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### Chapter 4

*Global Terrorism and the State of Permanent Exception: The significance of Carl Schmitt's thought today*

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#### FROM THE PARTISAN TO THE 'GLOBAL' TERRORIST

At the end of the 1990s, Gorbachev's advisor Arbatov declared to the Americans: 'We are dealing you the worst blow: we are going to deprive you of your enemy'. These are significant words. The disappearance of the Soviet 'Evil Empire' threatened to eradicate all ideological legitimization of American hegemony over its allies. This means that, from then on, the Americans needed to find an alternative enemy, the threat, real or imaginary, of which would allow them a continued imposition of hegemony over their partners, who had been more or less transformed into vassals. In conceptualizing the notion of 'Global Terrorism' two years after the 9/11 attacks, the Americans have found their new enemy.<sup>1</sup>

This new designation of the enemy explains why numerous authors have recently returned to various aspects of Carl Schmitt's works in their examination of the present world situation, with the majority making reference to the war operations led by the Americans and the measures taken by Washington in the fight against Islamic or global terrorism. In the same vein, we will

compare the 'global terrorist' with the figure of the partisan, as evoked by Carl Schmitt in his famous *Theory of the Partisan* (1963 & 2004c).<sup>2</sup>

In Carl Schmitt's works, the figure of the partisan is quite essential because it constitutes a perfect example of how state and politics are not necessarily synonymous, but can, on the contrary, be at a complete disjuncture. The partisan fights an eminently political battle but, as he fights usually against the state, his politics are, at the same time, outside the sphere of the state. In other words, the partisan's actions show that there are wars other than those between states, and similarly, that states are sometimes not the only political enemies.

Schmitt distinguishes clearly between the figure of the partisan, as in guerilla wars of the beginning of the 19<sup>th</sup> century against Napoleon's occupation in Prussia and Spain, and the modern revolutionary fighter.<sup>3</sup> Both are certainly irregular fighters and act outside the state's legality but in the name of a contrasting legitimacy that they claim to represent.. Both are mavericks, who describe themselves as 'resistance fighters,' while being regularly stigmatized by the public authorities who deny them all rights of resistance or insurrection, not only as 'illegal', but also as 'illegitimate' combatants. Both (and this is obviously the point which interests Schmitt the most) possess a keen awareness of the distinction between friend and enemy, as they do not even need a designated enemy to combat (just as the terrorist's enemies are never designated as such by any legal or public authority). Moreover, through their acts, both the partisan and the terrorist erase the traditional distinction between civilians and the military, combatant and non-combatant. Originally, the civilian was typically supposed to be excluded

from any participation in the war, and this is why he enjoyed the particular privilege of being protected. Partisans themselves, however, are not necessarily, and in fact, are rarely part of the military, being rather civilians who have decided to take arms and who often consider other civilians as the allies of their enemies.

The partisan and the revolutionary combatant differ profoundly, however. In addition to highlighting his irregularity as well as the intensity of his political engagement, Carl Schmitt considers the partisan to be distinctively flexible and mobile in active combat. More importantly, however, he also attributes to the partisan a telluric (*tellurisch*) character, that is, as generally having objectives limited to his own territory. Whether he wants to end a foreign occupation, or to overthrow a political regime that he judges illegitimate, the partisan's actions are governed in relation to a particular territory. The partisan, therefore, belongs to the logic of the Land.

On the other hand, the revolutionary fighter or activist, whose origins Schmitt traces to Lenin, is different for he identifies with the 'absolute aggressiveness of an ideology' or claims to incarnate the ideal of an 'abstract justice'. It may well be the case that the revolutionary fighter is, at the beginning, a classic partisan who has found himself

drawn into the force-field of an irresistible, technological-industrial progress. With the help of motorization, his mobility [then] becomes such that he runs the risk of ending up completely uprooted from his environment. [...] Thus, motorization leads to the partisan losing his telluric character (Schmitt 2004c: 24-25).

The loss of the telluric character can be explained by the fact that the revolutionary fighter is not linked intrinsically to a single territory. The entire earth constitutes his field of battle. But this lack of limits is also relevant in another way – the ‘revolutionary fighter’ also does not impose limits on his own choice of methods. Convinced of fighting a totally ‘just’ war, he becomes radical, in both the ideological and moral senses. He regularly designates his enemy as a criminal, and in return, he is himself designated as such. With the revolutionary fighter, hostility becomes absolute. For Lenin, Schmitt says,

the goal remains the communist revolution in countries all over the world. Anything contributing to this end is good and correct [...] For Lenin, only revolutionary war is genuine war, because it is based on absolute enmity [...] With the absolutization of the party, the partisan also became something absolute, and he was raised to the level of a bearer of absolute enmity (2004c: 46-47 and 77).

Schmitt adds that,

where war is pursued by both sides as a non-discriminatory clash, [...] the partisan remains a marginal figure, who does not avoid the framework of war and does not change the overall structure of the political phenomenon. When, however, one goes on to regard the enemy as a real criminal, when a war, such as a civil war, is fought between class enemies and its primary goal becomes the annihilation of the government of the state

enemy, in this case, the explosive revolutionary efficiency of the criminalization of the enemy transforms the partisan into the true hero of the war. He enforces the death penalty against criminals and, for his part, risks being treated as a criminal or a vandal. This is the war of *justa causa* which does not recognize a *justus hostis* (2004c: 31).

Today's terrorist is evidently the heir, or the last incarnation to date, of the revolutionary fighter.

Schmitt reacts against the idea that technical and industrial progress will render the figure of the partisan obsolete. He affirms, on the contrary, and with remarkable lucidity, that the same progress will add a new dimension to the partisan:

What if this human type that has hitherto generated the partisan succeeded in adapting to the technological-industrial environment, to avail himself of the new means, and became a new type of fighter, a figure that has managed to adapt, the partisan of the industrial age? [...] Who will be able to prevent the rise of unexpected new types of enmity [...] whose fulfillment will produce unexpected new forms of a new partisan? (Schmitt 2004c: 67 and 78).

Here, Schmitt is announcing, in prophetic fashion, the era of the 'global partisan' (*Kosmopartisan*).

Today, terrorism is obviously no longer a new phenomenon. However, what is new is the central place it now occupies (or which it has been accorded) on the international scene. But here, we are struck by the contrast between the omnipresence of the denunciation of 'terrorism', and the semantic haze which is attached to the concept, a haze which allows for different interpretations of the word. One of the main problems concerns, of course, the legitimacy of terrorist action, a legitimacy that terrorists affirm constantly, but which is strongly denied them by their adversaries. Actually, the problematic of the classic partisan raises already issues related to the pair legality-legitimacy. Because he is an illegal fighter, the partisan can only claim to have a superior legitimacy than the positive law upheld by the authority he is fighting, which illustrates that legality and legitimacy are not identical and, therefore, should not be confused. This is another Schmittian thematic par excellence (Schmitt 1932/2004b).

