

REREADING:

## THEORY OF THE PARTISAN

C. Schmitt

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Wouter Werner\*

The past two decades have witnessed a renewed interest in the legal and political thought of Carl Schmitt. This interest was spurred by the end of the Cold War and the proclamation of the 'end of history'; the belief that, with the implosion of the Soviet-Union, liberal democracy had no ideological competitors left.<sup>1</sup> Critics of such self-congratulating readings of history sought inspiration in Schmitt's critiques of liberalism and his concerns about the depoliticising tendencies of universalism, economy and technology.<sup>2</sup> A second event in world politics that led to a rediscovery of Schmitt's work were the 9/11 attacks and the ensuing 'war on terror'. Schmitt's concept of politics as rooted in friend-enemy distinctions<sup>3</sup> as well as his emphasis on the role of the exception<sup>4</sup> seemed to fit the post 9/11 world disturbingly well. While Schmitt's work will remain controversial for his opportunistic (and unsuccessful) flirt with the Nazi regime, his work has by now become an important part of academic discourse in international law and politics.<sup>5</sup>

The revival of Schmitt's work is also attested by the translation of some of his major works. In 2006 Telos published an English translation of *Der*

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\* Wouter G. Werner is professor Public International Law at VU University. His main fields of interest are international legal theory, the interplay between international law and international politics and the international legal regime on the use of force. One of the focal points of his research is the turn to prevention and risk-management in contemporary security policies. He has published on the phenomenon of targeted killing and published critiques on the rise of cosmopolitanism in contemporary international law.

<sup>1</sup> F. Fukuyama, *The End of History and the Last Man*, New York: Free Press 1992. See also F. Fukuyama, 'The End of History?', *National Interest* 1989, p. 3; 'A Reply to my Critics', *National Interest* 1989, p. 90.

<sup>2</sup> See C. Schmitt, *Der Begriff des Politischen*, Berlin: Duncker & Humblot 1932; C. Schmitt, *Der Nomos der Erde im Völkerrecht des Ius Publicum Europaeum*, Berlin: Duncker & Humblot 1950.

<sup>3</sup> Schmitt 1932, *supra* note 2.

<sup>4</sup> C. Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität*, Berlin: Duncker & Humblot 1922.

<sup>5</sup> In international legal discourse, the debate on Schmitt was given new impetus by Martti Koskenniemi's discussion in: M. Koskenniemi, *The Gentle Civilizer of Nations, the Rise and Fall of International Law 1870-1960*, Cambridge: Cambridge University Press 2002, ch. 6.

*Nomos der Erde*, Schmitt's study of the rise and decline of the classical law of nations, the *Jus Publicum Europaeum*.<sup>6</sup> A year later Telos published a translation of the *Theorie der Partisanen*, the book under discussion in this essay.<sup>7</sup>

*Theory of the Partisan* locates the origins of partisanship in the Spanish guerrilla war (1808-1813) against the French occupation. For Schmitt, the partisan of the Spanish guerrilla has specific significance as he was the first to wage an irregular war against a modern, regular army. From there, 'a spark flew north', notably towards Austria and Prussia. The latter State even officially embraced partisan warfare against foreign occupation in the *Landsturm* edict of 1813, which put citizens under an obligation to resist foreign intruders with weapons of every kind. This edict, Schmitt argues, constitutes nothing short of a *Magna Charta* of partisanship. The turn north also had another consequence. While the Spanish guerrilla was fought mainly by a coalition of the lower clergy and peasants, the Prussian embracement of partisanship took place in a highly intellectual atmosphere. It is not surprising, therefore, that the partisan also became the topic of theoretical reflections, *inter alia*, in Clausewitz' standard work *Vom Kriege*.<sup>8</sup> The Prussian *Landsturm* Edict as well as the theoretical reflections upon the partisan, Schmitt argues, meant that the partisan was discovered, "not only in his military-technical capacity but also philosophically, and valued accordingly".<sup>9</sup> This facilitated the rediscovery of the partisan in the 20<sup>th</sup> century, in the hands of the great revolutionaries.<sup>10</sup> Lenin, for example, acknowledged the importance of the partisan as an instrument in the class struggle.<sup>11</sup> Stalin, in its turn, successfully mobilised the partisan for a combined struggle: a defensive struggle against foreign (German) occupation and an aggressive struggle for communist world revolution. For Schmitt, however, the greatest practitioner *and* theorist of revolutionary war was Mao Tse-tung, who managed to mobilise the partisan in his fights against Japanese occupation, Western colonialism and the Chinese nationalists.

