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Carl Schmitt Revisited by the United States and the Terrorist

Abstract

In the article “Carl Schmitt Revisited by the United States and the Terrorist” it is shown that Carl Schmitt’s morals, standards and views can be noticed in the United States policy in the context of so-called “war on terror”. According to the article, Islamic terrorists are a mirror image of Schmittan revolutionary partisan. It is discussed how terrorists are, as a problem, treated by the USA, which in author’s opinion displays many Schmittan features. Schmitt is one of the few who claim that the sovereign state is above the legal order and can set boundaries. It is therefore shown that the USA seem to have rushed into Schmittan “state of exception”, where norms are suspended in order to achieve security, resembling the thinking of the G.W. Bush administration. It is illustrated how the USA seem to be following Schmitt’s ideology, especially by making exceptions to international rules, but also putting the terrorist outside of the scope of international regulations. Lastly, author tries to answer the question if it is justified to follow Schmitt and obey to the rule of law.

1. Introduction

Carl Schmitt’s works have been abandoned for many decades, some were not even translated into other languages¹. It can be assumed that it was a result of his opportunistic flirt with the Nazi regime, but it might be more than that – his views simply did not suit the world order after World War II. Yet, after many years of Schmitt’s non-existence, his name is starting to show up in academic research, especially in the United States.

*Theory of the Partisan (The Partisan)*² was written by C. Schmitt in the Cold War context and is a rethinking of his previous study, *The Concept of the Political*³, which was written 30 years earlier. Schmitt rediscovers the partisan not only in his military capacity, but mostly philosophically⁴. It is a very insightful piece of work, but at the same

¹ For example, *The Partisan* was translated into English as late as 2004.

² C. Schmitt, *The Theory of the Partisan: A Commentary/Remark on the Concept of the Political*, Michigan State University Press 2004.

³ C. Schmitt, *The Concept of the Political*, University of Chicago Press 1989.

⁴ W. Werner, *Rereading: Theory of the Partisan*, Michigan State University Press 2004.

time – very complex in structure. German Maoist Joachim Schickel once said that “Carl Schmitt had been the only person who was competent to say something about the topic of partisans and irregular combatants”⁵. Recognizing this fact, I will try to elaborate on this multidimensional yet surprisingly important and relevant topic. It seems that academic authors are right when resuscitating Schmitt ideas – his work, especially *The Partisan*, is a remarkable study: it appears that many conclusions may be derived from it. In this essay it will be shown that *The Partisan* deserves, if not even needs, a broader elaboration in the context of the terrorist. Due to the limited scope of this paper, I will constrain myself to the “Islamic terrorists”, and how they are, as a problem, treated by the United States. I have chosen this particular country, because (especially in terms of the terrorist issue) it displays many Schmittian features and is a great canvas to compare with Carl Schmitt’s ideas.

Firstly, the concepts of the partisan and the terrorist will be shown, explained and briefly compared. Then, the USA approach to the terrorist in the “war on terror” will be discussed.

2. The partisan – the terrorist

What meaning lies behind the term? Schmitt himself answers briefly, that the word is derived from *Partei* (party) and refers to the relation of some kind of fighting, warring, or politically active party or group⁶. Leaving historical connotations aside, what makes up Schmittian partisan are four core elements of great importance, without which, one is no partisan at all.

Irregularity is the obvious one, since partisans are not a regular, solid army, simply a gathering of armed and often not properly prepared fighters. It is an element, which for Schmitt is especially disturbing.

It needs to be highlighted that Schmitt was an expressive admirer of the classical martial law. It was the law that was established at the Congress of Vienna (1814–1815). In *The Partisan*, he claims that Congress “re-established also, in the framework of a general restoration, existing concepts of European martial law. It was one of the most astonishing restorations in all of world history”⁷. He then points out that it recognized clear distinctions between war and peace, combatants and non-combatants, enemy and criminal. It is of utmost importance to keep in mind that Schmitt all along his work sticks to this idea of world order and praises it as something worth holding onto. And partisan is nowhere to be found in this harmony, in his view.

Faced with this classical regularity, and so long as it possessed actual force, the partisan could only be a marginal figure [...], there is no place in the classical martial law of the existing European international law for the partisan, in the modern sense of the word⁸.