It is undeniable that certain forms of 'terrorism' have been recognized as legitimate in the recent past, firstly in World War II, during which the members of the Resistance were invariably denounced as 'terrorists' by the German occupying forces, and then, at the time of decolonization, when many terrorist groups presented themselves as 'freedom fighters' hoping to wrest independence from their colonial powers through armed uprisings. After 1945, innumerable armed minorities, liberation movements or guerillas all presented themselves effectively as resistance organizations confronting state systems that condemned them as 'subversive' groups and 'terrorists'. When their struggles ended and they obtained international recognition, the methods that they had used seemed to be retrospectively justified. This lends credit to the idea that in certain cases, terrorism can be legitimate. Of course, it is often said that

terrorism can never be justified in situations or countries where social and political claims can be expressed otherwise. However, opinions have remained divided as to what constitutes 'good' and 'evil' terrorism and, to a certain degree, the assessment about its moral or immoral character has been, de facto, left to propaganda or plain subjectivity.

The boundary between 'resistance fighters' and 'terrorists' has appeared still more porous, given that a number of countries owe, in part, their birth or independence to the use of terrorism. As a result, long-standing terrorists have been frequently carried to power, transformed in the same stroke into valuable spokespersons or respectable representatives of their country. The former terrorists Menahem Begin and Itzhak Shamir, for example, who distinguished themselves in bomb attacks against Arab civilians and English soldiers before the proclamation of the Israeli state were, some years later, awarded the highest positions in their countries. The same also goes for Algerian or South African leaders like Ahmed Ben Bella or Nelson Mandela.

Today, still, people who are seen as 'resistance fighters' by some are very often branded as 'terrorists' by others. The usage of the term has proven to be unstable and, even, interchangeable. While supporting Islamist movements in order to balance the influence of secular Arabic nationalist movements, the United States did not hesitate to support certain terrorist groups, notably in Nicaragua, Angola and Afghanistan during the Cold War, just as it supported, after the first Gulf War, opposition Iraqi groups responsible for numerous booby-trapped car bombings (Cockburn 1996). The Taliban, called 'freedom fighters' during the invasion of Afghanistan by the Soviet Red Army, became 'terrorists' when they started to use the same methods against their

former allies. The militants of the Kosovo Liberation Army (KLA/UCK), seen as 'resistance fighters' while NATO forces bombarded Serbia, became terrorists when they targeted Macedonia, which was allied with NATO and the United States. And, these are but a few examples.

The problem of the status of terrorism with respect to the binary pair legality-legitimacy is further complicated by the existence of state terrorism, which might be considered a 'legal' kind of terrorism. In fact, the most current definitions of terrorism do not exclude this type of state terrorism, which has always had more victims than illegal violence at the 'sub-state' level (Chaliand 1997:10). If one defines terrorism as a way of causing the greatest harm possible to the biggest number of innocent victims, as a way of deliberately killing innocents taken randomly in order to demoralize and to spread fear at the heart of the population, or also as a way to force their leaders to capitulate, then the terror bombings of German and Japanese civilians in the World War II, for example, certainly fall under this category, since, in all these cases, non-combatants were deliberately and randomly targeted.

Another important question that is much discussed nowadays is whether contemporary 'hyper-terrorism' or 'global terrorism' differs from 'classic terrorism' simply in the intensity and augmentation of its elements, or whether, on the contrary, this 'global' kind of terrorism marks the emergence of a form of violence that is itself completely new? Let us now examine certain traits or characteristics of this 'new' terrorism.

## THE NEW TERRORISM

As with the ‘revolutionary fighter’, examined above, one of the defining characteristics of today’s global terrorism is its use of violence. To say that terrorism is certainly violent is not sufficient to define it, however. More specifically, this must be understood as a violence without limits, where nothing seems to mark its boundaries. The global terrorist engages himself in a fight to the death. Terrorists are the first to strip the classic distinctions between warring parties and neutrals, civilians and the military, combatants or non-combatants, legitimate or illegitimate targets. It is in this way that terrorism is a form of total war. But this type of unlimited action generates some kind of ‘mirror effect’, in the sense that to fight terrorism, all means can easily appear as equally justified. Napoleon said already in 1813, for example, that ‘[w]e must act as partisans in any place where there are partisans’. Therefore, because terrorism is set up as an absolute enemy, it is tempting to think that nothing can be excluded in bringing matters to an end – especially if one thinks that the classic (or democratic) methods are ineffective before such a menace. There is great temptation, in other words, to use the terrorists’ own methods against them, in the name of efficiency.

Another important characteristic is its even more increased de-territorialization. Post-modernity means the end of territorial logic and, as a result, the figure of the partisan, to which Schmitt still attributed a prominent ‘telluric’ character, becomes completely de-territorialized. Paul Virilio goes so far as to speak about the ‘end of geography,’ which is probably excessive, as the basic principles of geopolitics remain (Virilio 2000: 9). However, today, the privileged form of

terrorist activity is the *network*. What we call 'Al-Qaeda', for example, is not a classic type of organization, localized with a set hierarchy, but a loose collection of tangled networks. These terrorist networks have become even more important because the postmodern era is itself an era of networks, an era where cross-over networks have replaced organizational hierarchies. And these networks are dispersed: their members live in a multitude of countries, which accentuates their de-territorialization.<sup>4</sup> The parallel which has often been made, including by President George W. Bush,<sup>5</sup> between the attacks of 11 September 2001 and Pearl Harbor in 1941, is, in this respect, completely erroneous. The 1941 attack was an action from a country clearly situated on a map: Japan. The 11 September attacks, however, are the actions of a series of transnational networks.

Similarly, the war *against* terrorism does not have any territorial boundaries because the enemy does not identify (or does so infrequently) with a given territory. The United States may have well been able to carry out a war in Afghanistan, accused of harbouring Al-Qaeda groups, but in reality, these groups were only there in part or provisionally. The 'global' war started by the United States against terrorism is a war between rootless, de-territorialized partisans that are organized essentially as networks, and a world power which aspires, not to conquer territories, but to install a new world order, seen as a necessary condition for its national security. This new world order will lead to the opening of global markets, guaranteed access to energy resources, the suppression of regulations and frontiers, the control of communications and so forth. Under these conditions, it is no longer the logic of the Land which characterizes the actions of the partisans, but the 'maritime' logic of de-territorialization-globalization that favours the

emergence of a new form of terrorism, in the same time that it opens up new ways of carrying out activities<sup>6</sup>. And as the United States, such as Schmitt defines it, is the Maritime power par excellence, and as globalization itself obeys a form of 'maritime' logic, we can say that the war against terrorism comes entirely under the logic of the Sea.

