The International Political Thought of Carl Schmitt
Terror, liberal war and the crisis of global order

Edited by
Louiza Odysseos and Fabio Petito

Routledge Innovations in Political Theory
Are we experiencing, at the beginning of the third millennium, the emergence of a new nomos, or order, of the earth? This book tackles this crucial question for International Relations by offering the first critical analysis of Carl Schmitt’s *The Nomos of the Earth* and examining how this seminal text, as well as Schmitt’s international political thought more broadly, can help us understand the epochal changes in the international system that have arisen from the collapse of the ‘Westphalian’ international order.

Schmitt’s international political thought, the book argues, provides a stepping stone for thinking about the contemporary crisis in the order and structure of international society by offering an alternative history of international relations, of the genesis, achievements and demise of the ‘Westphalian system’. Writing at a time when he believed that this spatial, political and legal order (the nomos of the earth) had collapsed, Schmitt highlighted the advent of many of the core concerns of contemporary global politics, such as the weakening of the state, the emergence of US ‘imperial’ hegemony, the prevalence of a global interventionist liberalism and the transformation of terrorism and warfare more generally.

The contributors to the volume give further impetus to, and expand, the nascent debate on the significance of Schmitt’s legal and political thought for International Relations. Moreover, they use Schmitt’s thought to reflect on the contemporary international political environment of the global ‘War on Terror’, the crisis in international legality, US hegemony and the emergence of new forms of warfare. In so doing, the book encourages a critique of, and a movement beyond, Schmitt.

*The International Political Thought of Carl Schmitt* will be of keen interest to students and scholars of international relations, politics, law and history.

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This volume began in 2003 when we first read the English translation of Carl Schmitt’s *The Nomos of the Earth* and felt compelled to introduce this book and make its insights better known to scholars of International Relations, Political Theory and International Law, in other words, scholars keenly thinking about the present international predicament.

For this purpose, we convened a special workshop on the international political thought of Schmitt at the fifth Pan-European International Relations Conference which took place in September 2004 in The Hague. A number of coincidences were immediately striking: the conference was called ‘Constructing World Orders’, and it took place on 9–11 September in The Hague – the city which Schmitt associates with the final dissolution of the *jus publicum Europaeum*. Not only this: the conference and the workshop also shared the Netherlands Congress Centre with the newly convened International Criminal Court.

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Louiza Odysseos and Fabio Petito
Brighton and Paris
Introduction
The international political thought of Carl Schmitt

Louiza Odysseos and Fabio Petito

Carl Schmitt and international thought

Are we experiencing, at the beginning of the third millennium, the emergence of a new nomos of the earth? In 1950 Carl Schmitt completed his seminal work with an international focus, The Nomos of the Earth in the International Law of the Jus Publicum Europaeum (Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum) (2003 [1950]). In continental Europe, the Nomos is widely regarded as the masterpiece of Schmitt’s intellectual production and offers perhaps the most compelling history of the development of international law from the ashes of the Middle Ages to the beginning of the Cold War. It is, however, much more than a history of international law: it is a fully fledged alternative historical account of international relations, of the genesis, achievements and demise of modern ‘international society’, often referred to as the ‘Westphalian system’ in the field of International Relations (cf. Bull and Watson 1984).

Schmitt wrote at a time when he believed that ‘Westphalia’ – this spatial, political and legal global order (the ‘nomos of the earth’) embodied in the jus publicum Europaeum – had undergone a momentous process of collapse, which he dates from the later decades of the nineteenth century to the beginning of the First World War. In the foreword to the Nomos, with ill-concealed regret Schmitt notes, ‘[t]he traditional Eurocentric order of international law is foundering today, as is the old nomos of the earth’ (2003: 39). In its stead, Schmitt foresaw many dangers arising from the hegemonic global interventionism of the United States of America, the effects of de-concretisation and universalisation of international law (that is, of ‘order’ without explicit spatial grounding), of diminishing pluralism in the international system, as well as the evolution of partisan warfare and terrorism. It is with these concerns in mind that he posed the question with which we began this introduction to a volume dedicated to his international political thought.

The effects of these dangers have become alarmingly and increasingly apparent since the end of the Cold War. But it is only now that a serious engagement with Schmitt’s international political thought is progressively seen as a useful, some might say necessary, engagement for understanding the current international situation.¹ In fact, while his legal and political writings during the
twilight years of the Weimar Republic have had a significant and growing impact on contemporary legal and political theory in the English-speaking world, Schmitt’s ‘international political thought’, with which continental political thought has frequently engaged, has been largely overlooked in the fields of both International Relations and political theory; this despite the recognition of Schmitt as a thinker regarded, even by some of his fiercest contemporary critics, as ‘among the ranks of twentieth-century Europe’s most influential political and legal theorists . . . who has [also] exerted a subterranean influence on postwar American political thought’ (Scheuerman 1999: 1).