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<sup>6</sup> C. Schmitt, *The Nomos of the Earth in the International law of the Jus Publicum Europaeum*, Telos Press Publishing 2006 (translation by G.L. Ulmen).

<sup>7</sup> C. Schmitt, *Theory of the Partisan*, New York: Telos Press 2007 (translation by G. L. Ulmen of the German original: *Theorie des Partisanen. Zwischenbemerkung zum Begriff des Politischen*, Berlin: Duncker & Humblot 1963). See also: C. Schmitt, *The Theory of the Partisan, A Commentary/Remark on the Concept of the Political*, Michigan: Michigan State University Press 2004 (translation by A.C. Goodson).

<sup>8</sup> C. von Clausewitz, *Vom Kriege*, Berlin: Dümmlers Verlag, 1832. The book is also available at: <http://www.clausewitz.com/CWZHOME/VomKriege/VKTOC2.htm> (accessed 13 January, 2009).

<sup>9</sup> Schmitt 2007, *supra* note 7, p. 32

<sup>10</sup> Schmitt also briefly discusses the confrontation between the Prussian-German army and the *Frankiteurs* in the Franco-German war of 1870-1871. As his main point concerns the theoretical articulation of partisanship and its transformation to the 20<sup>th</sup> century, towards the world revolutionary partisan, I will not discuss the *Frankiteurs* here.

<sup>11</sup> Schmitt here specifically refers to Lenin's essay 'Der Partisanenkampf', which was published originally in the Russian journal *Der Proletarier*. See Lenin, 'Der Partisanenkampf', *Sämtliche Werke*, 2<sup>nd</sup> ed., v. 10, 1930.

Schmitt ends his historical account, somewhat peculiarly, with a study of General Raoul Salan.<sup>12</sup> Salan got to know partisan warfare during the French colonial wars in Indochina and brought his experience to Algeria, where he was appointed Senior Commander of the French forces in 1958. Faced with the irregular methods employed by the Algerian resistance fighters, Salan succumbed to methods of partisan warfare preached by Mao. In the course of time, however, Salan also turned against his own government for its failure to unconditionally defend French sovereignty over Algeria. In response to the referendum on Algerian self-determination he co-founded the *Organisation de l'armée secrète*, an organization that used methods of terror and psychological warfare. In 1962 Salan was arrested and sentenced for his attempts to overthrow the government and the use of terror methods. Schmitt has difficulties hiding his admiration for Salan, portraying him as a courageous, tragic figure whose appeal to the sovereignty of the French nation was in the end crushed by the prosecutors' appeal to the sovereignty of the law.<sup>13</sup>

It would be a mistake, however, to read Schmitt's *Theory of the Partisan* primarily as a genealogy or historical overview. For a historical study too many aspects of partisanship are left out,<sup>14</sup> analytical distinctions between partisanship and other forms of irregularity are underdeveloped<sup>15</sup> while empirical evidence is not very systematically provided. The value of *theory of the Partisan*, in my view, lies elsewhere. It is a study that sheds light on and sharpens several core arguments of Schmitt's thinking on international law and politics. In order to illustrate this point, I will delve deeper into the elements that Schmitt regarded as constitutive of the partisan: (1) his intense political commitment, (2) his irregularity and (3) his mobility. In addition, Schmitt mentions the telluric nature of the partisan as a fourth constitutive element. As we will see below, however, it is not certain that this aspect actually defines the partisan as discussed by Schmitt.