The appearance of a terrorism that is completely de-territorialized has yet another consequence. It engenders confusion between military and police duties, which are now thought to be interchangeable. During World War II, in order to fight against the Resistance, the German occupation troops already had to perform duties that were typically in the domain of the police, such as investigation, arrests, interrogation of suspects, etc. At the same time, the collaborating police simultaneously underwent a militarization process. After 1945, during the anti-colonial wars, regular troops also utilized police methods, as they had to first identify enemies who did not wear uniforms. The global war on terrorism also falls under the domain of police work. Here we must not forget that a policeman does not regard his adversaries as a 'traditional' soldier would regard his. By definition, the police are not content with combating crime; they are, rather, attempting to eliminate it.

The police also do not conclude 'peace treaties' with criminals. In this way, there is nothing political in police activities, at least when they involve combating criminals and wrong-doers. However, there is a clear 'moral' dimension: the crime is not only socially, but also morally, contemptible. The police character of the war against terrorism reveals this point of view. It puts forward implicitly, as Rik Coolhaet writes, this 'message that one has wanted to spread since the

19<sup>th</sup> century: terrorism is not a legitimate political activity. It belongs to the criminal sphere' (2004: 113). But what is it exactly? Is terrorism a new political form of war, or is it a new form of criminality? (see Daase 2002; Falk 1986; Klitsche de la Grange 2001). Terrorism is, after all, a war of peacetime, and this signifies the increasing inability to distinguish between the notions of 'war' and 'peace'. This is in itself significant, because in this epoch of the fight against global terrorism, the confusion between police and army duties has grown to such proportions that it destroys the distinction between domestic and international affairs<sup>7</sup>.

From the point of view of those who combat terrorism, things are clear. In public discourse terrorists are irrevocably described as criminals. This is not a new phenomenon. During the French Revolution, the Vendean insurgents were officially denounced as 'brigands'. After the assassination in September 1901 of the American President William McKinley by an anarchist, his successor, Theodore Roosevelt, called anarchists 'criminals against the human race'. But the equation terrorist = criminals, generally supported by the violent, blind and unpredictable character of terrorist actions, has also been used in the past to disqualify members of the Resistance or the 'freedom fighters' in anti-colonial struggles. This equation made it possible for them to be considered as delinquents of common law, which justified why, for example, when they are arrested, they were refused the status of political prisoner. Along the lines of semantic analysis, remarks Pierre Mannoni, the terrorist is regularly described using terms 'such as "criminal", "assassin", "bandit", reducing him to the rank of violent undesirables, disturbers of order and social peace, or as "barbarian", "savage", "blood-thirsty madman", inclining towards

mental insanity or an uncivilized, brutal state of nature' (2004: 41). Terrorists, in other words, are denounced as criminals or madmen.

That kind of denunciation of terrorism transforms the terrorist into a man who cannot have anything in common with the people whom he attacks. Therefore, the terrorist becomes an Other, a real '*hostis humani generis*': '[t]he image of the Other is constructed as an image of somebody who will never 'be like us'' (Ragazzi 2005). This is constantly affirmed both by politicians and the media: whichever cause terrorism is claiming to defend is really 'incomprehensible'. In the United States, it is maybe still more incomprehensible, as the Americans, convinced of having created the best society possible – or even the only one truly acceptable – have a tendency to find it unimaginable that someone could reject the model of society which they champion. The idea that the United States is a 'land of the free' – the ultimate model of organization of society, and a nation 'chosen' by Providence – is so widespread that this obviously facilitates the representation of terrorists as sick, perverted, or mad people: in September 2001, how could 'normal' people not believe in the 'goodness' of the Americans? The mere fact that the terrorists 'detest the United States and everything it represents'<sup>8</sup> made them appear as outcasts – and, as the United States identifies itself as the 'Good,' the terrorists can only be the incarnations of Evil. Terrorism is therefore stigmatized as irrational and criminal at the same time, stripped of all logic, and fundamentally portrayed as having no proper political objectives. This description of the terrorist, either as mad, criminal, or both, resonates of course with public opinion, that often views terrorist acts as both unjustifiable and incomprehensible at the same time ('why do they do it?,' 'but what do they want?'). These reactions can be easily understood, but the question is

whether the usage of such terms can help the analysis of the true nature of terrorism, and the identification of its causes.

The description of the terrorist as a simple criminal is supported by a logic that bans any rapprochement between murder and legitimacy. This logic becomes entangled however by the fact that in all wars, murder is legitimate – even when it involves civilians, victims of terror bombings or ‘collateral damage’. Terrorist rhetoric will therefore attempt to portray their actions as legitimate. In fact, as we have seen, all the terrorists consider, firstly, that they are indeed fighting a war, and, secondly, that their actions are legitimate because their violent acts are only the consequence or result of another ‘legal’ violence, that is, that their violence is justified by the injustice of a situation and is therefore, a completely acceptable reaction to a situation which is unacceptable.

In view of this rhetoric, generally denounced as specious, terrorism is, on the contrary, described immediately by those who combat it as purely criminal, and they admit only grudgingly that terrorists might have political aims. It is emphasized that the terrorist’s methods disqualify him as a political combatant and are proof that he is only a criminal. But the negation of the political character of terrorism is not to be explained only by emotional reactions of opinion. For the public powers fighting terrorism, this negation translates often into an eminently political attitude, for which these emotional reactions are just an instrument. ‘It is a deliberate desire to obliterate the political message inherent in a terrorist act,’ writes Percy Kemp,

a denial of truth understood as a *sine qua non* condition of the constitution of a new ethos. Thus, in Israel, the refusal of the authorities to recognize the political specificity of terrorism (and therefore their refusal of all negotiation) has its foundations in the official denial of the reality of the despoliation of the Palestinians. In the United States, such a refusal is founded in the official denial of the incestuous relationships that successive administrations have maintained with the Islamist groups, and of the subsequent rupture with these cumbersome allies at the end of the cold war (2004: 21-22).

At the same time, the majority of people do not deny that terrorists are making war on the United States, and that the US must themselves make war on the terrorists. However, the recourse to this term of 'war' is ambiguous. Traditional wars are concluded by peace treaty, which is not a plausible option in this case. The model of war which operates here is rather the model of the total war, of the moral ('just') war, of the police war, where it is not enough to just defeat the enemy: one has to eliminate him. Carl Schmitt writes that 'theologians tend to define the enemy as something which must be annihilated' (Schmitt 1950: 89). Advocates of the 'just war' use this reasoning, as do those who fight the 'war against terrorism'. This permits them to justify the fact that they not only want to combat terrorism, but, rather, to eliminate it. Henceforth, we see that this war is by nature very different from traditional wars, that it is a war of police character, and an absolute war.

