, as Axtmann states, is liberalism.¹⁶ Schmitt's work focuses on the intensity of conflict among the human collectivities and it begins with the assertion that the possibility of mortal combat cannot be eliminated from politics. He contends that liberalism seeks to replace politics with economics, the friend-enemy opposition with the rule of law and decisionism with the parliamentary debates.

15. Wolin, "Carl Schmitt, Political Existentialism," 406.

16. Roland Axtmann, "Humanity or Enmity? Carl Schmitt on International Politics," *International Politics* 44, no.1 (2007): 535.

Schmitt criticizes liberalism for being boring, trifling, deficient, repetitive and self-deceiving. Therefore, he wants to replace the liberal paradigm by “another system, namely a system that does not negate the political but brings it into recognition.”¹⁷ He distances himself from “any political sensibility centered on the individual and its rights.”¹⁸ Schmitt believes that liberalism overlooks the polemical nature of politics and it acts as a ‘neutralizing technical force’.¹⁹ He argues that liberalism refuses to get engaged with the ‘concrete’ political order and it designates a type of society in which nothing has a political character. The ‘pretense politics’ of liberal tradition ignores “the real world of conflicts and the political as the human condition.”²⁰ Liberal pluralism, argues Schmitt, distorts the ‘us’ versus ‘them’ equation, which in turn, brings about the dissolution of the political community. He does not simply demonstrate suspicion toward liberal pluralism but he rejects it outright. In fact, he invokes a trade-off between pluralism and politics—homogeneity fortifies politics and vice versa. In Schmitt, homogeneity rests on “a significant degree of substantial ‘sameness’ in the political community” and it depends on “the specific constellation of conflicts which is ‘existentially’ most intense for a particular community.”²¹ Schmitt’s central argument is that we cannot speak of the political community without homogeneity. He writes:

When the state transforms itself in a pluralist state with parties, the unity of the state cannot survive beyond the moment when two or several parties are united by the acknowledgment of common premises. The unity then lies principally on the constitution recognized by all the parties: in effect the constitution, which is the common foundation, requires respect without conditions. The ethic of the state becomes then an ethic of the constitution.²²

One of the Schmitt’s primary points against liberalism is that it prioritizes private interests over the unity of the state. He vehemently opposes the idea of limiting the state’s power “on behalf of unpolitical and liberty-serving goals of

17. Leo Strauss, “Notes on the Concept of the Political,” in *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, ed. Heinrich Meier (Chicago: Chicago University Press, 1995), 85.

18. Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism* (Durham: Duke University Press, 1997), 113.

19. Bill Scheuerman, “The Fascism of Carl Schmitt: A Reply to George Schwab,” *German Politics and Society*, 29, no.1 (1993): 106.

20. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Massachusetts: The MIT Press, 2005), 130.

21. Scheuerman, “The Fascism of Carl Schmitt,” 106.

22. Chantal Mouffe, “Carl Schmitt and the Paradox of Liberal Democracy,” in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 171-72.

the individual.”²³ Schmitt affirms that it is precisely individualism that occupies pride of place in the liberal tradition. He explains that liberalism’s critical distrust in the state is due to its emphasis on the sanctity and supremacy of the individual. It disregards the state’s power to endorse the sacredness of private sphere. Liberalism indulges in banality of securing equality for all and hence it undercuts “the state’s aspiration to move beyond the legislative state.”²⁴ Moreover, the normative component of liberalism entails a commitment to the protection of individual rights. It puts emphasis on a system of checks and balances and introduces “a series of methods for hindering and controlling the state’s and government’s power.”²⁵ It thereby gives rise to “a situation in which social forces overtake the state.”²⁶ Schmitt’s dominant fear of liberalism forced him to accuse the Jews of “accelerating the dissolution of the state and for promoting a formless and apocalyptic extreme individualism.”²⁷