He does not see how this state-centric body of law could regulate irregular warfare.⁹ The partisan disturbs this classical distinction between who is a combatant and who is

⁵ J. W. Muller, *An Irregularity that Cannot be Regulated: Carl Schmitt’s Theory of the Partisan and the War on Terror*, Princeton University 2006 (quoting J. Schickel, *Gesprache mit Carl Schmitt*, Berlin 1970).

⁶ C. Schmitt, *The Theory...*

⁷ C. Schmitt, *The Theory...*

⁸ C. Schmitt, *The Theory...*

⁹ W. Werner, *Rereading...*

a civilian – and these are the core elements of the laws of armed conflict. However, when a category of irregular fighters are treated as equal to regular forces, they cease to be partisans.

Schmitt also adds that “he is either [...] a sort of light, especially mobile, but a regular troop; or he represents an especially abhorrent criminal, who stands outside the law, and is, thus *hors la loi*”¹⁰.

Therefore, the second characteristic which defines the partisan is mobility – light armor, fighting not only on the open field, but mainly destroying enemy’s sources. There is also political commitment, which “is crucial since he has to be distinguished from the common thief and criminal, whose motives aim at private enrichment”¹¹, whilst partisan is usually focused at a more *honorable* cause and usually is bound by territory, which leads to the fourth characteristic – telluric character, because he is defending his home soil. This aspect however seemingly fades away, as Schmitt observes.

Therefore, for the reader, since the beginning it becomes somewhat clear that Schmitt distinguishes two types of the partisan, the traditional partisan and the *absolute partisan*, who breaks all norms of world harmony and the classical law, and even the *qualities* of guerilla fighters. However, 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”¹².

Even when they do not appear to have any aim beyond the specific target, all terrorist acts also carry a political message. The terrorist is certainly a political enemy as meant by Schmitt, but it is precisely this strictly political dimension of terrorism that the *police* rhetoric erases. However, are their acts also not crimes? It might be said that 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 ordinary law, although this obviously does not mean that it should be treated with more leniency¹³.

Another relevant idea is the concept of enemy. A quote will be the best illustration, “He [the partisan – K.M.] has turned away from the conventional enmity of the contained war and given himself up to an other – the real – enmity that rises through terror and counter-terror, up to annihilation.” Conventional enmity, existing in the classical European relations, in *jus publicum europeanum*¹⁴. The real enemy has been introduced by the partisan, and is an epitome usually as a concrete state. Lastly, there is the absolute enemy, which is carried by an idea that he needs to be established amongst masses and is worth fighting against. Here especially, the telluric aspect fades away; one great example is the Leninist movement. The absolute enemy is also what characterizes the terrorist as

¹⁰ C. Schmitt, *The Theory...*

¹¹ C. Schmitt, *The Theory...*

¹² C. Schmitt, *The Theory...*

¹³ L. Odysseos, F. Petit, *The International Political Thought of Carl Schmitt*, Routledge 2007.

¹⁴ C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europeanum*, Telos Press Publishing 2006.

we see him today. He fights to for Islam against anyone who stands against it, of course; it may be shaped as particular community, country, but the ideology stays the same.

In addition to the core elements, Schmitt also distinguishes four different aspects of a modern-day partisan, which are of great value when venturing a comparison with the terrorist, and seem to be accurately applicable. The modern partisan

does not fight on an open field of battle nor on the same plane of open frontal war. Rather, he forces his enemy into another space [...] he, thus, adds another, darker dimension, a dimension of depth, in which the displayed uniform becomes deadly¹⁵.

The terrorist, on whom we are focusing, undeniably fits into this definition. Terrorist organizations use violence against civilians, whereas guerilla fighters respect the traditional distinction between combatants and non-combatants, and they do not perform the so-called ‘total war’, which terrorists would like to see spreading¹⁶. The *darker dimension* is added by sudden hijacks, car-bombs and various other means, which are the “space” that no-one expects to be interfered.

Others shatter social structures, as Schmitt suggests:

you have only to follow this logic of terror and counter-terror to its natural conclusion, and then apply it to every sort of civil war in order to understand the shattering of social structures at work today.

A few terrorists suffice to put large masses under pressure.

To the narrower space of open terror are added further the spaces of insecurity, anxiety, and common mistrust, the ‘landscape of treachery’ [...] All the peoples of the European continent [...] have in the course of the two world wars and two post-war periods experienced this personally as a new reality¹⁷.