The public powers confronted with terrorism often repeat that 'one does not negotiate with terrorism' – even if, in reality, they often negotiate with terrorists, albeit in a concealed manner,

for example with the secretive payment of ransoms in order to obtain the liberation of hostages. Global terrorism also seems to disdain negotiation in favour of inflicting the greatest damage possible. However, if one admits that the true goal is never the specific targets of the terrorist acts, but what the terrorists hope to attain through these acts, for example, a change of attitude of a government or a modification of its policies, one must also admit that there occurs some kind of 'negotiation'. The terrorists are attempting to achieve *something* through terrorism – that France ceases to support the Algerian regime, that the United States change its policies in the Middle East, that Russia withdraw its troops from Chechnya, etc. The statement: 'we do not negotiate with terrorism' is therefore to be understood as a simple refusal to cede to these demands. Of course, it is in reference to the methods utilized in order to force them to capitulate, methods considered immediately as unacceptable because they involve hurting 'innocents' or taking civilians as 'hostages', that the public powers justify their refusal to give in. But it is also obvious that they would not give in even if the same demands were presented to them in a 'reasonable' fashion. This is why terrorists, who know this perfectly, prefer to fall back on the most extreme methods – methods supposed to achieve what they would not achieve otherwise, though it is also these methods which are used to justify the refusal to accede to their demands.

Schmitt distinguishes between the traditional partisan and the 'absolute partisan,' who, animated by his revolutionary faith, breaks all norms. But Schmitt does not draw this distinction in order to make the absolute partisan a criminal. On the contrary, he recognizes in him a figure that is eminently political. He notes that the 'intense political character of the partisan must be kept in mind, precisely because it makes it possible to distinguish him from the ordinary criminal and

thief, whose motives are concerned purely with private enrichment' (Schmitt 2004c: 19). Even when they do not appear to have any aim beyond the specific target, all terrorist acts are political messages that must be deciphered. For the terrorist, the terror is always potentially 'convertible to political capital' (Kemp 2004). The terrorist is very well a *hostis*, a political enemy as meant by Schmitt, but it is precisely this strictly political dimension of terrorism that the 'police' rhetoric erases. This is not to say that terrorist acts are not also crimes. But these are *political* crimes that cannot be recognized as such without taking into consideration the context, as well as the causes which permit them to be qualified as such. In other words, a political crime is first and foremost political, and this is why it cannot be equated with crimes of common law, although this obviously does not mean that it should be treated with more leniency.

Terrorism, moreover, is not 'irrational', and the works of Schmitt are very useful in helping us understand this. It is not more (or less) irrational than the logic of the market, which is also grounded in religious foundations, since it divides the world between 'believers' (in the all-powerful 'invisible hand' and 'spontaneous' economic regulations) and 'unbelievers'. Let us add that it is also erroneous to label Islamic terrorism as 'nihilist,' as nihilism is probably what Islamic thinking detests the most. Nihilism is precisely what Muslims accuse the West of succumbing to, by having created a world where only material values are important. Nothing is therefore further from reality than the representation of terrorism as a set of irrational, purely pathological and criminal actions. Terrorism subscribes to political goals, and it employs very logical strategies. This logic and these goals are lost amongst the moralistic condemnations and indignation of the media. 'Even blind attacks, affecting anonymous victims', writes Pierre

Mannoni, 'have deliberate and precise intentions. All is calculated to produce a certain effect, because nothing is less farfetched, vague, or improvised than a terrorist attack, where everything is planned: agents, places, methods, and especially the political consequences, as well as subsequent media reaction' (2004: 8).

During the period of the Cold War, the Soviet Union represented a 'symmetrical' adversary to the United States. The confrontation of the United States with global terrorism is more of an asymmetrical confrontation. In a classic war, according to Mannoni, 'there is a direct proportional link between a strong spatial extension, a moderate to strong intensity and a continual frequency; terrorism is characterized, to the contrary, by a relationship of inverse proportionality between a weak spatial extension, an extreme intensity and an irregular frequency' (2004: 29). Not a long time ago, during the Cold War, we aimed at a balance of power (or of 'terror'). Today the key notion is that of asymmetry (rather than dissymmetry, which denotes solely an inequality of quantitative order between the forces present.)

The 'war against terrorism' is an asymmetrical war by its very nature: it is precisely because the terrorist does not make use of methods of classic confrontation that he resorts to terrorism. This asymmetry existed already during the era of the classic partisan, which enraged Napoleon. With global terrorism, this asymmetry becomes generalized at all levels. There is asymmetry in terms of actors: on the one hand, the heavy structures of states, on the other, the fluid logic of transnational networks. Then, there is also asymmetry in terms of objectives: terrorists know where and how they will attack, their adversaries do not know (or know only imperfectly) where and

how to respond. Moreover, there is asymmetry in terms of methods: on 11 September 2001, in the space of a few minutes, the battle ships, the atomic bombs, the F16s and cruise missiles became obsolete in the face of a dozen fanatics armed with knives and boxcutters (see Verstrynge 2005).

The most important asymmetry, however, is of the psychological order: an immense gap separates men for whom many things are worse than death and a world where individual life is a pure fact of immanence and is regarded as a good which nothing can surpass. People of the West live today in a ‘disenchanted’ (*entzauberte*) world where, for the majority of people, nothing is superior to life. Throughout history, however, this sentiment has been the exception rather than the rule. Percy Kemp speaks here, very rightly,, of the ‘anthropocentric choice that was made from the Renaissance onwards, to put Man, rather than God at the center of the universe, and to substitute the fear of death for that of hell’ (2004: 19) In today’s world, there is a radical asymmetry between terrorists, who are ready to give their lives in suppressing the lives of others, precisely because they are not paralyzed by the ‘fear of death,’ and those for whom this behavior is completely ‘incomprehensible’ because, for them, life is always more valuable than everything else. It is this asymmetry that tends, on the side of the victims, to denounce terrorism as ‘absurd nihilism’: the rationality of the secularized western world makes it unable to understand the motivations linked to a logic (that it itself had known in its past) for which there are causes – good or bad, of course – which are worthy of the sacrifice of life. From such a ‘rational’ view, the refusal to sanctify the worldly life, the absence of ‘fear before death’, can only be that of a ‘fanaticism’ that is also a form of criminal madness. Between those who are thinking of the other

world and those who are thinking about their pension, there can be no possible common ground. For the terrorists, death is eventually a reward. Faced with this desire of death raised as an ultimate weapon, the West is inevitably disarmed.

But terrorism is also asymmetrical in yet another sense, in that it has a formidable impact on public opinion by killing relatively few people –much fewer, for example, than the murders and killings of the ‘classic’ type which happen every year in the world. In this way, it is similar to air catastrophes and crashes: rare, but immensely news-worthy, because they result in the simultaneous death of dozens, or hundreds of people, whereas one never talks about car accidents, even though they kill many more people, in total, than air-crash accidents. Similarly, terrorism does not claim as many victims as ethnic wars and massacres, such as what happened in Rwanda, but it elicits stronger reactions because it is more spectacular. Moreover, this spectacular character cannot be disassociated from its objective. Terrorism’s real impact is in the psychological domain.

