

Terrorism, State of Emergency: The pertinence of some Schmittian themes today.

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1. 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.” Significant words. The disappearance of the Soviet “Evil Empire” threatened to eradicate all ideological legitimization of American hegemony over her allies. This means that, from then on, the Americans needed to find an alternative enemy, from which the threat, real or imaginary, 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.

This new designation of the enemy explains why numerous authors in recent years have returned to various aspects of Carl Schmitt’s works in their examination of the present world situation, with most making reference to war operations led by the Americans and measures taken by Washington in the fight against Islamic or global terrorism¹. It is in the same mind that we will be comparing the “global terrorist” with the figure of the partisan, as evoked by Carl Schmitt in his famous “Theory of the Partisan.”²

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 the figure of the partisan, as in guerilla wars of the beginning of the 19th century, in Prussia and Spain, against Napoleon’s occupation, from the modern revolutionary fighter.³ Both oppose, of course, the present legality with a legitimacy of their own, and are not fighters in the “normal” sense of the word. Both are mavericks, who describe themselves as “resistance fighters,” while being regularly stigmatized by the

public powers, who deny them all rights of resistance or insurrection, as not only “illegal” combatants, 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 foe, 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.) Also, through their acts, both the partisan and the terrorist eradicate the traditional distinction between civilians and the military, combatant and non-combatant. Originally, the civilian was typically supposed excluded of any participation to the war, and this is why he enjoyed the particular privilege of being protected, while 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 these civilians in arms often consider other civilians as the allies of their enemies.

The partisan and the revolutionary combatant differ however profoundly. In addition of his irregularity and the intensity of his political engagement, Carl Schmitt attributes to the partisan the distinctive criteria of being flexible and mobile in active combat, but more importantly, he also attributes the partisan with a telluric (*tellurisch*) character. The partisan has generally 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 belongs to the logic of the Land.

The revolutionary fighter, or the revolutionary activist, is different. In him, Carl Schmitt evokes the spirit of Lenin, a spirit which can be identified with an “absolute aggressiveness of an ideology” or which claims to incarnate the ideal of an “abstract justice”. Originally, the revolutionary fighter can be 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.”⁴ 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 exonerates himself of limits in his choice of methods. Convinced of fighting a “just” war, he becomes radical in both the ideological and moral sense. He designates regularly his enemy as a criminal, and in return, he himself is designated as such. With the revolutionary fighter, hostility becomes absolute. For Lenin, Carl 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.”⁵

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*.⁶ Today's terrorist is evidently the heir, or the last incarnation to date of the second figure.

Schmitt reacts against the idea that technical and industrial progress will render the figure of the partisan obsolete. He affirms, on the contrary, with a 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?" 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 attributed) 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 first problems concerns of course the legitimacy of terrorist action, a legitimacy that terrorists affirm constantly, but which is strongly denied them by their adversaries. The problematic of the classic partisan was already directly related to the words "legality" and "legitimacy". Because he is an illegal fighter, the partisan can only claim to have a superior legitimacy than the positive law edified by the authority he is fighting, which means and shows that legality and legitimacy cannot be confused, that they are not the same thing (an unjust law can be considered as illegitimate). This is another Schmittian thematic par excellence⁸.

It is undeniable that certain forms of "terrorism" have been recognized as legitimate in the recent past, firstly in the World War II, during which the members of the Resistance were invariably denounced as "terrorists" by the German occupying forces. Then, at the time of decolonization, when many terrorist groups presented themselves as "freedom fighters" desiring, with armed uprisings, to wrest their independence from ancient colonial powers. After 1945, innumerable armed minorities, liberation movements or guerrillas 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 used seem retrospectively to be justified. This gives credit to the idea that in certain cases, terrorism can be legitimate. Of course, it is also usual to say that terrorism will never be able to be justified in all cases or countries where social and political claims can be expressed otherwise. However, opinions stayed

divided as to what constitutes “good” and “evil” terrorism. The discussion about the moral or immoral character of terrorism was doomed in a certain measure to propaganda or simple subjectivity.

The boundary between “resistance fighters” and “terrorist” has appeared still more porous as some countries have owned their birth or their independence in part to the use of terrorism. The result was that ancient terrorists were frequently carried to power, transforming them in the same stroke into valuable spokespersons or respectable representatives of their country. The former terrorists Menahem Begin and Itzhak Shamir, 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, the same people who are seen as “resistance fighters” by some are very often seen as “terrorists” by others. The usage of the term has proven to be unstable, and even interchangeable. In the same time that it gave support to Islamist movements in order to balance the influence of secular Arabic nationalist movements, the United States, during the Cold War, did not hesitate to support certain terrorist groups, notably in Nicaragua, Angola and Afghanistan, just as it supported, after the first Gulf War, opposition Iraqi groups responsible for numerous booby-trapped car bombings. The same Taliban, called “freedom fighters” during the invasion of Afghanistan by the Red Army, became “terrorists” when they started to use the same methods against their former allies. The militants of the UCK, seen as “resistance fighters” while NATO forces bombarded Serbia became terrorists when they targeted Macedonia, allied with NATO and the United States. We could come up with many more examples.

