

CARL SCHMITT
Ex Captivitate Salus

EDITED BY

ANDREAS KALYVAS AND FEDERICO FINCHIELSTEIN

"*Ex Captivitate Salus* is Carl Schmitt's poetic, apocalyptic, seductive but ultimately unsatisfying attempt at self-exculpation after the fall of the Third Reich – which, in its early years, Schmitt served so faithfully." **John McCormick, The University of Chicago**

When Germany was defeated in 1945, both the Russians and the Americans undertook mass internments in the territories they occupied. The Americans called their approach "automatic arrest." Carl Schmitt, although not belonging in the circles subject to automatic arrest, was held in one of these camps in the years 1945–6 and then, in March 1947, in the prison of the international tribunal in Nuremberg, as witness and "possible defendant." A formal charge was never brought against him. Schmitt's way of coping throughout the years of isolation was to write this book.

In *Ex Captivitate Salus*, or *Deliverance from Captivity*, Schmitt considers a range of issues relating to history and political theory as well as recent events, including the Nazi defeat and the newly emerging Cold War. Schmitt often urged his readers to view the book as though it were a series of letters personally directed to each one of them. Hence there is a decidedly personal dimension to the text, as Schmitt expresses his thoughts on his own career trajectory with some pathos, while at the same time emphasising that "this is not romantic or heroic prison literature."

This reflective work sheds new light on Schmitt's thought and personal situation at the beginning of a period of exile from public life that only ended with his death in 1985. It will be of great value to the many students and scholars in political theory and law who continue to study and appreciate this seminal theorist of the twentieth century.

Carl Schmitt (1888–1985) is widely acknowledged to be one of the most important and influential political theorists of the twentieth century.

Translated by Matthew Hannah.

polity

www.politybooks.com

COVER DESIGN BY ANDREW CORBETT
PRINTED IN GREAT BRITAIN



9 781509 511631 >

CARL SCHMITT *Ex Captivitate Salus*

polity

Ex Captivitate Salus

Experiences, 1945–47

Carl Schmitt

Edited by Andreas Kalyvas
and Federico Finchelstein

Translated by Matthew Hannah

polity

First published in German as *Ex Captivitate Salus. Erfahrungen der Zeit 1945/47*, by Greven Verlag, Cologne, 1950. Fourth, extended edition © Duncker & Humblot GmbH, Berlin, 2015.

This English edition © Polity Press, 2017

Polity Press
65 Bridge Street
Cambridge CB2 1UR, UK

Polity Press
101 Station Landing, Suite 300
Medford, MA 02155, USA

All rights reserved. Except for the quotation of short passages for the purpose of criticism and review, no part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

ISBN-13: 978-1-5095-1163-1
ISBN-13: 978-1-5095-1164-8 (pb)

A catalogue record for this book is available from the British Library.

Names: Schmitt, Carl, 1888-1985, author.

Title: *Ex captivitate salus : experiences, 1945-47* / Carl Schmitt.

Other titles: *Ex captivitate salus*. English.

Description: Cambridge, UK ; Malden, MA, USA : Polity Press, 2017. | Includes bibliographical references and index.

Identifiers: LCCN 2017010109 (print) | LCCN 2017031142 (ebook) | ISBN 9781509511662 (Mobi) | ISBN 9781509511679 (Epub) | ISBN 9781509511631 (hardback) | ISBN 9781509511648 (pbk.)

Subjects: LCSH: Schmitt, Carl, 1888-1985. | Law--Philosophy. | Law teachers--Germany--Biography. | Nazis--Germany--Biography. | Prisoners' writings, German.

Classification: LCC K230.S352 (ebook) | LCC K230.S352 E3313 2017 (print) | DDC 340.092--dc23

LC record available at <https://lcn.loc.gov/2017010109>

Typeset in 11 on 14 pt Adobe Caslon by Servis Filmsetting Ltd, Stockport, Cheshire
Printed and bound in the United Kingdom by Clays Ltd, St Ives PLC

The publisher has used its best endeavours to ensure that the URLs for external websites referred to in this book are correct and active at the time of going to press. However, the publisher has no responsibility for the websites and can make no guarantee that a site will remain live or that the content is or will remain appropriate.

Every effort has been made to trace all copyright holders, but if any have been inadvertently overlooked the publisher will be pleased to include any necessary credits in any subsequent reprint or edition.

For further information on Polity, visit our website: politybooks.com

Ex Captivitate Salus

IN MEMORIAM
DR. WILHELM AHLMANN
† December 7, 1944

CÆCUS DEO PROPIVS

Translator's Note

All translator interventions appear in square brackets, either in the main text or in footnotes. Most of Schmitt's gendered pronouns are left as in the original, in part because he often clearly had himself in mind when writing of anonymous individuals. "Humankind," "humanity" and related terms are, however, substituted for "man" or "men" where this does not detract from the resulting English. The translator would like to acknowledge the assistance of George Schwab, the virtuoso copy-editing of Manuela Tecusan, the comments and suggestions of Andreas Kalyvas, Federico Finchelstein and Rory Rowan, and the supportive guidance of Paul Young.