In the liberal tradition, the state power is considered legitimate insofar as it protects the rights of individuals. The liberal theory encourages the idea of limited government and “every threat to individual freedom and private property and free competition is called repression and is eo ipso something evil.”²⁸

It thus superimposes the idea of the inviolability of individual life. Crucial to Schmitt’s work is the notion that liberalism encourages anti-political tendencies which deprives the individual of a meaningful political life. Schmitt writes:

For the individual as such there is no enemy with whom he must enter into life-and-death struggle if he personally does not want to do so. To compel him to fight against his will is, from the viewpoint of the private individual,

23. Ernst-Wolfgang Bockenforde, “The Concept of the Political: A Key to Understanding Carl Schmitt’s Constitutional Theory,” in *Law as Politics: Carl Schmitt’s Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 44.

24. Lars Vinx, “Carl Schmitt and the Problem of Constitutional Guardianship,” in *The Contemporary Relevance of Carl Schmitt: Law, Politics, Theology*, ed. Matilda Arvidsson, Leila Brännström, and Panu Minkinen (London: Routledge, 2016), 37.

25. Schmitt, *The Concept of the Political*, 60.

26. Dominique Leydet, “Pluralism and the Crisis of Parliamentary Democracy,” in *Law as Politics: Carl Schmitt’s Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 113.

27. William Hooker, *Carl Schmitt’s International Thought: Order and Orientation* (Cambridge: Cambridge University Press, 2009), 57.

28. Schmitt, *The Concept of the Political*, 71.

lack of freedom and repression.²⁹

To Schmitt, the idea of 'government by discussion' is deeply anti-political. He explains that the idea of 'exchange of opinion' is "governed by the purpose of persuading one's opponent through argument of the truth or justice of something, or allowing oneself to persuade of something as me and just."³⁰

Schmitt's critique of liberal constitutionalism is consistent with his distaste for political discussions and compromises. He abominates the idea of 'openness and discussion' and chastises the liberal institutions for holding endless discussion and never reaching definite conclusions. Schmitt's deep concern for the unity of the state is evident from his emphasis on 'decisionism'. He writes:

Just as liberalism discusses and negotiates every political detail, so it also wants to dissolve metaphysical truth in a discussion. The essence of liberalism 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 permits the decision to be suspended forever in everlasting discussion.³¹

Schmitt defines democracy as a quest for 'substantive equality' which follows the principle of "not only are equals equal but unequals will not be treated equally."³² His version of democracy stresses upon equality of citizens which resides in their unity—a political community shares a set of values and "equals are treated equally and unequals unequally."³³ Put simply, homogeneity provides a substantive basis for equality—we become equals as members of a homogenous group. Schmitt contends that a true democracy requires homogeneity first, and second, "if the need arises - elimination or eradication of heterogeneity."³⁴ Furthermore, democracy belongs to people not humanity as "there is no democracy of humanity, only a people's democracy."³⁵ Since, people are 'politically allied or opponents' and

29. Schmitt, *The Concept of the Political*, 71.

30. Schmitt, *The Crisis of Parliamentary Democracy*, 7.

31. Schmitt, *Political Theology*, 63.

32. Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002), 175.

33. Massimo Fichera, "Carl Schmitt and the New World Order: A View from Europe," in *The Contemporary Relevance of Carl Schmitt: Law, Politics, Theology*, ed. Matilda Arvidsson, Leila Brännström, and Panu Minkkinen (London: Routledge, 2016), 170.