The problem of the status of terrorism with respects to the binary couple legality-legitimacy is thus complicated by the existence of a “legal” terrorism, in the instance of state terrorism. Actually, 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” level⁹. If one defines terrorism as a way of causing the most damage 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 to the heart of the population, or also to force their leaders to capitulate, then it is without doubt that the terror bombings of German and Japanese civilians in the World War II fall under this category, since, in all these cases, non-combatants were deliberately used as the main targets.

One of the questions that is much discussed nowadays is to know if today’s “hyper-terrorism” or “global terrorism” differs from “classic” terrorism” simply by the intensity and augmentation of its elements, or, on the contrary, if this new 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.

One of the first characteristics of today's global terrorism is its lack of limits, which was already a characteristic of the revolutionary fighter. Terrorism is certainly a violence, but its violence is not enough to define it. We have to define the exact type of violence it emulates. Firstly, it is a violence without limits, whereby nothing seems to mark its boundaries. The global terrorist engages himself in a fight to the death. The 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, that "We must act as partisans in any place where there are partisans." 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. The temptation is thus very big, under the pretext of efficiency, to use against the terrorists the same methods employed by themselves.

Another important characteristic is an even more increased de-territorialization. Post-modernity means the end of territorial logic, and the figure of the partisan, to which Carl Schmitt still attributed an eminent "telluric" character, becomes himself completely de-territorialized. The war against terrorism does not have any territorial boundaries. The enemy does not identify (or does so infrequently) with a given territory. Paul Virilio goes so far as to speak about the "end of geography," which is probably excessive, as the basic principles of geopolitics remain. However, today, the privileged form of terrorist activity is the *network*. What we call "Al-Quaïda", 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. Besides, if the new partisan has become less and less "telluric," it is that 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.

The parallel which has often been made, including by President George W. Bush¹⁰, between the attacks of September 11th 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 September 11th attacks, however, are the actions of a series of trans-national networks. The United States may have well been able to carry out a war in Afghanistan, accused of harboring Al-Quaïda 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 favors the emergence of a new form of terrorism, in the same time that it opens up new ways of carrying out activities¹¹. And as the United States, such as Carl Schmitt defines, is the Maritime power par excellence, and as globalization itself obeys a form of “maritime” logic, we can say that the fight against terrorism comes entirely under the logic of the Sea.

The appearance of a terrorism that is completely de-territorialized has another consequence. It engenders a confusion and an interchangeability of military and police duties. During the World War II, to fight against the Resistance, the German occupation troops already had to perform duties that were typically in the domain of the police. (investigation, arrests, interrogation of suspects) while 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. 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 affairs¹².

Terrorism is, after all, a war of peace-time, and is therefore also a sign of the increasing lack of distinction between the two notions. Nevertheless, this war, as we have said, first 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 is not content in combating crime; they are attempting to eliminate it. The police also does 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 morally contemptible. The police character of the war against terrorism reveals this point of view. It has implicitly, as Rik Coolsaet writes, this “message that one has wanted to spread since the 19th century: terrorism is not a legitimate political activity. It belongs to the criminal¹³ sphere.” But what is it exactly? Is terrorism a new political form of war, or is it a new form of criminality?¹⁴

From the point of view of those who combat terrorism, things are clear. In public discourse used to describe their adversaries, terrorists are irrevocably described as criminals. This is not a new phenomenon. During the French Revolution, the Vendean insurgents were officially designated 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 the 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 designated with 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.¹⁵ Terrorists are therefore disqualified as criminals or as madmen.

That kind of denunciation of terrorism transforms the terrorist in 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*.” “The image of the Other is constructed as an image of somebody who will never ‘be like us’.”¹⁶ The discourse of the politicians and what is said by the media affirm it in permanence: 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 –, all have a natural tendency to find it unimaginable that someone could reject the model of which they are champions. The idea so widespread in the United States that theirs is a “land of the free”, the ultimate model of organization of societies, and a nation “chosen” by Providence, 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 only fact that the terrorists “detest the United States and everything it represents”¹⁷ 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 without proper political objectives.

This description of the terrorist, either as mad, criminal, or both, finds of course a ringing echo in 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 consist of trying to include their actions in the sphere of legitimacy. In fact, as we have seen, all the terrorists consider, firstly that they fight an effective war, then that their actions are legitimate, that the violence of their acts are only the consequence or the result of another “legal” violence, that it is justified by the injustice of a situation, that it is 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 he might have political aims. It is emphasized that his methods disqualify him as a political combatant and are the 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, this negation translates often into a highly 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”¹⁸.