This neglect is, perhaps, partly explained by the fact the *Nomos* was only made available in English in 2003. Moreover, the reluctance of International Relations to engage with Schmitt’s thought is often justified as the result of his own involvement with the National Socialist regime in the 1930s (Balakrishnan 2000; Schmitt 1950) – reluctance which, interestingly enough, has been resisted longer in International Relations than in other related disciplines such as political theory, legal theory and international law, and that arguably reveals the extent to which International Relations is still an ‘American social science’ (Hoffmann 1977). But also, and perhaps more interestingly, the ‘multidisciplinarity’ of Schmitt’s international thought – which lies at the intersection of international relations, international law and international history, while also drawing on philosophy and political and legal theory – has arguably exacerbated this unfortunate neglect.

This volume was conceived as precisely an antidote to this neglect, seeking with its analyses to fill the gap in both international relations and political theory literatures, by examining the heterodox international writings of Schmitt and exploring, more importantly, how they relate to the epochal changes in international society that arise from the collapse of the ‘Westphalian’ international order. Such an intellectual enterprise has, therefore, two major tasks: first, it introduces the international thought of Schmitt to International Relations, a field which has not yet recognised that his writings offer, as we noted above, a significant and powerful analysis of the geopolitical characteristics and ‘achievements’ of the Westphalian system of states, which stands contrary to the founding ‘mythology’ of the discipline itself (Teschke 2003; Krasner 1999; Schmidt 1998). For reasons which we outline below, the contributions to this volume argue that Schmitt’s writings on the genesis of Westphalia should be regarded as at least as important for International Relations as the writings of other classical realist scholars such as E. H. Carr, Hans Morgenthau, Raymond Aron, Martin Wight, Hedley Bull or Kenneth Waltz, but also those of liberals such as Leonard Woolf and Harold Laski, whose influence on IR has also only recently been documented (Carr 2001; Wilson 2002; Honig 1995/1996; Soellner 1987). In other words, this volume, in expanding and giving further impetus to the debate on the significance of Schmitt’s thought for international politics, instigates a movement towards a reconsideration of his whole oeuvre, not as marginal to International Relations, but as central to its key concerns. Here, therefore, lies our first aim: to acknowledge Schmitt’s international thought, and in particular *The Nomos of the Earth*, as a ‘missing classic’ of IR.
Second, what is really at stake in seeking to redress the neglect of Schmitt’s international thought, beyond the important problem of exegesis, is the need for a deeper understanding of the present international condition of crisis and epoch-making change in the normative structures of international society. The contributors to this volume variably illustrate that Schmitt’s insights can provide scholars from social, legal and political sciences with a new common multidisciplinary research platform that helps to analyse the rise of global terrorism, the current international political environment of the global ‘War on Terror’, the crisis of international legality, the emergence of US ‘imperial’ hegemony, and the prevalence of a global interventionist liberal cosmopolitanism (see Schmitt 2000 [1963], 1996).

Yet why place such an emphasis on the past, that is on a history of international relations – a history written, moreover, more than half a century ago – if what we are urged to understand is the present situation of world (dis)order, institutional instability and political violence and what we are expected to construct is a future peaceful and just global order? There is a great need to give a context, to localise, to give a perspective to our fast-changing globalised world politics and this requires, more than ever, acute historical sensitivity. We cannot hope to read the present, even less to construct the future, without understanding the past, and this notwithstanding what the dominant positivistic methodologies of social sciences would like us to believe. In particular, we would contend that, in this time of transformation, any serious reflection on the contemporary international situation, aiming to go beyond the news commentary, needs to be historically informed. In this respect, we are committed to a historical sociological methodology and would gladly subscribe to the final sentence of Hedley Bull and Adam Watson’s introduction written to The Expansion of International Society: ‘[w]e certainly hold that our subject can be understood only in historical perspective, and that without an awareness of the past that generated it, the universal international society of the present can have no meaning’ (1984: 9).

With this methodological premise in mind, we offer below a critical introduction to Schmitt’s alternative history of ‘Westphalia’ or, in his own words, of the first nomos of the earth, the jus publicum Europaeum, situating in this way the varying interpretations of Schmitt’s international thought contained in this edited volume. This global order, which Schmitt regarded as the greatest achievement of European jurisprudence and civilisation, came gradually into being in the sixteenth century from the ashes of the respublica Christiana, the pre-global nomos of the Middle Ages. In the twentieth century, the disintegration of the jus publicum Europaeum becomes clear and the question of a new nomos of the earth arises.

Rethinking ‘Westphalia’ as the nomos of the earth

Schmitt understands Westphalia as a uniquely European order. He historicises Westphalia, in other words, by highlighting the unique conditions and circumstances in Europe which enabled this concrete spatial order and its international
law, the *jus publicum Europaeum*, to develop. The realist paradigm of International Relations understands international politics as immutable and repetitive, portraying the Westphalian system of states as the latest historical manifestation of existing power political relations – the tendency towards repetition lauded as an analytical and predictive strength (see, for example, Waltz 1979). For Schmitt, on the contrary, the genesis and demise of the Westphalian order could only be discussed within a broader historical narrative of an emergent, secularised, European modernity and of the related consolidation of the modern state, the development of which transformed the institutional and legal basis of political coexistence of peoples and princes in Europe.

