Chapter 1:
Introduction: Refuting the Legends

"Are you coming as a friend or as an enemy?," Carl Schmitt reportedly asked Kirchheimer when he unexpectedly arrived on his doorstep in Plettenberg in November 1949 (see Söllner 1996, 114). The question is an apt allusion to Schmitt's *Concept of the Political* in which he had famously defined the political by making the distinction between friend and enemy and had singled out the deadly conflict between enemies as the basic category of the political process. In other words, the emphasis in his formulation was exclusively on the concept of the enemy. However, there is more to this anecdote than a witty allusion to Schmitt's famous essay. Alfons Söllner told me in a recent conversation that he does not recall his source for the anecdote, that he probably heard it in the 1980s, and that the most likely sources were either his conversations with George Schwab, a great admirer of Schmitt's, or with John H. Herz, a close friend of Kirchheimer's. Söllner raised doubts about its accuracy and also called it a cleverly contrived allegory.[1]

The speculative status of this anecdote points to the uncertainty of what we know about the relationship between Kirchheimer and Schmitt. Both Carl Schmitt (1888–1985) and Otto Kirchheimer (1905–1965) are paradigmatic figures in the history of political thought of the twentieth century: Schmitt as the most original, dazzling, and controversial German constitutional law teacher and Kirchheimer, who received his doctorate under Schmitt, as a member of the Frankfurt School in exile. Their journeys through life intertwined repeatedly between 1926 and 1965, whereby their roles evolved and they were in frequent contact, both directly and indirectly. And, tellingly, for Schmitt's part, their relationship even extended beyond Kirchheimer's death. This book explores the personal, political, and theoretical dimensions of the relationship between these two thinkers from opposite political camps in times of tremendous political upheaval. I will describe the cross-fertilization of their thinking as well as Kirchheimer's learning process that led him far away from Schmitt's concepts and theories. This book also challenges the feel-good interpretation in the secondary literature of their alleged friendship. Conversely, I will shed light on the different phases and various constellations of an enduring enmity.

1 Alfons Söllner in conversations with the author on 21 April 2021 and 10 May 2023.

Carl Schmitt is the more prominent of the two authors. International interest in his work has become practically a "tsunami" (Bernstein 2011, 403) and has culminated in the *Oxford Handbook of Carl Schmitt* (see Meierhenrich and Simons 2016a).[2] Schmitt was a masterful wordsmith who wrote in different styles, from dry legal opinion to forceful polemical essays to literary works. Many of his books and articles contain veiled allusions and messages for the initiated. He was aware of the changing styles of political thought and liked to play with them. Schmitt chose his words carefully and his writings are filled with subtle linguistic twists. His scholarly apparatus reveals some, but not all, of his sources. The thrill of deciphering the arcana in his writing has undoubtedly contributed to the ongoing reception of his work.

Otto Kirchheimer is well known among legal scholars, political scientists, and historians for his work in multiple fields: as a critical analyst of the Weimar Constitution and the Nazi legal system, as a member of the Frankfurt School in exile, as an inspirer of Foucault's critical criminology, as a member of the legal team that prepared the Nuremberg Trials, as a European politics researcher in the US State Department, as the inventor of the concept of the "catch-all party" in comparative political science, and as the author of the seminal book *Political Justice*.[3] His rich oeuvre reflects both the range of his political experiences and his evolution as a legal and political theorist in the Weimar Republic and the early Nazi era, in his exile in France and the US, and during the founding and establishment of the two new German states after 1945. In the vast secondary literature, however, his connection to Schmitt overshadows all these facets of his oeuvre.

1. Repeated visits and friendship after World War II?

In the literature about both Schmitt and critical theory, Kirchheimer has been assigned the role of the first "left-Schmittian," someone who started to borrow intensively from Schmitt earlier and with considerably stronger effects than other authors of the Frankfurt School such as Walter Benjamin and Franz L. Neumann. Consequently, the name Otto Kirchheimer has become associated with the beginning of a genealogy of authors from the left who rely on concepts and theories adopted from Schmitt. Seyla Benhabib, for instance, names Kirchheimer along with contemporary theorists such as Ernesto Laclau and Chantal Mouffe as the first author for whom "Schmitt is the *éminence grise* to whom one turns when the liberal-democratic project is in deep crisis" (Benhabib 2012, 689). Kirchheimer seems to fit this exceptional role perfectly: in this view, not only was he an outstanding left-wing doctoral student of Schmitt's in Bonn in 1926–28 who made extensive use of Schmitt's thinking in his own writing during the Weimar Republic but

2 The best and (regularly updated) bibliography on the literature about Schmitt can be found on the website of the Carl-Schmitt-Gesellschaft e.V., accessed 2 January 2024, https://www.carl-schmitt.de/forschung/literatur-zu-carl-schmitt/#tab1.

3 See Jay (1973), Söllner (1982), Tribe (1987), Luthardt and Söllner (1989), Scheuerman (1994), Wiggershaus (1995), Schale (2006), Ooyen and Schale (2011), Schale, Klingsporn, and Buchstein (2018), Simard (2020), Klingsporn (2023), and Simard (2023).

he was also in personal contact with him again after 1945, regardless of Schmitt's participation in the establishment of the Nazi regime and his support for this regime until the end of the war.

A number of authors from the extensive secondary literature on both Schmitt and Kirchheimer have constructed a positive description of their "friendship" (Neumann 1981, 239) on this basis. The editors of Schmitt's diaries call Kirchheimer Schmitt's "favorite student" and use this characterization as proof "that Schmitt got along very well with many Jews" (Tielke and Giesler 2020, 51). When reading authors of various political convictions, we get the impression that Kirchheimer and Schmitt shared an almost lifelong understanding of legal and political theory that bridged their well-known political differences. In his foreword to the American reissue of *The Concept of the Political*, Tracy B. Strong refers to the late Kirchheimer as Schmitt's "colleague and friend" (Strong 1996, ix). The late Reinhart Koselleck mentioned the "good friendship"[4] between the two of them in an interview. Martin Tielke referred to the relationship between Kirchheimer and Schmitt up until the late 1950s as a "friendship." [5] And the editor of the journal *Telos*, Gary S. Ulmen, who became a proponent of Schmitt's in the 1980s, was referring to Kirchheimer when he stated: "There has been an important Jewish reception of Schmitt […] let's face it: Critical Theory makes strange bedfellows."[6] Continuing in this vein, John McCormick states that Kirchheimer was among the German émigrés whose work was still influenced by Schmitt, but "chose to acknowledge him as little as possible" (McCormick 1998, 849) because of his political affiliation with the Nazi regime.

