

Chapter 10:

Practicing Antisemitism and Analyzing Antisemitism

There can be no doubt that Carl Schmitt was antisemitic.¹ During the Weimar Republic, he only articulated his stance in his publications indirectly,² but he began to do so overtly when the Nazis took over the government in the spring of 1933. In the following five years, Schmitt became one of the constitutional scholars most vocally supporting the Third Reich's policy toward Jews. Whereas Schmitt's antisemitic actions took place before the eyes of the national and international public, it has only recently become generally known that Otto Kirchheimer also addressed the situation of Jews in Europe during the Nazi era. A research paper on antisemitism and the Catholic Church that he wrote in 1943 at the Institute of Social Research was finally published in 2018. He was also involved in the institute's empirical research on the prevalence of antisemitism among blue-collar workers in the US. Schmitt's antisemitism and Kirchheimer's analyses of antisemitism touched on each other multiple times.

The word "antisemitism" was coined in Germany in the latter third of the nineteenth century. From there, it spread to other languages in a matter of years. In contrast to the hatred of Jews in antiquity and Christianity's religious hatred of Jews, antisemitism was—in the antisemites' own understanding—directed against apparent or actual powerful positions of Jews in society, which they called "rule by Jews." It was a reaction to a "Jewish question" that was posed anew, and differently, because of the emancipation legislation. As a political catchword, antisemitism was post-emancipatory. At the same time, German antisemitism was always also a nationalist and anti-liberal movement. Among the various antisemitic streams in the Weimar Republic, Adolf Hitler claimed in *Mein Kampf* that the Nazi movement was not advocating for emotional antisemitism but for a decidedly "scientific antisemitism" that was based on a biologicistic theory of *Rassen* (see Glossary). He also called it "*Antisemitismus der Vernunft*"³ (antisemitism based on rea-

¹ Numerous definitions of antisemitism exist, and there has been an extensive debate around them for decades. This is not the place to go into this debate or to make a decision for or against any particular definition.

² See Gross (2000, 137–261) and Egner (2013, 351–355).

³ See Brumlik (2020, 67). The quote from Hitler is attested in Jäckel and Kuhn (1980, 89).

son). After the NSDAP took over the government, however, the term antisemitism became officially discredited. The Reich Propaganda Ministry admonished people to avoid the word “antisemitic” and instead use “*antijüdisch*” (anti-Jewish).⁴ The *Handbuch der Judenfrage* [Manual on the Jewish question], first published in 1907, went through numerous editions, some with extensive revisions, during the Nazi period. Unlike the 48th edition from 1943, the 49th edition from 1944 gave the following directive on linguistic policy: The “incorrect catchword antisemitism” was to be replaced by the word “*Antijudaismus*” (anti-Judaism, Fritsch 1944, 18).

It is useful to look at the history of the word to better comprehend the decades-long debate over whether Carl Schmitt should be deemed antisemitic. Not surprisingly, Schmitt himself rejected this label, indignantly correcting any mention of it in the secondary literature about him by handwriting “critical of Jews” (see Hofmann 1995, XII) in the margin. Another way in which Schmitt tried to downplay his antisemitism is by using the term “anti-Judaism,” also found in some of the literature. Those who prefer this term to describe Schmitt use a three-step argument.⁵ First, they rigidly differentiate between a biologicistic-racist form of hostility toward Jews (“antisemitism”) and a rejection, based on the Bible and theology, of Judaism as a non-Christian religious community (“anti-Judaism”). In a second step, they give Schmitt credit for his Catholic background and the allegedly strong Catholic motives in his thinking evident in his work so that he can be allocated to the rubric of the tradition of anti-Judaism, which has less of a negative ring to it. In a third step, they either claim (incorrectly) that Schmitt never made biologicistic-racist comments about Jews, or they dismiss⁶ these comments as “lip service”⁷ only. They consider the assumption that he never supported biologicistic-racist thinking to be even more plausible because he did not hold the natural sciences in high esteem.

All this notwithstanding, the claim that biologicistic-racist wording cannot be found in Schmitt’s writings is simply wrong, as I will show in more detail below. In the context of this chapter, the second step seems to be important only in terms of whether there had ever been a clear-cut categorial discontinuity between traditional religiously founded anti-Judaism and a Nazi “Aryan” form of antisemitism. Historian Rainer Walz has demonstrated that reducing the dichotomy to that between non-racist anti-Judaism and racist antisemitism does not do justice to the historical complexity of hostility toward Jews. A strict differentiation between premodern anti-Judaism and modern anti-

4 Directive for the press by the German government as of 22 August 1935, quoted in Nipperdey and Rürup (1972, 151).

5 Many arguments have been advanced countering the Catholic interpretation of Schmitt’s oeuvre; I will not take this debate up again here. See Gross (2000) and (2016), Mehring (2014b, 20–29), and Neumann (2015, 374–391).

6 Although they do in fact differ in various details, all those who absolutely refuse to call Schmitt antisemitic and instead consider him to be part of the Catholic tradition of anti-Judaism apply this same three-step approach. Among the phalanx of apologists for Schmitt, see Schwab (1970), Bendersky (1983), Koenen (1995, 313–318), Tielke (2007), Quaritsch (2018, 85–88), and also the editors of Schmitt’s diaries, Tielke and Giesler (2020, 51–52). Somewhat more nuanced: Strong (1996, xiv–xxiii).

7 Schwab (1970, 101) and Bendersky (1983, 381). Bendersky has slightly softened his position after reading Schmitt’s diaries (see Bendersky 2016, 119).

semitism is historically inaccurate, both for the premodern period and for the nineteenth and twentieth centuries (see Walz 1995).⁸ Moreover, ultimately, there must have been a particular reason why the struggle against those people whom the Nazis called “non-Aryans” in their theories on *Rasse* was primarily a struggle against Jews. As traditional Christian hostility toward Jews was a widespread belief, it served to amplify the propagandistic success of these pseudo-scientific theories. Racist hostility toward Jews cannot be separated entirely from older Christian anti-Judaism (see Katz 1989). The Nazis used all forms of racism and xenophobia in their agitation and were able to build on the religious resentment pervasive in the two largest Churches in Germany, the Catholic and the Protestant Church. Therefore, even if Schmitt’s hostility toward Jews had a different religious source than Nazi antisemitism, it made it easy for him to align himself with the Nazi position (see Meier 1998, 152–156).

1. Schmitt’s view of Kirchheimer: The “vile Jew”

In the early 1990s, two very old friends of Otto Kirchheimer’s—Eugene Anschel, with whom he was friends from his high school days, and John H. Herz, who became one of his closest friends when they worked together at the OSS—looked back on their personal experiences as students of Schmitt’s; Anschel in Bonn in 1927 and Herz in Berlin in 1928. Both referred to Schmitt’s *Concept of the Political*. Antisemitism played an important role in both their memoirs. When Schmitt defined the enemy as “the stranger,” “the other,” as one who is “in an especially intense way, existentially something different and alien,” or as an adversary who “must be repulsed or fought in order to preserve one’s own form of existence” (see Schmitt 1932a, 27), his readers at the time understood these definitions of the enemy very specifically, their linguistic vagueness notwithstanding. “Nobody faced with such enemy definitions,” Herz said after listening to Schmitt in person a couple of times in Berlin, “could escape a hidden, code-word type of reference” (Herz 1992, 308). Anschel, too, wrote that no one reading or listening to Schmitt’s words at that time in Bonn could avoid associations with the antisemitic propaganda during the Weimar Republic that portrayed Jews as “alien,” as “the other,” who, despite all efforts to integrate, would always be outsiders hostile to, and endangering, the German “Aryan” way of life. The same is true of sociologist Werner Sombart contrasting *Helden* (heroes) and *Händler* (merchants), which Schmitt regularly referenced in his seminars. According to Anschel, Schmitt not only stylized the Germans into heroes, as opposed to British merchants, but simultaneously linked the allegedly specific mentality of merchants and shopkeepers with a denigrating characterization of Jews (see Anschel 1990, 85).

Along with Eugene Anschel and John H. Herz, Kirchheimer had also registered the antisemitic tone Schmitt took in his Bonn days. In 2021, George Schwab reported in his memoir about his own failed dissertation at Columbia University in 1961⁹ that Kirchheimer had claimed that Schmitt “was already an anti-Semite during the Weimar period” (see Schwab 2021, 175). Schmitt’s diaries from 1925 to 1934, which were published

⁸ Walz uses the term “genealogical racism” as a common category.

⁹ This incident will be discussed in Chapter 17.

in 2010 and 2018, provide additional evidence of his antisemitic attitude even before his involvement in the Nazi regime. The diaries are filled with numerous notes about “a vile *Ostjude*,”¹⁰ “vile Jewish women on the Kurfürstendamm,”¹¹ “creepy: Jews and socialists,”¹² referring to Berlin: “a shame and a disgrace that I am in this Jewtown, insulted and defiled by Jews;”¹³ the “vile noise of the Jew-children and rabbis”¹⁴ in the neighborhood; meeting a “likable man, hopefully not a Jew;”¹⁵ “Jews being chosen and depraved;”¹⁶ “disgust about being poisoned by Jews;”¹⁷ and a “dream: the attack of *Juda*, I am murdered”.¹⁸ From mid-1930 to early 1933, his statements about Jews became increasingly frequent, disparaging, and aggressive, and, as of spring 1933, his diaries are literally riddled with antisemitic passages. Now, he also used the words “*ordinär*” (vulgar), “*gierig*” (greedy), “*elend*” (squalid), and “*betrügerische Assimilanten*” (fraudulent assimilationists). Readers have the impression that Hitler’s takeover of the government opened another outlet for Schmitt to express his antisemitism.