34. Schmitt, *The Crisis of Parliamentary Democracy*, 9.

35. Chantal Mouffe, *The Challenge of Carl Schmitt* (London: Verso, 1999), 47.

therefore “one cannot abstract out what is political, leaving only universal human equality.”³⁶ The notion of general equality, argues Schmitt, eliminates the basis for an understanding of what makes citizens equal. Therefore, he insists on drawing “a line of demarcation between those who belong to the demos—and therefore have equal rights—and those who, in the political domain, cannot have the same rights because they are not part of the demos”. Schmitt claims that a true democratic leader creates “a normal situation out of the chaos of pluralism by making a genuinely political, sovereign decision.”³⁷ Schmitt’s notion of ‘substantive equality’ precludes the possibility of shared values. More importantly, it endorses the view that equality is not ‘given’ but ‘acquired’—human beings acquire equality as members of a political grouping. Hence, the citizens have equal rights due to “their belonging to the demos and not because they participate in an abstract idea of humanity.”³⁸ It follows that the state cannot attempt to recognize the universal equality of individuals without concerning itself with “national or any other form of homogeneity” because this would be “a complete devaluation of political equality and of politics itself.”³⁹ Schmitt believes that the liberal notion of equality of mankind robs equality of its substance. “Equality is only interesting and valuable politically so long as it has substance.”⁴⁰ Inequality makes equality significant as “an equality without the possibility of an inequality, an equality that one inherently possesses and that cannot at all be lost, is without value and meaningless.”⁴¹ In other words, equality which does not contain a possibility of inequality is worthless. This means that equality becomes politically invaluable when the risk of inequality runs through it. Schmitt argues that universal equality is “a certain kind of liberalism” and it is a form of “an individualistic-humanitarian ethic and Weltanschauung.”⁴² Schmitt separates democracy from liberalism without realizing the fact that there exists a close relationship between democracy and civil liberties. Moreover, he limits the scope and content of equality—equality is acquired and thus it can be lost. The rejection of the separation of individuals from the

36. Schmitt, *The Crisis of Parliamentary Democracy*, 11.

37. David Dyzenhaus, “Introduction: Why Carl Schmitt,” in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 2.

38. Mouffe, *The Challenge of Carl Schmitt*, 41.

39. Mouffe, *The Challenge of Carl Schmitt*, 162.

40. Schmitt, *The Crisis of Parliamentary Democracy*, 9.

41. Carl Schmitt, *Constitutional Theory* (Durham: Duke University Press, 2008), 258.

42. Schmitt, *The Crisis of Parliamentary Democracy*, 13.

community is at the heart of Schmitt's anti-individualistic discourse. He believes that the pursuit of universal equality is futile as it cannot provide

...a foundation for a state, a state form, or a form of government, no distinctive differentiations and delimitations may be derived from it; only the elimination of distinctions and boundaries; no specifically formed institutions can be constituted on its basis, and it can only contribute to the dissolution and elimination of distinctions and institutions that no longer have any force in themselves.⁴³

4. The State of Exception and Schmitt's Fear of Universalism

Schmitt's preoccupation with the exception is evident from his intensive statement: "In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition."⁴⁴ As explained by Schmitt, the state of exception reveals the 'emptiness' of the law, the 'limited' scope of legal norms, the fragility of public and precariousness of the human condition. In noting that the exception is transcendent, Schmitt states, "The exception is that which cannot be subsumed; it defies general codification;" and all that remains is the "decision in absolute purity."⁴⁵ Schmitt sees the exception as a condition of 'concrete indifference' that "constitutes the center around which all political considerations revolve."⁴⁶ Moreover, he maintains that the exception has ontological priority over the rule as "the rule proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives from the exception."⁴⁷ Schmitt's state of exception calls for definite decisions and a powerful sovereign who can deal with the political crisis. He forcibly reminds us that there is no escape from facing the challenge of the exception. More controversially, he proposes a dangerous idea of the suspension of individual rights in the state of exception.

Schmitt's theorizing evokes an understanding of human practices that is arbitrary—a legal norm does not apply to disorder and the law does not create order. Schmitt defines the exception as the state of fear and insecurity. He affirms that only a powerful Leviathan can restore the public order. At the same time, he maintains that the exception is a blind spot as the risks associated with it are unforeseen and unforeseeable. Schmitt's disregard for the rule of law can

43. Schmitt, *Constitutional Theory*, 257.

44. Schmitt, *Political Theology*, 15.

45. Schmitt, *Political Theology*, 15.

46. Horst Bredekamp, Melissa T. Hause, and Jackson Bond, "From Walter Benjamin to Carl Schmitt, via Thomas Hobbes," *Critical Inquiry* 25, no. 2 (1999): 258.