### The Objectives of Global Terrorism

The first aim of global terrorism is to weaken mind structures and to destabilize habits of behaviour. Evoking the actions of present-day terrorists, Mannoni writes quite correctly that it is less ‘about ‘shaking people from their apathy’, as in the era of historical revolutionaries, than to generalize this apathy by stripping their enemies of their faculties for defense or initiative’ (2004: 10). On his side, Jordan Paust observed already in the 1970s that the goal of the terrorist act was

to 'use the terror and anguish of the victims to force their principal target to adopt a given conduct, or to modify their policies in the ways they wished them to be' (1977: 21). This definition shows very well how the 'principal target' is never what is immediately targeted, but that which the terrorists hope to overcome through the ricochet (it is in this sense that the terrorist act can be compared to a kidnapping.) Already at the time of the terror bombings of civilians in Japan and Germany during World War II, beyond from the victims themselves, the targets were the German and Japanese governments. The same goes for global terrorism, whereby the actions aim at a secondary, rather than primary, effect. The attacks are only the means of conditioning public opinion or of putting pressure on governments and their policies. Terrorism desires to move spirits and to disarm public will. The sought-for goal, for example, is not so much to destroy the Twin Towers of the World Trade Center, but to traumatize the population by the spectacle of their destruction. This is an important difference from the partisan or the guerillero, which are almost always pursuing direct effects on immediate objectives, the primary effect therefore being the sought-for goal.

In today's world, this objective is attained mainly through media networks. There is a strong link between the intrinsic spectacular character of the big terrorist attacks and the sensation which the media creates from them. Terrorism strikes the sight as much as it makes an impression on the imaginary. The creation of a shocking and disturbing spectacle that elicits emotional upheavals and immediate visceral reactions, confers terrorism its power of impact: the attacks of 11 September 2001 are perfect examples of this. The development of terrorism, therefore, is intimately linked to the expansion of global media which, getting a hold of the news in 'zero

time' – everywhere in the same time – effectively multiplies terrorism's effect. How effective the shock of an attack is, does not depend as much on its intrinsic amplitude as on what one says of it: if one does not say anything about it, it is as if it never took place. There is, then, a type of perverse, though organic, link between terrorism and the media (Alexander and Latter 1990; Mannoni 1992). Terrorism can therefore be construed as a card game of four players, a murderous game where the four elements cannot be disassociated: the terrorists, the victims, the 'principal target' (the established public authorities) and the media.

With global terrorism, the fear of danger is still more important than the danger itself. The terrorist is a formidable and 'invisible' enemy, who is supposedly capable of anything and is viewed, at the same time, as virtually omnipresent. This characteristic serves him by amplifying the effect of fear. Having neither norms nor limits, terrorism destroys all reference points, because its logic is radically distinct from the prevailing current rationality. Its 'invisibility' and unpredictability multiply the fear, which arises from the menace that it constitutes, while, at the same time, it leads to all sorts of irrational or conspiratorial representations. In a society where the *risk* (omnipresent) has taken the place of *danger* (identifiable and localized) (Beck 1986), it generates phantasms of general suspicion, which tend to legitimize whatever measure of control or restriction of civil liberties amongst populations often ready to sacrifice these liberties in order to guarantee their security.

We said earlier that terrorism is a war of peacetime, perhaps even a war *disguised as peace*. It is also both a 'global' and a total war. After 11 September 2001, the White House gave the

codename 'Infinite Justice' to its plan to wage war on terrorism. By definition, 'Infinite Justice' does not know any limits. Addressing Congress at that time, George W. Bush said that this war would not end 'until every terrorist group of global reach has been found, stopped and defeated'. He also declared: '[w]e want total victory in Iraq; we will get total victory,' which means clearly that anything which will not be a total victory would be taken as a total defeat. He could as well have said that this undeclared war is a war without end. Paul Virilio wrote that 'with terrorism, we have entered into a war without end, in both sense of the word,' meaning that this is a war which cannot be ended, and also a war without a precise objective (1999: 5). It is without end on both sides, because the terrorists cannot seriously hope to vanquish their adversaries, while the latter cannot seriously hope to eradicate terrorism. As Schmitt had predicted, global terrorism has many days ahead of it.

#### FROM 'STATE OF EMERGENCY' TO THE STATE OF PERMANENT EXCEPTION

Faced with terrorism, the old doctrine of 'containment' has become obsolete. The fight against terrorism is now a fight that is at once offensive by nature, but also, preventive. It affirms the right to unlimited pursuit and, in authorizing the pursuer to cross all borders, permits him at the same time to affirm his hegemony in the world. But it is also a fight which makes great use of the notion of 'urgency' and which finds an outlet in the state of exception. Characteristic of 'times of distress', the state of exception resembles the 'state of necessity' that historian Theodor Mommsen paralleled with legitimate defense. In the state of exception, a state finds itself abruptly confronted with an extreme peril, a mortal menace that it cannot face without having

recourse to methods which, following its own norms, would be unjustifiable in normal times. The situation of urgency or the state of exception can be defined in other terms as the brutal occurrence of rare events or unpredictable situations which, because of their menacing character, require that they be faced immediately with exceptional measures, such as restriction of liberties, martial law, state of siege, etc., considered as the only suitable responses to the situation.

The notion of the 'state of emergency' (*Ernstfall*) or the state of exception (*Ausnahmezustand*) plays a central role in Schmitt's political and constitutional theory, where it is clearly linked to his critique of liberalism (see Schmitt 1985, chapter 1). For Schmitt, the exception being unpredictable, it is vain to believe that one can determine in advance the methods to respond to it. Liberalism, either inspired by neo-Kantian formalism or by Kelsenian positivism, cannot understand the nature of the exception, and neither can it face the exception without betraying itself because it adheres to a legal conception which is strictly formal or procedural, and which claims that a pre-established rule or norm can be applied to any situation.

Carl Schmitt adds that, in suspending legal norms, the exception helps us to better understand and appreciate the nature of the political, in the sense that it reveals to us the domain of the sovereign, meaning in this case the concrete capacity to make a decision in the face of an urgent or exceptional situation. The state of exception reveals both who is sovereign and also where sovereignty lies, in the very moment that it makes the decision appear (*Entscheidung*) in its 'absolute purity'. In such conditions, one can see that the politically sovereign instance does not coincide automatically with the State. '*Souverän ist, wer über den Ausnahmezustand*

*entscheidet*', writes Schmitt (2004b: 13). This famous formula can be understood in two fashions: first, that he who is sovereign is the one who decides in the case of exception, and second, also sovereign is he who decides about the exception itself, that is he who decides that it is no longer a normal situation and that the rules no longer apply. There is therefore a tight link between the exception and the decision, which Schmitt identifies as the 'premier cause' of all political society. To Schmitt, the purest expression of the political act is the decision in (and about) the case of exception (or emergency): the suspension of legal norms in the case of exception constitutes the ultimate manifestation of political sovereignty. Sovereignty, he underscores, is not so much the power to make laws as the power to suspend them. But one would be wrong to interpret this affirmation as an apology for arbitrariness. On the one hand, Schmitt emphasizes that in making decisions in a case of exception, the sovereign is not rendered free by circumstances to act according to his own pleasure, but he is, on the contrary, obliged to act in a way that makes him responsible for them. On the other hand, he stresses that the exception *defines the rule* in the sense that we cannot understand a rule without taking into consideration its limits, which is to say the circumstances that can make it inapplicable. In other words: whoever decides to derogate from the norm, is equally fixing the norm.