Various authors have claimed that Kirchheimer visited Schmitt at his home in Plettenberg several times after World War II and tried to stay in close intellectual exchange with him. This view can be found in most scholarly contributions that mention the relationship between Schmitt and Kirchheimer. The editor of Schmitt's diaries, Martin Tielke, states that it was Kirchheimer who initiated contact with Schmitt after 1945 (see Tielke 2018, xxvii). Schmitt's best biographer, Reinhard Mehring, writes about Kirchheimer visiting Schmitt "repeatedly" after the war. In his view, Kirchheimer even played the active role in the relationship as he writes that, ultimately, the "efforts of Otto Kirchheimer to have a renewed relationship to his old doctoral advisor from the period in Bonn failed" (Mehring 2014a, 432).[7] Helmut Quaritsch and George Schwab go one step further and sardonically use Kirchheimer's allegedly multiple visits to Schmitt's home against a "mentally unbalanced" (see Quaritsch 1995, 72) Kirchheimer as evidence of his purported opportunism (see Schwab 1988a, 80–82). Joseph W. Bendersky speaks of Kirchheimer's "return" (Bendersky 2016, 137) to Schmitt, which allegedly began with visits in 1947. Rolf Wiggershaus writes in his seminal history of the Frankfurt School that "Kirchheimer visited Schmitt on several occasions" (Wiggershaus 1995, 470). In his brilliant book about Schmitt's personal networks after 1945, Dirk van Laak mentions "several visits" (van Laak 1993, 135) of Kirchheimer's to Plettenberg after 1945. To the

4 Koselleck in an interview with Claus Peppel in 1994 quoted in Schmitt and Koselleck (2019, 377).

5 Tielke in his editorial notes in Schmitt and Schnur (2023, 211).

6 Cited in Zwarg (2017, 368).

7 This version can be found even in the new revised edition of his excellent biography of Schmitt, see Mehring (2022a, 473).

leftist legal scholar Jürgen Seifert, the numerous contacts between the two after 1945 were an impressive testament to the fact that "rejection of positions did not necessarily have to mean personal enmity" (Seifert 1985, 199).

According to the existing literature, the relationship between the two of them seems to have been a kind of personal friendship despite their political differences. The—as I will prove in this book, erroneous—claim that Kirchheimer visited Schmitt repeatedly after 1945 at his home in Plettenberg seems to fuel this kitschy legend. As a matter of fact, Kirchheimer only visited Schmitt once, in November 1949, and they only met in person one more time after that, in Cologne in June 1953.

Jürgen Seifert's retrospective statement fits perfectly with Schmitt's vocabulary in *The Concept of the Political*. The enemy is "solely the public enemy" (Schmitt 1932a, 28); they are part of a collectivity of people fighting against another collectivity. Schmitt's definition leaves room for positive private relationships between two individuals from different fighting collectivities. As a matter of fact, Schmitt emphasized that "the political enemy does not need to be morally evil or aesthetically ugly" (Schmitt 1932a, 27). This is Schmitt's understanding of the civilizing aspect of enmity: enemies may treat each other with respect on the personal level; indeed, they may even like each other. Kirchheimer—at least in his Weimar writing—had a similar idea about the separation of personal and political enmity, albeit arguing from his left-wing political position. He used the German term *Feind* in several publications between 1928 and 1932. The enemy was the class enemy whose position was defined by class membership.[8] In the Marxist tradition, the class enemy is a character mask behind which there might be a person one may get along well with on a personal level. In both Schmitt's and Kirchheimer's understanding, enemies can become close friends—and then can tragically, but necessarily, turn away from each other after the outbreak of an existential fight between the two collectivities they belong to.

I have listed the sources that claim the contacts between Kirchheimer and Schmitt were friendly for a long time in order to illustrate the importance of the biographical dimension in assessing their relationship. Kirchheimer became a candidate for filling the role of a political enemy as well as a personal friend of Schmitt's not only because of his writing, but also because of the various authors' assumptions about the personal relationship between the two. As a matter of fact, as I will demonstrate in Chapter 15, when Kirchheimer stopped by Schmitt's house in Plettenberg in 1949, his intention was to show Schmitt that he, who in 1933 had been one of those whom Schmitt had wanted to see driven out of Germany as an enemy once and for all, as evidenced in his Nazi writing, had survived—in a dual sense, both as a Jew and as a leftist.

8 See Kirchheimer (1928a, 13—translated as "arch foe"), (1929b, 183), (1930a, 327), (1930e, 39), and (1932a, 62). Between 1933 and 1945, Kirchheimer used the term *Feind* when he paraphrased Nazi documents.

2. Grasping the *Lage*: Two theorists of concrete situations

It is difficult to receive Schmitt's work impartially. Nor is it easy to insert his work into current international debates about legal and political theory. This results in much cherry-picking from Schmitt's oeuvre as is currently the case particularly in China, with the Nouvelle Droite in France, and in Russia with its aggressive geopolitical agenda leading to the military attack on Ukraine.[9] There are various reasons to raise doubts about the dominant interpretative lines in the literature on Schmitt in the English-speaking academic world. Some interpretations of his works are so vague and peppered so strongly with literary associations that it is difficult to recognize Schmitt, the eminently political writer, in them. Others are so far detached from Schmitt's theoretical and political impulses that using him as a reference point becomes almost superfluous. The fixation in this literature on some of Schmitt's obscure ideas, for example, his eschatology, needs to be overcome by recontextualizing his work in the political constellations of its time (see Finchelstein 2022, 96–100). These shortcomings certainly have something to do with the fact that not all relevant sources are available in English. Important works by Schmitt, particularly from the Nazi era, have not yet been translated. In addition, some translations into English blur important linguistic nuances, Schmitt's choice of words, and the shifting meaning of some of his terms. These factors make Schmitt's writing in German accessible only to scholars with an extraordinary command of the language, including the specific use of language of the Nazi period. I would like to employ the concrete understanding of legal and political theory that is fortunately shared by both Schmitt and Kirchheimer to counter the prevailing cherry-picking and abstract readings.

Kirchheimer broadly characterized his interpretation of the debates on Weimar constitutional law as "sociological" (Kirchheimer 1933e, 500) analysis. He claimed to view existent legal and political institutions in their particular "social function" (Kirchheimer 1928b, 162) and postulated certain changes in the social function of institutions (such as parliaments, interest groups, the judicial institutions, or property rights) as the starting point for his political critique. In a number of his publications during the Weimar period, Kirchheimer referred to the German metaphor *Lage*. Within the theoretical framework of Marxism, *Lage* had a military and territorial meaning. The Prussian military expert Carl von Clausewitz was the tradition-forming author for using *Lage* as a synonym for the antagonistic positions in a battle. The line of left-wing uses of *Lage* started most prominently with Friedrich Engels's book *Die Lage der arbeitenden Klasse in England* (1844).[10] In the early 1920s, *Lage* had become a crucial term used frequently by Lenin, Georg Lukács, Austro-Marxists, and reformist social democrats alike. *Lage* was the overarching descriptive term for the analysis of the concrete positions in the struggle between the social classes (*Klassenlage*). Following the Marxist tradition, Kirchheimer made extensive use

9 See de Benoist (2007), Auer (2015), Lilla (2016), Marchal and Shaw (2017), and Lewis (2020).

10 The authorized translation by Florence Kelley appeared in 1885 titled *The Condition of the Working Class in England*. Engels is well known for his admiration of the Prussian military and Clausewitz in particular. In the translation, he nevertheless renounced the militant semantic content that he chose to use for his German readers.

of this term in his Weimar writing.[11] Whereas the young Kirchheimer described his approach using this metaphor stemming from the world of the military, he later chose a different metaphor instead: it was a pacified metaphor from the social practice of craftspeople. In 1964, in one of the few statements in which he explicitly addressed his own methodological approach, he called it a "handicraft to decipher government systems in full activity, to diagnose them or to substitute better ones in his mind."[12] Such a craft, however, "increases the operational risk" of errors due to its specific reference to concrete political situations. Nevertheless, he claimed he didn't "want to wait until the obituary of a political system [was] due" but instead sought to intervene in current political constellations with his studies. Even though Kirchheimer switched to a different metaphor, he still kept the original idea of *Lage*.