## I. Intense Political Commitment

The partisan fights on the basis of an intense political commitment, which sets him apart from common criminals. For Schmitt, having a political commitment means being able to distinguish friend from enemy and, ultimately, demonstrating a willingness to fight the enemy to death. Schmitt had already set out the defining role of the friend-enemy distinction in his

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<sup>12</sup> As Jan-Werner Müller points out, this part of Schmitt's book can be considered as a "hidden homage to Salan and the OAS". J. Müller, *'An Irregular that cannot be Regulated': Carl Schmitt's theory of the Partisan and the 'War on Terror'*, p. 15. Text available at: <http://www.princeton.edu/~jmueller/Schmitt-WarTerror-JWMueller-March2007.pdf> (accessed 14 January 2009).

<sup>13</sup> Schmitt 2007, *supra* note 7, pp. 57-60. See also Müller 2009, *supra* note 12.

<sup>14</sup> The partisan struggles against German occupation, for example, are only indirectly discussed.

<sup>15</sup> For a discussion see: H. Münkler, *Gewalt und Ordnung: Das Bild des Krieges im politischen Denken*, Frankfurt: Fischer 1992.

*Der Begriff des Politischen*.<sup>16</sup> He had failed, however, to distinguish between different types of enmity- and thus different types of the political. One of the aims of *Theory of the Partisan* is to fill in this gap. In order to do so, Schmitt makes a distinction between three types of enmity.

The *first* is what he calls 'conventional enmity'; the notion that the enemy, while presenting an existential threat, is also someone equal and worthy of respect. According to Schmitt the notion of conventional enmity was laid down in the classical law of nations, the *Jus Publicum Europaeum*.<sup>17</sup> This body of law was grounded upon the idea of that (European) States could be regarded 'lawful enemies' who had an equal right to wage war upon each other. War then became a regularized, contained activity between equal enemies. The *second* is what Schmitt calls 'real enmity'. This form of enmity, Schmitt contends, dominates partisan struggles against foreign occupation and is typified by the Spanish guerrilla wars of 1808-1813. It does not accept the limits of conventional enmity. On the contrary: it is an understanding of enmity that "...stands outside any containment... (and) rises through terror and counter-terror, up to annihilation".<sup>18</sup> Yet, despite the uncontained and irregular character of the methods of warfare, partisan warfare based on real enmity knows an important limit: it is, in the end, a defensive, territorially bounded war. Genuine partisans, in Schmitt's conception, are telluric and defensive in nature; they do not fight for abstract universal ideas, but for what they perceive to be the liberation of the homeland. Such territorial, defensive limitations are absent in another type of partisan fighter identified by Schmitt: the international revolutionary. This type of partisan fights on the basis of a combat waged against the *third* form of enmity identified by Schmitt. While the autochthonous partisan fights against a real enemy on a concrete territory, the international revolutionary fights for abstract, universalistic ideals, against a 'absolute enemy'. The most pronounced expressions of absolute enmity locates Schmitt in the works of Lenin, for whom "the concrete absolute enemy was the class enemy, the bourgeois, the Western capitalist and his social order in every country in which they ruled".<sup>19</sup>

For Schmitt, the rise of real and absolute enmity signified the gradual breakdown of an international legal and political order that was based on the State as a lawful enemy. The partisan disrupts this order on the basis of imageries of real or absolute enmity- or on the basis of a combination of both. The latter was the case, for example, in the theory and practice of Mao, who based his struggles on a mixture of mutually reinforcing imageries of real and absolute enmity. From the perspective of political theory, this signifies a different political form; a form that is a far cry from the political order of Westphalian Europe.

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<sup>16</sup> C. Schmitt, *Der Begriff des Politischen*, Berlin: Duncker & Humblot 1932.

<sup>17</sup> Schmitt 2006, *supra* note 1.

<sup>18</sup> Schmitt 2007, *supra* note 7, p. 7.

<sup>19</sup> *Idem*, p. 36.