At the same time, most of the people do not deny that terrorists are making war on the United States, and that they must themselves make war on the terrorists. However, the recourse to this term of “war” is ambiguous. Traditional wars are concluded by peace treaties, which are not plausible options in this case. The model of war which is retained 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 vanquish the enemy: one has to eliminate him. Carl Schmitt writes that “theologians tend to define the enemy as something which must be annihilated.”¹⁹ Advocates of the “just war” reason in this fashion, and this is also the same reasoning which is used by those who fight the “war against terrorism” – which permits them to justify the fact that they not only want to combat terrorism, but 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 repeat often that “one does not negotiate with terrorism” – even if, in reality, they often negotiate with him, 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 favor of doing the most 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 (a change of attitude of a government, or a modification of its policies), one must also admit that there here some kind of “negotiation”. The terrorists are attempting to obtain something through terrorism – that France cease 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 that were 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 evident 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 that perfectly, prefer to fall back on the most extreme methods—methods supposed to obtain what they would not obtain otherwise, though it is also these methods which are used to justify the refusal to accede to their demands.

Carl Schmitt distinguishes between the traditional partisan and the “absolute partisan,” who, animated by his revolutionary faith, breaks all norms. But he does not do so 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.”²⁰ Even when it does not seem to have any aim but itself, all terrorist acts are political messages that must be deciphered. For the terrorist, the terror is always potentially “convertible to political capital” (Percy Kemp). The terrorist is very well a *hostis*, a political enemy as Carl Schmitt means, 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 can not be recognized as such without taking consideration of the context and 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 assimilated with crimes of common law (which obviously does not signify that it should be treated with more indulgence.)

Terrorism is also not “irrational”, and the works of Carl Schmitt are very useful to understand that. 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.”²¹

During the period of the Cold War, the Soviet Union represented a “symmetrical” adversary to the Americans. With global terrorism, it is more of an asymmetrical confrontation that we see. In a classic war, according to Pierre 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”²². In the time of the Cold War, the powers tried to reach an equilibrium of forces (or of “terror”). From here on, the key notion is that of asymmetry (and not of dissymmetry, which denotes solely an inequality of quantitative order between the forces in presence.)

The “war against terrorism” is an asymmetrical war by consideration of its very nature: it is precisely because the terrorist does not dispose 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. Asymmetry of the people: on one hand, the heavy structures of the States, on the other hand, the fluid (“liquid”) logic of trans-national groups. Asymmetry of objectives: the terrorists know where and how they will attack, their adversaries do not know (or know imperfectly) where and how to respond. Asymmetry of methods: on September 11th 2001, in the space of a few minutes, the battle ships, the atomic bombs, the F16 and cruise missiles became obsolete in the face of a dozens of fanatics armed with knives and cutters.²³

But the most important asymmetry 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. Occidentals live today in a “disenchanted” (*entzauberte*) world where, for most of the 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 so, 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.”²⁴ In the world of today, there is a radical asymmetry between terrorists 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 that 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 present life, the absence of “fear before death”, can only be that of a “fanaticism” that is also 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 Occident is inevitably disarmed.

But terrorism is also asymmetrical in the sense that it has a formidable impact on public opinion, with 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 it results in the simultaneous death of dozens, or hundreds of people, whereas one never talks about car accidents, even though they kill many more people than air 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. Its real impact is in the psychological domain.

The first aim of global terrorism is to weaken mind structures and to destabilize habits of behavior. Evoking the actions of present-day terrorists, Pierre 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.”²⁵ On his side, Jordan Paust observed already in the 70’s 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.”²⁶ 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 ricochets (it is in this sense that the terrorist act can be compared to a kidnapping.) Already, in the era of the terror bombings of civilians in Japan and Germany during the World War II, the goal targeted beyond from the victims themselves, 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 means of conditioning public opinion or to put 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 it. 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 the power of impact on the terrorism: the attacks of September 11th are perfect examples. The development of terrorism is intimately linked to the expansion of the world media which, getting ahold of the news in “zero time” – everywhere in the same time – effectively multiplies its effect. The effect of the shock of an attack does not depend as much on its intrinsic amplitude as what one says of it: if one does not say anything about it, it is as if it never took place. There is a type of perverse, though organic link between terrorism and the media.²⁷ 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 powers) and the media.