Indeed, for Schmitt, modernity as an epoch relates directly to the rise of the state as the ‘historical agency of detheologization and rationalization’ of ‘public life’ (Schmitt 2003: 159, 140; see also 1985; Ulmen 1996: 130). Secularisation and, more specifically, the divestiture of the spiritual authority of the Church over politics and war allowed the emergence of this new and unique spatial order (Schmitt 1999: 204). The modern state ‘upset the axis of the spatial order of the *respublica Christiana* of the Middle Ages, and replaced it with a completely different type of spatial order’ (Schmitt 2003: 127). It was not only the actual evolution of the state that resulted in this new *nomos* of the earth; it was also the fact that this type of political entity could, and did, seek to establish a balance among all such recognised entities (ibid.: 126).

What makes Schmitt’s understanding of ‘Westphalia’ radically different from other prevalent interpretations, however, is his conviction that this political-legal European order was *global from its very genesis* and could not have been possible without the unrepeatable historical event of the discovery of the New World at the end of the fifteenth century. Schmitt, in fact, argues that only since discovering the New World and exploring the earth as a true globe – scientifically measurable as space – could one view the earth as a whole and reflect on its spatial ordering, the *nomos* of the earth.

**The ‘nomos of the earth’ and the discovery of the New World**

The concept of *nomos* has very little to do with the positivist idea of ‘law’ as an abstract command, as a superficial literal translation might suggest. For Schmitt, *nomos* is the foundational act that creates a concrete territorial order as unity of (legal) order and (spatial) orientation (*Ordnung und Ortung*) (ibid.: 67–79). The concept of *nomos* makes visible the truth that every legal order is, first and foremost, a spatial order constituted by a process of land appropriation, for ‘all law is law only in a particular location’ (ibid.: 98). For Schmitt, as we noted above, it is the historical turning point of the discovery and appropriation of the New World which prompted the emergence of the first *nomos* of the earth: the *jus publicum Europaeum*.

The *nomos* of the earth is, therefore, the *order* of the earth, ‘the community of political entities united by common rules . . . considered to be mutually binding in the conduct of international affairs’ (Ulmen 2003: 10). Such an order is, for
Schmitt, necessarily based on a historical event of land appropriation, a foundational act of force. As this definition suggests, the European modern ‘international society’, as broadly described by the rationalist and English School traditions of International Relations (cf. Wight 1994; Linklater 2001), is one possible starting point within International Relations from which to understand what Schmitt has in mind when he talks about the *jus publicum Europaeum* as the first ‘*nomos*’ of the earth. Bull, in fact, defines a society of states as ‘a group of states that conceive themselves to be bound by a common set of rules in their relations with one another’ (1977: 13). Both the concepts of ‘international society’ and ‘nomos of the earth’ are definitely richer than the realist notion of ‘international system’, for they both outline the dense institutional dimension of Westphalia as well as its uniquely European origin (see Colombo, Chapter 1 in this volume). For Schmitt, however, ‘Westphalia’ is a global order from the very beginning of its inception – well before the process of expansion of the European international society, which Bull and Watson saw as culminating in its universalisation in the twentieth century. ‘Westphalia’ is a global order precisely because its origins lie in the epoch-making discovery of a New World as a free space, an area regarded as open to European occupation and expansion.

Shortly after 1492, when the first maps and globes were produced, the first lines were also drawn by the appropriating European powers to divide and distribute this new global space, signalling the birth of what Schmitt refers to as ‘global linear thinking’ (2003: 86–100). Schmitt illuminates how the first global lines, the Spanish–Portuguese *rayas* (Treaty of Tordesillas, 1494), had a *distributive* purpose, that is, they aimed at the internal division of the new lands between two land-appropriating Christian princes within the spatial order of the *respublica Christiana* and guaranteed by the common authority of the head of the Church, the Roman pope. The subsequent French–English ‘amity lines’, established with the treaty of Cateau-Cambrésis (1559), were based on completely different premises, embodying an *agonal* character. They set aside two distinct areas considered ‘open spaces’: on the one hand, the landmass of the New World, whose belonging to the native populations was not recognised, and on the other, the newly mapped and navigable seas (ibid.: 94–95). In both types of ‘open space’, the appropriating European powers could use force freely and ruthlessly, as these were areas ‘designated for agonal tests of strength’ (ibid.: 99). In the powerful words of Schmitt:

> At this ‘line’ Europe ended and the ‘New World’ began. At any rate, European law, i.e., ‘European public law’, ended here.... Beyond the line was an ‘overseas’ zone in which, for want of any legal limits to war, only the law of the stronger applied.

(ibid.: 93–94)

Schmitt examines how the need to permit and legally justify the appropriation of these new lands ‘beyond the line’, as well as the marshalling of the seas, led to the creation of ‘Westphalia’, a uniquely European order that lasted for almost three centuries, which was the first *nomos* with a global geopolitical character.
The global relations of appropriation – which International Relations has been forced to recognise as belonging to its domain of study only after persistent postcolonial and poststructuralist critiques (see for example Hoogvelt 2001; Campbell and Dillon 1993) – play a central and crucial role in Schmitt’s heterodox account of international politics and law.