Developing this point, it must be noted that the use of violence is quite different: partisans concentrate on destroying the enemy’s supplies to increase their chances of successful combat (one may say it is rather physical harm for the enemy). At the same time, terrorists aim to interact with the enemy and civilian psyche, by e.g. hijacking airplanes, as already mentioned, and behaving in an unpredictable way to generate anxiety and fear for the sake of their political goal. They both rely on the society, however, the partisan wishes for its support while the terrorist wages war in the name of an imaginary party (as for example the “authentic Islamic community”), whose actual role in the hostilities may be minimal¹⁸.

Continuing, the world political context changes.

The autochthonous defenders of the home soil, who died *pro aris et focis* (for our altars and our hearths), the national and patriotic heroes who went into the woods, all elemental, telluric force in reaction to foreign invasion: it has all come under an international and transnational central control that provides assistance and support, but only in the interest of its own quite distinct world-aggressive purposes and that, depending on how things stand, either protects or abandons. At this point the partisan ceases to be essentially defensive. He becomes a manipulated cog in the wheel of world-revolutionary aggression. He is simply sent to slaughter,

¹⁵ C. Schmitt, *The Theory...*

¹⁶ W.E. Scheuerman, *Carl Schmitt and the Road to Abu Ghraib*, Blackwell Publishing Ltd 2006.

¹⁷ C. Schmitt, *The Theory...*

¹⁸ W.E. Scheuerman, *Carl Schmitt...*

and betrayed of everything he was fighting for, everything the telluric character the source of his legitimacy as an irregular partisan, was rooted in¹⁹.

This is how Schmitt cleverly observes the forthcoming changes in the partisan's role. It might even be said, that the characteristics which Schmitt had seen in a revolutionist partisan are nowadays mainly possessed by terrorists themselves. Again, we may notice that the tellurian aspect has faded away for them, and they are driven mostly by this vicious idea. However, it needs to be added that while the contemporary suicide bomber has characteristics and a world vision that contain a version of a specifically *Islamic* content (not telluric by any means), this does not place the Islamic terrorist outside the sphere of the political, outside of the world of the partisan, and outside of the ongoing global play between friends and enemies²⁰.

Lastly, there's a technical aspect. Schmitt makes a notice that the partisan takes part in the world development and uses machine guns; soon even tactical atomic weapons might be in his possession. It does not need to be clarified further, but obviously it also applies to terrorists, who now are in possession of various types of weapons.

All the above may lead us to the conclusion that one may or may not agree with Schmitt, but most definitely his ideas should not be neglected, as we may observe an uncanny reference to Schmittian morals and standards in today's world – in the United States. Closing this part, one last thing cannot be left unsaid. Schmitt is one of the few philosophers who claim that state stands above the legal order. In his *The Concept of the Political*, in short, he argues that states make exceptions, which are boundaries to the rules.

Therefore one has to always keep in mind, that what beacons Schmitt is the sovereignty – the system carrier, and there is no supremacy to the state and to the real politics, because only state can decide over the exception. This is an even more shocking discovery, especially when we compare it to the USA, that seemingly operates by these rules.

3. The terrorist – the USA

The term *terrorism* is broadly known, however it seems hard to define in practice. In the Oxford English Dictionary we find the following definition: “the unofficial or unauthorized use of violence and intimidation in the pursuit of political aims”²¹. However, those who combat it describe it as purely criminal, however they do admit that terrorists have political aims (as has already been discussed). However, it is emphasized that the terrorist's methods disqualify him as a political combatant and are proof that he is only a criminal²². At the same time, many state that terrorists make war on the United States, and that the US must therefore make war on the terrorists. However, the term of *war* is ambiguous.

The concept of war is still premised upon the sovereign state body and action of the sovereign state²³. Schmitt recalled Clausewitz's quote “war is the continuation of

¹⁹ C. Schmitt, *The Theory...*

²⁰ T. Kochi, *The Partisan: Carl Schmitt and Terrorism*, Law and Critique 2006/17.

²¹ *Oxford English Dictionary*, Oxford University Press 2014.