Schmitt also repeatedly emphasized the close connection between his scholarly work and concrete political constellations, albeit in a different way. Clausewitz's term *Lage* had become popular in the vocabulary of the Prussian military and also inspired a number of authors on the extreme right such as Ernst Jünger and Gottfried Benn during the Weimar Republic. Schmitt also frequently used the phrase "*Analyse der Lage*" (analysis of the *Lage*) or simply stated "*Das ist die Lage!*" (That is the *Lage*!) throughout his long career.[13] For Schmitt, the metaphor *Lage* always had a double meaning. It simultaneously designates the aspect of a situation of being bound and its potential for change. It is therefore not to be confused with the arbitrary, the freely available, the merely opportune. Every *Lage* requires a decision. The standard English translation "concrete situation analysis" disregards the military and territorial semantic component of the term, and Schmitt's polemical meaning gets lost at this point.[14] Schmitt thought that legal and political theory was a polemical practice, which gave every academic debate the character of a political struggle. In his view, all political and legal theories emerge out of concrete political battles and disputes. Anyone who denies such a close connection to concrete constellations in political battles, he wrote in 1930, is simply using the "specifically political

11 See Kirchheimer (1929b, 182, 185), (1929c, 193, 195), (1930i, 220, 237), and (1932e, 370). The posthumous translation of *Weimar—and What Then?* by John H. Paasche uses either "position," (Kirchheimer 1930e, 44) or "political situation" (62). In his late German work, the term *Lage* can only rarely be found (see Kirchheimer 1957c, 380).

12 This and the following two quotes are in Kirchheimer (1964, 501).

13 The term is part of the title of his critique of parliamentarism in *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (Schmitt 1926e). It can also be found in his *Verfassungslehre* (Schmitt 1928c, 69) and in the title of a programmatic lecture in the final phase of the Nazi era, "Die Lage der europäischen Rechtswissenschaft (1943/44)" (see Schmitt 1950b). After the war, he used it in *Der Nomos der Erde* (see Schmitt 1950e, 54) as well as in his foreword to the 1963 German edition of *Der Begriff des Politischen* (see Schmitt 1963b, 12).

14 Ellen Kennedy chose the title *The Crisis of Parliamentary Democracy* (see Schmitt 1923a) for her English translation of Schmitt's *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*. Her translation of the term *Lage* in this book is "intellectual circumstances" (Schmitt 1926a, 1); she claims that her departure from the literal translation of the book does "capture the spirit" (Kennedy 2000, x) of Schmitt. Gary S. Ulmen in his translation of *The Nomos of the Earth* gets rid of the term altogether (Schmitt 1950d, 86). Jeffrey Seitzer comes closer in the articulation of the territorial and military components of the term by using "position" in his translation of *Constitutional Theory* (Schmitt 1928b, 119).

trick of presenting oneself as apolitical and the opponent as political." He complained about "too much methodology and not enough method" in German legal and political thought (Schmitt 1930c, 165 and 175). Four years later, he coined the term "concrete-order thinking" (Schmitt 1934h, 225) to describe his own methodological approach in opposition to legal positivism. In an interview five years after Kirchheimer's death, Schmitt explained his scientific practice as follows: "I have a method that is peculiar to me: to let the phenomena approach me, to wait and to think from the concrete material, so to speak." (Schmitt 1970, 11) As discussed in more detail in Chapter 6, Schmitt's *konkrete Lageanalyse* (concrete analysis of the *Lage*) is a method that claims to situate every theoretical debate within the context of a political battle. With reference to Schmitt, *Lageanalyse* has become a key concept in particular among right-wing authors and Schmitt enthusiasts in Germany and it remains so to this day.[15]

The methodological commitments of Kirchheimer and Schmitt, expressed in metaphors from different social practices, have two epistemological axioms in common. First, the axiom of inevitable situatedness: no legal or political theories will be able to evade their dependence on the specifics of particular sociohistorical, cultural, and geographical contexts and social power relations; and neither should they. Second, the axiom of interventionism: the inevitable relatedness of theory and praxis becomes a productive virtue by making active use of legal and political theorizing as an instrument of political intervention. Despite many other fundamental differences between Schmitt's approach and Kirchheimer's neo-Marxist critical theory, they agree on these two—however vague—epistemological axioms.

3. Through the lens of the other

The methodological approach of *Lagenalyse* shared by the two authors is also my methodological key for reconstructing their story in this book. Their numerous dialogues, disagreements, and repeated confrontations can only be understood in the context of the changing political situation. Thus, the overarching questions addressed in this book are as follows: What was the relationship between these two political thinkers from opposite political camps and how did it change in its personal, political, and theoretical dimensions over the course of time? Our understanding of Schmitt shifts if viewed through the lens of Kirchheimer's analyses and commentaries—and vice versa. This line of inquiry results in three sets of more specific questions.

First, on the level of their legal and political theories, how significant and inspiring were Schmitt's theories, categories, and concepts for Kirchheimer's work—and vice versa? What was the explicit dialogue between the two like? Can traces of implicit dialogues be identified? What subject areas did their receptions of each other cover and what, if any, is the meaning of what they overlooked or chose to disregard? In what kind of modalities did these receptions take place—from direct adoption and integration into their own theoretical framework to suggestions, critiques, or even instrumentalization?

15 See Willms (1982), Arndt (1985), Oberlercher (1993), Sander (1993), Schneider (1993), and Maschke (2011, 22). For a critical review, see Priester (2015).

Are there any surprising thematic overlaps even in the absence of a direct reception of the other? Does Kirchheimer's reading of Schmitt contribute to a better understanding of his work—and vice versa? Or are the lenses—one or both—distortive in a way that they serve the interests of the author peering through them?

Second, on the personal level, how did their personal relationship develop and change—on the one hand, the Jewish and socialist student and, on the other, the Catholic and right-wing extremist professor seventeen years his senior? Were there any role changes and shifts in the balance of power between them during the four politically turbulent decades in multiple political systems? Are there any indications that their personal relationship influenced the theoretical substance of their work? Or, conversely, are there any indications that changes in the theoretical substance of their work influenced their personal relationship?

And third, to a minor degree, on the level of contemporary debates in political theory, does the controversy between the two point to any hidden treasures in legal and political theory that are worth being unearthed? Is there anything to be learned from Kirchheimer's grappling with Schmitt's work for a new perspective in the debate with the protagonists of today's left-Schmittianism?

These three levels of exploration cannot be treated separately. The polemical practices in the writing of both authors can only be adequately understood within their constantly and dramatically changing political contexts. I therefore reconstruct the multifaceted relationship between Kirchheimer and Schmitt in chronological order: the years of the Weimar Republic between 1926 and January 1933 (Chapters 2 to 6); the Nazi period in Germany and Kirchheimer's exile in France and the US (Chapters 7 to 13); and the postwar years until Kirchheimer's untimely death in 1965 (Chapters 14 to 17). Thus, the book combines a double political biography with the discussion of systematic questions of legal and political theory. The theoretical, political, and personal links between Schmitt and Kirchheimer illuminate crucial points in the recent history of political ideas, in German and European contemporary history, and in transatlantic intellectual history as well as the role of German exiles in the American academic system, the subject of antisemitism, and German-Jewish relations in the twentieth century.

The personal, political, and theoretical dimensions of the relationship between Kirchheimer and Schmitt are inextricably linked. Part of the story told in this book is the self-serving manner in which Schmitt himself contributed to the legend that the relationship between the two men after 1945—with the exception of a conflict in 1961/62—had remained essentially friendly. The book is not only about the cross-fertilization of their thinking, but it will also challenge the feel-good interpretation of their alleged friendship and reveal their numerous conflicts—and the different phases and different constellations of an enduring enmity.