Indeed, Schmitt argues for a history of modern international politics that is inseparable not only from the rise of scientific rationality (Schmitt 2003: 53), or even from the spread of capitalism that more commonplace narratives of modernity emphasise, but first and foremost from the processes of land appropriation of the New World by the state, which, as we noted above, was a specifically European form of social organisation. Indeed, he goes as far as to suggest that

[t]he first question in international law was whether the lands of non-Christian, non-European peoples and princes were ‘free’ and without authority, whether non-European peoples were at such a low stage of civilization that they could become objects of organization by peoples at a higher stage.

(ibid.: 137–138)

Having already drawn a line to distinguish European from non-European – read ‘open’ or ‘free’ – space available for appropriation and agonal struggles for power, this order, moreover, regulated relations of war in Europe itself (ibid.: 97). Schmitt called this regulation of war eine Hegung des Krieges, a bracketing of war, which resulted, he suggests, in what might well be the greatest achievement of the Westphalian order: the limitation and humanisation of war, which we examine below.

Eine Hegung des Krieges: bracketing war

Highlighting in the Nomos both the advent of the modern European state as the vehicle of secularisation and also its global geopolitical character allows Schmitt to trace how this interstate order was able to limit and ‘rationalise and humanise’ war. In acknowledging the patterns of violence in the form of limited interstate war, Schmitt’s Nomos also recounts the ways in which this order had succeeded in ‘bracketing’ war, precisely on the basis of drawing such geopolitical distinctions between European and non-European space and on pursuing land appropriations in the New World. Schmitt evaluates this occurrence as a significant legal and political achievement, for it had kept ‘war at bay’ (see Mouffe, Chapter 8 in this volume) on European soil:

Compared to the brutality of religious and factional wars, which by nature are wars of annihilation wherein the enemy is treated as a criminal and a pirate, and compared to colonial wars, which are pursued against ‘wild’ peoples, European ‘war in form’ signified the strongest possible rationalization and humanization of war.

(Schmitt 2003: 142)
According to Schmitt, this is the major achievement of Westphalia: the interstate order which existed in Europe until 1914 had sought, through its international law, ‘to prevent wars of annihilation, i.e. to the extent that war was inevitable, to bracket it’ (ibid.: 246). It did not, on the contrary, seek to end war as such, to abolish or banish it from its international relations since it implicitly recognised that ‘any abolition of war without true bracketing resulted only in new, perhaps even worse types of war, such as reversions to civil war and other types of wars of annihilation’ (ibid.). It rather sought to find ways in which to gauge the opponent’s strength, usually by striving for appropriation of lands in the New World or by fighting limited wars on European soil, and by recognising the opponent as an enemy on equal grounds – as a justus hostis.

The development of the notion of justus hostis was the key to such an achievement. The concept of an ‘equal and just enemy’ evolved alongside the consolidation of the modern state. With the predominance of this type of political entity and the weakening of the moral authority of the Church, war became ‘non-discriminatory’, that is, divorced from substantive causes of justice or justa causa. Since war was the means by which land could change ownership status, ‘war came to be judged in terms of its outcome’ and became a form of political relation among states (ibid.: 100). Any enemy that had the form of a state was a just enemy and war could be waged against it. This development enabled the avoidance of wars of conviction, creed and religion (that is, based on substantive issues of justice) which had historically caused tremendous destruction, and of possible annihilation of enemies. For Schmitt, whose belief was that war was an inevitable part of political life, this regulation of war without substantive cause meant a ‘rationalization, humanization and legalization’ of war. Regarding an enemy as both a just and an equal partner meant that peace could be made with that enemy – his ultimate destruction was not sought, but conflict with him was possible and regulated.

As a consequence, war became a ‘“war in form”, une guerre en forme’ (ibid.: 141) whereby the justice of war no longer had anything to do with the causes of war, but was concerned only with the formal adequacy of the belligerents: they had to be justi hostes, bearer of the jus belli, that is, European sovereign states. In other words, ‘war became somewhat analogous to a duel, i.e. a conflict of arms between territorially distinct personae morales’ (ibid.), part of the European ‘family’ of the jus publicum Europaeum. Such wars, Schmitt suggests, were the very ‘opposite of disorder’ (ibid.: 187).

The notion of the just enemy, moreover, meant that such a system of war allowed for both resistance and self-defence: given that the enemy was a priori just, its right to self-defence and to resistance was recognised, precisely because the issue of just cause was eliminated. This also allowed for the development of the institution of neutrality for third-party states in international law. The only unjust war was the non-state or private war: rebels, pirates, outlaws, perturbateurs are not justi hostes but criminals and as such they have to be dealt with through punitive actions in the sense of modern criminal law.