47. Schmitt, *Political Theology*, 15.

be traced to his conception of the political which acknowledges a pre-legal distinction of friend and enemy. In the state of exception, a pre-existing legal order becomes redundant as it fails to determine the content of the decision. Here, Schmitt introduces his version of sovereignty which is basically “a monopoly on the ability to decide on the exception.”⁴⁸

Schmitt's notion of sovereignty outlines the conditions under which a normal legal order can be put aside. He explains that the exercise of sovereignty is a political act and its sole purpose is to create homogeneity by drawing boundaries between ‘the insiders’ (friends) and ‘the outsiders’ (enemies). The existing laws, the constitution, the claims of human freedom and individual rights do not constraint the sovereign for taking decisions on the state of exception. In Schmitt, law is not ‘a hindering of a hindrance to freedom’ rather it is what the sovereign decides. Schmitt introduces the protection-obedience axiom while explaining the mode of functioning of sovereign's political decisionism. The sovereign uses his power to maintain the public order and in exchange, the citizens show obedience to him. He asserts that only an ‘unbound’ sovereign “who renders decisions of last resort can settle serious political crises.”⁴⁹ Schmitt's idea of a decisionist state is “an organic expression of the national community, something not very far from the Nazi-states volkisch image of itself.”⁵⁰ By focusing intensely on the conflictual nature of politics, Schmitt allows for the advent of a tyrannical sovereign. Schmitt's sovereign is not subject to ethical or legal restrictions. The sovereign can suspend the existing legal order, fundamental rights and civil liberties to peruse security agendas. He possesses the ultimate power to decide on the (public) enemy and “...any group of people subjectively and contextually identified by a sovereign's perception of it as constituting a threat to his community's way of life is an enemy.”⁵¹ Schmitt refutes human immanence in the face of sovereign's power. The constitution and individual rights cannot float over the sovereign's power. The sovereign's decisions come out of nothing and the curtailment of freedom and suspension of fundamental rights must not bother the sovereign. Schmitt insists that the state must be a pure executive authority and “the ultimate arbiter over questions of ‘concrete indifference’: it is the state that must in the last analysis decide.”⁵² Schmitt

48. Nick Vaughan-Williams, *Border Politics: The Limits of Sovereign Power* (Edinburgh: Edinburgh University Press, 2009), 72.

49. Medina, “Locke's Militant Liberalism,” 345.

50. Thomsen, “Carl Schmitt,” 21.

51. Medina, “Locke's Militant Liberalism,” 353.

52. Wolin, “Carl Schmitt, Political Existentialism,” 409.

wants to free the sovereign's power both from legal-moral constraints as "it makes little sense to construct a security regime in terms of a comprehensive system of ethics or morality."⁵³ The citizens can neither interfere nor can they resist the sovereign. In fact, the rights of the citizens are subject to the sovereign's review i.e. they do not stand above the sovereign's power. There are certain dichotomies in Schmitt's position. For example, he justifies the sovereign's powers on the grounds that the sovereign has to deal with the exceptional situation. Since the exact details of the exceptional situation cannot be anticipated and, therefore "the power to decide on the exception must necessarily be unlimited."⁵⁴ But at the same time, he affirms that it is actually the sovereign who determines the status of a given situation. "For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation exists."⁵⁵ Put simply, it is the sovereign who gives decides on whether a given state be called the state of exception or the state of order. Secondly, Schmitt maintains that the exception is applicable to the normal (general) situation—the former reveals everything about the latter. But, he also links the exception to the "exceptional times, exceptional circumstances, as a state of exception related to situations of necessity and/or grave danger."⁵⁶ Lastly, as Seyla Benhabib notes, Schmitt confuses human rights norms with norms limiting internal/external sovereignty. Hence, the thinkers who borrow Schmitt's ideas "to critique the hypocrisies of the current international order"⁵⁷ risk throwing the baby out with the bathwater. To be sure, Schmitt's account of sovereignty shields human rights violations from scrutiny. It outlines the conditions for 'justifying' the suspension of individual rights and endorses the idea of maintaining "the public order at the expense of individual freedom."⁵⁸ Schmitt makes an ideological attempt to justify a brute rule behind the language of public order and security. He questions the inviolable character individual life as in his view, the state has "the right to demand from its own members the readiness to die and unhesitatingly to kill enemies."⁵⁹ Schmitt's idea of the sovereign power is declarative of mutable