4. Enduring enmity in changing *Lagen*

Between 1926 and 1965, significant changes occurred to both Schmitt and Kirchheimer's individual *Lagen*, and these changes affected their relationship in considerable ways.

During these almost forty years, their enduring enmity went through four distinctly different phases.

The *first phase* starts with Kirchheimer's decision to follow the advice of his mentor at Berlin University, the legal scholar Rudolf Smend, to move to Bonn and study with Schmitt. His decision was inspired by the motivation to learn as much as possible from Schmitt to further his left-wing politics, in particular about his theory of dictatorship and his criticism of parliamentary democracy. During the time they shared in Bonn, their enmity was a kind of abstract relationship to each other, on the level of political standpoints only. As will be demonstrated in Chapter 2, Kirchheimer and Schmitt did not view each other merely as sympathizing with rival political camps but as representatives of political forces that saw each other as political enemies, ready and willing to fight the other side until they achieved irreversible victory. To Kirchheimer, Schmitt was a militant right-wing ideologist of the bourgeois class enemy—a kind of "Lenin of the bourgeoisie."[16] The two respected each other and their political views, although Schmitt's acknowledgment of Kirchheimer was accompanied by a certain condescension. At this point in their relationship, their political enmity was compatible with a seemingly friendly relationship on the personal level and Schmitt's patronage of his doctoral student.

Kirchheimer was completely satisfied with the opportunity to study with Schmitt. He found it very stimulating to attend his seminars, read his books and articles, and discuss them with him in person. Schmitt, for his part, learned from his doctoral student about ongoing theoretical and strategic debates among intellectuals of the socialist left. Kirchheimer's dissertation gave him evidence for his belief that not only revolutionary communists but even reformist social democratic Marxists saw the existing Weimar Republic as merely a transition period toward a better socialist future. Such a view seemed to confirm Schmitt's expectation of future political instability and also reinforced his political counterprogram: the search for an authoritarian political model in order to build a strong and stable state. In his citations, he soon made Kirchheimer a key witness for his conviction of the uncompromising enmity of the left toward the existing bourgeois state.

After the two met again in Berlin in 1928, their relationship quickly shifted from the former teacher-student constellation. These years in Berlin became a time of rapidly growing success for both of them. Schmitt easily succeeded on the academic and political stages and Kirchheimer soon gained a certain public notoriety as a harsh critical voice on the left wing of the Social Democratic Party (SPD). Their personal contact remained good between 1928 and 1931. As in Bonn, they went for walks and met frequently, occasionally with their families, as will be described in Chapters 3 and 5. In addition to their personal communication, they exchanged manuscripts and offprints so that both were able to quote from the other's as yet unpublished writing. Nevertheless, neither Kirchheimer nor Schmitt showed any intention of approaching the other to look for common ground that could lead to compromises in their political aspirations or theoretical reflections. They continued to see themselves as representatives of political forces engaged in tough battles, although still hoping to learn from the enemy-other in order to further their own political ambitions.

16 John H. Herz in a discussion at the Kirchheimer symposium in Berlin on 11 November 1985.

With the dramatically changing political *Lage* in the upcoming crisis of the Weimar Republic in 1932, Kirchheimer and Schmitt's intellectual disagreements lost their sterility and transformed into a *second phase*. As will be shown in Chapters 5 and 6, an increasing number of political conflicts between them became public. Kirchheimer still attended Schmitt's seminars at the Handelshochschule in Berlin and introduced him to other younger socialists. Schmitt, in turn, supported Kirchheimer in his (unsuccessful) applications for academic scholarships. For his *habilitation*,[17] he aspired to at the University of Berlin; however, Kirchheimer turned to his other mentor Rudolf Smend and not to Schmitt. Whereas their contact remained cordial on the personal level, Schmitt was careful to conceal from Kirchheimer his active role in the futile efforts in late 1932 to install a presidential dictatorship, albeit not yet under Hitler's chancellorship.

Kirchheimer contradicted Schmitt in his publications on almost every important topic: Schmitt's theory of parliamentarism and democracy; the role of the president in the constitutional order of the republic; the *Rechtsstaat* and property rights; the role of political parties in a modern democracy; international law; the legitimate limits of legal constitutional changes; political myths; and Italian fascism as a political alternative to the current system. By contrast, until the end of the Weimar Republic, Schmitt made no critical comments about Kirchheimer in his publications but treated him as a representative of a radical socialist left that wanted to overcome the constitutional order. In doing so, he ignored Kirchheimer's turn toward the defense of the republic and even misquoted him in his influential book *Legality and Legitimacy*.

Their conflict escalated and turned—at least from Schmitt's side—into a level of enmity *ad personam* just as the Weimar Republic suffered its final blows. Schmitt wanted to prevent the revitalization of the Weimar Republic and conjured the specter of civil war or a state of trade unions that would become a socialist republic. To Schmitt, with his Catholic background and upbringing, Kirchheimer's way of thinking was synonymous with agnostic socialism. Seen through Kirchheimer's lens, Schmitt was drifting toward an authoritarian economic liberalism that intended to eliminate the central social and democratic elements of the Weimar Constitution. At this crucial political moment, Kirchheimer co-authored an essay which reads like an incisive review of his previous critical debates with Schmitt. It also included a general attack against him on the methodological level. When the two discussed their political, theoretical, and methodological disagreements in person at Schmitt's home in November 1932, the conflict escalated to a new level from Schmitt's side. Afterwards, he noted "s*cheußlich, dieser Jude*" ("vile, this Jew")[18] in his diary, referring to Kirchheimer. The entry indicates that at this point in time, Schmitt's antisemitic sentiments were no longer distinguishable from his substantive differences with Kirchheimer.

Once Hitler had been installed in power, the new *Lage* transformed Schmitt and Kirchheimer's relationship into a *third phase*. Hitler's inauguration as the new Chancellor of the Reich took both Kirchheimer and Schmitt by surprise. And they both misinterpreted the new chancellorship initially, albeit for different reasons. Kirchheimer's

17 A postdoctoral qualification in many European countries, including Germany, required in order to become a full professor.

18 Carl Schmitt, diary entry of 6 November 1932 (Schmitt 2010, 231).

underestimation of the Nazis was to some extent a logical result of his theories. Just like many German Marxists of the day, he interpreted Italian fascism as a phenomenon that could prevail only in industrially backward societies. What had distinguished his analytical acuity in the years 1930 to 1932—his description, inspired by Marxism, of the societal functions of state and politics—no longer helped him come to terms with the new *Lage*. To Kirchheimer, the main risk to the parliamentary republic stemmed from a bureaucracy that had taken on a life of its own with a presidential dictatorship at the top—in other words, precisely what Schmitt had declared to be his political ideal before 1933. So ironically, it was presumably the fact that Kirchheimer knew Schmitt's way of thinking very well that contributed to him temporarily losing sight of the danger of a successful Nazi mass movement. He was among the majority of leftists of that time who perceived only minor differences between the authoritarian governments of Chancellors Franz von Papen and Kurt von Schleicher on the one hand and Adolf Hitler's regime on the other and who underestimated the residual protective function of bureaucratic state institutions of the former presidential dictatorship.