The state of exception is also important because it reveals the original non-normative character of the law. Moreover, it is not the law/right (*Recht*) which is suspended in the state of exception, but only the normative element of the law (*Gesetz*). Through this, the state of exception unmasks the 'existential' character of laws. The exception is essential, not because it is rare, but because it is unpredictable. Like the enemy himself, who cannot be determined beforehand by a pre-

existing general norm –because enmity can only be defined through concrete context of the moment –, the exception cannot be codified in advance. In linking the law (*Recht*) to its non-legal source, that is the sovereign decision, Schmitt attacks all forms of constitutional rationalism, notably the theory of the rule of law (*Rechtsstaat*) or the positivist theory, according to which the sovereign must, under all circumstances, submit himself to the rule of law. The occurrence of an exceptional case (*Ausnahmezustand*), with all that is implied, shows that it is simply not possible to submit the sovereign unconditionally to the rule of law, since norms cannot predict the exception. A constitution is, in this sense, always incomplete. The most it can do is predict a situation where it is no longer applicable.

However, Schmitt also underscores that the exception is, by definition, exceptional, that is to say, it can never be transformed into a permanent state. Exception is to rules or norms what war is to peace. As in the case of the ancient Roman dictatorships, the suspension of the norms by the sovereign can only be provisional. It can also open a new cycle of law. In his book on dictatorship (Schmitt 1921), Schmitt says clearly that dictatorship, which can be justified in certain cases of exception, suspends norms but does not change the legal order or the nature of the state, which means that it does not have any legitimacy except as much as it aims to restore the pre-existing legal order. A dictatorship therefore remains a constitutional dictatorship: the suspension of legal order does not signify its abolition.<sup>9</sup> In an exceptional situation, if the state suspends the rule of law, it is because it wishes to preserve it. Hence, to decide on the exception means also to decide on the concrete conditions in which the norm can still be applied.

The theory of the case of exception shows the highly *concrete* character of Schmittian thought: if he challenges formal and abstract theories, it is firstly because he is attuned to the context. Here, we remember that Schmitt formulated his doctrine under the troubled circumstances which Germany was undergoing from 1917-1919. The famous Article 48 of the 1919 Constitution of the Weimar Republic, to which Schmitt dedicated numerous writings, defined the state of emergency in the constitutional sense of the term. This Article, which could be compared with Article 16 of the Constitution of the 5<sup>th</sup> French Republic, grants extraordinary powers to the President in order to face situations of exception, including the right to call on armed forces to contain the serious situations of state and internal disorder. This Article was invoked more than 250 times during the Weimar Republic!

Nevertheless, the notion of the state of exception is obviously not unique to Germany (or France). A study published in 1978 estimated that at least 30 countries were at that time in a state of emergency.<sup>10</sup> The Constitution of the United States itself foresees the suspension of *habeas corpus* ‘when in cases of rebellion or invasion the public safety may require it’ (art I, § 9, cl.2) – but instead of making this a privilege of executive power, it assigns this power of suspension to Congress. During the Civil War, President Abraham Lincoln decided to suspend *habeas corpus* – without, however, deferring to Congress –, just like after the attack of Pearl Harbor, President Franklin D. Roosevelt interned all Americans of Japanese origin, as a preventive measure. During the Cold War, the confrontation with the Soviet Union also led the United States to adopt certain measures of exception supposedly justified by the demands of ‘national security’. Here, we can cite the National Security Act of 1947 which, from this period onwards, puts the notion

of ‘national security’ in the center of American foreign affairs preoccupations. The constitutional effects of the Cold War have been studied many times (see Yergin 1977). One can remember how these effects influenced also domestic politics in the period of McCarthyism, when there occurred a systematic re-interpretation of the rights of American citizens and the adoption of surveillance procedures of those suspected of being communist sympathizers. Between 1950 and 1970, Congress adopted not fewer than 470 acts to reinforce executive power in order to confront exceptional situations. None of these acts have been repealed after the dismantlement of the Soviet power.

The measures taken by the American government following the attacks of 9/11 are therefore not without precedent. However, they also have particular characteristics, which distance them radically from the Schmittian ‘model’. In declaring a war, seemingly without end, in order to confront a danger – global terrorism –, the American authorities seem to be leaning towards an institutionalization of these exceptional measures. The state of exception ceases therefore to be an exception, and from henceforth becomes permanent.

For some writers, the development of terrorism – even before 9/11 – could already justify the declaration of a state of exception (Scheuerman 1999; Gross 2001). After 9/11, everything accelerated. Immediately after the attacks, President George W. Bush decreed a state of emergency, while the American Congress adopted a resolution authorizing the president ‘to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11,

2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons'.<sup>11</sup> One month later, on the 24<sup>th</sup> October 2001, the USA Patriot Act (acronym for 'United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism') was approved by an overwhelming majority by the House of Representatives. It authorized notably the Federal Bureau of Investigation (FBI) to conduct secret investigations on the private lives of persons suspected of terrorism, to use spyware in their computers, and to indefinitely keep records of their internet navigations. It also authorized the Secretary of Justice to arrest and detain all foreigners suspected of putting national security in danger.<sup>12</sup> On 13 November, President Bush signed an ordinance, the 'Military Order', foreseeing the judgment of presumed terrorists by a special military court and the indefinite detention of suspects.

These different laws of exception have permitted the arrests and detentions of suspects for an indeterminable length of time. They have also legalized their deportation, their imprisonment in solitary cells without being charged or given due process, and the search of their homes without authorization. They have resulted in the creation of zones of non-law, and the suppression of the judicial legal status of certain people. The FBI and the National Security Agency (NSA) have been granted unlimited freedom, exempt from all judicial control in the matters of communications surveillance both in national and foreign territories. More than 1200 foreigners have been arrested on simple suspicions. Four months later, 900 of them were still in incarceration, without any precise charges brought against them, without having had the opportunity to appear before a judge or the possibility of having a lawyer. On its part, the

‘Military Order’ of 13 November deems that its sources could be kept secret, that the accused would have no recourse against their arrest and incarceration and that their rights of defense would be ‘severely limited’.