As a result, the jus publicum Europaeum allowed for the construction and
maintenance of a balance (ibid.: 161), known within International Relations as the ‘balance of power’. This relates to the avoidance of wars of destruction, because if balance was the political and military objective, then wars could be limited to achieving it, unlike wars of substance and just cause which required the submission of the opponent or their resocialisation. The workings of the system of a continental equilibrium between European territorial states were predominantly visible in the resolution of the fundamental problem of territorial change: how to allow for territorial changes within European soil without endangering the overall spatial ordering of the *jus publicum Europaeum*. The problem was resolved in the eighteenth and nineteenth centuries through the international law procedure of the great peace conferences under the leadership of the great powers. This represented the supreme legal institutionalisation of the foundation of the European international law, the balance of power, articulated in its two main principles: first, every important war among European states is a legitimate concern for all the members of the community of European states and, second, it is for the great powers as guarantors of the European spatial ordering to recognise the relevant territorial changes (ibid.: 185–212).

The *spatiality* of the *nomos* of the earth, moreover, underscored its longevity because it allowed European powers to conduct limited, rationalised, wars in Europe while pursuing appropriation of lands elsewhere. It is important to note, however, that the ability to balance power was also based on the fundamental contraposition between ‘Land’ and ‘Sea’ that took shape as a result of another unique historical event, the British conquest of the seas (Schmitt 1997). Schmitt argues that it is in the coexistence, full of tensions, of these two different global spatial orderings, land and sea, that the *nomos* of the earth was grounded. Within this framework, ‘the connecting link between the different orders of land and sea became the island of England’ (Schmitt 2003: 173), ruler of the seas and guarantor of the equilibrium between land and sea. From 1713 to 1914, then, there were two main distinctions within the *nomos* of the earth: a division between land and sea, relevant to distinguish between land-war and sea-war with their respective concepts of enemy, war and plunder; and a division of the firm land between the soil of European states, where the limitation of interstate war applied, and the soil of colonial territories, where it did not (ibid.: 184).

This brief exploration, taken up, expanded and critiqued by each of the contributors to the volume, suggests that Schmitt’s *Nomos* has to be accorded its proper place, side by side with other major classics, as a founding text of International Relations, corrective of the ahistoricity of the discipline and its blindness to the ways in which spatiality, law and politics constitute world order. Moreover, it opens up the possibility to recast the thought of Schmitt as international but of a radically heterodox character.

**Assessing Schmitt’s heterodox international thought**

As the above discussion suggests, Schmitt provides an alternative examination of the historical emergence and specificity of the Westphalian system of states,
which is a far cry from the one common in the discipline of International Relations. Below, we summarise the volume’s evaluation of Schmitt’s account of the *nomos* of the earth, and his *heterodox* international thought more broadly, highlighting the contributions it makes to theorisations and understandings of international relations and world order. We focus, first, on Part I of the book, entitled ‘Carl Schmitt’s *heterodox* international thought’, discussing the institutionalist and geopolitical dimensions of his international thought and, second, on Part IV entitled ‘Critical rereadings of Carl Schmitt’s international thought’, evaluating the metaphysical structure, mythopoetic characteristics and ‘ethical’ particularities of his approach.

*The Nomos of the earth and beyond: the ‘realist institutionalist’ and geopolitical aspects of Schmitt’s thought*

The achievements of the global order, which Schmitt called the *nomos* of the earth, all relate, in some sense, to the evolution and rise to dominance of the modern state in European and world political life. In particular, Schmitt recognises that the construction of the concept of the modern state was essential to the bracketing of war. He interestingly notes, in fact, that ‘all definitions that glorify the state, and today no longer generally are understood, hark back to this great accomplishment, whether or not they later were misused and now appear to have been displaced’ (ibid.: 142). Indeed, for Schmitt, the state was the focal point of the *institutional* basis of the Westphalian order, a dimension often missed in mainstream accounts of International Relations, be they realist or liberal, as Alessandro Colombo explores in depth in Chapter 1.

While classical realist and neo-realist accounts recognise the importance of the state for Westphalia, they have historically maintained that this centrality of the state negates any ‘thick’ institutionalist understandings of international politics. It has been incumbent on liberal institutionalist accounts to call for an examination of the initially precarious, though increasingly significant, institutional developments of international politics. Schmitt’s *heterodox* account of the historical conditions leading to the development of the modern international system, on the contrary, challenges both liberal and realist perspectives as having failed to consider that the state, in the words of Colombo, is the adequate bearer of the European order, the chief institutional component of Westphalia. Colombo criticises both realists and liberals for ignoring ‘the search for the concrete meaning of institutions’ in the densely institutional character of Westphalia and suggests that Schmittian international thought ‘reveals not a history of power politics, but, basically, one of institutions’ which nevertheless ensures a proper consideration of geopolitical and power factors. For Colombo, ‘the *jus publicum Europaeum* is a monument to the impact of institutions on international life’ and this also explains why Schmitt’s image of history rejects the progressive and optimistic perspective of contemporary institutionalism.

In Chapter 3 Chris Brown, in a dialectical move, offers a contraposition to Colombo’s assessment by de facto opposing Schmitt’s ‘reversed image of
history’. For him, Schmitt can indeed ‘tell us where notions of humanitarian intervention come from, he can show us an alternative account of “humanism” that does not grow out of the barrel of a Western gun’; nevertheless Brown criticises both ‘Schmitt’s politics and his rather selective use of historical materials’, calling into question the notion that the humanised wars of sovereign states were an advance over the ‘just wars’ that preceded them, and the ‘humanitarian wars’ that have followed them.