This increase in Schmitt’s antisemitic statements can be observed in relation to Otto Kirchheimer, too. He had invited him over for dinner one evening in November 1931. Schmitt wrote about his wife’s behavior when Kirchheimer was at their home: “Duška foolishly talks about the Jews.” And about the later part of the evening, when Schmitt and Kirchheimer had gone to a tavern to continue their conversation: “had a nice chat, I like him.”¹⁹ In the following months, Schmitt repeated multiple times how much he liked Kirchheimer. That changed when the political controversies between the two became increasingly intense in the summer of 1932.²⁰ It was in August 1932, when Schmitt had taken a prominent stance in relation to the coup of the Reich against Prussia and Kirchheimer had severely criticized him for this in an article, that Schmitt first used the word *scheußlich* (vile) to describe Kirchheimer in his diary: “Went for a walk through the Tiergarten [park] with Kirchheimer, vile fellow.”²¹ Previously, he had mostly used the word to describe other Jews, but not Kirchheimer. After Schmitt received the manuscript of Kirchheimer’s fundamental critique of his work *Legality and Legitimacy*, they met in person to discuss the matter but did not reach a consensus. Exasperated, Schmitt noted in

10 “*Ein scheußlicher Ostjude.*” Carl Schmitt, diary entry of 10 January 1930 (Schmitt 2010, 4). *Ostjude* was a derogatory term for an Eastern European Jew.

11 “*Scheußliche Jüdinnen auf dem Kurfürstendamm.*” Diary entry of 30 July 1931 (Schmitt 2010, 128). Kurfürstendamm was the entertainment street in the west of Berlin.

12 “*Unheimlich, Juden und Sozialisten.*” Diary entry of 4 August 1931 (Schmitt 2010, 130).

13 “*Scham und Schande, daß ich in dieser Judenstadt bin, von Juden beleidigt und geschändet.*” Diary entry of 24 December 1931 (Schmitt 2010, 160).

14 “*Scheußlicher Lärm der Judenkinder und des Rabbis.*” Diary entry of 21 August 1932 (Schmitt 2010, 210).

15 “*Sympathischer Mann, hoffentlich aber kein Jude.*” Diary entry of 15 November 1932 (Schmitt 2010, 235).

16 “*Die Auserwähltheit und Verworfenheit der Juden.*” Diary entry of 14 January 1933 (Schmitt 2010, 252).

17 “*Ekel vor der Vergiftung durch Juden.*” Diary entry of 23 January 1933 (Schmitt 2010, 255).

18 “*Traum: der Anschlag von Juda, ich werde ermordet.*” Diary entry of 12 September 1927 (Schmitt 2018, 162). In German, *Juda* is a negative term for the totality of Jews.

19 Carl Schmitt, diary entry of 21 November 1931 (Schmitt 2010, 146).

20 For more on this, see Chapter 6.

21 “*Mit Kirchheimer durch den Tiergarten, scheußlicher Kerl.*” Diary entry of 25 August 1932 (Schmitt 2010, 210).

his diary: "It is pointless to speak with him, he simply does not want to see it. Vile, this Jew."²²

2. Schmitt as an antisemitic Nazi propagandist

Schmitt agreed with the first rapid steps of Nazi policy toward Jews even before he publicly professed his allegiance to the Nazi regime and began to support it with his work on constitutional law. He noted in his diary that he was positively impressed by the boycott of Jewish stores declared by the NSDAP on 28 March 1933 under the pretense of world Jewry allegedly having declared war²³—not without expressing his concern about some Jews who were his personal friends.

Just a short time later, Schmitt also declared his agreement with Nazi policy toward Jews publicly.²⁴ He played an active part in the new regime firing Jews and social democrats from universities and simultaneously made sure that students of his would be appointed to the now vacant chairs.²⁵ The antisemitism he propagated in numerous lectures and written works intensified in the years 1933 to 1938. As a young man, Nicolaus Sombart, an eccentric Berlin intellectual whose father, economist and sociologist Werner Sombart, had been friends with Schmitt since the 1920s, knew Schmitt well from many personal conversations on long walks in Berlin. He concluded in retrospect that in these public statements, Schmitt clearly and frankly spoke his mind and could at last "reveal his deepest, innermost conviction in an unguarded way" (Sombart 1997, 279).

A closer look at Schmitt's choice of words and way of arguing in his public statements during these years reveals, as I see it, five stages of systematic escalation.²⁶

The first stage can be called somewhat muted antisemitism. It begins with Schmitt's article "Das gute Recht der deutschen Revolution" [The undeniable right of the German revolution], which he published on 12 May 1933 in the NSDAP rag *Westdeutscher Beobachter* [West German observer], twelve days after joining the party. The article made clear that combating Jewry and Judaism were at the center of the "national revolution" that Schmitt supported with his work on constitutional law. The specific purpose of the article was to justify the *Gesetz zur Wiederherstellung des Berufsbeamtenstums* (Law for the Restoration of the Public Civil Service), which had been enacted three weeks earlier. All the subjects Schmitt addressed were linked in one way or another to the "Jewish question" through the polemic concept of *Gleichartigkeit* (see Glossary), which Schmitt considered to be the

22 "Es hat keinen Zweck mit ihm zu sprechen, er will einfach nichts sehen. Scheußlich, dieser Jude." Diary entry of 6 November 1932 (Schmitt 2010, 231).

23 On the day of the organized boycott, which Schmitt experienced in downtown Jena, he wrote: "Met Koellreutter, had a nice conversation, very much in agreement about the Jews." "Boycott of the Jews, it did impress me." Diary entries of 29 March 1933 (Schmitt 2010, 275).

24 On antisemitism in Schmitt's activities and publications during the Nazi period, see Rüthers (1990, 96–103), Gross (2000, 42–136), Blasius (2001, 157–169), Mehring (2014a, 328–348), Neumann (2015, 174–399), and Mehring (2022, 364–387).

25 For example, Ernst Forsthoff was appointed to Hermann Heller's former chair in Frankfurt am Main.

26 For the following, see Buchstein (2021c).

key to the “entire body of laws at hand.”²⁷ The new provisions on civil servants, attorneys, and physicians “cleanse[d] public life of non-Aryan *fremdgeartete Elemente* (elements foreign/alien to the *Volk* in an exclusionary and antisemitic sense; *Elemente* was a contemptuous term for opponents; *Volk*: people/nation in a racial sense, of common blood and with a common destiny; see Glossary and Translator’s Preface), thereby securing the “*eigenvölkische Art der deutschen Geschlechter*” (German houses)²⁸ uniformity as a *Volk* of their own). “Kein Fremdgearteter [No one foreign/alien to the German *Volk*] should interfere in this “great [...] process of growth [...] even if they might have good intentions.” On the new law, he wrote: “A *Volk* awakes to awareness of its own *Art* [the state of being characterized by *Blut* and *Rasse*; see Glossary] and recurs to itself and its peers.”

A new revised edition of Schmitt’s *Concept of the Political* was published at the same time as this article. In that work, he had emphasized that the ability to distinguish between friend and enemy was the decisive prerequisite for every political unit, so an invisible assimilated enemy represented the greatest challenge to his concept of the political. By referring back to his concept of the political, Schmitt supported the Nazis’ intention to create ethnic *Gleichartigkeit* by proposing a radical and incisive definition of the enemy. The differentiation between *Gleichartigen* and *Fremdgearteten* (those belonging to the German *Volk*; those foreign/alien to the German *Volk*, in an exclusionary and antisemitic sense) became the epitome of his political thought, as the following maxim from his May 1933 article makes clear: “We learn once again to differentiate. Above all, we learn to differentiate friend and enemy properly” (Schmitt 1933b, 28).

Two things in this article stand out. First, that Schmitt replaced, or concretized, the neutral term *Homogenität* (homogeneity), which he had used during the Weimar Republic, with the term *Gleichartigkeit* here. In so doing, he used *Gleichartigkeit* as a biologistic metaphor. Yet he did not define the substance of this *Gleichartigkeit* more precisely, applying positive criteria. Instead, although Schmitt called it something “deeper,” he differentiated it from other words only in a negative sense. Second, Schmitt did not mention Jews explicitly even once in the entire text. Instead, he chose paraphrases and allusions. For example, he criticized the *Rechtsstaat* for making it possible for “usurers” (Schmitt 1933b, 29) to have driven thousands of German peasants into misery. This was one of the most commonly used stereotypes of Jews in German antisemitic propaganda. Schmitt also insinuated that legal positivism was a Jewish way of understanding the law. The legal positivists defended legal equality. Schmitt ironically illustrated this claim with the following words: “baptized was baptized” (Schmitt 1933b, 29). Thus, he insinuated that unbaptized people did not deserve to be integrated as equals into the German legal community. He also criticized the formalism of legal positivism. He wrote: “Thousands of *Fremde* (people foreign/alien to the *Volk*, in an exclusionary and antisemitic sense) were permitted to change their names which would have identified them and received the permission of the authorities to deceive harmless Germans by using names that give the impression of trustworthiness” (Schmitt 1933b, 29). In other words, if Jews were permitted to change their names, then “harmless Germans” would not realize they were in fact dealing with

27 This and the following quotes are from Schmitt (1933b, 28–31).

28 Houses in the sense of kinship groups of virtually noble lineage; emotionally charged term evoking mystical blood ties (see Translator’s Preface).

Jews, whom he considered untrustworthy by definition. Here, Schmitt connected anti-liberal and antisemitic polemics, as was typical under Nazism. Even if he did not mention Jews explicitly in the article cited —just as in his other legal commentaries from the first months of his renewed involvement in constitutional law²⁹— he could safely assume that these whispered intimations made abundantly clear to his readers what he was talking about: namely, that Jews were the beneficiaries of equality before the law and the liberal state under the rule of law, which he vilified, at the expense of non-Jewish Germans.