In global terrorism, the fear of danger is still more important than the danger itself. The terrorist is a formidable and “invisible” enemy, who is supposed capable of anything and is viewed in 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 that arises from the menace that it constitutes, in the same time that 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)²⁸, it generates phantasms of general suspicion, which tends to legitimize whatever measure of control or the restriction of liberties among populations often ready to sacrifice these liberties in order for a guarantee of 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 September 11th, the White House gave the codename of “Infinite Justice” to its plan of war on terrorism. By definition, “infinite justice” does not know any limits. Addressing Congress, George W. Bush said at that time that this war would not end “until every terrorist group of global reach has been found, stopped and defeated.” He also declared: “We 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. 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 Carl Schmitt had predicted, global terrorism has many days ahead of it.

2. 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, and 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 a great use of the notion of “urgency” and that 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 to which 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 (restriction of liberties, martial law, state of siege) considered as the only adapted responses to the situation.

Moreover, the notion of the “state of emergency” (*Ernstfall*) or the state of exception (*Ausnahmezustand*) plays a central role in Carl Schmitt’s political and constitutional theory, where it is clearly linked to his critique of liberalism (in the European sense of the term).²⁹ 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 in the same time who is sovereign and where is sovereignty, in the very moment that it makes appear the decision (*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 Carl Schmitt. This famous formula can be understood in two fashions: he who is sovereign is the one who decides in the case of exception, but is also sovereign he who decides about the exception itself, that is 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, that 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 it is to suspend them. But one would be wrong in interpreting this affirmation as an apology of arbitrariness. On 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 which can make it inapplicable. In other terms: whoever decides to derogate the norm, is equally fixing the norm.

The state of exception is also important because it reveals the character originally non-normative of the law. Moreover, this 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 the 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 a situation of exception, with all which is implied, shows that it is simply not possible, 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. Exactly like 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 dictatorship³⁰, 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 signifies that it does not have any legitimacy except as much as it aims to restore the pre-existing legal order. Dictatorship therefore remains a constitutional dictatorship: the suspension of legal order does not signify its abolition.³¹ In an exceptional situation, if the state suspends the rule of law, it is in the view of conserving them. 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 careful of the context. Here, we must be reminded that Schmitt formulated his doctrine under the troubled circumstances his own country was undergoing from 1917-1919. The famous Article 48 of the 1919 Constitution of the Weimar Republic, to which Schmitt consecrated numerous writings, defined the state of emergency in the constitutional sense of the term. This article, which could be compared with the Article 16 of the Constitution of the 5th French Republic, attributes 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.³² The American Constitution foresees itself the suspension of *habeas corpus* “when in cases of rebellion or invasion the public safety may require it” (art I, § 9, cl.2) – but in lieu of making this a privilege of executive power, it assigns this power of suspension to Congress. During the Civil War, Abraham Lincoln decided to suspend *habeas corpus* – without, however, deferring to Congress –, just like after the attack of Pearl Harbor, Franklin D. Roosevelt interned all Americans of Japanese origin. During the period of 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 preoccupations where foreign affairs are concerned. The constitutional effects of the Cold War have been studied many times.³³ One can remember how these effects influenced also domestic politics in the period of McCarthyism, with the consequences of a systematic re-interpretation of the rights of American citizens and the adoption of surveillance procedures of those who were 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 precedents. However, they also have particular characteristics, which distance them radically from the Schmittian “model.” In claiming to confront a danger

– global terrorism – on which the American authorities have declared a war seemingly without end, all evidence points to them leaning towards an institutionalization of these measures. The state of exception ceases therefore to be an exception, and from henceforth becomes permanent.

For some writers, the development of terrorism even from before 9/11 could already justify the declaration of the state of exception.³⁴ After this date, everything accelerated. Immediately after the attacks, 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”.³⁵ One month later, on the 24th 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 FBI to do 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 Minister of Justice to arrest and detain all foreigners suspected of putting national security in danger.³⁶ On November 13th 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 communication 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 against them, without having had the opportunity to appear before a judge or to have the possibility of having a lawyer. On its part, the “Military Order” of the 13th of November decided that its sources could be kept secret, that the accused would dispose of no recourse and their rights of defense would be “severely limited.”

One of the most spectacular consequences of this range of measures has been the internment in a camp situated in the American military base of Guantánamo, in Cuba, of hundreds of detainees (of more than 40 different nationalities) without ever having been charged or knowing the reasons for their arrests, and without having access to attorneys or the right to be treated as prisoners of war under the Geneva Convention.³⁷ For these detainees, made prisoners in Afghanistan, Iraq or elsewhere, a 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, political prisoners, nor prisoners of war. A number of them have been victims of ill-treatment and brutalities. Some of them, in the wake of these brutalities, have been more or less secretly transferred to allied countries where human rights are insignificant, and have been systematically tortured.³⁸ The 2005 annual report from Amnesty International, made public the 25th May 2005, does not hesitate in describing the camp at Guantánamo as “the Goulag of our times”.³⁹