After Hitler was declared Chancellor on 30 January 1933, Schmitt was not sure whether the new regime would be able to stay in power. It took him a few weeks to grasp the new political *Lage* and the brutal energy of the new regime. He still decided to support it and quickly became its most influential legal theorist, whereas Kirchheimer saw no other option but to flee to France after being released from prison. He had been detained for a few days in May 1933 for political reasons. From then on, there was a new asymmetry to their enmity. Schmitt no longer dealt specifically with Kirchheimer but simply included him in the group of all those Germans who were in detention or had been forced to emigrate. He called all of them enemies of the Reich and even accompanied this label with threats of violence, stating that enmity toward the Jewish émigrés was part of an existential life-or-death struggle for the German *Volk* (people/nation in a racial sense, of common blood and with a common destiny; see Glossary).

Schmitt and Kirchheimer agreed that the new regime was a response to the civil war-like conditions of 1932. In November 1932, Schmitt had already spoken of the inevitability of civil war in Germany. By supporting Hitler, he linked the Nazi regime with the suggestion of a civil order rescued from a dangerous civil war situation. Hitler appeared to be the one preventing civil war and permanently overcoming it. Kirchheimer, on the other hand, described the fact that Hitler's party had been able to stabilize its power position not as preventing civil war but as the uncompromising first victory of one civil war party over the others. He was convinced the measures taken by the Nazi regime were a continuation of this civil war with the additional instruments available to state agencies. Kirchheimer observed Schmitt's many activities in detail from his exile in Paris and London and reported on them in journals and magazines. He was the first to call Schmitt "*the* theorist of the Nazi Constitution" (Kirchheimer 1933c, 533). A few months later, émigré journalist Waldemar Gurian referred to him as the "crown jurist of the Third Reich."[19] Gurian's label was more striking and was immediately used polemically by Schmitt's opponents outside of Germany as well as by his Nazi competitors. Whereas Gurian's term captures the essence of a political lawyer for a regime who becomes dependent on his

19 Waldemar Gurian in the émigré journal *Deutsche Briefe*, 26 October 1934.

superior, the *Führer* (see Glossary), and serves his master for the sake of ambition or careerism, Kirchheimer's more laconic characterization left the question of Schmitt's personal motives open. But by emphasizing Schmitt's role as the leading legal theorist of the Nazi regime, he also set the tone for the Frankfurt School philosopher Herbert Marcuse's first study of Nazi political thought (see Marcuse 1934).

In the summer of 1935, the enmity between Kirchheimer and Schmitt escalated to a new level. This time, it was Kirchheimer who intensified the dispute. As will be reconstructed in more detail in Chapter 8, Kirchheimer chose a new and direct tactic aimed directly at Schmitt. Using the pseudonym Dr. Hermann Seitz, he wrote the booklet *State Structure and Law in the Third Reich* for the resistance in Germany; the title alluded to one of Schmitt's most widely distributed booklets in Nazi Germany. To boost distribution, the booklet's cover design, color, and typesetting were designed to make it appear to be part of a Nazi book series edited by Schmitt. The illegal booklet was distributed to a few thousand lawyers across Germany. Schmitt was infuriated when he found out about it. He instantly assumed Kirchheimer was the author and demanded that the Nazi authorities crack down on everyone involved in its production. If the Gestapo had caught Kirchheimer, he would likely have been interned in a concentration camp or worse.

Even though Paris still was a safe place for Kirchheimer, he rightfully expected a German military attack on neighboring countries in the near future and was determined to leave France for the US. He was eventually able to do so in the fall of 1936. Schmitt's militant antisemitism, which will be analyzed in detail in Chapter 10, reached its pinnacle in the fall of 1936 when he claimed that the deadly poison of Jewry and Judaism had for decades permeated the German state and German academia unhindered. To Schmitt, Jews—like his former student Kirchheimer—had become the public enemy *par excellence*. There can be no beating around the bush: it was precisely this kind of domestic declaration that Jews were the enemy that made the extermination of the Jews in the Holocaust possible and that made the Holocaust unique as a crime against humanity.

The same year, Schmitt himself got caught up in the machinery of the Nazi system. As will be described in depth in Chapter 9, the surviving files from the *Reichsführer* of the *Schutzstaffel* (SS; see Glossary) also mentioned his former contacts with Kirchheimer. However, Schmitt's fall from grace was not a case of persecution of a supposed enemy or opponent of the regime. It was an initiative by other Nazi jurists to limit his leading role. The best way to understand Schmitt's fall is through the analytical lens of Kirchheimer's writing in exile about the political system of Nazi Germany. Whereas Schmitt in his numerous written works and speeches had admired the Nazi regime for overcoming the pluralism of the Weimar Republic and creating a tripartite structure of unity of the German state, Kirchheimer countered that no such unity existed. Contrary to the official ideology, he argued that the Nazi state had never become a homogeneous entity but was instead a polycracy. It was a system based on compromises between five major social groups—the Nazi party, the army, industrial and financial capital, the agrarian Junkers, and the state bureaucracy—that were constantly struggling for influence against each other. The party hierarchies below the level of the *Führer* were regrouped time and again. Thus, the position of every individual in the system was subject to sudden shifts. This analytical approach permits us to identify the reasons for the activities of the *Reichsführer* of the SS against Schmitt as being founded less in his person and rather in the complex

internal struggles between competing groups within the Nazi system. Schmitt, the triumphant Nazi theorist of tripartite state unity, had become caught in the clutches of the polycratic power structure that Kirchheimer had described in his writing in exile.

Only after another year had passed, in late 1937, did both Schmitt and Kirchheimer find themselves in a new *Lage*. Kirchheimer had succeeded in moving to the United States and was working for the Institute of Social Research (ISR) in New York under the leadership of Max Horkheimer. In November 1938, the Nazi government revoked his German citizenship and he and his daughter Hanna became stateless. Shortly afterwards, the University of Bonn revoked his doctoral degree of 1928 (it took the university until November 2023 to give it back eighty-five years later).[20] Meanwhile Schmitt had found his way back into the top ranks of Nazi jurists by throwing himself into international law as the main subject of his theoretical research. Kirchheimer commented on this new twist in Schmitt's new works soon after their publication, concluding that Germany would attack neighboring countries within a short space of time. After Germany had started the war, both men contributed to the fight against the enemy on the other side: Schmitt in his writing and lectures for Nazi Germany and Kirchheimer at the Office of Strategic Services (OSS) on the side of the US. His research at the OSS included analyzing the political mood in Germany, determining the Reich's military capabilities, and advising on the selection of military targets in Germany.

After Germany's unconditional surrender in 1945, the immediate postwar situation once again reversed Kirchheimer and Schmitt's *Lagen* and their roles. In this *fourth phase*, which lasted up until 1961, each had seen their professional situation change fundamentally. Schmitt had lost his job as a prestigious German professor and, for the first time in his life, Kirchheimer had a well-paid position. He was on the victorious side and Schmitt found himself on the side of the defeated. While Schmitt did not feel liberated by the Allies, he was happy that the war was over and that he had survived. He prepared to serve as a defense attorney for German war criminals. As will be described in more detail in Chapters 13 and 14, he saw himself pursued by returning émigrés and people he considered "Jewish-American enemies" seeking to take revenge, enrich themselves, or go after him personally. He considered the trials of German war criminals to be victor's justice perfidiously executed by enemies. From Schmitt's perspective, Kirchheimer was one of the enemies one had to be very cautious of. Kirchheimer, for his part, in his legal opinions for the Nuremberg Trials, took great care to argue within the framework of the international rule of law.