In the 1933 edition of *The Concept of the Political*, Schmitt even took a further semantic step by connecting the political concept with racist and biologistic ones. A newly added passage reads:

For this reason, only those involved can identify cases of extreme conflict; in particular, each of them can only decide themselves whether the characteristic of the *Fremde* [foreigners/aliens, in an exclusionary and antisemitic sense] of being different implies the negation of their own kind of existence in the concrete case of conflict at hand, for which reason it must be repelled or fought against in order to rescue their own way of life commensurate with their own way of being (Schmitt 1933i, 8).³⁰

In the revised edition, *Fremde* becomes identical to *Feind*. Schmitt complemented the original term *Feind* (enemy) with that of the *Fremde* (foreigner/alien, in an exclusionary and antisemitic sense) in that he still used “enemy” but added the meaning of *Fremde* to it (see Schmitt 1933i, 6 and 8). Thus, he transformed the dichotomy of friend and enemy into the dichotomy of *artgleich* (belonging to the *Volk*, in an exclusionary and antisemitic sense) and *artfremd* (foreign/alien to the *Volk*). Anyone who was not of the same *Art* was therefore automatically an enemy.

The second stage was antisemitism expressed as a form of biologicistic racism. It started with Schmitt’s lecture at the Deutsche Juristentag, a conference in Leipzig in October 1933. Addressing the audience of 12,000 legal experts as “Dear *Volksgenossen* [Volkscomrades; see Translator’s Preface regarding *Volk* as a prefix],” Schmitt opened the conference on the morning of 3 October and Hitler gave the closing speech in the evening. Schmitt noted in his personal diary that day: “Wonderful speech by Hitler about the total state. I feel very comforted.”³¹ In his own speech, Schmitt replaced the term he had previously used, *Gleichartigkeit*, with “*Artgleichheit*” (Schmitt 1933f, 67) (belonging to the *Volk*). Although both terms are comprised of the same components *Art* (the state of being characterized by *Blut* and *Rasse*, see Glossary) and *gleich* (equal, similar, alike), there is a subtle but important difference in meaning: whereas *Gleichartigkeit* may or may not be used in a biologicistic sense, *Artgleichheit* is unequivocally biologicistic (see Glossary). Schmitt’s use of the term in October 1933 was certainly biologicistic.³² For one thing, he declared *Artgleichheit* to be the “key concept” of the new Nazi state “indispensable for

29 See Schmitt (1933a), (1933g), and (1933h).

30 For a systematic comparison of the different versions of this passage in the book, see Walter (2018, 284–286).

31 Carl Schmitt, diary entry of 3 October 1933 (Schmitt 2010, 305).

32 With this interpretation, I contradict those interpretations that draw a fine line between a biologicistic form of antisemitism promoted by the Nazis on the one hand and Schmitt on the other.

reasons of legal systematics.” For another, he linked *Artgleichheit* with the concept of the *Führer* (Schmitt had not done so previously with the concept of *Gleichartigkeit*): “*Führen* [literally: leading; see Glossary on the concept of the *Führer*] is not commanding; *Führen* is not a dictatorship; *Führen* is something that rests on the *Artgleichheit* [state of being of the same *Art*] of the *Führer* and *Gefolgschaft* [subordinates, see Glossary]” (Schmitt 1933f, 67).

Although he added that the concept of *Artgleichheit* was “basically clear” and had already “prevailed,” Schmitt again avoided giving a more precise definition of this biogistic notion he had elevated to become his key concept. Instead, he gave specific examples with the intent of triggering particular associations among his audience. For instance, he emphasized the legitimacy of the Nazi revolution; Nazi legality had to be “*wesens- und artgetreu* [faithful to its own essence and *Art*, the state of being characterized by *Blut* and *Rasse*; see Glossary]” (Schmitt 1933f, 68). And Schmitt added: “We need not permit a *Volk* with a different opinion or mindset to lecture us about this” (Schmitt 1933f, 68). Thus, Schmitt constructed a connection between *Art* (see Glossary) and *Denken* (thinking). The *Artfremde* (individuals alien to the *Volk*) could not think in a German way, even if they wanted to. They could not leave behind the biological character with which they were endowed by adopting German cultural practices. The thrust of these words of Schmitt’s is unequivocal: it was Jewish jurists who remained *fremd* to the German manner of legal thinking.

At the end of his talk in Leipzig, Schmitt offered his audience another subject for antisemitic association: the will of the *Führer* was directly applicable law and “we” Nazis should not permit ourselves to be misled by sophistic antitheses about politics and law. Following the will of the *Führer*, Schmitt stated, “is, as Heraclitus said, also a *nomos*” (Schmitt 1933f, 68). The concept of the *nomos* was to replace the concept of the liberal rule of law. Schmitt used the ancient Greek word *nomos*³³ in the sense of a particular spatial order, a particular social unit, and a particular “*Ortung und Ordnung* [spatial location and order]” (Schmitt 1933f, 68). Schmitt’s turn to the new term *nomos* evoked antisemitic associations, too: the concept of the *nomos* liberated allegedly German legal thinking on the one hand from allegedly Jewish legal thinking on the other, with the former rooted in the will of the *Führer* and the latter characterized by thinking in terms of laws and by its purported strictness, fetish for rules, and mercilessness.

The third stage was explicit outspoken antisemitism. It was only now that Schmitt explicitly mentioned the Jews he was fighting by name. He did so for the first time in his essay “Nationalsozialistisches Rechtsdenken” [Nazi legal thinking] in the spring of 1934, in which he presented a summary of German legal history from a Nazi perspective. In this view, the legal system in Germany during the Middle Ages was characterized by the type of the wise, experienced, and just man of “*gesund* concrete-order thinking” (concrete-order thinking corresponding to the norm of the NSDAP; see Translator’s Preface

See Bendersky (1983, 227–236), Koenen (1995, 313–318), Strong (1996, xiv–xvii), Tielke (2007), and Tielke and Giesler (2020).

³³ The ancient Greek word *nomos* has two meanings: *nómōs* (emphasis on the first syllable) in the legal sense of “law” and *nomós* (emphasis on the second syllable) in the spatial sense of “district.” Schmitt connected these two semantic aspects in his use of the word (see Chapter 12).

and Glossary) (Schmitt 1934h, 157). This harmonious legal concord had been disrupted from the fifteenth century on, when a type of legal thinking oriented toward Roman law began to prevail. With its abstract rules and difficult, delicate differentiations, it became a kind of book learning removed from the problems of practical life. Yet the “normativist type of thinking” did not achieve a breakthrough in Germany until the nineteenth century. Schmitt traced the cause of this development back to the “influx of the Jewish guest-*Volk*” (Schmitt 1934h, 159). He mentioned two reasons why Jews had played a decisive role in this fallacious development of legal thinking in Germany. First, “because of the *Eigenart* (nature, or: its own *Art*, the state of being characterized by *Blut* and *Rasse*, see Glossary) of the Jewish people, which for millennia had been living not as a state and on one soil but only in the law and the norm, and was, in other words, most literally ‘existentially normativistic’” (Schmitt 1934h, 159). Second, not only was normativism part of Jewish nature but it was also in their practical interest. “A *Fremder* [a person foreign/alien to the *Volk*],” Schmitt claimed, viewed the right of a *Volk* hosting him “solely from the aspect of legal certainty” (Schmitt 1934h, 159). And, he continued, that was not even surprising, given that “the Jewish guest-*Volk* does not belong to the reality of the *Volk*, the reality in which it lives” (Schmitt 1934h, 159). “*Der Jude*” (see Glossary) simply wanted the law to be “the schedule in order to know when and where he can embark or disembark” (Schmitt 1934h, 159). Although another reason was not mentioned explicitly by Schmitt, it is a subtext at various points of the article: he obviously felt that Jews were the people of the book and of constant interpreting and disputing and could therefore outdo their fellow (non-Jewish) German jurists in such debates.

In the fourth stage, Schmitt expressed his antisemitism not only explicitly but also militantly. It began with Schmitt’s commentary on the infamous Nuremberg Laws passed on 15 September 1935 at the Reichsparteitag der Freiheit (Reich Party Rally of Freedom) held in Nuremberg. At the party rally, Hitler proclaimed the *Reichsbürgergesetz* (Reich Citizenship Law), the *Reichsflaggengesetz* (Reich Flag Law), and the *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre* (Law for the Protection of German Blood and German Honor). One new aspect of these laws was that they were no longer about “non-Aryans” but explicitly about “Jews.” According to the Nuremberg Laws (see *Reichsgesetzblatt I* 1935, 1145–1147), marriages “between Jews and citizens of German or *artverwandten Blutes* [blood related to the German *Art*, the state of being characterized by *Blut* and *Rasse*, see Glossary]” were prohibited, and Jews were banned from hiring “Aryans” as domestic staff or hoisting the Reich flag. Violations of these laws were subject to severe punishment. Only two weeks after the laws were proclaimed, Schmitt commented on them for the *Deutsche Juristen-Zeitung*. He praised the new laws, calling them “the constitution of freedom, the core of our German law today” (Schmitt 1935a, 282). Countering the oppression of Germans as “slaves to interest and wages,” countering “Germany’s enemies and parasites,” countering the “demon of *Entartung* [degeneration or decline due to biological or cultural factors; see Glossary],” countering *geistige Fremdherrschaft* (rule over the minds/spirit/intellect of the *Volk* by foreigners/aliens, in an exclusionary and antisemitic sense), the Nazi revolution had finally made the concepts of the constitution “German again.”³⁴ In other words, Schmitt considered the Nurem-

34 All quotations in this sentence are from Schmitt (1935a, 282–284).

berg Laws to be Germany's new constitution. For decades, German lawyers and legal scholars had been entangled in the "conceptual web of un-German systems" (Schmitt 1935a, 283) and had surrendered to liberalism. This epoch of German legal history had now been brought to an end once and for all. If that were to prove untrue, Schmitt uttered an open threat to Jews:

The Führer has mentioned that in the event that the current regulation of the situation of the Jews does not achieve the desired result, there would be the possibility of a fresh review, and he presented the prospect that then, a law would assign the solution to this question to the party. This is a serious warning (Schmitt 1935a, 283).

As combative as Schmitt sounded here, he was barely capable of saying anything at all about the characteristics distinguishing "Aryan" and "Jewish" by using expressions such as the "voice of German blood" (Schmitt 1935a, 282) or "German substance" (Schmitt 1935a, 283). That did not change when he spoke about applying the Nuremberg Race Laws in practice at the annual conference of the German branch of the International Law Association in October 1935, giving reasons for the ban on non-Jewish Germans marrying Jews abroad (see Schmitt 1935c, 377–384).