For both Brown and Colombo, however, Schmitt’s place as a classic of International Relations should be guaranteed. For Colombo, this is because Schmitt’s Nomos gives pride of place to a peculiar type of ‘realist institutionalism’, ‘which can legitimately seem an oxymoron in contemporary International Relations Theory, since most institutionalists reject realist assumptions and most realists downplay the role of institutions’, while, for Brown, it is because Schmitt ‘offers the fullest, most intellectually substantial critique of the recent revival of Just War thinking available, a critique that anyone who wishes to continue to work within that tradition must confront’ and a critique which is absolutely essential to contemporary theoretical and political debates alike.

What makes Schmitt’s international thought even more topical for contemporary theorising, however, is that, while narrating the history of the first state-centred global nomos, it was, at the same time, trying to understand the end of the state, its consequences, and the need for a new world order for international politics. Mika Luoma-aho’s Chapter 2, therefore, examines the evolution of Schmitt’s geopolitical thinking from his Weimar works to his post-1936 writings, and in particular his search for the foundations of a new order in which multinational Großräume, led by great powers, would replace the geopolitical form of the state. He importantly traces, moreover, how such concerns about grosspolitics were at the centre of the thought of E. H. Carr, whose importance in International Relations is well known, but also of James Burnham, now widely regarded as one of the founding fathers of American neo-conservatism.

Ethical, metaphysical, mythopoetic? Critical rereadings of Schmitt’s thought

While much of the discussion in this introduction has focused on a critical exposition of Schmitt’s international political thought, it is also as, if not more, important to give a sense of the philosophical, philological and ethical contours of Schmitt’s writings. The articles found in the fourth and final part of the book generally provide such a critical and in-depth discussion of the philosophical and ethical basis of Schmitt’s earlier thought as well as his later international thought. In so doing, they rely on contemporary critical continental thought in order to engage with, and evaluate, Schmitt’s corpus.

In Chapter 12 Mika Ojakangas explores the metaphysical foundation of Schmitt’s thought through the question: ‘why is [Schmitt] so afraid of globalization and the unity of the world – a world without an exterior?’ Opposing the hitherto influential theological reading of Schmitt offered by Heinrich Meier
(1998), Ojakangas offers a metaphysical argument, suggesting that Schmitt’s thought sought to question and, indeed to curtail, the ‘outstanding characteristic of late modernity’ which was the ‘dominance of the metaphysics of immanence’. Ojakangas suggests that the metaphysical foundation of Schmitt’s thought was the centrality of the outside, the exterior which cannot be dispensed with. He sought to maintain, against immanence, ‘the openness of order towards transcendence’ but that this is not ‘a transcendence beyond but within immanence’ (emphasis added).

Mitchell Dean’s Chapter 14, however, suggests that perhaps it is not so much the theological reading of Schmitt’s thought, represented by Meier, which ought to be at the centre of our critical endeavours but, rather, a reading of Schmitt which excavates (in an ironic telluric emphasis) the mythopoetic and philological aspects of his thought on world order. Such an examination as Dean undertakes, moreover, critically reflects on our own scholarly capacity to appropriate Schmitt’s thought without reproducing the dangers of his often disturbing mythopoetics in our contemporary discussions and politics.

Finally, Sergei Prozorov’s Chapter 13 tackles an important lacuna – which centres on the consideration of the ethical dimension of Schmitt’s thought – in Schmittian studies but also in critical perspectives of international relations, where Schmitt’s political realism is ‘often the object of criticism in the name of a variably construed “political ethics”’. Reading Schmitt’s existential decisionism through Foucault, as a form of ‘self-constitution . . . in the absence of or in opposition to a substantive moral code’, in other words, allows Prozorov to recast ‘even the most controversial or even scandalous aspects’ associated with Schmitt’s amoralism ‘as ethical in their own right’.

Below, in the final part of this introduction, we discuss how Schmitt’s heterodox international thought provides us with a new multidisciplinary research basis on which to analyse crucial international concerns, such as the contemporary emergence of global terrorism, the international political environment of the global ‘War on Terror’, the evolution of US ‘imperial’ hegemony, and the prevalence of a global, interventionist, liberal cosmopolitanism.

**In search of a new nomos: Schmitt and the contemporary crisis of order**

In the last decades of the nineteenth century the *jus publicum Europaeum* enters its twilight years, which would eventually lead to its final dissolution with the First World War. From then onwards, according to Schmitt, the key issue became the search for a new *nomos* of the earth. Schmitt identifies the end of the first *nomos* of the earth in three major processes emerging with all their strength throughout the twentieth century: the dissolution of the *jus publicum Europaeum* into a spaceless and generic ‘international law’ and its institutionalisation in the League of Nations system (2003: 227–258); the transformation of the meaning of war (ibid.: 259–278, 309–322); the new role of the United States and the emergence of the Western hemisphere as a central category of its foreign policy
discourse (ibid.: 281–308). Behind all these processes lay a major historical and epoch-making shift: the end of Europe as the centre of the earth. In the previous centuries, European conferences had determined the spatial ordering of the world; after the First World War, as was evident at the Paris peace conference, it was, for the first time, the world which would decide on the spatial ordering of Europe.