In the name of fighting against terrorism and the sacred union against a common, imminent peril, numerous public liberties have therefore been suspended in the United States. In its wake, a climate of fear has prevailed, leading to many occasions of new attacks on civil liberties. From the public powers, the most common, current allegation has been that of the “threats” against “national security,” two concepts which evoke admittedly emergency or exception, but which remain both as blurry, which facilitates their political and judicial instrumentation, as well as their utilization as a pretext for restraining political liberties. Moreover, one observe that there is a constant enlargement of the concept of “national security, which in the beginning was possessed of 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 reprovod in normal times. The first of these methods is obviously the use of torture.⁴⁰ The tortures in the prison of Abu Gharib are not only an illustration of what Susan Sontag has called the “culture of the shamelessness.” The debates which followed the publication of the books of Paul Berman, *Terror and Liberalism*, and Michael Ignatieff, *The Lesser Evil*⁴¹, 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 of 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.

Kim Lane Scheppele shows that the measures of exceptions 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, but also that these measures have not ceased to proliferate, which is of course the most important point. While in the “classic” case of exception, such as Carl Schmitt defines, the measures adopted to confront an situation of urgency are generally of short duration, 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, whereby a system of exception is still constantly being reinforced. “The biggest abuses,” writes Scheppele, “happened as we gathered more distance from September 11th, with constitutional exceptions more and more important, which have had benefit from the active approbation on the part of Congress and the Courts.”⁴²

This conclusion has been shared by many observers.⁴³ They notice 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. This indetermination easily permits them to criminalize certain behaviors, to generalize suspicion, to justify preventive detention, etc. Moreover, as it targets firstly suspects, the anti-terrorist legislation applies unavoidably to the entire population, an evolution that can engender a big upheaval of all 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 derivation. It masks the realities of social insecurity and projects outwards the internal contradictions of the country which makes use of this rhetoric. The discourse on “internal security” prolongs 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 subtract from the public debate all the problems which it brings, thus ending in a new form of “de-politization.” The attacks on liberties are made possible by the expectations of citizens in the domain of security: the desire for security pre-empts the desire for liberty. And it pre-empts it as much as we live in a world where threats are omnipresent and invisible at the same time. Along the same lines, the fight against terrorism permits, on the international scale, to reinforce the authority of the dominant American power, presented as the best placed to ensure a “global protection.”

In the end, terrorism gives back to the national State, which seemed to be more and more struck by impotence in the face of global influences and planetary challenges linked to globalization, legitimacy and a new role. Actually, one can wonder if the State, of which Carl Schmitt had clearly seen from the 30’s onwards that it will not be in the future the privileged instance of the political he was previously, is not about to rediscover a new legitimacy through its supposed ability in ensuring global security and fighting 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 a trans-national cooperation of the police forces and the information services (and from this point of view, the anti-terrorist fight subscribes perfectly to the frame of globalization.) On the other hand, however, they unquestionably revive a state structure that was become more and more obsolete, the national elites finding “in the anti-terrorist war an excellent occasion to perpetuate their power and to introduce a big range of laws which permit them to impose as much on their enemies as on their own civil society.”⁴⁴ The State, in other words, cannot legitimize itself otherwise than through security and, in the same time, it makes use of the irrepressible desire of security to reinforce its influence in restraining liberties. As Jean Baudrillard noted well, the true victory of terrorism is having precipitated the entire West in a climate of fear and obsession with security, which itself is only a veiled form of permanent terror.⁴⁵

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 comprehension –literally – theological of the enemy and the figure of the “motorized partisan.”⁴⁶ However hostile to

Schmitt's ideas, the author does not underemphasize 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'."⁴⁷

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 this critical dimension of the legal and liberal order as the carrier of a repressed disorder or of a masked repressive violence which has especially been retained by authors such as Giorgio Agamben, Antonio Negri or Etienne Balibar.⁴⁸ It opens 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*)⁴⁹. The present day state of exception would only reveals openly of a latent anterior tendency, which had already been well studied by Louis Althusser or Michel Foucault.

The fact is that the state of exception, when it generalizes itself and becomes permanent, loses at the same time its character of exception. Pierre Hassner writes that "one distinguishes [...] tyrannical governments from others according to the manner from which they utilize the exceptional situation to make it permanent in lieu of targeting the return of normality and the respect for the law."⁵⁰ 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 the Schmittian doctrine. But here again, it is the works of Schmitt which stay the more useful tool to understand what is at work in the instauration of this permanent state of exception: a conception of enmity which is triggered by theology and "moral." The conclusion that one can draw is that "liberal" regimes are perfectly capable of taking measures of exception – but that they tend to transform the exception into a permanent norm under the influence of their representation of the enemy. 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." Robert Kurz writes in the same spirit: "That which, in the past, came under the domain of the exception becomes today the normal or permanent state."⁵¹