Following the Nuremberg Laws, Schmitt and others provided the academic foundations for the antisemitic measures in the Reich. During a trip to Italy in spring 1936, Schmitt called "the problem of *Rasse*" (Schmitt 1936e, 334; see Glossary) the greatest difference between Nazi and fascist legal science and praised the "biological well-being" of the German *Volk* in the form of its "purity of blood" (Schmitt 1936f, 346), which was the objective of the Nuremberg Laws. In his lectures at the university in Berlin, he also made strongly antisemitic remarks in the presence of his students (see Mehring 2014a, 342). Schmitt's militant antisemitism in his publications and his role in organizing legal scholarship culminated in the autumn of 1936. On 3 and 4 October 1936, a conference of the former Bund Nationalsozialistischer Deutscher Juristen (Association of National Socialist German Legal Professionals, BNSDJ), which had been renamed Reichsgruppe Hochschullehrer des Nationalsozialistischen Rechtswahrerbundes (NSRB; see Glossary), took place under his direction.³⁵ Preparations for the conference had already begun in early 1936, that is, even before the point in time when Schmitt realized that the SS-*Sicherheitsdienst* (intelligence service of the Third Reich, SD) was gathering information about him.³⁶

Schmitt formulated three guiding principles in his keynote speech. He started with a "statement by the Führer in his book *Mein Kampf*" (Schmitt 1936c, 482). Schmitt reminded his audience of Hitler's remarks about Jewish "dialectics"³⁷ in the book and chose another quote from the book as the first guiding principle for his talk: "By fending off the

³⁵ For more details about this conference, see Hofmann (1988).

³⁶ The point in time is relevant inasmuch as some authors cling to the legend that Schmitt had organized the conference merely as a means to protect himself against the SD's harassment; in this vein, see Bendersky (1983, 234–237), Koenen (1995, 709–720), and Tielke (2007).

³⁷ Schmitt (1936c, 482). See Hitler (1925, 225).

Jew, I fight for the work of the Lord" (Hitler 1925, 231).³⁸ In his second guiding principle, Schmitt stated that legislation on *Rasse* had been successfully completed. But now, what remained was the following task: "tireless education to keep the German *Volk* engaged in recognizing the Jewish danger" (Schmitt 1936c, 483). In his third guiding principle, he reminded his audience of the "deadly poison" (Schmitt 1936c, 483) with which Jewry and Judaism had for decades permeated the German state and science unhindered. Schmitt demanded that his audience and the German legal community as a whole should take a significantly more combative stance toward Jewry and Judaism: "A merely emotional antisemitism and general rejection of some particularly obtrusive and unpleasant Jewish phenomena are not enough; what is needed is security based on knowledge"³⁹ (Schmitt 1936c, 482). Adolf Hitler, Schmitt told his audience, had already found such security based on knowledge as a young man in Vienna before the war—Schmitt may have alluded to Hitler's wording "*Antisemitismus der Vernunft*" (antisemitism based on reason), mentioned above.⁴⁰ Such security based on knowledge was also necessary according to Schmitt because the Germans had proven to be particularly susceptible to "Jewish infection" (Schmitt 1936c, 484) in the past. It was only thanks to the scientific study of *Rasse* that the difference between the Jews and all other *Völker* (peoples/nations in a racial sense, of common blood and with a common destiny; see Glossary) had finally been identified clearly.

In his closing remarks, Schmitt mentioned a number of specific measures that had to be taken in order to make the knowledge gained from the scientific study of *Rasse* directly applicable in the practice of law. Schmitt demanded that a bibliography be prepared with precise information about which author in the field of law "[was] a Jew and which [was] not a Jew" (Schmitt 1936d, 486). Building on this work, the next step would be a "cleansing of the libraries"; thus, students were to be "protected from confusion" (Schmitt 1936d, 487). Third, he thought the problem of citations was of decisive importance. Following a conference like the one that had just taken place, it was "no longer possible to quote a Jewish author like any other author" (Schmitt 1936d, 487). It was nothing less than irresponsible to quote a Jewish author as an authority in an area of the law. Jews *per se* had no authority in German legal thinking. If a Jewish author was to be quoted nonetheless, then the word "Jewish" had to be added. Then and there, Schmitt helped his audience become accustomed to this new practice of attaching a literary yellow star, speaking of the "Jew Kelsen" and calling Friedrich Julius Stahl, the ideological leader of the Protestant Prussian high conservatives, "Stahl-Jolson"⁴¹ to indicate that he had been born into a Jewish family and had only later converted to Christianity. Mentioning the word "Jewish," he claimed,

38 "Indem ich mich des Juden erwehre, kämpfe ich für das Werk des Herrn" (Hitler 1925, 231), see Schmitt (1936a, 483).

39 "*Erkenntnismäßige Sicherheit*" (Schmitt 1936c, 482).

40 For a discussion of Hitler's wording in the context of Schmitt's antisemitism, see Gross (2000, 54–55 and 125–126).

41 Schmitt attempted multiple times in various works to expose how the most influential political philosophers of Prussian arch-conservatism had been deceived by Jews, see (1933c, 34), (1935a, 282), (1936g, 262), and (1938a, 69–75). However, it seems he had doubts about exposing Stahl as Jewish and began to research Stahl's genealogy. In a letter to Ernst Jünger dated May 1935, he reported that he wanted to spend a whole day in the archive in Wolfenbüttel to "collar der Jude [...].

would bring about a “holy exorcism” (Schmitt 1936d, 488). Fourthly, Schmitt took on the question of future research into legal history. He suggested setting several dissertation subjects examining what he considered to be the detrimental Jewish influence on legal thinking in Germany in the past.

At the end of his closing remarks, Schmitt returned to the fundamental principles once again. “*Der Jude*” (see Glossary) had “a parasitic, a tactical, and a merchantlike relationship” (Schmitt 1936d, 489) to German intellectual labor; with his soul of a merchant, he was to be found wherever he could make a profit (Schmitt 1936d, 489). One of the “diabolical traits” of *der Jude* that Schmitt mentioned was that others could not easily detect him. Jews could even be found among nationalists and conservatives. He explained this phenomenon of ideological diversity, which he described as a problem, with the “overall Jewish behavior of changing masks, reflecting diabolical ulterior motives” (Schmitt 1936d, 490). Schmitt thus linked up with the biblical image of the Antichrist as well as Hitler’s social Darwinist notion of Jewish virtuosity in mimicry. The global power of “*der Jude*” did not tolerate *völkisch* (of the *Volk*, chauvinistic-nationalistic, antisemitic; see Glossary) productivity. Otherwise, his own kind of existence would be proven wrong. With reference to Hitler and his warning of “Jewish dialectics” in *Mein Kampf*, Schmitt declared “*der Jude*” to be the “mortal enemy of any true productivity of another *Volk*” (Schmitt 1936d, 490, 491).

Jewish legal scholars who had been driven into exile keenly observed and vehemently commented on the conference Schmitt had organized. The most extensive reaction was from Hugo Sinzheimer in his exile in the Netherlands. During the Weimar Republic, Sinzheimer had been the editor of the journal *Die Justiz*, which had published some of Kirchheimer’s work. *Die Justiz* was published by the Republikanische Richterbund (Republican Judges’ Association), the small organization of the minority of jurists loyal to the republic. Kirchheimer and Sinzheimer had met at its events and knew each other well from Social Democratic Party circles.⁴² Two years after Schmitt’s conference, Sinzheimer’s book *Jüdische Klassiker der deutschen Rechtswissenschaft* [Classic Jewish authors of German legal science] was published in Amsterdam. In twelve individual portraits, he described the contributions of Jewish jurists to legal thought in Germany during the nineteenth century and the first third of the twentieth century. Sinzheimer directly attacked Schmitt and his talk of the diabolical Jewish masquerades in the final chapter, employing a dual strategy. First, he showed that the image of the masquerade fit best of all to the German Romantic Adam Müller, whom Schmitt had derided in his 1919 book *Political Romanticism*. Second, Sinzheimer accused Schmitt of staging such masquerades himself by supporting the Nazi regime; after all, he had celebrated Hugo Preuß, who was Jewish, as a great and fearless legal expert in 1930, among others. “A mask has fallen”—it was with these words that Sinzheimer summarized his remarks

Joel Jolson again.” Letter from Carl Schmitt to Ernst Jünger dated 24 May 1935 (Schmitt and Jünger 1999, 48).

42 Hugo Sinzheimer survived the German occupation of the Netherlands in hiding. He died of exhaustion a few days after liberation in 1945. Kirchheimer later wrote a touching commemorative article (Kirchheimer 1968a).

about Schmitt—"but the mask that has fallen is not a Jewish mask" (Sinzheimer 1938, 247).

In the fifth stage, Schmitt cloaked his antisemitism in pseudoscientific terms. The manifest expression of this phase is Schmitt's 1938 book *The Leviathan in the State Theory of Thomas Hobbes*. An initial attempt is to be found in his 1937 lecture in Berlin "The State as a Mechanism in Hobbes and Descartes" in which he believed he could prove the subversive influence of Jewish thinking using the example of Jean Bodin, the French jurist and political theorist of the concept of sovereignty. Bodin had been familiar with kabbalistic writing, and consequently identified Leviathan as being an "all-demanding Moloch or an all-trampling Golem" (Schmitt 1937c, 95). Schmitt stated that it was imperative to conduct "detailed historical research" (Schmitt 1937c, 95) on the kabbalistic utilization of the myth of Leviathan.