One of the most spectacular consequences of this range of measures has been the internment of hundreds of detainees (of more than 40 different nationalities) in a camp situated in the American military base of Guantánamo, in Cuba. These detainees have never been charged or told the reasons for their arrests, and have not had access to attorneys or the right to be treated as prisoners of war under the Geneva Convention.<sup>13</sup> For these detainees, made prisoners in Afghanistan, Iraq or elsewhere, the status of ‘Illegal Enemy Combatants’ has been created, which is stripped of all judicial content or value. Incarcerated without judgment, the prisoners of Guantánamo are neither criminals of common law, nor political prisoners, but more importantly also not prisoners of war. A number of them have been victims of ill-treatment and brutality. Some of them, in the wake of such ill-treatment, have been more or less secretly transferred to allied countries where human rights are insignificant, and have been systematically tortured (Grey 2005). The 2005 annual report from Amnesty International, made public on 25 May 2005, does not hesitate in describing the camp at Guantánamo as ‘the Gulag of our times’.<sup>14</sup>

In the name of fighting against terrorism – a common, imminent peril –, numerous civil liberties have been suspended in the United States. Moreover, in the wake of 9/11, a climate of fear has prevailed, leading to new attacks on civil liberties. The most common, current allegation has been that of ‘threats’ against ‘national security,’ two concepts which evoke emergency or

exception, but which also remain blurred, facilitating their political and judicial usage, as well as their utilization as a pretext for restraining political liberties. Moreover, one observes that there is a constant enlargement of the concept of ‘national security’, which in the beginning possessed an essentially military resonance, but which has come to encompass all domains of social or international life.

The anti-terrorist fight has also revived the question of whether democracies can, in times of exception, utilize against the terrorists methods which would be reprovved in normal times. The first of these methods is obviously the use of torture.<sup>15</sup> The tortures in the prison of Abu Ghraib are not only an illustration of what Susan Sontag has called the ‘culture of the shamelessness’, but the debates which followed the publication of books such as Paul Berman’s, *Terror and Liberalism* (2003) and Michael Ignatieff’s *The Lesser Evil* (2004), were also very revealing. Ignatieff, director of the Carr Center for Human Rights at Harvard University, illuminated the way in which terrorism has brought to light, to many people, the weaknesses of the characteristic traits of liberal democracies that they were previously most proud of – tolerance, pluralism, respect for liberties, and so forth. Observing that ‘human rights are not a system of indivisible absolutes,’ he highlights the fact that democracies have admittedly to protect individual rights, but that they also have to guarantee the collective existence, tasks that are not easily reconciled (Ignatieff 2004).

Kim Lane Scheppele shows that the exceptional measures decided by the Bush administration have been taken, not only in consideration of a state of exception at the national level, but also at

the international level. Scheppele also suggests that these measures have not ceased to proliferate, which is of course the most important point. While in the 'classic' case of exception, as Schmitt defines it, the measures adopted to confront a situation of urgency are generally of short duration, taken in a way that permits a progressive return to normality, in the case of the measures taken following 9/11, we have seen the contrary situation, whereby a system of exceptional measures is constantly being reinforced. 'The biggest abuses,' writes Scheppele, 'happened as we gathered more distance from September 11<sup>th</sup>, with constitutional exceptions more and more important, which have had benefit from the active approbation on the part of Congress and the Courts' (2004: 3).

This conclusion has been shared by many observers, who note, 'firstly, that the definition of terrorism given by the public powers is very extensive, since it takes into consideration not only the acts themselves, but the intentions.'<sup>16</sup> This indeterminacy easily permits them to criminalize certain behaviors, to generalize suspicion, to justify preventive detention, etc. Secondly, as it targets suspects, the anti-terrorist legislation applies inevitably to the entire population, an evolution that can engender a big upheaval in the entirety of the penal system. But the fight of 'Good' against 'Evil,' utilized so often as a theme in American public rhetoric, has also a function of diversion. It masks the realities of social insecurity and projects outwards the internal contradictions of the country making use of this rhetoric. The discourse on 'internal security' prolongs and strengthens the discourse on 'national security' while bringing it to civil society. The insistence on 'security,' always in a larger and more extensive sense, is accompanied by a tendency to remove from public debate all the problems which it brings, thus ending in a new

form of 'de-politicization'. The attacks on liberties are made possible by the expectations of citizens in the domain of security: the desire for security trumps the desire for liberty. And security will trump liberty as long as we live in a world where threats are omnipresent and invisible at the same time. Along the same lines, the fight against terrorism, reinforces the authority of the dominant American power on the international scale, who is presented as the best suited to ensure 'global protection'.

In the end, terrorism gives back legitimacy and a new role to the State, which had seemed to be increasingly impotent in the face of influences and planetary challenges linked to globalization. Actually, one may wonder whether the State, whose decline as the privileged instance of the political Schmitt had clearly seen since the 1930s,, is not about to rediscover a new legitimacy through its presumed ability to provide global security and to fight against terrorism. It is in this context that we must appreciate the measures of exception adopted recently in the United States and elsewhere. These have, on the one hand, obvious repercussions at the international level, because the fight against terrorism requires the transnational cooperation of the police forces and the intelligence services. On the other hand, however, they undeniably revive a state structure that has become increasingly obsolete, the national elites finding 'in the anti-terrorist war an excellent occasion to perpetuate their power and to introduce...laws which permit them to impose as much on their enemies as on their own civil society' (Kemp 2004: 22). The State, in other words, cannot legitimize itself otherwise than through security and, therefore, makes use of the citizens' irrepressible desire for security in order to reinforce its influence by restraining liberties. As Jean Baudrillard noted well, the true victory of terrorism is having precipitated the

entire West into a climate of fear and obsession with security, which itself is only a veiled form of permanent terror (2001).

In any case, one cannot be surprised that the name 'Carl Schmitt' has been frequently cited in these commentaries and critiques. According to Jean-Claude Monod, 'the attack of 9/11 confirms perhaps the link foreseen by Schmitt between the (literally) theological comprehension of the enemy and the figure of the 'motorized partisan' (2004: 55). However hostile to Schmitt's ideas, Monod acknowledges that the critique of the German jurist finds today 'an actuality which is particularly obvious when the White House decrees the doctrine of the "pre-emptive war", transgressing all the rules of international law in order to carry out a "war for peace" which expresses itself in theological terms such as "crusade" or the confrontation against the "Axis of Evil"' (2004: 56).

The doctrine of the state of exception can also be utilized to make the political-legal 'normality' appear as some kind of continued exception. It is Schmitt's critique of the legal and liberal order as the carrier of a repressed disorder or of a masked repressive violence which has been especially retained by authors such as Giorgio Agamben, Antonio Negri or Etienne Balibar (Monod 2005: 80-88). It offers access to the idea of *the exception as a permanent norm*: for Agamben, the practice of government based on these procedures of exception has already subtly replaced democratic procedures and norms of the rule of law (*Rechtsstaat*) (Agamben 2005). The current state of exception would only reveal openly a latent anterior tendency, which had already been well studied by Louis Althusser or Michel Foucault.