Contents

Translator's Note	viii
Introduction: Carl Schmitt's Prison Writings <i>Andreas Kalyvas and Federico Finchelstein</i>	1
1 Conversation with Eduard Spranger (Summer 1945)	13
2 Remarks in Response to a Radio Speech by Karl Mannheim (Winter 1945/6)	16
3 <i>Historiographia in nuce</i> : Alexis de Tocqueville (August 1946)	25
4 Two Graves (Summer 1946)	32
5 <i>Ex captivitate salus</i> (Summer 1946)	46
6 Wisdom of the Cell (April 1947)	63
7 Song of the 60-Year-Old	73
Appendix: Foreword to the Spanish Edition	75
Notes	79
Index	91

Introduction

Carl Schmitt's Prison Writings

Andreas Kalyvas and Federico Finchelstein

I am naked.

Carl Schmitt¹

If 1945 was a turning point in world history, it was especially so for Carl Schmitt's intellectual, academic, public, and personal trajectory. Global reality had changed in unexpected ways: from a world disputed by three ideologies—fascism, communism, and liberalism—to a post-European Cold War between the last two, which had allied and defeated the first. Undoubtedly Schmitt was considered one of the most prominent intellectuals in the defeated camp. An admirer of Mussolini's fascist dictatorship, an ambitious member of the Nazi Party—which he joined on the same day as Martin Heidegger, just a few months after Adolf Hitler came to power in January 1933—and a vocal anti-Semite thereafter, Schmitt had seriously contemplated the prospect of becoming a leading voice in national socialist theory.² He wanted to determine its content and decide its direction.³ He was perceived at the time as the “crown jurist of the Third Reich,” someone who sought to endow the regime with a new legal theory of politics and all the reputation and

legitimacy consequent upon it.⁴ It was a theory he tailored to fit the Führer's aspirations to become the only source of legality.⁵

To be sure, Schmitt's work cannot be reduced to his Nazi period. Ultimately, as it became evident in 1936, it was not as influential with the Nazis as he had wanted it to be. But at the same time it cannot be disconnected from Nazism. Before 1933 he authored seminal works on political theology, dictatorship and the state of emergency, political myth, sovereignty, constitutionalism, and, most importantly, enmity as the defining element of the political. After 1933 he sought to recalibrate his work in the direction of international law and world politics, so as to fit the ideological imperatives of the Nazis and avoid party suspicions. However, what defined Schmitt all along and informed his theoretical explorations was his fierce opposition to liberalism and communism. In the new bipolar world that emerged after the fall of Berlin, his long-standing enemies had won and were in a unique position to determine the new political landscape. As fascism was defeated and his enemies victorious, Schmitt had to rethink himself, his work, and his own political standing and, as his biographer Reinhard Mehring put it, to "attempt to establish one's identity in the battle for recognition."⁶

* * *

This battle was conducted from prison. Schmitt was arrested twice in 1945 and stripped of his prestigious professorship in Berlin, his library was confiscated, and he spent more than one year in two civilian detention camps, being incarcerated and interrogated again by the Allies, in the spring of 1947, at Nuremberg. At the dawn of a new era that seemingly had no

space for him, he found himself out of place, defeated, and “naked”—a victim unjustly persecuted, “weak” and “defenseless” inside a cell.⁷ This was the abrupt context in which he secretly wrote this book and which Jacob Taubes, professor of Jewish studies at the Free University of Berlin and Schmitt’s postwar interlocutor, has described as Schmitt’s “broken confessions.”⁸

In prison Schmitt, who was designated by the allies in 1947 as a “potential defendant” in war crimes, dedicated most of his time to vindicate his past, his work, and himself against charges that in one way or another made him complicit in and responsible for the crimes of Nazism.⁹ His prison writings therefore consist of a kind of judicial rhetoric that aims to vindicate its author, staging a public self-defense against wrongful accusations. Suitably, they start on a defensive tone, with Schmitt’s reaction to the German philosopher and pedagogue Eduard Spranger’s “unfathomable” and (in Schmitt’s eyes) improper question: “Who are you?” This question, which Schmitt sees as a reproach and a provocation, hence implicitly as “a serious accusation,” sets the stage for his response in the form of a self-defense but also offers him a reason to plan a philosophical and political intervention.¹⁰ It compels him to compose the most intimate of his books.¹¹ “I have spoken of myself here,” he claims, “actually for the first time in my life.”¹² Although Schmitt rejected the confessional and apologetic tone of prison prose literature and in general questioned the ideal of self-transparency, he becomes for the first and last time his own main topic, his own object of inquiry from the beginning to the end of the book. Neither before nor after this text did he put himself in this self-reflective visible subject position. In his weakest moment Schmitt attempts to reach his readers through a