Schmitt claimed to fill this alleged gap in the book he published a year later. In his foreword to *The Leviathan*,⁴³ he emphasized that he would treat the subject "with scientific objectivity" (5). Schmitt's central hypothesis about the failure of the symbol of Leviathan and the separation of the internal and the external has already been described in detail in the previous chapter. In the present chapter, I would like to add how Schmitt argued that it had even been possible that the crack integral to Hobbes's theory of the state had resulted in the entire theory coming apart. Schmitt stated that "a liberal Jew noticed the barely visible crack" (57) in the theoretical justification of the sovereign state shortly after *Leviathan* had been published. Jewish philosopher Baruch de Spinoza had immediately taken the seed planted by Hobbes in separating the internal and the external to its extreme outcome "until the opposite was reached" (57) and the "Leviathan's vitality was sapped from within and life began to drain out of him" (57). As a Jew, Spinoza had approached Hobbes's theory of the state from the outside and had purposefully misrepresented it. Whereas Hobbes had primarily been concerned with public peace, Spinoza had made the opposite, namely individual freedom of thought, his form-giving principle. Spinoza had thus undertaken "*eine kleine, umschaltende Gedankenbewegung aus der jüdischen Existenz heraus* [a small switch in his thinking arising from his Jewish existence]" (Schmitt 1938d, 88–89).

Although Schmitt felt that freemasons, illuminates, Pietists, Rosicrucians, and all kinds of other sectarians were also among the advocates of such inner reservations, it was "above all" the "restless spirit of *der Jude*" that knew best how to "exploit the situation" (60) until the relationship of public and private was turned upside down. Schmitt mentioned Moses Mendelssohn, the German-Jewish philosopher of the Enlightenment, by name; endowed with the "unerring instinct" for undermining state power, he served to "paralyze" the German *Volk* and to "emancipate" (60) his own Jewish *Volk*. Schmitt characterized the role of Friedrich Julius Stahl, who championed the "monarchical principle," as particularly perfidious here, again using the name "Stahl-Jolson." Stahl had been the "boldest" (70) representative of the "Jewish front" (70). He had outright infiltrated the Prussian state and the Protestant Church in order to "confuse ideologically and paralyze spiritually" (70) the inner core of Prussian statehood. Schmitt discerned in Stahl's plea for

43 See Schmitt (1938a). The following page numbers refer to this book.

a moderately constitutionally bound Prussian monarchy what he considered the typical Jewish “deceitful manner to mask his motivation” (70).

Schmitt used this to construct an antisemitic stab-in-the-back myth of his own: the constitutional monarchy à la Stahl, Schmitt claimed, had ultimately resulted in the Prussian military state having to collapse under the severe test of World War I in October 1918. Schmitt argued that Stahl had contributed to “continuing the metaphor, done his part to *verschneiden* a Leviathan full of vitality.”⁴⁴ The German word “*verschneiden*” has four semantic fields: (1) to cut incorrectly, (2) to cut back, as in pruning a hedge, and (3) to castrate. Moreover, *verschneiden* is close to the German word *beschneiden* (to circumcise), and (4) it could be construed as “to circumcise incorrectly”; it conjures up associations of a castration performed by or on a Jew. A Jew is circumcised—and to Schmitt, that also symbolized his intellectual castration. In any case, Schmitt intended a negative connotation here.

A second aspect of Schmitt’s work on *Leviathan*, which he considered to be strictly scientific, refers to the origins and varying interpretations of the biblical myth of Behemoth and Leviathan. Schmitt closely linked this discussion with the history of the reception of *Leviathan* he described. He made a rough distinction between two lines of argument that had been developing since the Middle Ages: one Christian, to which he devoted only a few lines, and one Jewish, which he explored in more depth. For it was the “traditional Jewish interpretation” (82) of the myth of Leviathan that he considered to be responsible for the failure of Hobbes’s symbol. Schmitt believed this interpretation was the specific expression of the “unique, totally abnormal condition and attitude” (8) of the Jewish *Volk* toward other *Völker*. The myth according to Schmitt said that Leviathan and Behemoth symbolized the unbelieving peoples battling each other. “The Jews,” he continued, “stand by and watch how the people of the world kill one another” (9). To them, the practices of killing and performing religious slaughter on each other were lawful and kosher. And that was why they ate and lived on the meat of the peoples that had been killed. In another version, God spent a few hours each day playing with Leviathan until the latter was weary. Schmitt believed that Leviathan and Behemoth were “Jewish battle myths of the grandest style” (9). He claimed that seen with Jewish eyes, they were images of fertility and the heathen life force that deserved to be destroyed. Against this background, Schmitt thought, it was all the less astounding that Hobbes’s Leviathan had been slain by Jews.

Schmitt did not mention any of the kabbalistic sources he used in his portrayal of the alleged Jewish battle myth. Historian Raphael Gross reviewed the sources Schmitt vaguely alluded to and determined that Schmitt did not read them himself, instead taking them second-hand from notorious anti-Jewish screeds.⁴⁵ This is supported by the fact that most of Schmitt’s references are not to be found in the original sources; some, for example about kabbalist Isaac Abarbanel, mentioned only one side of his work; and others

44 Laced with innuendo, this wording, found on page 110 of the German edition, is missing in the translation by George Schwab (page 70), who simply wrote “castrating” and omitted “continuing the metaphor.”

45 For example, Schmitt made reference to the 1700 diatribe *Entdecktes Judenthum* [Judaism unmasked] by Andreas Eisenmenger, see Schmitt (1938a, 8). See also Gross (2000, 273–275).

were entirely incorrect.⁴⁶ Italian philosopher Giorgio Agamben even spoke of “an anti-Semitic falsification” by Schmitt because he jumbled kabbalistic and Talmudic traditions and fabricated ideas of his own.⁴⁷ The mythological underpinning of Schmitt’s critique of Hobbes is an antisemitic phantasm. One can only agree with Paul Bookbinder’s characterization of Schmitt’s incredible conspiracy theory as “reminiscent of *The Protocols of the Elders of Zion*” (Bookbinder 1991, 104).

At the end of his book, Schmitt explicitly made clear that he agreed with Hobbes about strict “scientism” (85) in theoretical work. The fact that Schmitt was unwilling to retract a single word on this matter even four years later, when the murderous terror against the Jews in Europe had long reached a new dimension, is very clear from his statement in 1942 about the “complete lack of relation of the Jewish spirit to the German *Volk*” (Schmitt 1942c, 205). His book about Leviathan is not a “cryptic, esoteric [...] and enigmatic” (Maschke 1995a, 227) work; he wrote it with the intention of “burnishing [his antisemitism] academically” (Neumann 2015, 389) in order to “give his antisemitism a scientific form” (Mehring 2014a, 356).

3. Kirchheimer’s research on antisemitism at the Institute of Social Research

Up until 1940, Kirchheimer hardly dealt with Nazi antisemitism and the German Reich’s policies toward Jews at all, at least in his scientific work on the Nazi regime. He addressed the subject only twice, and briefly, in his 1935 *Staatsgefüge und Recht des dritten Reiches* [State structure and law in the Third Reich], the brochure disseminated illegally in Germany. He stated that Nazi “legislation in the area of race has come nowhere close to realizing all the points sketched out in the party program” (Kirchheimer 1935a, 159)—whereby it must be taken into consideration that this statement was made prior to the Nazis’ Party Rally in Nuremberg in September of that year. The second passage illustrates that Kirchheimer considered the development that began with the Nuremberg Race Laws to be within the realm of the possible: “Especially in the case of the ‘Jewish Question,’ the development of so much of the German legal system remains in a state of flux” (Kirchheimer 1935a, 160). Following the enactment of the Race Laws, Kirchheimer attended a multi-day conference of the International League for Human Rights in Paris where the situation of Jews in Germany was one of the three main subjects discussed (see Langkau-Alex 2005b, 221). The focus of his academic work continued to lie elsewhere, however. In *Punishment and Social Structure*, he mentioned the persecution of Jews only in the chapter on the Middle Ages (see Kirchheimer and Rusche 1939, 20–22). The subject was eventually no longer relegated to the background when he addressed it for the first time in his 1941 essay “The Legal Order of National Socialism.” Kirchheimer saw the abolition of the liberal separation of law and morality as the core of the German Reich’s legal system. The Nazi moral code “substitutes racial homogeneity for equality” (Kirchheimer 1941d, 456), thereby abandoning the

46 See Meier (1994, 236–240), and Gross (2000, 271–278).

47 See Agamben (2014, 41) and (2015, 58). Paul Bookbinder lists additional mistakes of Schmitt’s concerning Jewish history, the Jewish sources, Spinoza, and Stahl (see Bookbinder 1991).

notion of shared human existence. He called the legislation concerning Jews beginning with the Nuremberg Laws “thoroughgoing extirpation of the Jews” (Kirchheimer 1941d, 462). He went into more detail only with respect to marital law and the new ways to divorce a Jewish spouse.

Kirchheimer addressed the subject of antisemitism in his academic work in more depth after moving to New York as he sought new professional opportunities at the Institute of Social Research (ISR). This new focus of his work was completely unrelated to Carl Schmitt and the escalation of his aggressive antisemitic diatribes. Kirchheimer was involved in the work on antisemitism at the ISR from the outset and contributed to multiple empirical research projects between 1941 and 1943. To gain a better understanding of his contribution to antisemitism research at the ISR, it is useful to take a brief look at the context of his work at the institute at the time.⁴⁸ The first specific plans for a major study on antisemitism at the ISR were made in 1939, when antisemitism was already escalating in the United States and had become the subject of a broader public debate in books such as Sinclair Lewis's *It Can't Happen Here* (see Lewis 1935). The findings of the multi-year research at the ISR finally led to the publication of the famous series *Studies in Prejudice* beginning in 1949. Max Horkheimer's programmatic essay “The Jews and Europe” of 1939 can be seen as the starting point of the institute's work on antisemitism. The article was permeated with the fear that the fascist model of governance and a murderous form of antisemitism would spread worldwide. It ended with a note stating that it had been completed on the first day of the war in September 1939. Horkheimer developed the hypothesis that the Nazi regime had stabilized the monopolistic capitalism of the Weimar Republic, which had fallen into an existential crisis in the form of a historically new post-liberal order.