When the state of exception generalizes itself and becomes permanent, it loses its character of exception. Pierre Hassner writes that ‘one distinguishes [...] tyrannical governments from others according to the manner in which they utilize the exceptional situation to make it permanent rather than to seek a return to normality and to the respect of the rule of law‘ (2003: 200). If the adoption of measures of exception by the United States seems to respond to the Schmittian model – while contradicting paradoxically the idea, equally supported by Carl Schmitt, that ‘liberal’ regimes are, by nature, incapable of facing the state of exception – the fact that one heads towards a permanent state of exception – an *exception without exception* – is completely foreign and even opposed to Schmittian thought. But here again, Schmitt’s works help us understand what is at work in the establishment of this permanent state of exception: a conception of enmity which is triggered by theology and ‘morality’. The conclusion that one can draw from this, is that ‘liberal’ regimes are perfectly capable of taking measures of exception – but that they also, given their representation of the enemy, tend to transform the exception into a permanent norm.. Agamben quotes here the visionary views of Walter Benjamin, according to whom ‘what is effective from henceforth is the state of exception in which we live and which we cannot longer distinguish from the rule’ (Agamben 2005: 59) Robert Kurz writes in the same spirit: ‘[t]hat which, in the past, came under the domain of the exception becomes today the normal or permanent state’ (2005: 79).

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<sup>1</sup> See especially Assheuer, (2001: 54); Hacke (2002: 29-32); Stjernfelt (2002); Rogeiro (2003); Thiele (2004); Rasch (2004); Lausten, (2004); Stirk (2004); Merlo (2005). William Rasch has tried to translated Schmitt's views on the conflict into terms borrowed by Luhman and Lyotard, see Rasch (2000). Jacques Derrida has suggested a new lecture on Schmitt in reference to the present-day international situation, see Derrida (2004). Georges Corm estimates that 'the drift of events since 9/11 and the war-like atmosphere created by the United States for engraving in the minds of everyone the necessity of a total war against the terrorist monster' only confirm the 'penetrating views' of Carl Schmitt (2005: 194). A special issue of the journal *CR: The New Centennial Review* has also been entirely devoted to the study of the Carl Schmitt's theory of the partisan (Michaelson and Johnson: 2004) with texts by Alfred Clement Goodson, Rodolphe Gasché, Gil Anidjar, Alberto Moreiras, Sigrid Weigel, Eva Horn, Miguel E. Vatter and Werner Hamacher.

<sup>2</sup> Schmitt's book brings together the text of two conferences held in Spain in March 1962, a few months after the erection of the Wall in Berlin. Several commentators estimate that it is not by chance that Schmitt focused on this subject at the moment of the Cold War.

<sup>3</sup> Schmitt cites a Prussian general, according to whom Napoleon's campaign against Prussia in 1806 could be considered by itself as a partisan war, see Laclau (2005).

<sup>4</sup> Besides, if the new partisan has become less and less 'telluric,' it is because the ancient form of territorial domination has also become obsolete: these days, it is more beneficial to colonize minds or to control markets than it is to conquer and annex territories.

<sup>5</sup> According to Bob Woodward, George W. Bush described the 9/11 attacks in his personal diary as 'the Pearl Harbor of the 21st century' (2004: 24).

<sup>6</sup> On the link between terrorism and globalization, and the gap that globalization creates between countries depending on a global 'center' and functioning through networks ('functioning core') and the others, see Barnett (2004).

<sup>7</sup> From the year 2000, the blending of internal security and military strategy systems has been presented in the United States as the best way to face the terrorist threats. See Pumphrey (2000). The September 2002 report entitled *The National Security Strategy of the United States of America* observes that 'today, the distinction between domestic and foreign affairs is diminishing.' (2002: 31). The specialists in the fight against terrorism are also increasingly collaborating with criminologists, see Raufer (2005) and on the idea of an international police ('Globo-Cop'), see Dal Lago (2003).

<sup>8</sup> *The National Security Strategy* (2002:14).

<sup>9</sup> It is the same idea that we find in Machiavelli (such as when he cites the example of Cincinnatus) and, during the modern period, in the famous work of Rossiter (1948).

<sup>10</sup> Ferejohn and Pasquino (2004) do not hesitate to argue that the constitutional possibility of suspending the law is a characteristic trait of the 'non-absolutist western legal tradition'. See also Negretto and Rivera (2000) and Ackerman (2004).

<sup>11</sup> *War Powers Resolutions*, proclamation n° 7463 (September 14, 2001).

<sup>12</sup> In November 2003, Congress passed an amendment to the Patriot Act ('Patriot II'), which permits federal agencies to require that Internet providers give them information without needing judicial approval. Also, the 'Domestic Security Enhancement Act' of 2003 allows the authorities to deprive any citizen accused of terrorism of his citizenship giving to the public authorities a discretionary power in terms of the recognition of citizenship. These measures have been renewed in 2005. For more details, see Scheppele, (2004) who specifies that he has examined the circumstances under which these measures were taken 'in the light of Carl Schmitt's writings on the nature of the state of exception'.

<sup>13</sup> The Hague and Geneva Conventions stipulate that civil populations must never be used as targets, and that prisoners must be well treated. Concerning persons suspected of terrorism, these stipulations have been officially declared as 'obsolete' by Alberto Gonzales, Attorney General of the United States, when he was still a member of the White House staff.

<sup>14</sup> See Amnesty International Annual Report (2005: Foreword). On Guantánamo prison, see Bribosia and Weyembergh (2003); Saar and Novak (2005); Johns (2005) supports paradoxically the idea that such a prison comes more under the norm than the exception, and proposes a very heterodox reading of Carl Schmitt's doctrine. In November 2003, the Supreme Court of the United States decided to make a decision about the legality of the detention of foreigners at Guantánamo. On 28 June, 2004, it declared that Guantánamo base was well under the jurisdiction of the United States, and accorded to the detainees the right to contest their imprisonment before an American court. In March 2006, the American authorities were forced to reveal the names of the detainees in Guantánamo. Also, on 29 June 2006, the last day of its term, the Supreme Court of the United States ruled that the military commissions, which had been established to try the detainees of Guantánamo Bay, lack 'the power to proceed because its structure and procedures violate both the UCMJ [Uniform Code of Military Justice] and the four Geneva Conventions signed in 1949' (2006: 4).

<sup>15</sup> Today, we possess enough information and testimonies to know that in relation to the war in Iraq and the fight against terrorism, torture has been used constantly, see Levinson (2004: 5-9).

<sup>16</sup> See Masset (2005); on the consequences of the adoption of the 'Patriot Act' on the citizens of the United States, see Steinmetz (2003), Williams (2003), Norris, (2004), Hamm (2005) and Harvey and Volat (2006).