

Schmitt, Carl. *Carl Schmitt: Antworten in Nürnberg*. Edited by Helmut Quaritsch. Berlin: Duncker & Humblot. 2000. Pp. 148. Index. €36. SFr64.

In March 1947, US forces arrested the German professor of public law Carl Schmitt in Berlin and brought him to the prison for major war criminals in Nuremberg. He was kept in custody as a possible defendant in a future trial. Apparently, some Allied officials considered Carl Schmitt (1888–1985) not only an important legal scholar of the Nazi era, but also an influential author who had promoted the idea of a war of aggression. Indeed, the first interrogation concerned Schmitt's 1939 booklet on the *Großraumtheorie*. In it, he developed his theory of the 'greater space', according to which more important states may, due to the force of their dominating

political theory, control not only their own territory but also other adjacent countries. Hitler had used this concept almost immediately to repudiate US requests to refrain from further actions in central and eastern Europe. Modelled after the US Monroe doctrine, the 'European Greater Area' was to become an area of exclusive German interests. As Germany invaded Poland a few months later, a direct link between Schmitt's theory and the Second World War and its crimes could be discerned.

During April 1947, Schmitt was interrogated three times by the well-known attorney Robert M.W. Kempner. After the final interrogation, he was released and allowed to return home. During this time Kempner asked Schmitt to write texts on four different issues:

- 1 To what extent did you further Hitler's policy of the greater space?
- 2 To what extent did you participate in the preparation of an aggressive war and the crimes resulting from it?
- 3 Legal remarks on the constitutional position of the Reichsminister and the Head of the Reichskanzlei.
- 4 Why did the German Secretaries of State follow Hitler?

Schmitt presented elaborate historical and constitutional reflections which on the whole try to explain and justify his views and his actions in the Nazi period. Together with the records of the three interrogations, these texts have now been edited. Although most of the texts have already been published in other words, this edition presents all these texts in their entirety and includes explanatory footnotes and a commentary. It is astonishing that, even today, after so much discussion on this notorious academic, new texts of Carl Schmitt's work still appear. Of course, the need for a new, reliable edition has long been felt, but the executor of Carl Schmitt's estate thought it necessary to have the texts annotated.

Helmut Quaritsch, a well-known expert on Carl Schmitt, undertook this difficult task. Although the originals given to Kempner have been lost, there are so many copies of the

¹² Galeano, *supra* note 10, at 202.

¹³ Cited in Boraine, *supra* note 8, at 441.

texts in existence that Quaritsch was able to draw up a reliable version of the original texts. The copies of the manuscript in the Institut für Zeitgeschichte in Munich, however, contain notes on the text from various authors, which have not so far been published. Quaritsch gives detailed background information on the names and issues alluded to in the texts; in this respect, the book is typical of the meticulousness of the research on Carl Schmitt in recent years. Quaritsch first explains the historical background to Schmitt's arrest and the developments in Nuremberg,¹⁴ and then comments on Schmitt's texts.

According to Quaritsch, Schmitt's innocence was so obvious that his release was the only possible outcome to the interrogations (p. 27). From 1936, Schmitt had been a professor (p. 115), a position from which he could scarcely influence the crimes committed during the Second World War. Quaritsch points to the numerous inconsistencies in Kempner's recollection of the events (pp. 39 *et seq.*). Indeed, the many evident contradictions give cause to question the official explanation for taking Schmitt into custody in the first place. Kempner is harshly criticized for his apparently unprofessional interrogations,¹⁵ and Quaritsch raises the question of whether there was another motive for the interrogations other than Schmitt's alleged responsibility for the war of aggression. After considering the various topics covered in Schmitt's statements written in Nuremberg, Quaritsch concludes that the threat of a trial and the poor conditions in prison in which he was being kept would have induced Schmitt to implicate others accused in the Wilhelmstrasse trial

against officials of the foreign office (p. 36). Thus Schmitt cooperated (p. 47), but it is unclear whether his statements were ever used in any prosecution (p. 50).

But is the claim by Kempner that he simply tried to evaluate the responsibility of intellectuals so improbable? Might it not be the case that Kempner saw the possibility of Nazi academics not being charged at all (see p. 21)? Why else would Kempner ask for an explanation of the significance of the *Grossraumordnung* and of the influence of intellectuals on politics? True, in Nuremberg, even Baldur von Schirach, the *Reichsjugendführer*, had been cleared of the charge of having acted against peace (p. 19). But does this mean that intellectuals do not hold *any* responsibility? Many persons contributed to the Nazi cause, but few of them had the intellectual skills of Schmitt. Indeed, Schmitt tried to develop a myth that would influence the German people and thus add force to the German quest to subdue eastern Europe.¹⁶ In Schmitt's view, his contribution was more important than Hitler's feeble intellectual efforts. *Post factum*, it may seem impossible for anyone to make sense of National Socialism (p. 122), but an attempt to understand the background should nevertheless be made.

Even today, mere *theories* about law and state cannot amount to a criminal act, even if their realization in practice might cause war and bloodshed. We can punish the illegal actions of soldiers and we can pursue the politicians and the intellectuals who incite war. But their intellectual mentor and theorist, provided he does not call for concrete measures of aggression, has to be respected, even if his ideas might have been the stimulus for the actions committed by those politicians and soldiers. As so many new legal issues arose in Nuremberg, why should not the

¹⁴ Here he obviously does not take into consideration the commentary by F. Kröll, *Das Verhör. Carl Schmitt in Nürnberg 1947* (1995).

¹⁵ Thus, according to Quaritsch, Kempner was unprepared for the interrogations (see C. Schmitt, *Antworten in Nürnberg* (2000) 24 ('blamable Unkenntnis')) and the interrogations were carried out in an unprofessional manner (*ibid.*, at 24 ('stümperhaft')). However, it is surprising that Quaritsch attacks Kempner so passionately.

¹⁶ See M. Schmoeckel, *Die Großraumtheorie. Ein Beitrag zur Geschichte der Völkerrechtswissenschaft im Dritten Reich, insbesondere der Kriegszeit* (1994) 124 *et seq.*; this interpretation was taken up by F. Blindow, *Carl Schmitts Reichsordnung: Strategie für einen europäischen Großraum* (1999) 126 *et seq.*, without reference to my book.

pursuit of this critical question have been Kempner's true objective? The role of intellectual theories as instigation for criminal acts is not a question limited to Carl Schmitt: it is of importance in contemporary international law as well. It has, nevertheless, remained unanswered since Nuremberg, and it may be doubted whether this is to our advantage.

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