²² L. Odysseos, F. Petit, *The International...*

²³ T. Kochi, *The Partisan...*

politics”²⁴. It was to him *The Theory of the Partisan* in a nutshell and he noticed that it was extended to its logical limit (by Lenin and Mao)²⁵. The partisan’s performance of war does not wash away the role of the state, because he always has to depend upon regular power. The same applies to the terrorist (who relies on those “rouge states” as the USA calls them).

In his previous work, *The Concept of the Political*, Schmitt broadly discussed the categories of friend and enemy as the fundamental categories of the political and stated that the primary political form under his consideration is that of the state.

For Schmitt the friend-enemy divide draws its power from the possibility of war between groups and peoples²⁶.

War is neither the aim nor the purpose nor even the very content of politics. But as an ever present possibility it is the leading presupposition which determines in a characteristic way human action and thinking and thereby creates a specifically political behavior²⁷.

For Schmitt, it seems that one term “friend” gains its meaning from the other, “enemy”. Also, he believes that the partisan operates within a wider political context of friend and enemy, because he not only presupposes the enemy but also a friend.

Carl Schmitt writes that “theologians tend to define the enemy as something, which must be annihilated”²⁸. Those who fight the war against terrorism use a similar reasoning. This permits them to justify the fact that they want not only 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 a police character, and an absolute war²⁹. The war on terror is understood by the Americans as a “new kind of war” rather than a conventional armed conflict.

The distinction that the USA makes between enemy combatant and unlawful combatant has much in common with the Schmittian distinction between enemy and foe. While the former refers to the concrete other that constitutes an existential threat to the self, the latter refers to the criminalized and morally degraded other who should not only be defeated but utterly destroyed (i.e. terrorists). The comment by the American Secretary of Defense Donald Rumsfeld was that “the goal of the war in Afghanistan was to kill – rather than defeat – as many Taliban as possible”³⁰. At any rate, the framing of the war on terrorism as a war on behalf of the civilization is questionable and vague³¹.

It must be nevertheless noted that an act of war and an act of terror are both terrible in consequences, because they involve the killing of people, politically declared as an enemy³². It is therefore not surprising that nowadays the war or terror has a growing number of opponents. After September 11, 2001, the USA rushed into the Schmittian “state of exception”, where the normal rules of international society were necessarily suspended in order to achieve international security³³. The attacks of 9/11 and the war

²⁴ C. Schmitt, *The Concept...*

²⁵ T. Kochi, *The Partisan...*

²⁶ T. Kochi, *The Partisan...*

²⁷ C. Schmitt, *The Concept...*

²⁸ C. Schmitt, *The Concept...*

²⁹ L. Odysseos, F. Petit, *The International...*

³⁰ R. van Munster, *The War on Terrorism: When the Exception becomes the Rule*, International Journal for the Semiotics of Law 2004/1.

³¹ R. van Munster, *The War...*

³² T. Kochi, *The Partisan...*

³³ J. Fitzpatrick, *Speaking Law to Power: The War Against Terrorism and Human Rights*, EJIL, 2003/13.

against terrorism have tested the limits of the legalist approach, leaving human rights advocates baffled³⁴. After the shocking events of 9/11, the United States acted quickly and undeniably effectively in some ways. The number of acts that have been implemented and speeches that have been given is outstanding – this topic has burdened this so-called American ‘freedonia’ up to this day.

However, one act is particularly important. One month after the tragedy, the PATRIOT Act³⁵ was enacted. It introduced a new definition of the terrorist. It states that domestic terrorism may be described as

activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the U.S. or of any state, that (B) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping, and (C) occur primarily within the territorial jurisdiction of the U.S.”³⁶.

The Bush Administration viewed terrorism as a ‘black hole’ that gave them an opportunity to regulate in such a broad way and engage in war on terror across borders. However, it might be observed that although the USA in this act defined the terrorist as someone who violates law, it itself broke many international principles of armed conflict. Jay Bybee³⁷ confirmed that thinking stating:

the President enjoys complete discretion in the exercise of his Commander-in-Chief authority and in conducting operations against hostile forces and thus [...] he can discard not only international but even standing domestic legal prohibitions on torture as part of the current war against Al-Qaeda³⁸.

Like the Schmittan partisan, the terrorist does not qualify for protection under the Geneva Convention, therefore their imprisonment was solely at the USA discretion. In the PATRIOT Act we find further regulations. For example, it is stated that the Attorney General shall take into custody any alien who is certified under paragraph 3 [which includes engagement into any activity that endangers the national security of the United States among many other allegations mentioned], they can be detained without any juridical supervision for an indefinite time, and moreover this detention is not bound to be announced to the public nor justified³⁹.