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1. Cf. especially Thomas Assheuer, "Geistige Wiederbewaffnung. Nach den Terroranschlägen erlebt der Staatsrechtler Carl Schmitt eine Renaissance", in *Die Zeit*, Hamburg (November 15, 2001), p. 54 ; J. Hacke,

“Mit Carl Schmitt in den Krieg – mit Carl Schmitt gegen den Krieg”, in *Ästhetik und Kommunikation*, Berlin, 33 (2002), 118, pp. 29-32; Frederik Stjernfelt, “Suverænitets paradokser: Schmitt og terrorisme”, in *Weekendavisen*, København (May 10, 2002); Nuno Rogeiro, *O inimigo público. Carl Schmitt, Bin Laden e o terrorismo pós-moderno* (Rio de Janeiro: Gradiva, 2003); Ulrich Thiele, “Der Pate. Carl Schmitt und die Sicherheitsstrategie der USA”, in *Blätter für deutsche und internationale Politik* (August 2004), pp. 992-1000; William Rasch, “Carl Schmitt and the New World”, in *South Atlantic Quarterly*, Durham (2004), 2, pp. 177-184; Carsten Bagge Lausten, “Fjender til døden: en schmittiansk analyse af 11. September og tiden efter”, in *Grus*, København, 71 (2004), pp. 128-146; Peter Stirk, “Carl Schmitt, the Law of Occupation, and the Iraq War”, in *Constellations*, Oxford (2004), 4, pp. 527-536 (reprinted in Peter Stirk, *Carl Schmitt, Crown Jurist of the Third Reich. On Preemptive War, Military Occupation, and World Empire*, Lewiston: Edwin Mellen Press, 2005, pp. 115-129); Francesco Merlo, “Se questa è una guerra – Sulla ‘teoria del partigiano’” di Carl Schmitt, in *La Repubblica*, Roma (21 juillet 2005). William Rasch has tried to translate Schmitt’s views on the conflict into terms borrowed from Luhman and Lyotard: “Conflict as a Vocation: Carl Schmitt and the Possibility of Politics”, in *Theory, Culture and Society* (December 2000), pp. 1-32. Jacques Derrida has suggested a new lecture of Schmitt in reference to the present-day international situation: “Qu’est-ce que le terrorisme?”, interview with Giovanna Borradori, in *Le Monde diplomatique*, Paris (February 2004), p. 16. 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 (*Orient-Occident. La fracture imaginaire*, 2nd ed., Paris: Découverte, 2005, p. 194). A special issue of the journal *CR: The New Centennial Review* has also been consecrated entirely to the study of the Carl Schmitt’s theory of the partisan: Michaelsen et David E. Johnson (ed.), *Theory of the Partisan*, East Lansing: Michigan State University Press, 4, 3 (Winter 2004) with texts by Alfred Clement Goodson, Rodolphe Gasché, Gil Anidjar, Alberto Moreiras, Sigrid Weigel, Eva Horn, Miguel E. Vatter and Werner Hamacher.

2. *Theorie des Partisanen. Zwischenbemerkung zum Begriff des Politischen* (Berlin: Duncker u. Humblot, 1963, last edition: Berlin 2002; engl. transl.: “Theory of the Partisan: Intermediate Commentary on the Concept of the Political”, in *Telos*, New York, 12, Spring 2004, pp. 11-78). 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 focalized on this subject at the moment of the Cold War.

3. Schmitt cites a Prussian general, according to whom Napoleon’s campaign against Prussia in 1806 could be considered by itself as a partisan war. Cf. Ernesto Laclau, “On ‘Real’ and ‘Absolute’ Enemies”, in *CR: The New Centennial Review*, East Lansing (Spring 2005), pp. 1-12.

4. “Theory of the Partisan”, *op. cit.*, pp. 24-25.

5. *Ibid.*, pp. 46-47 and 77.

6. *Ibid.*, p. 31.

7. *Ibid.*, pp. 67 and 78.

8. Cf. Carl Schmitt, *Legalität und Legitimität* (München-Leipzi: Duncker u. Humblot, 1932, last edition: Berlin 2006; engl. transl.: *Legality and Legitimacy*, Durham: Duke University Press, 2004).

9. Cf. Gérard Chaliand, “La mesure du terrorisme”, in *Stratégique*, Paris (1997), 2-3, p. 10.

10. According to Bob Woodward, George W. Bush described the 9/11 attacks in his personal diary as “the Pearl Harbor of the 21st century” (cf. Bob Woodward, *Plan of Attack*, New York: Simon & Schuster, 2004, p. 24).

11. On the link between terrorism and globalization, and the gap that globalization creates between countries depending of a global “center” and functioning through networks (“functioning core”) and the others, cf. especially Thomas P.M. Barnett, *The Pentagon’s New Map. War and Peace in the Twenty-first Century*, New York: Putnam 2004.