At Horkheimer's request, Kirchheimer had contributed a short memorandum on an earlier version of this article in the late summer of 1939. His comments include an overview of empirical findings from various areas of the economy in Italy and Germany. Presenting large amounts of data, Kirchheimer documented a strengthening of private capitalism through “re-privatizations” (Kirchheimer 1939, 203) under both regimes, the processes of concentration in various sectors at the expense of small and medium-size businesses, a reduction of wages and an intensification of labor, the continuous importance of large-scale land holdings in agriculture, the failure of the expansion of public administration, and increasing bureaucratization. Even if Horkheimer's essay “The Jews and Europe” did not directly include any individual passages or tables of figures from Kirchheimer, it is evident that Kirchheimer's findings were incorporated into Horkheimer's statements about the role of business monopolies, advancing concentration in certain sectors, and the expansion of the government apparatus (see Horkheimer 1939a, 79, 84, and 90). Horkheimer still advocated a functionalist interpretation of antisemitism, which assumed the primacy of economic factors.⁴⁹ He made the decreasing

48 On antisemitism research at the exiled Institute of Social Research, see Ziege (2009) and Rensman (2017).

49 On the functionalist interpretation of antisemitism championed by Horkheimer in 1939 and his transition to an interpretation based on the history of civilization (inspired by Adorno) from 1941 on, see König (2016, 220–244).

importance of the sphere of circulation, which Kirchheimer had illustrated with data, fit into his own interpretation, and refashioned it into its complete disappearance. According to Horkheimer, Jews were the circulation agents par excellence. They owed their emancipation to the fact that they served as pioneers of capitalism and were indispensable as lenders in the sphere of circulation. To Horkheimer, the sphere of circulation was simultaneously the foundation of bourgeois democracy and the universality of the law. As circulation disappeared, he believed, Jews were “being run over” and had become superfluous (see Horkheimer 1939a, 89). At the same time, democracy and the universality of the law had become obsolete.

In 1941, the project outline “Research Project on Antisemitism,” which had been prepared with Kirchheimer’s extensive involvement in 1939, was published in the ISR’s renamed journal *Studies in Philosophy and Social Science*. Under Horkheimer’s leadership, the institute presented an interdisciplinary and thematic research program on antisemitism that was to provide the basis for intellectual combat. The goal of the project analysis was “to show that antisemitism [was] one of the dangers inherent in all more recent culture” (ISR 1941, 124). The project was to demonstrate in different ways that antisemitism was widespread, had deep historical roots, and was also to be found where one might hardly expect it, for instance, in the work of humanistic Enlightenment philosophers. The institute’s hypotheses on the “Foundations of National Socialist Antisemitism” were formulated in Section VI of the project outline, which attributed Jews’ weakened role in society to “the change in the functions of money” (ISR 1941, 140).⁵⁰

The empirical evidence presented to demonstrate the new importance of the sphere of circulation in capitalism came from a short paper Kirchheimer had prepared for the project outline, “Funktionswandel und Konzentrationstendenzen im Bankgewerbe” [Functional transformation and concentration tendencies in the banking industry] (see Kirchheimer 1940c). Kirchheimer summarized how Germany’s banking sector had changed since 1933, focusing in particular on the increase of political influence in decisions about loans and the Reich’s heavy indebtedness to the banks. Overall, he found a shift of profits from private bankers to major banks, and he considered the Nazi “Aryanization” of Jewish property part of the process of growing concentration. Horkheimer used Kirchheimer’s figures about changes in the private banks’ and major banks’ total deposits as evidence supporting his hypotheses on economic transformation (ISR 1941, 141). However, he made the findings more pointed by using them to explain the complete liquidation of the sphere of circulation. Horkheimer stated that it was the decline of the power of financial capital and the replacement of the market by a planned economy overseen by government bureaucracy that made the anti-Jewish policies of the Third Reich possible in the first place.

The ISR’s first attempts to gain financing from the Rockefeller and Carnegie Foundations for empirical and historical research on antisemitism failed. It was not until early

50 On the functionalist features of the theory of antisemitism in this project outline, see König (2016, 235–240).

1943 that Franz Neumann, working together with Arkadij Gurland and Kirchheimer,⁵¹ succeeded in obtaining funding from the American Jewish Committee (AJC) for two parts of the institute's original research project.⁵² It was initially scheduled for one year, from April 1943 to March 1944, and was to be headed by Friedrich Pollock. The researchers in New York were to work on the economic and social causes of antisemitism, and those on the West Coast were to conduct present-day psychological studies under Horkheimer's leadership (see Horkheimer 1943b). The New York group was directed by Friedrich Pollock and Leo Löwenthal, although most of its work was conducted by Arkadij Gurland and sociologist Paul W. Massing with Kirchheimer involved part-time (see Wiggershaus 1995, 362). Kirchheimer's close friend at the institute Herbert Marcuse also contributed to the work of the group and commented extensively on the original research agenda.⁵³

In order to be able to present the AJC with initial findings that could be used politically, the group of researchers in New York focused on the political function of antisemitism in European history and also conducted a survey of German émigrés about their experiences and the reactions of the German population to the Nazi regime's antisemitic policies. The findings from the first year of research were presented to the AJC at a conference in New York in the spring of 1944 and delivered in the form of a hectographed research report in August 1944, which was never published. The 150-page report was augmented with several essays and exposés as well as a list of its twenty-one authors, including Kirchheimer (see ISR 1944, 142–144). The AJC leadership was sufficiently convinced of the results that in the fall of 1944, it approved funding to continue and expand the project and to establish a scientific department directed by Horkheimer. The publication of the five volumes of *Studies in Prejudice* in the United States between 1949 and 1951 was a "sensational scientific success" for the ISR and established its legendary reputation as a pioneer of empirical research on prejudice (Ziege 2009, 252).

Two research papers by Kirchheimer stem from this Frankfurt School context, both titled "The Policy of the Catholic Church Toward the Jews." The first is a twenty-one-page typescript, which remains incomplete and presents a number of hypotheses. The second, running to thirty-two typed pages, is a more in-depth version of the same work, with more detailed references. Neither carries a date, yet we can narrow down the time of writing with reasonable certainty based on other sources. Horkheimer had decided in the beginning of June 1943 to give Kirchheimer a grant to write the research paper.⁵⁴ Kirchheimer was funded for special projects within the antisemitism project from mid-

51 Kirchheimer's early involvement in the organizational preparations for the antisemitism project is evident from a letter from Kirchheimer to Max Horkheimer dated 16 July 1943. Max Horkheimer Papers, Letters VI,11, 310.

52 On the various attempts to secure funding for the project and Horkheimer's skepticism about the American Jewish Committee, see Wiggershaus (1995, 350–359). The AJC was established in 1906 as an advocacy group for Jews promoting integration into American society (on the AJC and the ISR, see Ziege 2009, 61–72).

53 See letter from Leo Löwenthal to Herbert Marcuse dated 29 June 1943, quoted in Jansen (2000, 101–114).

54 Letter from Max Horkheimer to Friedrich Pollock dated 9 June 1943 (Horkheimer 1996, 456).

June to mid-August 1943.⁵⁵ Considering his other activities and the work flow at the institute, the second, more detailed, manuscript can be dated to the autumn of 1943.⁵⁶ He certainly worked on the paper in November 1943 since the agenda for a dinner meeting of the Institute of Social Research and the AJC at the Harmonie Club in New York City on 8 December 1943 announced Kirchheimer as the third speaker (alongside Friedrich Pollock and Arkadij Gurland). Kirchheimer's talk was titled "The Catholic Church and Her Jewish Policy."⁵⁷

4. Kirchheimer's Policy of the Catholic Church Toward the Jews

Despite Horkheimer's skepticism about whether Kirchheimer could "achieve anything really valuable in a relatively short time,"⁵⁸ he produced a research paper of thirty-two typewritten pages titled "The Policy of the Catholic Church Toward the Jews."⁵⁹ He conspicuously touched on Schmitt's work at a number of points, starting the research paper with a statement reminiscent of Carl Schmitt's book *Roman Catholicism and Political Form* (see Schmitt 1923b). Schmitt had written in this early book that the Catholic Church had to be viewed primarily as a religious institution with "astounding [...] elasticity." The Catholic Church was a "*omplexion oppositorum*" comprising a practically infinite number of contradictions in an integrative way. That, Schmitt thought, also applied to the theological diversity within the Church. Kirchheimer did not mention this early work of Schmitt's explicitly, but he, too, described the Catholic Church as eminently flexible and adaptable, adding that this was also true of its position toward the "Jewish question."

Kirchheimer developed his deliberations⁶⁰ by distinguishing between Catholic doctrine and "the different, sometimes even contradictory, motivations which have guided Catholic attitudes towards the Jews at different periods and in different regions" (498). One constitutive element of Catholic doctrine, Kirchheimer stated, was its "anti-Judaism," which he strictly differentiated from antisemitism. Anti-Judaism was not an accidental element in the doctrine of the Church. It was based on the firm belief that Jews were guilty of not having accepted Jesus as the Son of God and the Redeemer. Instead, they had put Jesus to death. Kirchheimer described various Christian interpretations and evaluations of Judaism, beginning with the New Testament through the Middle

55 This is evident from the project budget for the AJC. See *Re: Antisemitism Project, Preliminary Budget*. Max Horkheimer Papers, 665, 19.

56 In a letter to Max Horkheimer dated 20 September 1943, Kirchheimer writes that "antisemitism" and his other commitments "are literally [eating] up my time." Max Horkheimer Papers, Letters VI, 11, 307.

57 See *Agenda for the Joint Meeting of the Institute of Social Research and the AJC on December 8, 1943*. Arkadij Gurland Papers, Documents and Letters, Na 5/131.

58 Letter from Max Horkheimer to Friedrich Pollock dated 9 June 1943 (Horkheimer 1996, 456).

59 Kirchheimer's research paper was discovered in connection with the edition of his *Gesammelte Schriften*. It was not referenced before, except for in a brief vague footnote by Felix Weil in *The Chicago Jewish Forum*, a minor newsletter that existed for a few years after the war. See Weil (1951, 11). The research paper was first published together with an introduction by the author in the journal *Antisemitism Studies* in 2018.