According to Schmitt, the League of Nations system failed to replace the *jus publicum Europaeum* because it could not provide any spatial ordering. Rather, the League was built on a highly unstable disorder made visible first of all in the way it dealt with the issue of the limitation of war, the central purpose of any international law. Its central aim became the abolition, rather than the limitation, of war via the introduction of new concepts of discriminatory war and war as a crime. In classical European international law, the concept of war crime only referred to particular actions undertaken during the war against *jus in bello*; now, in article 227 of the Treaty of Versailles, Schmitt notes, the German Emperor Wilhelm II was explicitly accused of an international crime whose content was ‘the supreme offense against international morality and the sanctity of treaties’. These attempts to criminalise wars of aggression, to create an international tribunal and to claim reparations for damages deriving from the legal responsibility of having waged an unjust war of aggression, all pointed to an epochal transformation in the meaning of war and signalled, in the clearest way possible, the end of the era of the old *nomos* of the earth. The consequences of the end of what might well be the major achievement of European legal rationalism, ‘the bracketing of war’, would become clear in the emergence of the new total wars of the twentieth century – wars of annihilation fought in the name of humanity, which had been, thanks to the modern means of destruction (air power), transformed into a police action against the perturbers of peace, criminals and others.

This transformation, however, would not have been possible without the new fundamental role of the United States, which Schmitt analyses by looking at the Western hemisphere as a central category of its foreign policy discourse. Since the formulation of the famous Monroe doctrine in 1823, the Western hemisphere represented, in Schmitt’s language, the American *Großraum* (greater space), defining the US sphere of special interest, namely the American continent. In terms of ‘global linear thinking’, the line of the Western hemisphere, different from a distributive *raya* and from an agonal amity line, was a defensive line around a security zone, a line of self-isolation, as well as an anti-European line based on contempt for the old and ‘corrupted’ Europe. But it is during the interwar years that the originally *isolationist* nature of the Western hemisphere gradually moved into a universalistic-humanitarian global *interventionism*, which would seek to justify US intervention in all the relevant political, social and economic issues of the earth on the basis of a return to the older and sounder views of the just war tradition. This is the background that the contributors to Part II of this volume have in mind when they approach the current international political situation under the heading of ‘crisis of order’.
The crisis of order (nomos): war, terrorism and the political

As a preliminary observation, from which Alain de Benoist’s and Gary L. Ulmen’s chapters move, the emergence of global terrorism and the related global War on Terror are the most visible symptoms of the major crisis in the normative structure of international coexistence, for the common agreement on the laws of war is, according to Schmitt, the most essential pillar of the architecture of any system of international law. This common Schmittian starting point, however, does not necessarily grant a univocal interpretation as far as the post-9/11 developments are concerned: in Chapter 4 De Benoist offers a political reading of global terrorism as the ‘new enemy’ against the background of the clearly overwhelming US hegemony and focuses on what he believes to be the inadequate American reaction to it, in the form of a permanent state of exception of a war seemingly without end. In a diverging argument, Ulmen, in Chapter 5, draws a conceptual distinction between the ‘partisan’ and the ‘terrorist’ and argues for what Schmitt called ‘pest control’ in a situation that exhibits, in his view, the characteristics a ‘global civil war’, again in Schmitt’s sense of this phrase.

The crisis of order in the structure of contemporary international society is also manifest in the unexpected links that the contemporary discourse of international law, inspired by liberalism and cosmopolitanism, entertains with the practice of current political violence. As Linda S. Bishai and Andreas Behnke show in Chapter 6, liberalism attempts to turn the pluriverse of international politics into a universe, in which the effects of difference are controlled from a ‘meta-sovereign’ site through current US-driven attempts to reformulate international law by conferring a special status on liberal democracies, as well as by reintroducing a ‘discriminatory concept of war’ in the form of a right to different forms of interventions from humanitarian to preventive ones. Such a displacement of the political is also discussed in Chapter 7 by Louiza Odysseos, who highlights the dangers arising from recent cosmopolitan attempts to erase the spatial lines drawn by the Westphalian order and inaugurate a new age of modernity based on a universal humanity. Her analysis illuminates the processes of world political subjectivisation which ensue from such a cosmopolitan project and which point to significant but neglected relationships between cosmopolitanism and the War on Terror.