12. 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. Cf. Carolyn Pumphrey (ed.), *Transnational Threats. Blending Law Enforcement and Military Strategies*, US Army War College, (November 2000). The 2002 report entitled *The National Security Strategy* observes that « today, the distinction between internal affairs and international affairs has diminished » (p. 29). The specialists in the fight against terrorism are also increasingly collaborating with criminologists. Cf. Xavier Raufer, “Géopolitique et criminologie. Une féconde alliance face aux dangers du monde”, in *Défense nationale et sécurité collective*, Paris (May 2005). On the idea of an international police (“Globo-Cop”), cf. Alessandro Dal Lago, *Polizia globale. Guerra e conflitti dopo l’11 settembre* (Verona : Ombre corta, 2003).

13. Rik Coolsaet, *Le mythe Al-Qaida. Le terrorisme, symptôme d’une société malade* (Bierges: Mols, 2004), p. 113.

14. On this point, cf. Christopher Daase, “Terrorismus und Krieg. Zukunftsszenarien politischer Gewalt nach dem 11. September 2001”, in Rüdiger Voigt (ed.), *Krieg – Instrument der Politik? Bewaffnete Konflikte im Übergang vom 20. zum 21. Jahrhundert* (Baden-Baden: Nomos 2002), pp. 365-389. Cf. also Richard Falk, “Thinking About Terrorism”, in *The Nation* (28 June 1986) ; Teodoro Klitsche de la Grange, “Osservazioni sul terrorismo post-moderno”, in *Behemoth*, Roma, 30 (2001).

15. Pierre Mannoni, *Les logiques du terrorisme* (Paris: In Press, 2004), p. 41.

16. Francesco Ragazzi, “‘The National Security Strategy of the USA’ ou la rencontre improbable de Grotius, Carl Schmitt et Philip K. Dick”, in *Cultures et conflits*, Paris (18 May 2005).

17. Report: *The National Security Strategy*, *op. cit.*, p. 14.

18. Percy Kemp, “Terroristes, ou anges vengeurs”, in *Esprit*, Paris (May 2004), pp. 21-22.

19. *Ex captivitate salus* (Köln: Greven, 1950, last edition: Berlin: Duncker u. Humblot, 2002), p. 89.

20. “Theory of the Partisan”, *op. cit.*, p. 19.

21. *Op. cit.*, p. 8.

22. *Ibid.*, p. 29.

23. On the notion of the asymmetrical war, cf. Jorge Verstrynge, *La guerra periférica y el islam revolucionario. Orígenes, reglas y ética de la guerra asimétrica* (Madrid: El Viejo Topo, 2005).

24. *Op. cit.*, p. 19.

25. *Op. cit.*, p. 10.

26. “A Definitional Focus”, in Yonah Alexander and Seymour Maxwell Finger (ed.), *Terrorism. Interdisciplinary Perspectives* (New York: John Jay Press, 1977), p. 21.

27. Cf. Yonah Alexander and Richard Latter (ed.), *Terrorism and the Media. Dilemmas for Government, Journalists and the Public* (Washington: Brassey's, 1990) ; Pierre Mannoni, *Un laboratoire de la peur : terrorisme et medias* (Marseille: Hommes et perspectives, 1992).

28. Cf. Ulrich Beck, *Risikogesellschaft. Auf dem Weg in eine andere Moderne* (Frankfurt/M.: Suhrkamp, 1986; engl. transl.: *Risk Society. Towards a New Modernity*, London: Sage Publ., 1992).

29. This notion is mainly studied in the first chapter of the first *Political Theology: Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* (München-Leipzig: Duncker u. Humblot, 1922, last edition: Berlin 2004; engl. transl.: *Political Theology. Four Chapters on the Concept of Sovereignty*, Cambridge: MIT Press, 1985).

30. *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (München-Leipzig: Duncker u. Humblot, 1921, last edition: Berlin 1994).

31. 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 Clinton L. Rossiter, *Constitutional Dictatorship. Crisis Government in the Modern Democracies* (Princeton: Princeton University Press, 1948).

32. John Ferejohn et Pasquale Pasquino do not hesitate to argue that the constitutional possibility of suspending the law is a characteristic trait of the “non-absolutist western legal tradition” (“The Law of the Exception. A Typology of Emergency Powers”, in *International Journal of Constitutional Law*, 2004, 2, pp. 210-239). Cf. also G.L. Negretto and J.A.A. Rivera, “Liberalism and Emergency Powers in Latin America. Reflections on Carl Schmitt and the Theory of Constitutional Dictatorship”, in *Cardozo Law Review*, New York (2000), 5-6, pp. 1797-1824 ; Bruce Ackerman, “The Emergency Constitution”, in *Yale Law Journal*, 113 (2004), pp. 1029-1076.