most personal tone, allowing them to see the author behind the work, the person and not the party member, a professor and a scholar instead of a fanatic ideologue. Never again will he resort to so many self-descriptions, comparisons, analogies, and associations, all centered upon himself. The prison writings are a passionate attempt to repress his writings from the national socialist period, reinvent himself, and rebuild his damaged reputation. This is why this book represents such an evocative and unique statement of Schmitt's own self-understanding.¹³

To be sure, there are a few other postwar texts by him that could be considered personal in some way. For instance, in his dialogues on power and space in the 1950s, Schmitt will stage himself as an interlocutor among some fictional characters.¹⁴ But in these brief dialogues he still emerges in a mediated form, like a character in a play. By contrast, in the prison writings he speaks directly to the readers, assuming responsibility for his own voice and thus attempting to bypass the narrative limits of representation. In a sense, he wanted this little book to stand directly for his own experience, for his own self. And unlike his private diaries, the writings from the cell were deliberately composed for an immediate public. Schmitt clearly expected that there was a sympathetic audience out there, open to the unapologetic perspective of a former member of the Nazi Party. Although he conceived of his readership very selectively and in intimate terms, he also wrote for all those who were acquainted with his previous work and aware of his Nazi period, but who could also empathize with his trajectory and potentially become receptive to his pleas. In fact, in the context of a total antifascist victory, this was a text that sought to reach out not only to those who had been defeated in the war but to a

much broader audience of bystanders who could rehabilitate Schmitt's reputation and legacy.

While Schmitt was defeated—defeated as a German, as a jurist, as a European, and as a fascist—as a scholar he stated that he was “in no sense destroyed.”¹⁵ He felt he only needed to mount a satisfactory defense and provide an explanation for the role he played in the Third Reich. And he did so in this book. He took this task upon himself and offered his own political explanation in terms of a general theory of obedience that addresses the borderline case of resistance to tyranny by recasting the distinction between norm and exception from two new angles. In the prison writings Schmitt focused again on the exception, a core concept that defined his Weimar work, but this time he began from below, in the concrete context of civil war. Thus, surprisingly, he revisited the state of exception not from the theological heights of a sovereign power that decides to suspend normal order, as he had depicted it in his interwar years, but from the borderline position of a victim of civil war. Strikingly, he now construed his notion of power from the assumed position of the subordinate, the disenfranchised, the outlawed, the excluded, and the rightless.

These figures of exclusion represent extreme situations, Schmitt claimed. They are the new forms of enmity produced in this new age by the criminalization and dehumanization of the enemy. The post-Eurocentric enemy appears in lawless and violent spaces—spaces that confront the citizen with the unpredictable terror unleashed by civil war. In these anomalous and abnormal moments, he explained, the loyal citizen is caught in a situation that is both treacherous and hostile. Confronting a fratricidal battle, he faces the ultimate political question: he “must determine the boundaries of his

loyalty himself,” decide whether, when, and how to exchange submission for protection.¹⁶ The decision to suspend or discontinue obedience reverts back to individual citizens and their judgment, because they are the ones who have to decide whether the state, especially a totalitarian state, a tyranny, is worse than civil war and the total war of all against all. As in his theory, in his own particular case Schmitt resolved this dilemma by questioning the rationality and expediency of disobedience and by choosing the tyrant over the natural state. The power asymmetry between a totalitarian one-party system and the individual, he said, is so great that resistance becomes impossible and the dissenter is ultimately thrown back into “the claws of the Leviathan itself.”¹⁷ Any order is better than disorder.¹⁸ This line of argument became a belated justification of his membership of the Nazi Party and of his activities for and within Hitler’s regime. As he explains in this book, accommodation with Nazism was therefore an existential necessity, a lesser evil, and a prudential act of survival under totalitarian domination. He said that victims of such extreme situations, such as himself, resembled closely Herman Melville’s fictional character of Benito Cereno and his tragic adventures. They also evoked the enigmatic figure of a Christian Epimetheus and his Pandora’s box.

Schmitt’s first identification is with a literary character, a victim of deception, violence, and impotence who is taken captive and acts against his will, while the second is with a Christianized Greek mythical figure and his tragic, unintended error, provoked by manipulation but carried out by desire and love. Both figures, the literary and the mythical, are summoned up in the broader context set by the questions of personal responsibility and moral accountability, which are central to the structure of this book. These symbols are