Schmitt four decades earlier stated that “a few categories of irregular fighters are treated as equal to regular forces and enjoy the rights and privileges of regular combatants”. However, when they do, they cease to be partisans. A. Gonzales observed that the “war against terrorism represents a new kind of war, for which the existing legal rules are inappropriate since the Geneva Convention arose in the context of the traditional clash among nations”⁴⁰. This thinking disturbingly, once again, resemble Schmitt’s one. Schmitt continued his remarks that the partisan “does not have the rights and privileges of combatants; he is a criminal in common law, and may be rendered harmless by summary punishments and repressive measures”.

³⁴ J. Fitzpatrick, *Speaking...*

³⁵ The full name is: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, however it seems that the shortcut came first, then the complete name.

³⁶ The PATRIOT Act, sec. 802.

³⁷ J. Bybee, who is a federal judge on the United States Court of Appeals for the Ninth Circuit – source: Wikipedia.

³⁸ W.E. Scheuerman, *Carl Schmitt...*

³⁹ The PATRIOT Act, sec. 412.

⁴⁰ W.E. Scheuerman, *Carl Schmitt...*

The USA mirrored this thinking, not only in the PATRIOT Act, but also in practice. Many of the detainees taken into American custody during the armed conflict in Afghanistan were not granted the prisoner-of-war status in the way it is required by the Geneva Convention. The United States successfully kept their detainment outside the realm of international regulation, which led to the establishment of infamous prisons – Guantanamo Bay Detention Camp and Abu Ghraib. It was also said that this Act is temporary – *sunset provision* guaranteed that this law should cease as of the end of 2005. However, it has already been renewed twice (including by President Obama, who promised otherwise).

Now, the similarity to the Schmittan state of exception becomes very obvious. The USA seems to be almost identical to his way of thinking. According to Schmitt, the kernel of sovereignty lies in declaring the state of exception. The state of exception is constitutive of the juridical order in the sense that no rule exists without an exception “order must be established for juridical order to make sense. A regular situation must be created and sovereign is he who definitely decided if this situation is actually effective”⁴¹. Therefore, sovereignty shows itself not in a normal situation, but in the state of exception. The similarity is uncanny and it might be said that the USA in this context are the perfect example of a strong, sovereign state, as they are indeed powerful enough to cross any boundaries by exceptions at any given time.

It seems to me that the war on terrorism institutionalizes the state of exception as a permanent aspect of the global order, at least when it comes to the USA themselves. I also do find many contrary aspects in the PATRIOT Act’s definition of a terrorist – it may as well suit to the American army and actions that they have performed (dangerous to human life, intended, destruction...).

Additionally to The PATRIOT, after 9/11, the Bush administration enforced a plan to wage a war on terror, with the codename *Infinite Justice*. It, by definition, does not know any limits. Addressing the Congress at that time, President G.W. Bush said that this war would not end “until every terrorist group of global reach has been found, stopped and defeated” and declared “we want total victory in Iraq – we will get total victory”. He also used the term “crusade against Islam”, which was later rectified. This had probably meant that only a total victory was taken into account. The decision to invade Afghanistan led to shoving away the Taliban regime that was supporting Al-Qaeda. The Bush administration claimed the right to target such individuals wherever they were in the world, basing on the non-combatant status and on the basis of the PATRIOT.

The global war on terrorism seemed to be working, and moreover American intelligence allegedly confounded many attacks (for example, an attack on the Sears Tower in Chicago). Consequently, following the pattern of defending freedom, infinite justice, and disposing of terrorist and “rogue states” that support them, in 2003 the decision was made to invade Iraq. It may be said that to a certain extent that was also a success: Ba’ath Party was overthrown and Saddam Hussein was executed. However, what happened later is our main interest: the Iraq invasion was the beginning of a partisan war in the “original” sense. As Fukuyama has observed:

terrorism is not an enemy, but a tactic, calling it a “war on terror” obscures differences between conflicts such as anti-occupation insurgents and international Mujahideen⁴².

⁴¹ C. Schmitt, *Political Theology, Four Chapters on the Concept of Sovereignty*, The MIT Press 1985.