In the years that followed, the basic constellation between them continued to solidify. For the first time in his life, Kirchheimer attained a tenured university position, whereas Schmitt was forced to remain outside the German university system. Nevertheless, he was able to create a large network of contacts with influential legal scholars and young academics that became known as an "invisible college." The next personal encounter between Kirchheimer and Schmitt occurred almost exactly seventeen years after they had last met at Schmitt's Berlin home in November 1932. Kirchheimer's motives for visiting Schmitt at his home in Plettenberg in November 1949 have largely been misrepresented in

20 Hermann Horstkotte, "Universität Bonn will Otto Kirchheimer rehabilitieren," *Bonner Generalanzeiger*, 6 November 2023, 8.

the literature to date. As will be explained in Chapter 14, it was Schmitt who took the initiative to resume their personal contact. He had been arrested in Berlin in 1947 and asked about Kirchheimer's fate during his interrogation by Ossip K. Flechtheim. He also asked Flechtheim to give his best regards to Kirchheimer. Based on Wilhelm Hennis's recollections of his discussions with Kirchheimer,[21] I interpret Kirchheimer's visit to Schmitt's home in Plettenberg two years later as a demonstration to Schmitt that he, who had been forced to leave Germany with Schmitt's applause in 1933, had managed to survive. He also wanted to show Schmitt how the *Lage* had changed after 1945 and the extent to which the political tide had turned. As described in more detail in Chapter 15, Schmitt wrote in a letter to his wife that Kirchheimer had confronted him about his unwillingness to grapple self-critically with his own responsibility for the Nazi regime's policies and told him so during his visit.

After this one and only trip of Kirchheimer's to Schmitt's home in Plettenberg, the two did not resume their relationship as it had been before 1933. Not only their different roles in the years 1933 to 1945 but just as much their differences in dealing with the Nazi past had created a deep rift that could not be patched up with friendly phrases of address in their letters over the following years. The sparse correspondence between the two at this time shows no signs of an intimate personal connection. Their letters contained mostly polite phrases on both sides and occasional critical remarks from Kirchheimer toward Schmitt or his students. They also sent each other their publications from time to time. They briefly met again in person in Cologne in June 1953 but Kirchheimer did not respond to Schmitt's multiple offers by letter to enter into a debate with him again. He contented himself with brief replies, the only exception being his letter of November 1952 in which he expounded on the methodological differences between him and Schmitt and repeated the objections he had raised against Schmitt's conceptual realism twenty years earlier in his article "Remarks on Carl Schmitt's *Legality and Legitimacy*." In 1932, Schmitt had not responded to Kirchheimer's fundamental and detailed criticism; he did not react to it twenty years later, either.

During the 1950s, Kirchheimer also publicly attacked Schmitt and his followers multiple times in his articles and book reviews. In 1957, he summarized his substantive and methodological objections to Schmitt in a compact form: Schmitt's ever-present negation of the *Rechtsstaat*; the discrepancy between the traditional liberal concept of traditional international law and the rejection of an alien liberalism as part of the domestic constitutional order; the omnipresence of the people's constituent power combined with its incapacity to act as a constituted organ; the indeterminate character of the values underlying concrete decisions; and the lack of any clear-cut criteria for differentiating between violence and *nomos*. Again, Schmitt refrained from publicly reacting to these allegations. On the basis of the letters surviving in the archives, he did not respond to Kirchheimer by letter, either. By the end of the 1950s, Kirchheimer had stopped commenting on Schmitt's work in his publications altogether. Their contact practically dried up. Kirchheimer had obviously lost interest both in debating with Schmitt in person and in debating about him in public. Their exchange of letters was limited to sending offprints, which took the form of small mutual jibes.

21 Wilhelm Hennis in a conversation with the author on 26 September 2009.

Kirchheimer formulated his opinion about dealing with Schmitt in a 1958 letter to Arvid Brødersen, his colleague at the New School for Social Research, who had asked him about his relationship to Schmitt:

> I still think today that nobody should be held criminally or pseudocriminally responsible for their writings or their intellectual production. To a writer, the authority is the reaction of the audience and their own conscience. The question of employment sanctioned and paid for by the state is of course a different matter.[22]

In Kirchheimer's view, the decision not to put Schmitt on political trial in Nuremberg with the intent to punish him for his writing during the Nazi regime was correct. Schmitt could now enjoy all the liberties of life and public expression a *Rechtsstaat* guaranteed its citizens—but Kirchheimer thought he should be barred from the opportunity to continue disseminating his doctrines at a state-funded university as he had successfully participated in the destruction of the *Rechtsstaat* and in the establishment of a fascist terror regime.

5. The godfather of left-Schmittianism?

The narrative that Schmitt and Kirchheimer rekindled a friendly relationship after World War II has developed a life of its own in the literature. This narrative serves two legitimating functions. First, it makes Kirchheimer an apologetic witness to Schmitt's alleged personal sympathies for Jewish intellectuals—before and after the Shoah. Second, it portrays him as a kind of godfather and patron of today's left-Schmittianism. And, depending on one's perspective about Schmitt and his writing, this characterization is used by contemporary left-Schmittians either to enthrone Kirchheimer as their forerunner or, with a critical intention, to turn Kirchheimer's work into the starting point of a fateful dead end for the political left.

I define left-Schmittianism as the transformation of Schmittian concepts or categories into the framework of legal or political theories with emancipatory political intentions. Left-Schmittians insist that Schmitt's work provides crucial contributions to understanding our modern political condition. The label "left-Schmittianism" is used in very different ways. For some, it is a title of honor used for political theories that claim to be of service to their emancipatory cause through a productive reception of Schmitt's writing.[23] To others, this label is tantamount to a stigma because they view Schmitt's theories and concepts as fundamentally incompatible with any emancipatory goal. They are convinced that Schmitt's key concepts such as democracy, parliamentarism, international law, and the political cannot be divorced from his reactionary political intentions.[24]

22 Letter from Otto Kirchheimer to Arvid Brødersen dated 2 March 1958. Otto Kirchheimer Papers, Series 2, Box 1, Folder 25.

23 See Mouffe (1999) and (2005), and Kalyvas (2009).

24 See Müller (2003), and Scheuerman (2020).

Kirchheimer did not use the term "left-Schmittian" to describe himself or his work. This points to the term's complex history over the past hundred years or more and to the particular role Kirchheimer plays in this. Its prehistory dates back to the publication of Schmitt's book *Dictatorship* in 1921, which he finished writing during his first professorship at Greifswald University. Only a few months later, the Austro-Marxist Max Adler happily resorted to using some of Schmitt's definitions and analytical distinctions for his legal theoretical foundation of a theory on the dictatorship of the proletariat (see Adler 1922, 193–197). He was followed by Arkadij Gurland, a young socialist from the left wing of the SPD (see Gurland 1930a, 77–80). Both authors were major inspirations to the young Kirchheimer as he developed his own theoretical considerations. Another of his close colleagues at the time and a personal friend of his for the next twenty-five years, Franz L. Neumann, concurred with Schmitt's critique of the Weimar federal system and pluralism in his book *Der Hüter der Verfassung* [The guardian of the constitution], published in 1931 (see Neumann 1931, 81–85). Karl Korsch, who provided crucial intellectual inspiration in the early phase of the Frankfurt School, also praised the book and the potential of Schmitt's critique of parliamentarism. Although he evidently did not share Schmitt's sympathies for a fascist state, he agreed with his "critical analysis of the hitherto dominant bourgeois-liberal" (Korsch 1932, 205) theory of the state. While all of these authors relied on certain concepts and considerations by Schmitt, none of them connected to the Frankfurt School would identify as a left-Schmittian.