53. Thomas Moore, "Citizens into Wolves? Carl Schmitt's Fictive Account of Security," *Cooperation and Conflict* 46, no. 4 (2011): 516.

54. Evan J Criddle and Evan Fox-Decent, "Human Rights, Emergencies, and the Rule of Law," *Human Rights Quarterly* 34, no.1 (2012): 75.

55. Schmitt, *Political Theology*, 13.

56. Sartori, "The Essence of the Political," 68.

57. Seyla Benhabib, "Carl Schmitt's Critique of Kant: Sovereignty and International Law," *Political Theory* 40, no. 6 (2012): 702.

58. Thomsen, "Carl Schmitt," 10.

59. Schmitt, *The Concept of the Political*, 46.

political order. It pushes individual rights to a secondary position and calls into question the utility of moral reasoning in politics. Schmitt's notion of the exception is not simply divergent from the standpoint of human rights; it opposes the categorical character of human rights. Moreover, to accept the suspension of rights is to accept dehumanization of the individuals. Human rights aim to protect human persons from torture, humiliation and injustice. The recognition of the inherent dignity of every human person is what makes human rights inalienable.

Furthermore, human rights rest on the principle of universalism, that is, the idea of justice for all. "A core principle of human rights is that those rights belong to everyone, no matter what status that person holds in society."⁶⁰ Human rights envisage a world in which human individuals can claim equality, oppose exploitation, resist expropriation and rise up against repression. Hence, human rights belong to all human beings; "one has rights simply because one is a human being."⁶¹ Schmitt's political paradigm eradicates the possibility of universalizing human relationships based on shared values. To Schmitt, the universal notions of justice, equality and human dignity are empty, abstract, value-laden and contradictory principles of liberalism. He argues that liberal tradition pretends to treat 'the unequal unequally' and the principle of universalism shares a feature of liberalism which is that of "depoliticizing and neutralizing conflict."⁶² Schmitt's critique of universal principles is a methodological question that cannot be easily ignored. He maintains that when the possibility of universality is open, politics die down. Where it is possible to recognize enemies, the political is at work. Schmitt affirms that the very existence of multiple entities confirms that the political world is a 'pluriverse' and "a world state which embraces the entire globe and all of humanity cannot exist."⁶³ Schmitt assumes that universal principles of justice, freedom and equality fail to generate 'specific distinctions and limits'.⁶⁴ He argues that the idea of humanity is an ideological weapon in the hands of imperialist powers. The big powers make use of the notions of "universal morality, pacifism, perpetual peace, and human rights to cripple nations, like Germany, that simply

60. Elisabeth Reichert, "Human Rights: Challenges and Promises," *Social Justice in Context* 2, no.1 (2006): 19.

61. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2002), 12.