60 See Kirchheimer (1943). The following page numbers refer to this text.

Ages to the late eighteenth century, as well as the Church's practical policies toward Jews. In this historical reconstruction, Kirchheimer stressed the elements of Catholic theology that protected Jews because, in principle, they could be evangelized. He placed particular emphasis on the question debated among Christians of how and when Judgment Day would come: would Jews return to the flock automatically on Judgment Day, or would it be postponed and everything remain uncertain until their blindness had ended? Kirchheimer quoted the 1935 book *Le mystère des Juifs et des Gentils dans l'Église* by Erik Peterson on this debate in order to make his point.⁶¹

Schmitt had introduced Peterson and Kirchheimer when they all lived in Bonn. The three had concluded the evening of Kirchheimer's doctoral graduation in February 1928 over wine in Schmitt's apartment.⁶² In 1924, Schmitt had called Peterson, who had moved to Bonn as a theology professor, his closest friend; their friendship was to break up later, not least because of Peterson's criticism of Schmitt's portrayal of Jews in *Leviathan* (see Schmitz and Lepper 2021, 277–285). In Bonn, Peterson extolled Schmitt's *Roman Catholicism and Political Form* and promoted a theological approach departing from historicism, instead championing a new dogma according to which only the literal text of the Bible was accepted as valid. One of the main subjects discussed by Peterson and Schmitt was the "Jewish question," more precisely, Peterson's hypothesis that the Church existed only under the precondition that the Jews, as the people chosen by God, had not come to believe in Jesus (see Mehring 2017, 311–336). For this reason, he gave Jewry the questionable eschatological role of a "delayer"—*katéchon*—guaranteeing the continued existence of the Church before the return of Christ; this was a motif that Schmitt took up, too, and spelled out in more detail in his later works after 1945. Peterson thus developed his concept of the Church separately from the "Jewish question," placing his hopes for eschatological salvation in converting Jews to Christianity. In his reference to Peterson's book on St. Paul's passages about the Jews in his *Epistle to the Romans* in the New Testament, Kirchheimer noted that it "takes the text in its literal sense" (499). And criticizing Peterson sarcastically (as Schmitt did later), he commented that the idea that the final fulfillment of religious expectation depended on the conversion of all creatures was not particularly original and could already be found in some Jewish traditions.

Kirchheimer dated the decisive watershed in Catholic policy toward Jews, which was caused by the looming loss of much of the Church's societal power during capitalist modernization, to the early nineteenth century. More than before, the Church had to opportunistically seek potential political allies in order to maintain its powerful position. Kirchheimer selected the examples of the *Kulturkampf* in the German Reich and, in more detail, the Dreyfus Affair in France to examine Catholic tactics concerning the "Jewish question." In these conflicts, the Catholic Church seized the opportunity to assert its public rejection of capitalist modernity by employing antisemitic propaganda more influentially. Catholic theologians condemned "the evils of finance-capitalism personified in the Jews" (509). Using the example of the Weimar Republic, Kirchheimer explains that

61 Peterson, who had relocated to Rome in 1933, had had his most important theological works translated into French for this book.

62 Carl Schmitt, diary entry of 25 February 1928 (Schmitt 2010, 208).

the Catholic Church was more tolerant toward Jews in contexts where Catholicism was also a minority faith.

In the final section of his study, “Catholic Policy and Totalitarianism,” Kirchheimer argued that the senior leadership of the Catholic Church was not only prepared to cooperate with those in political power at a given time to maintain the Church as an institution but was even “willing to sacrifice the Catholic parties” (515), as illustrated by the examples of fascism in Italy and Nazism in Germany. During the Weimar Republic, the Catholic Church declared that working together with the NSDAP was out of the question because of its anti-clerical propaganda. Yet immediately after Hitler took power, not even his militant antisemitism could move the leadership of the Catholic Church to refuse to collaborate with the new German government. In the concluding passages, Kirchheimer states that “after 1939 antisemitic policies rapidly spread all over Europe” (515). This simultaneously showed a shift in the Catholic Church’s position toward the “Jewish question” resulting from concern about the Vatican’s position of power in fascist Italy. Now, the Vatican did emphasize that it nonetheless remained the fundamental task of the Catholic Church to overcome Judaism, but that there were also “certain definite limits” to this goal (516). Considering its universal mission, the Church had to insist that Jews would still be permitted to convert to Catholicism. From this followed the political thrust countering a “race doctrine, which would tend to nullify the Church’s freedom to enlist” (516). Kirchheimer’s view was that the Catholic Church was still not adopting a friendly stance toward Jews—official Church publications continued to describe them “both as members of the financial oligarchy and as revolutionaries” (517)—but from 1939 on, the Catholic Church saw itself subject to a “struggle with totalitarianism,” as did Jews (518).

It is striking that Kirchheimer did not draw the obvious political conclusion that new allies in the struggle against antisemitism could be won in this changed constellation. This was presumably linked to the fact that Pope Pius XII, who had taken office in 1939, was friendly toward Germany, and Jewish circles in the US were aware of this. The new pope raised more fears than hopes for the future of European Jewry (see Feldman 2000, 125–127). It is easier still to understand why Kirchheimer refrained from relying on Catholicism as an ally against antisemitism if we also examine the very first version of the text, which has survived only in part.⁶³ In addition to the deliberations focusing on Europe in the more detailed version, this text includes several pages on American Catholicism and its role in antisemitism, which had increased sharply since the early 1930s. In these six pages, he reminded readers of the marginalized role of Catholics in American history and also emphasized the special significance of immigration from Ireland for changes in North American Catholicism. In the early twentieth century, the social competition in the lower strata of society between Irish immigrants and Jewish immigrants from Eastern Europe and Russia led to the emergence of “anti-Jewish bias,” with contempt for Jewish competitors in particular. This had formed an echo chamber for rapidly increasing antisemitism among Catholics in the American industrial labor force in the preceding years. In the political realm, it had been stoked above all by Catholic “radio

63 This quotation and the following ones are taken from the first version of the research paper. Institute of Social Research, “The Policy of the Catholic Church Toward the Jews” (typescript, no date). Otto Kirchheimer Papers, Series 4, Box 2, Folder 15.

priest" Father Charles Coughlin's aggressive antisemitic propaganda during the 1930s.⁶⁴ Kirchheimer linked the "meteoric rise" of Coughlinism in the United States to similar contemporary "popular Catholic antisemitic movements" in Poland and Austria. While antisemitic mass movements led by Catholics were not a new phenomenon, their existence in the United States at the time, however, was new and could prepare the ground for a "native American fascism." The AJC's major concern and reason for financing the study was combating antisemitism, and it placed little trust in other representatives of the Catholic Church in America when it came to that goal. They would do nothing against rampant Coughlinism for the simple reason that it promised to attract new adherents to Catholicism, which had an "inferiority complex" in North America. Consequently, Kirchheimer's pessimistic expectation concerning the potential of the Catholic Church's resistance against the Nazi policies toward Jews was colored not least by his experiences with the success of antisemitic propaganda in the US.

5. Kirchheimer's contribution to the Frankfurt School's research

Kirchheimer had already left the Horkheimer Institute when the final report on antisemitism was submitted to the AJC in August 1944. Nonetheless, his work left its mark on the institute's future research on antisemitism, but less with respect to the philosophical parts of the Frankfurt School in exile. Kirchheimer's deliberations did not directly influence Horkheimer and Adorno in the chapter "Elements of Antisemitism"—also written in the summer of 1943—in their *Dialectic of Enlightenment*. Yet certain parallels can be seen in terms of their differentiation between religious and *völkisch* (of the *Volk*, chauvinistic-nationalistic, antisemitic; see Glossary) forms of antisemitism and their view of Christianity as an institution (Horkheimer and Adorno 1944, 206–208). Conversely, there are no points of contact with their interpretation of Christian antisemitism following Freud's image of patricide. In their reading of antisemitism, Horkheimer and Adorno followed a different path from Kirchheimer, one that presented itself in the empirical studies in the early phase of the antisemitism project. Surveys of German-language immigrants to the United States in 1943—Kirchheimer was also involved in their analysis (see Wiggershaus 1995, 362)—revealed that devout Catholics and conservatives helped Jews far more than Protestants. Horkheimer later used this finding to support his hypothesis that conservatives were often better guardians of critical thinking than liberals. The question of Catholicism played no role in the best-known volume of *Studies in Prejudice*, the book *The Authoritarian Personality*, co-authored by Adorno (see Adorno et al. 1951).

Kirchheimer's empirical observation that antisemitism was widespread among the American Catholic industrial labor force had a greater impact. Gurland and Neumann succeeded in securing funding from the Jewish Labor Committee (JLC) for the ISR to conduct a major study on antisemitism in the US labor force beginning in the summer

64 On Coughlinism and its political success, see Baldwin (2001).

of 1944.⁶⁵ The lengthy interim report, *Antisemitism among American Labor*, completed a year later on the basis of 566 interviews, stated that antisemitism was widespread among industrial workers: almost thirty-one percent were classified as “actively hostile to Jews,” 38.5 percent as rejecting them, but without assenting to consistent discrimination, and 30.5 percent as “friendly to Jews.” The share of respondents who approved of the persecution of Jews in Germany was significantly higher among Catholic workers than among those of other faiths, whereby the highest share was found among Catholics who no longer attended church.⁶⁶ The leaders of the institute considered results of this kind so unfavorable for the American labor force that they decided not to publish the study (see Jay 1973, 224–227). Thus, Kirchheimer’s thoughts on antisemitism in “The Policy of the Catholic Church Toward the Jews” had little in common with the concept of a “philosophical prehistory of Antisemitism” (Horkheimer and Adorno 1944, xvii) as elaborated in *Dialectic of Enlightenment*. Instead, there were more similarities to the functionalist interpretation Horkheimer had previously championed, but without his apodictic claim regarding an entirely new societal epoch for Jewry.