To the best of my knowledge, the first time that someone from the left was criticized for using Schmitt to make his own case was in connection with the disputes between communists and socialists toward the end of the Weimar Republic. The allegation was made in the communist magazine *Unsere Zeit* [Our era], and its intent was unequivocally denunciatory. It was published only a few days after the transfer of power to the Nazis. The target of the attack was Otto Kirchheimer. He was accused by an anonymous author under the headline "Mister Carl Schmitt's Key Witness" of left social democratic "uniformity"[25] with Schmitt. The author used Kirchheimer's references to Schmitt as further evidence of the communist narrative that the SPD was partly to blame for the establishment of the new fascist regime in Germany. Thus, Kirchheimer in fact stands at the beginning of the genealogy of alleged left-Schmittianism, although the term itself was not actually used.

"Left-Schmittianism" as an explicit label appeared in Germany in the late 1950s under completely different political circumstances. It was used with positive intentions and meant as a self-ascription. German philosopher Wolfgang Wieland coined it to designate a group of younger West German academics who met with Schmitt on a regular basis and who read his works from liberal and social democratic perspectives (see Lübbe 1988, 428).[26] Schmitt—when he heard about it—liked this label for this group (see van Laak 1993, 238). Ten years later, in a different political situation, the term returned with a new wave of Schmitt reception by a number of authors of the New Left. Political activists and academics such as Mario Tronti in Italy, European theorists of the guerilla movements

25 *Unsere Zeit* (15 February 1933, 244).

26 Besides Hermann Lübbe, Odo Marquard, Martin Kriele, and Ernst-Wolfgang Böckenförde also belonged to this group.

in Latin America such as Joachim Schickel, and Johannes Agnoli in Germany in the late 1960s and early 1970s[27] used Schmitt's critique of parliamentary democracy for their revolutionary purposes. Now self-identification as left-Schmittian took on a proud militant tone.

Another decade later, not much was left of such self-assured declarations in the circles of the academic left. Nevertheless, in 1983, Alfons Söllner, following some observations by Volker Neumann about parallels between Schmitt and Kirchheimer in their Weimar writing,[28] found it "attractive" to analyze some of Kirchheimer's Weimar works "under the label of left-Schmittianism" (Söllner 1983, 222). His reintroduction of the term as a key for interpreting Kirchheimer's critical analysis of the Weimar Constitution was gladly accepted by American political theorist Ellen Kennedy. She used the same attribute for other prominent authors of the Frankfurt School too, namely Franz L. Neumann, Walter Benjamin, Herbert Marcuse, and the early Jürgen Habermas. According to Kennedy's controversial interpretation, their contributions to political theory continued—albeit with different political goals—the anti-liberal substance of Schmitt's thought uncritically (see Kennedy 1987a). The discussion that resulted from her allegations was intense—and has not been consensually resolved to this day.[29] What is striking, however, is that most authors from the academic left in this debate insisted on Kirchheimer's—and their own—distance from Schmitt.

The collapse of the Soviet Union led to a temporary acceleration of processes of globalization and the emergence of a unipolar world—two developments that have been identified as key factors behind another change in the discursive field from the 1990s on. In addition, a number of academic political theorists in the West seemed to tire of the normativism and rationalism of political philosophers such as Jürgen Habermas and John Rawls (see Bernstein 2011, 403–404). The discursive field changed again when the reception of Schmitt's writing spread to a new international level. Schmitt became a kind of "sage of the Left and the Right" (McCormick 1998, 830). On the right, he has become a point of reference for authors of the French Nouvelle Droite such as Alain de Benoist. On the left, Schmitt has been hailed by a new generation of authors in Italy, France, Germany, the UK, and the US as an incisive and stimulating author for their political purposes, too. Among a number of contemporary political theorists, left-Schmittianism has become a positive label again. Just like their predecessors in the 1970s, contemporary self-confessed left-Schmittians claim that Schmitt's concepts and arguments are not necessarily contaminated by his lifelong antisemitic attitude and his preference for authoritarian and fascist regimes. They treat Schmitt as our contemporary with important messages that cannot be found in the work of other theorists of the past.

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27 See Schickel (1970) and Müller (2003, 169–180).

28 See Neumann (1981) and (1983).

29 The literature on this subject has become legion. See Habermas (1987), Jay (1987), Kennedy (1987b), Preuß (1987), Schäffer (1987), Söllner (1987), Tribe (1987), Perels (1989), Kohlmann (1992), Scheuerman (1994), Scheuerman (1996), Heil (1996), Scheuerman and Caldwell (2000), Richter (2001), Müller (2003), Schale (2006), Bavaj (2007), Landois (2007), Mehring (2007), Kemmerer (2008), Hitschler (2011), Llanque (2011), Turner (2011), Breuer (2012), Mehring (2014b), Neumann (2015), Olson (2016), Zwarg (2017), Buchstein (2021a), Mehring (2021), Klein (2022), Simard (2023), and Klingsporn (2024).

There are numerous examples of this selective and reconstructive strategy of reception in contemporary political theory: Gopal Balakrishnan in his plea for radical democracy and his critique of US imperialism; Giorgio Agamben in his work on the state of exception; Michael Hardt and Antonio Negri on the genuine capacity of the deterritorializing power of the multitude; Chantal Mouffe in her theory of agonistic democracy and her rejection of a unipolar world; Andreas Kalyvas on the relationship between constituent power, sovereign decision, and democracy; Danielo Zolo on humanitarian international law; Luiza Odysseos on spaceless universalism and cosmopolitanism; Horst Bredekamp in his reflections on the eternal constitutive role of political myths; and Jean-Francois Kervégan on the challenges to liberal democracy.[30] Some of them transform and dilute the meaning of some of Schmitt's concepts and theories to such an extent that the resulting syntheses are only partially Schmittian—at least in my opinion. In any case, all of them choose specific concepts, categories, or theorems from Schmitt and incorporate them into their own theoretical framework, sometimes significantly modifying them in the process. And all of them are keen to do their political due diligence, making all the necessary caveats about Schmitt's completely different political intentions, his antisemitism, and his role in Nazi Germany.

Their differences notwithstanding, contemporary left-Schmittians agree that Schmitt provides unique resources for contemporary political theory, diamonds in the rough, as it were, that can be excavated from his work. The following five theoretical contributions in Schmitt's work are highlighted in the works of the authors listed above: Schmitt's antagonistic concept of the political; his theory of the exceptional state and sovereignty; his declaration of an irreconcilable antagonism between democracy and liberalism; his critique of parliamentarism; and his critique of universalism in international law. Kirchheimer already addressed all five of these subjects, albeit with different results.

What exactly is the meaning of left-Schmittianism in Kirchheimer's case? Is it a fitting characterization of his work at all and, if so, for what timeframe and in what respects? Among other things, my book illustrates how problematic it is to separate some of Schmitt's theoretical concepts and impulses from the overarching context of his legal and political thought. Kirchheimer realized after a short period of time that his original intention to make productive use of Schmitt's key concepts in order to fill the gaps in left-wing political thought was a lost cause. But he still made use of Schmitt's work in several other ways that are well worth exploring—not least in reference to the theoretical weaknesses of today's left-Schmittianism.

30 See Balakrishnan (2000, 2011), Agamben (2003), Hardt and Negri (2004), Mouffe (1999, 2005, 2007), Odysseos (2007), Zolo (2007), Kalyvas (2009), Bredekamp (2016), and Kervégan (2019).