62. Fichera, "Carl Schmitt and the New World Order," 171.

63. Schmitt, *The Concept of the Political*, 53.

64. Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham: Duke University Press, 2004), 147.

attempted to decide honestly, that is, without ideological subterfuge, over friends and enemies.”⁶⁵ Schmitt sees the invocation of humanity as an ideological cover for power politics—“whoever wants to invoke humanity wants to cheat.”⁶⁶ Humanity disguises the promotion of imperialist interests and it denies the existence of a political community. It abstracts human beings from their unique positions and different situations. Humanity stresses upon dissolving boundaries and “with the help of such a universal concept every distinction may be negated and every concrete community ruptured.”⁶⁷ Schmitt argues that humanity is meaningless concept as “no political entity or society and no status correspond to it.”⁶⁸ Humanity is an apolitical category as “it has no enemy, at least not on this planet.”⁶⁹ Schmitt rejects human rights and crimes against humanity “as being moralizing glosses on superpower politics.”⁷⁰

5. Conclusion

Human rights enshrine the hope for a better world, where human dignity is protected. The politics of human rights orients itself towards the possibility of human equality, universal justice and global peace. The loss of meaning of human rights is rooted in the compromises made due to ‘prudential’ reasons. Carl Schmitt’s political philosophy is a significant departure from human rights aspirations. It is an embodiment of existential irrationalism exalting political expediency, in-group homogeneity and particularism. It calls into question the utility of moral reasoning in politics and culminates into a rejection of the shared goals of humanity. Schmitt’s work stresses upon the importance of a strong state, a powerful sovereign and a homogenous political community. Schmitt develops a provocative thesis vis-à-vis human equality. He proceeds from the premise that human beings are not equal by birth i.e. they become equal only within an artificially constituted political community.

65. John P McCormick, “From Roman Catholicism to Mechanized Oppression: On Political-Theological Disjunctures in Schmitt’s Weimar Thought”, in *Thomas Hobbes and Carl Schmitt: The Politics of Order and Myth*, ed. Johan Traula (London: Routledge, 2011), 138.

66. Schmitt, *The Concept of the Political*, 54.

67. Carl Schmitt, “State Ethics and the Pluralist State,” in *Weimar: A Jurisprudence of Crisis*, ed. Arthur Jacobson and Bernhard Schlink (Berkeley: University of California Press, 2000), 309.

68. Mika Ojakangas, “A Terrifying World without an Exterior: Carl Schmitt and the Metaphysics of International (Dis)Order,” in *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, ed. Louiza Odysseos and Fabio Petito (London: Routledge, 2007), 206.

69. Schmitt, *The Concept of the Political*, 53.

70. Benhabib, “Carl Schmitt’s Critique of Kant,” 700.

In the light of Schmitt's account, human rights appear a utopian project. Schmitt's paradigm rejects the possibility of moral unity of human beings. In fact, it denies the very idea of there being universally valid moral norms. The iniquity of Schmitt's theorizing lies in its assertion that the universals are abstractions. It chastises liberalism for disguising the true nature of relations between political subjects. To Schmitt, universalism spells the end of politics. Equally, the negation of humanity is crucial to Schmitt's understanding of politics. He sees humanity as a shallow rhetoric that corresponds to the process of de-politicization. Schmitt's discontent with the universal ideals can be traced back to his understanding of politics which is based on the logic of exclusion. Schmitt's discourse is oriented towards invalidating the notions of universal justice, of equality, of humanity, and of freedoms of plurality of people. It trumps human rights considerations and brings our commitment to human rights under question. Schmitt gives a frame of reference under which it is possible for his followers to relativize the conception of justice. It is important to emphasize here again that human rights and Schmitt's political theory have different conceptual basis regarding the human condition and the place of morality in human relations. The discourse of human rights is essentially based on morality and it does not allow for compromises made due to the 'prudential' reasons. Human rights cannot be associated with specific political conditions. They cannot be contextualized, relativized, replaced or surpassed. Human rights must take precedence in all instances. This takes us some way in identifying as to why divided-loyalties put human rights at stake. The protection of human rights demands an unconditional commitment as it is the sole ground on which the project of human rights stands. Hence, we cannot attest to any relational understanding of human rights. Also, we cannot remain ambivalent or indecisive about human rights. Schmitt's political philosophy is the key to understanding the hindrance to the realization of human rights. We must extricate ourselves from Schmitt's framework if we are to give the concept of human rights its full meaning.

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