33. Cf. especially Daniel Yergin, *Shattered Peace. The Origins of the Cold War and the National Security State* (Boston: Houghton Mifflin, 1977).

34. Cf. William B. Scheuerman, “Globalization and Exceptional Powers. The Erosion of Liberal Democracy”, in *Radical Philosophy* (1999) ; Oren Gross, “On Terrorism and Other Criminals. States of Emergency and the Criminal Legal System”, in Eliezer Lederman (ed.), *New Trends in Criminal Law* (2000).

35. *War Powers Resolutions*, proclamation n° 7463 (September 14, 2001).

36. In November 2003, Congress voted to make 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 to deprive of his citizenship any citizen accused of terrorism, 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, cf. Kim Lane Scheppele, “Law in a Time of Emergency: States of Exception and the Temptations of 9/11”, in *Journal of Constitutional Law* (May 2004), pp. 1-75 (reprinted on October 1, 2004 in the form of a booklet, University of Pennsylvania Law School, Scholarship at Penn Law, Paper 55). The author 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.”

37. 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.

38. Cf. Stephen Grey, “Délocalisation de la torture”, in *Le Monde diplomatique*, Paris (April 2005), pp. 1 and 10-11.

39. On Guantánamo prison, cf. Emmanuelle Bribosia et Anne Weyembergh, *Lutte contre le terrorisme et droits fondamentaux* (Bruxelles: Bruylant 2003). Cf. also Erik Saar and Viveca Novak, *Inside the Wire. A Military Intelligence Soldier's Eyewitness Account of Life at Guantánamo* (London: Penguin Press, 2005). Fleur Johns ("Guantánamo Bay and the Annihilation of the Exception", in *European Journal of International Law*, 16, 4, September 2005, pp. 613-635) 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 June 28, 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.

40. Today, we dispose of enough information and testimonies to know that in relation with the war in Iraq and the fight against terrorism, torture has been used constantly. Cf. Sanford Levinson, "Torture in Iraq and the Rule of Law in America", in *Daedalus* (2004), 3, pp. 5-9.

41. Paul Berman, *Terror and Liberalism* (New York: W.W. Norton, 2003); Michael Ignatieff, *The Lesser Evil. Politics and Ethics in an Age of Terror* (Princeton: Princeton University Press, 2004).

42. Kim Lane Scheppelle, *op. cit.*, p. 3.

43. Cf. Adrien Masset, "Terrorisme et libertés publiques", in Quentin Michel (ed.), *Terrorisme – Terrorism. Regards croisés – Cross Analysis* (Pieterlen: Peter Lang, 2005). On the consequences of the adoption of the "Patriot Act" on the citizens of the United States, cf. George Steinmetz, "The State of Emergency and the Revival of Modern American Imperialism. Toward an Authoritarian Post-Fordism", in *Public Culture* (Spring 2003), pp. 323-345 ; M.C. Williams, "Words, Images, Enemies. Securitization and International Politics", in *International Studies Quarterly*, 47, 4 (December 2003), pp. 511-531 ; Andrew Norris, "'Us' and 'Them'", in *Metaphilosophy*, Oxford, 35, 3 (April 2004), pp. 249-272 ; Bernd Hamm (ed.), *Devastating Society. The Neo-Conservative Assault on Democracy and Justice* (London: Pluto Press, 2005 ; Robert Harvey and Héléne Volat, *De l'exception à la règle : USA Patriot Act* (Paris: Lignes-Manifestes, 2006).

44. Percy Kemp, "Terroristes, ou anges vengeurs", *op. cit.*, p. 22.

45. Cf. Jean Baudrillard, *L'esprit du terrorisme* (Paris: Galilée, 2001; engl. transl.: *The Spirit of Terrorism and Requiem for the Twin Towers* (London: Verso, 2002).

46. "La déstabilisation humanitaire du droit international et le retour de la 'guerre juste' : une lecture critique du 'Nomos de la Terre'", in *Les Etudes philosophiques*, Paris (January 2004), p. 55.

47. *Ibid.*, p. 56.

48. Cf. Jean-Claude Monod, "La radicalité constituante (Negri, Balibar, Agamben) ou peut-on lire Schmitt de droite à gauche ?", in *Mouvements*, Paris, 37 (January-February 2005), pp. 80-88.

49. Cf. Giorgio Agamben, *Stato di eccezione* (Torino: Bollati Boringhieri, 2003; engl. transl.: *State of Exception*, Chicago: Chicago University Press, 2005).

50. *La terreur et l'empire* (Paris: Seuil, 2003), p. 200.

51. *Avis aux naufragés. Chroniques du capitalisme mondialisé en crise* (Paris: Lignes-Manifestes, 2005), p. 79.

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