6. Sources

Most aspects of Schmitt's biography are now fairly well known.[31] This is not the case at all for Kirchheimer; his biography has yet to be written. Consequently, the source base for this book is asymmetrical. With regard to Schmitt, I made use of a number of primary sources published in the past decade, almost all of them only in German. These include a new critical edition of his books *The Concept of the Political* and *Staatsgefüge und Zusammenbruch des zweiten Reiches* [The structure of the state and the collapse of the Second Reich] as well as a few minor works; the second and revised edition of his diary-like *Glossarium*; a collection of his Nazi works; his diaries from the years 1925 to 1934; and various editions of his vast correspondence running to many thousands of letters, including with his wife Duška, his editors, journalists, his colleague Rudolf Smend, as well as philosophers, legal scholars, economists, historians, historians, theologians and writers such as Jacob Taubes, Alexandre Kojève, Hans Blumenberg, Gerhard Ritter, Eric Voegelin, Hermann Heller, Ernst-Wolfgang Böckenförde, Moritz Julius Bonn, Carl Brinkmann, Nicolaus Sombart, Reinhart Koselleck, Dietrich Braun, Armin Mohler, Roman Schnur, and Waldemar Gurian.[32] With regard to Kirchheimer, my research had to rely on unpublished documents to a much greater extent. As a matter of fact, I was fortunate to find far more material than expected, a great deal of it scattered in various archives in Germany and the US. The documents also include the correspondence between Schmitt and Kirchheimer. My interviews with a number of witnesses mentioned below also became invaluable sources for reconstructing the relationship between the two.

Every book in the field of history of political ideas has a history of its own, and this book's history is slightly longer than usual. A longer history does not necessarily make a better book; in any case, the reason I mention this history at all is because some of the sources are interwoven with my own academic biography. My interest in both Schmitt and Kirchheimer was piqued at the beginning of my academic career in the early 1980s. Time and again over the past forty years, I have touched upon certain parts of the subject of this book—be it in connection with my early publications about some unknown manuscripts by Franz L. Neumann (1983 and 1986), my monograph on the history of political science in Berlin after World War II in 1992, my books on the history of public and secret voting (2000) and on democracy and lottery (2009), or my editorial work on collections of the writing of Franz L. Neumann (1989), Arkardij Gurland (1991) Ernst Fraenkel (1999–2011), and Hermann Heller (2023). My research related to the edition of Kirchheimer's collected works published in six volumes between 2017 and 2022 brought to light several hitherto unknown aspects of Kirchheimer's political biography and a number of as yet unknown articles and manuscripts of his. After finishing this edition, I initially wanted to move on to new subjects in my academic work. But I changed my mind in response to the reactions to a talk I gave at the New School for Social Research in New York

31 The best biography is by Reinhard Mehring (see Mehring 2014a). A revised German edition was published in 2022 (see Mehring 2022a).

32 All published exchanges of letters with Schmitt are listed by the Carl-Schmitt-Gesellschaft e.V., accessed 5 March 2024, https://www.carl-schmitt.de/wp-content/uploads/CSG_Briefe-von-und-an.pdf.

in February 2019 titled "The 'ugly Jew' and the 'Man of Darkness'—Otto Kirchheimer and Carl Schmitt." The intense discussion that followed my lecture and the critical questions raised by some members of the audience became the starting point for writing this book.

Over the course of my academic career, I have had the good fortune to meet quite a few people who were happy to tell me about their experiences with Kirchheimer and/or Schmitt—be it Richard Löwenthal on the discussions among the radical left in the Weimar Republic about Schmitt's theory of dictatorship; Susanne Suhr on Otto Kirchheimer's eloquence in the political discussions in Café Dümichen, the meeting place of the socialist intelligentsia in Berlin at the end of the Weimar Republic; Henry W. Ehrmann on the intense atmosphere of Schmitt's seminar in Berlin that he and Kirchheimer attended; Herta Zerna and Dieter Emig on the political activities of Kirchheimer and Arkadij Gurland in the left wing of the Weimar SPD; Ludmilla Müller on Kirchheimer's work in the law firm of Franz L. Neumann and Ernst Fraenkel; Reinhard Bendix on the Weimar debates about reforming criminal law; Peter Gay on social scientists' and legal scholars' "hunger for wholeness" in their theories during the Weimar Republic; Albert O. Hirschman on Kirchheimer's poor living conditions in his Paris exile; Leo Löwenthal on the tense relationship between Kirchheimer and Max Horkheimer at the Institute of Social Research; Ossip K. Flechtheim on his and Kirchheimer's contributions to Franz L. Neumann's book *Behemoth*; Lili Flechtheim-Faktor on the difficult living conditions as a German émigré in the United States; Raul Hilberg on the research about antisemitism at the Institute of Social Research; John H. Herz on his collaboration with Kirchheimer at the Office of Strategic Services (OSS) during the war and while preparing for the Nuremberg Trials; Nicolaus Sombart's vivid recollections of Schmitt's antisemitism; Wilhelm Hennis's lively report on Kirchheimer's motives for visiting Schmitt in 1949; Ernst-Wolfgang Böckenförde's impressive portrayal of Schmitt's charisma as a conversation partner; Helge Pross on Kirchheimer's failed attempts to obtain a professorship in Frankfurt; Jürgen Habermas on Kirchheimer's hospitality at his home in Silver Spring; Arthur J. Vidich's anecdotes about Kirchheimer teaching at the Graduate Faculty of the New School for Social Research; David Kettler about Kirchheimer and Franz L. Neumann at Columbia University; Winfried Steffani on Ernst Fraenkel's personal relationship with both Kirchheimer and Schmitt; Jürgen Fijalkowski on the dismissive way Schmitt reacted to criticism of his work; Karl Dietrich Bracher on Kirchheimer's thoughts on the destruction of the Weimar Republic; Wolfgang Mommsen on his interpretation of Max Weber as a forerunner of the theory of plebiscitarian presidential dictatorship and Schmitt's praise for this controversial reading; Gilbert Ziebura on Schmitt's and Kirchheimer's reflections about Charles de Gaulle's *Coup d'Etat permanent* in France; Kurt Sontheimer and Michael Th. Greven on Kirchheimer's comparative research on party systems; Jürgen Seifert on his attempt to ask Schmitt about his relationship with Kirchheimer; Horst Ehmke on Kirchheimer's work on his book *Political Justice* and his decision to return to Germany which he was unable to realize because of his untimely death; Johannes (Giovanni) Agnoli and Angelo Bolaffi on the interest of the Italian radical left in Schmitt's work in the 1960s and '70s; Claus Offe on Kirchheimer's contribution to Frankfurt School critical theory; Ulrich K. Preuß on the rediscovery of Schmitt's work for the German New Left; Alexander von Brünneck on the rediscovery of Kirchheimer's work for critical legal studies; Rainer

Erd on his visit at Schmitt's home in Plettenberg and the conversation with him about Kirchheimer in 1980; and Jacob Taubes's entertaining stories about Schmitt and the friendly correspondence with his—as he used to call him in his seminars—"enemy *par excellence*." In addition to the publications and the documents available in archives, the memories these individuals shared with me are an invaluable source of information for this book.

In addition, I had the opportunity for numerous conversations with Hanna Kirchheimer-Grossman and Peter Kirchheimer about their father's life and work. I came away from these stimulating conversations with new information I could not possibly have obtained any other way. Poring over the documents and photos in their family archive sparked memories they shared with me and helped fill in gaps concerning details of their father's biography.

I am deeply grateful for the opportunity to have spoken with each and every one of these contemporaries of Otto Kirchheimer and Carl Schmitt, all of them witnesses of a vanished epoch. Not least because some of their recollections exist only in my correspondence, in scattered handwritten notes or in my memory only, I felt it important to share them in this book and I hope my readers also find them newsworthy.