Clearer parallels can be found, however, to Hannah Arendt’s approach in the first part of her 1951 book *The Origins of Totalitarianism*, in which she localized the phenomenon of antisemitism in terms of time and space and placed it within the political histories of Germany and of Europe more generally. Like Kirchheimer, Arendt championed the position that changes in social and religious antisemitism beginning in the last third of the nineteenth century were tied to the history of nation-building and modern imperialism. In the revised German edition of *The Origins of Totalitarianism*, published in 1955, four years after the first American edition, Arendt calls this the transition from “Antisemitismus als gesellschaftliche Idiosynkrasie” (antisemitism as a social idiosyncrasy) to “Antisemitismus als politische Bewegung” (antisemitism as a political movement, see Arendt 1955, 72 and 77). The terms she used in the English edition were less trenchant: “aristocratic antisemitism” with “mild discrimination without further political significance” and “antisemitic movement” (see Arendt 1951, 32 and 39).⁶⁷ In her political history of antisemitism, Jews do not appear as victims, always damned to be passive, but as a social minority actively and sometimes skillfully engaged in political life. Kirchheimer would concur with this view, as indicated by some of his writing in the 1960s.

At the ISR, Kirchheimer’s work was continued, in a sense, by his colleague Paul W. Massing in the first volume of *Studies in Prejudice*, entitled *Rehearsal for Destruction: A Study of Political Antisemitism in Imperial Germany*, published in 1949. This book examined the background of the Nazi regime’s political antisemitism in the German Empire. With respect to Catholicism, Massing, too, underlined how political antisemitism took root in

65 The final report of this study was not published. On the main project findings, see Worrell (2008) und Ziege (2009). The JLC was founded in New York in 1934 as an umbrella organization for the Jewish trade unions.

66 See Institute of Social Research, *Antisemitism among American Labor, 1944–45*, New York, 1455 pages (Max Horkheimer Papers, IX–146, 1–23, 755–760).

67 There is no evidence that Kirchheimer and Arendt met in person while they were both in Paris or in the first years of their exile in New York. The sparse correspondence between the two in the 1950s and 1960s, however, indicates that Arendt valued Kirchheimer’s book *Political Justice* and that he agreed with her in the debate about Eichmann in Jerusalem (see Chapter 16).

the Catholic Zentrumspartei (Center Party) in the course of the *Kulturmampf* (see Massing 1949, 219–221). After leaving the ISR in late 1943, Kirchheimer continued to be interested in writing on antisemitism, at least in shorter pieces. Here, the parallel to the activist component in Arendt's position becomes even more evident. In a book review for *The Washington Post* published after the Eichmann Trial of 1961, Kirchheimer called Germany's murder of Jews the “greatest crime of modern history,” carried out “in cold blood and with mathematical precision,” and reminded readers of heroic Jewish resistance in the camps. Even if their struggles were unsuccessful, their activism made them, “if often only for a fleeting moment, heroes with the sense of a mission and certain of their place in the history of their people” (Kirchheimer 1962a, 6). A few weeks later, he reported to the American public in the same newspaper that there was a group of people in Germany for whom the memory “of their country's shame forms a key to their frame of mind” (Kirchheimer 1962b, 9). Although this group was still relatively small, it was growing and consisted mostly of young people who wanted to face up to the German past.

Shortly before his death in 1965, Kirchheimer again took up the subject of antisemitism and the Catholic Church by writing a review of sociologist Gordon Zahn's book *German Catholics and Hitler's Wars*, which was intended for publication in *The Washington Post* but did not appear in the end. We don't know why not. In his manuscript, Kirchheimer praised the book for its detailed description of the German Catholic bishops' strong support for the German army during the war. “Given the trends of our time,” he concluded, Zahn had written “a tragically important book” because it “demonstrate[d] how little guidance the individual may expect in hours of gravest moral doubt from any established institution.”⁶⁸

A few weeks before his death, Kirchheimer's review of the book *The Catholic Church and Nazi Germany* by historian Guenter Lewy appeared in *Dissent*, then one of the leading journals in the American leftist intellectual milieu. Kirchheimer saw Lewy's findings on contemporary history, which relied on countless sources, as confirming his own hypotheses about the sociology of power. In Lewy's opinion, the Catholic Church in Germany had cooperated with the Nazi regime after 1933 purely out of power interests, similarly to the industrial and military leaders, and had declared its loyalty to the bitter end in return for the state's financial services. In contrast to Lewy's interpretation, however, Kirchheimer insisted that Catholic hatred of Jews was not the same thing as Nazi antisemitism. Kirchheimer used the contrasting example of France to answer the question of why the Catholic Church in Germany and Italy did not muster more energy against the murder of Jews. In France, the state and the Church were separate, which gave centrifugal forces within the Church greater weight, thus creating greater latitude for individual believers' decisions of conscience. After 1945, the historical opportunity to sever the unholy alliance of Church and state in Germany was wasted: “now the alliance is once again profitable in terms of money, educational privileges, and Church influence in state policy” (Kirchheimer 1965a, 92). In this review, Kirchheimer considered the play *Der Stellvertreter* [The deputy] by Rolf Hochhuth, which premiered in Berlin in 1963, to be the first public questioning of the false image of the Catholic Church as an institution that had resisted

68 Otto Kirchheimer, “Book Review of Gordon Zahn, *German Catholics and Hitler's Wars*.” Unpublished Manuscript, three pages. Otto Kirchheimer Papers, Series 4, Box 3, Folder 22, 2.

the Nazi regime. This image had been widely cultivated by the Catholic Church after 1945 in West Germany, and Kirchheimer criticized it as a “product of [the] imagination” mixed with “elements of misrepresentation” (Kirchheimer 1965a, 94). In personal conversations with German friends, he expressed his optimism about a growing commitment by the younger generation in Germany to face up to the past.⁶⁹

6. Conclusion: The modernity of Catholic antisemitism

While Schmitt expressed and even celebrated antisemitism in his speeches and writing praising the Nazi regime, Otto Kirchheimer’s family had to experience its antisemitism firsthand. Most of his closer relatives had been able to flee Europe during the war, but not all of them escaped.⁷⁰ Two members of his closer family circle did not make it and were murdered in the Holocaust, his brother-in-law Adolf Rosenthal in Theresienstadt in 1942 and his brother-in-law Ludwig Rosenthal in Izbica in 1943. Among the wider group of family members (around 160 persons in total), twenty-eight of them are recorded as killed in concentration camps. Seven family members are known to have spent greater or lesser amounts of time in a concentration camp but survived. Almost eighty family members managed to emigrate from Germany between 1933 and 1940. Among the émigrés were Otto Kirchheimer’s brothers Max, Leo, and Fritz, who all went to Argentina at different times (his other siblings had died before 1933). A few members of the family survived in hiding in Germany, the fate of other family members is unknown to this day.

Carl Schmitt was preoccupied with Jews and Jewishness throughout his life. Raphael Gross took the biographical finding of Schmitt’s views about Jews as the starting point for his interpretation of his work, establishing the significance of antisemitism for Schmitt’s criticism of parliamentarism, pluralism, the liberal concept of the law, legal positivism, and universal international law even during the Weimar Republic.⁷¹ It is tempting to apply the horizon of interpretation introduced by Gross and to analyze further topics and motives in Schmitt’s thinking from the perspective of his antisemitism. Yet I will limit my reflections here to a brief comparison of Kirchheimer and Schmitt.

There are multiple points where the antisemitism analyzed by Kirchheimer and the antisemitism practiced by Schmitt touched on each other. A first and particularly striking instance is Kirchheimer’s focus on Catholicism. Because he followed Catholic theological debates as a student in Bonn, Kirchheimer seemed the most suitable among the exiled members of the Frankfurt School to address the subject of Catholicism. Another point is how Kirchheimer, drawing on Schmitt’s *Roman Catholicism and Political Form*, emphasized the institutional and ideological elasticity of the Catholic Church. Third, Kirchheimer entered the theological debates about Christianity and Judaism by using Erik Peterson’s work, which he was familiar with from working with Schmitt. The fourth point is how he evaluated the role of the Catholic Church as it dealt with the Nazi regime. Kirchheimer

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

70 The following information is based on Kirchheimer-Grossman (2010) and several conversations with Hanna Kirchheimer-Grossman and Rebecca Kirchheimer in September 2021.

71 See Gross (2000; 2016).

was skeptical as to the role of the Catholic Church in Germany as a potential force of resistance against Nazi policies. In turn, Schmitt as a Catholic had attempted to explain in retrospect that one reason for his support for the Nazi regime was that “Hitler had accomplished the Concordat [between the Holy See and the German Reich] without any resistance at all.”⁷²

Besides these points where their works touched on each other, the contrast in methodological terms could hardly be greater between Schmitt with his constructions in intellectual history on the one hand and Kirchheimer with his empirical analyses and his assessments critical of ideology on the other. Whereas Schmitt, in his book *Leviathan*, drew on vague second-hand sources on the kabbalah written by antisemites to construe a genealogy of the triumph of an international Jewry operating while concealed by masks, Kirchheimer undertook sober sociological contextualizations of the attitudes inimical to Jews.

Since the nineteenth century, modern antisemitism has reacted to the development of capitalist modernity, i.e., to industrialization, urbanization, the loss of binding worldviews, and the objectification of human relationships. To Kirchheimer, Catholic antisemitism was a modern phenomenon despite its initially religious sources which had to be understood as the expression of negative experiences of modernization. If we apply Kirchheimer’s analytical approach to Schmitt, the latter emerges as one among many others socialized in the German Empire who would always reject this modernity.⁷³ Schmitt stood out from this large group only inasmuch as he used particularly copious words and quotations to articulate his antisemitic resentment.

72 Schmitt in a conversation with Ernst-Wolfgang Böckenförde (Böckenförde 1988, 336).

73 On Schmitt’s view that Jews and their threatening “*maskenhafte*” (mask-like) nature embodied the ambiguity of modernity, see Balke (2016, 648–650).