⁴² F. Fukuyama, *After Neoconservatism*, The New York Times, February 19, 2006.

A great number of the Iraqi population were protecting their home soil. Shockingly, as Kochi observes⁴³, looking back to the 1980s ‘Mujahideen’, sponsored by the USA, predominantly Arab, Muslim men were encouraged to travel to Afghanistan and carry out a partisan war against the communist and atheist occupying army of the Soviet Union. Over 20 years later, very similar men, who declared themselves as Mujahideen in Iraq (but also in Afghanistan and even in the USA), are treated as the enemy, if not the absolute enemy and are criminalized, condemned as terrorists and locked-up indefinitely in prison cells in infamous detention camps. Unsurprisingly, for many of them the global revolutionary civil war has not changed. But then again, the Western conceptions of legal and political order did change and they seemingly no longer fitted into the politics of the USA (and thus other Western countries who participated as well) and cannot be recognized anymore. How can one even try to comprehend this peculiar train of thought? Is it not that the USA have added a new dimension to the Schmittian concept of terror and counter-terror? The USA now legitimize the “counter-terror” methods that were once not accepted under international law such as preventive war, torture and indefinite detention. Schmitt praised Napoleon for his remark, “you have to fight like a partisan wherever there are partisans”⁴⁴. It seems that the USA are also trying to live up to these words.

4. The future endeavor

A question may come to one’s mind in the context of this elaboration: what is the future then? Some authors suggest that

the only sensible response to this harsh reality is not to follow Schmitt and surrender the rule of law, but instead force the US to rethink its disastrous [...] legal and political positions about the “war on terrorism”⁴⁵.

Others add

many post 9/11 measures have been the worst of both worlds: they undermine human rights, both at home and around the world, and they do not help the United States counter terrorism. Lifelong military and intelligence officials have said that a fatal flaw in the “war on terror” is that the United States is losing the moral authority and credibility that is essential in a war of ideas and values⁴⁶.

However in my opinion, after we follow the US logic along with Schmittian output, it is hardly imaginable that any conclusions may be in fact analyzed and taken into account by the USA other than the state of exception.

In the 1st part of this essay, the comparison between the partisan and the terrorist was analyzed. The main conclusion was that the terrorist is a mirror image to the ‘revolutionary partisan’, though he is no longer a defender of the home soil and he fights against the *absolute enemy*. In the 2nd part, the USA were shown as following Schmitt ideology, especially by making exceptions to international rules, but also putting the

⁴³ T. Kochi, *The Partisan*....

⁴⁴ In the original text: *il faut opérer en partisan partout où il y a des partisans*.

⁴⁵ W.E. Scheuerman, *Carl Schmitt*....

⁴⁶ N. Strossen, *American Exceptionalism, the War on Terror, and the Rule of Law in the Islamic World*, The Federalist Society for Law and Public Policy Studies 2008.

terrorist outside international regulations. Some authors say that “in the prevention of chaos, law will always need to deem certain partisans as ‘illegal’ and ‘illegitimate’”⁴⁷. We might not agree with that, but it seems that we have to accept it.

I would like to make one last remark to this short study. Taking all of the above into consideration, I observe that soon (if not even already) there will be no partisan in the Schmittan sense, nor guerilla fighter, nor revolutionary. They all might cease to be distinguished on the international ground (by “the classical martial law” as Schmitt would say). It can be observed in the Iraq example that no difference was made in treating partisans and terrorists. Schmitt predicted that the partisan

will simply disappear in the frictionless execution of technical-functionalist processes, no differently from the way that a dog disappears from the autobahn. In the technical picture of things, he is then hardly even a problem for the highway patrol, and – by the way – he is then neither a philosophical, nor a moral, or legal problem anymore.”

I concur with this statement, although with a slightly different approach. It seems to me that simply in today’s harsh reality, too often the ‘old-style’ guerilla fighter will be confused with the revolutionary – who has now transformed himself into a terrorist. The solution might be unsatisfactory, however I can imagine that in the near future only those who fall into the scope of international conventions will gain the rights of combatants. Only this could grant them any defense when waging a war with any sovereign state. Otherwise, they will be treated as terrorists and every one of them will be named *the terrorist*.

⁴⁷ T. Kochi, *The Partisan*....

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