## II. Irregularity

The disruptive effects of partisan warfare are further underlined by his irregular nature. The partisan fights in ways that starkly deviate from the way in which regular, modern armies combat: he does not wear a uniform, knowingly and willingly mixes with the civilian population and does not display his weapon openly. The partisan thus also challenges the basis of the laws of armed conflict. One of the core aspects of the (modern) laws of armed conflict is the distinction between combatants and civilians. While combatants have a privilege to participate in hostilities and, as a corollary, constitute a legitimate object for attack, civilians lack such privilege and, as a corollary, cannot as such be the object of a military attack. In order to make the distinction applicable in practice, the laws of armed conflict contain elaborate definitions of who counts as a combatant in international armed conflicts. The core of the provisions is that a combatant should carry arms openly, wear a distinctive sign, should operate in a chain of command and conduct their operations in accordance with the laws of war.<sup>20</sup>

The combination of the partisan's intense political commitment with his irregular mode of fighting has an immediate effect on the possibilities for international law to contain and limit war. Contemporary laws of armed conflict, after all, are still predominantly based on the idea of conventional enmity- as well as on the imagery of the regular army that distinguishes itself from the civilian population. For Schmitt, this State centric body of law is by definition unable to regulate irregular warfare.<sup>21</sup> Instead, partisan struggle will spur a cycle of terror and counter-terror, which has broken free from the confines of conventional enmity. Here again, Schmitt's *Theory of the Partisan* links to larger topics discussed in his earlier work: the transformation of war in the 20<sup>th</sup> century<sup>22</sup> and the rise of a new world order that is taking the place of the *Jus Publicum Europaeum*.

## III. Mobility

The partisan's irregular nature is closely connected to his mobility; to his capacity to organize surprise attacks and to retreat fast. All these aspects, Schmitt contends, are increasingly interwoven with the further development of technology. The partisan's dependency on technology, however, potentially undermines his independent role in world politics. It makes the partisan even more dependent on external powers for weapons, munitions, material assistance, etc. Writing in the context of the Cold War, Schmitt voiced concerns over the way in which the partisan could be encapsulated in

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<sup>20</sup> For a legal definition see article 4 (a) (2) of the Third Geneva Convention.

<sup>21</sup> One could wonder whether Schmitt's claim is entirely correct. The laws of armed conflict, after all, have shown some elasticity and have been able to take up insights from human rights law. Especially in cases of foreign occupation and non-international armed conflicts, the State centric basis of the laws of armed conflict have been compromised.

<sup>22</sup> Schmitt 2006, *supra* note 1. See also C. Schmitt, *Die Wendung zum diskriminierenden Kriegsbegriff*, Berlin: Duncker & Humblot 2007 (Nachdr. d. Ausg. v. 1938. 4. Aufl).

great power rivalry, up to the point where the partisan runs the risk of becoming a mere puppet in the hands of the great powers and his struggle nothing but a "...a dogfight controlled by the world powers...".<sup>23</sup>

Schmitt's anxieties regarding the role of technology and great power rivalry show his deeply ambivalent position towards the partisan. For Schmitt, the partisan carried the hope of redemption of the political in a world dominated by antagonistic universalistic ideologies and technological progress. At the same time, he feared that the partisan's independent position would be swallowed by exactly the same tendencies. Even if the partisan was there to stay, Schmitt foresaw profound difficulties: a further undermining of the foundations of the laws of armed conflict and the ever-present danger that modern means of destruction would be used to fight absolute enemies.<sup>24</sup>

In the first decade of the 21<sup>st</sup> century, Schmitt's analysis proves to continue to be relevant for an analysis of international law and international politics. The issue of irregular warfare still figures prominently on the international legal agenda,<sup>25</sup> while the problem of how to contain the logic of terror and counter-terror gained renewed prominence, *inter alia* with the US led 'war on terror'. Schmitt's *Theory of the Partisan* can help, not so much to solve these problems, but to gain a better understanding of the structural changes that underlie them.

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<sup>23</sup> Schmitt 2007, *supra* note 7, p. 56.

<sup>24</sup> *Ibid.*

<sup>25</sup> See, for example, the ongoing discussion about the category of civilians directly participating in hostilities: The International Committee of the Red Cross, 'Direct Participation in Hostilities under International Humanitarian Law', *Summary Report*, 2003; International Committee of the Red Cross/TMC Asser Institute, 'Second Expert Meeting: Direct Participation in Hostilities under International Humanitarian Law', *Summary Report*, 2004; and 'Third Expert Meeting on the Notion of Direct Participation in Hostilities', *Summary Report*, 2005; all three reports are available at: <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/participation-hostilities-ihl-311205>