The crisis of order has arguably become more manifest, however, since 1989 with the end of the bipolar moment of the Cold War. We could go as far as to argue that the whole ‘global civil war’ between 1918 and 1989 only delayed confronting the dilemma between universalism and pluralism, which was for Schmitt the core question that would determine the new international law of the earth (2003: 243, 247). This point seems to be confirmed by the fact that the central debates on the post-Cold War international order have been articulated around different versions of the dichotomy universalism/pluralism, which was so central to Schmitt’s international thought: unipolarity versus multipolarity, globalisation versus fragmentation, cosmopolitanism versus communitarianism.
and, to some extent, even Francis Fukuyama’s (1989) ‘end of history’ versus Samuel Huntington’s (1993) ‘clash of civilizations’. Following these reflections, the analyses proposed in the Part III of this volume, under the rubric ‘Searching for a new nomos of the earth’, examine the nature and possibilities of the future world order.

**Searching for a new nomos of the earth**

Using Schmitt’s insights, Chantal Mouffe in Chapter 8 argues that the central problem that our current unipolar world, under the unchallenged hegemony of the United States, is facing is the impossibility for antagonisms to find legitimate forms of expression. Under such conditions, antagonisms, when they do emerge, tend to take extreme forms. In order to create the channels for the legitimate expression of dissent we need to envisage, Mouffe suggests, a pluralistic multipolar world order constructed around a certain number of greater spaces and genuine cultural poles.

Along similar lines, in Chapter 9 Danilo Zolo draws on Carl Schmitt’s philosophy of international law in order to argue against certain contemporary uses of the notion of ‘empire’. He uses the notion of empire, rather, to denote the global hegemony of the United States according to a complex meaning, which is partially new with respect to the ‘Roman model’ which functions as an imperial paradigm within contemporary political theory. Against the United States’ dangerous imperial tendencies, Zolo argues that world order and peace need a neo-regionalist revival of the notion of *Großraum*, together with a reinforcement of multilateral negotiations between nation-states, which continue to be the source of democratic legitimation of the processes of regional integration.

If these analyses tend to emphasise Schmitt’s preference for the emergence of a new pluralistic order as the future nomos of the earth, Fabio Petito’s and J. Peter Burgess’s chapters expand respectively on the possible theory and practice of this new pluralist nomos of the earth to come. In Chapter 10 Petito critically discusses Schmitt’s own speculations on the possible configurations of a ‘new nomos of the earth’ and, moving from his apocalyptic stance against world unity, sketches the contours of an intellectual strategy in international political theory to articulate a more pluralist world order adequate for a multicultural and globalised international society. In Chapter 11 Burgess, moreover, examines the general elements of the European legal system, and the project of European construction from 1950 to 2006 more specifically, as expressed in the evolution of European Union law. Outlining the broad contours of a new European nomos, which according to Burgess has more modest aspirations than the *jus publicum Europaeum* and which contains a particular mix of limited universality and local particularity, he speculates on the possible connection that this European order might entertain with a future nomos of the earth.

At the very beginning of this introduction we asked, with Schmitt, whether at the dawn of the third millennium we were experiencing the emergence of a new nomos of the earth. Answering this question is, in the very words of the jurist of
Plettenberg, ‘an hazardous undertaking [and a] fervent hope’ (2003: 39). More modestly, our hope is that this volume makes clear why, and how, a critical engagement with the international political thought of Carl Schmitt can help us to move through the complexities of this hazardous undertaking, which is not likely to leave us soon; more fervently, our hope is that this work might encourage more creative thinking, more astute than this book can offer, to go ‘beyond Schmitt’ in the search for a new nomos of the earth.

Notes


3 For an exhaustive critical presentation of the main arguments of Schmitt’s The Nomos of the Earth see Ulmen (2003).

Bibliography


‘World Orders: Confronting Carl Schmitt’s The Nomos of the Earth’ (2005), special issue of South Atlantic Quarterly, 104, no. 2.
Part I

Carl Schmitt’s *heterodox* international thought
1 The ‘realist institutionalism’ of Carl Schmitt

Alessandro Colombo

Introduction

It is pertinent to focus on institutions in a part of the book that discusses Carl Schmitt’s heterodox international thought. In fact, Schmitt’s major concern was precisely to search for the concrete meaning of institutions, while preventing a divorce between law and political science. On the one hand, as the jurist that he still represents himself to be at the beginning of *Der Nomos der Erde*, he unequivocally rejects the naively Machiavellian view of politics and its inability to grasp the cultural and juridical dimensions of order. Schmitt’s thought, on the contrary, revolves around the problem of reconciling form and decision, effective and juridical power, in an attempt to distinguish what power *always* is – the pure and simple ability to impose one’s will on others – from what it *can become* through law – a ‘restraining force’, as Schmitt defines it, borrowing the Pauline concept of *katechon*; namely, an instance able to channel the indomitable lack of restraint of the political into juridical form (Schmitt 1984, 1988).

On the other hand, as a critic of normativism and legal formalism, Schmitt vehemently denounces the tendency of contemporary legal studies to put forward an increasingly drastic disjunction between norm and reality, rule and actual behaviour (Schmitt 2004a), reducing law to nothing more than ‘a collection of somewhat valid norms’ (Schmitt 2003: 220). In this conception, specific problems and political, economic and geopolitical issues are banished from the juridical realm and a technical distinction is drawn between pure sociological and pure juridical facts. Schmitt sees a real abdication of international law in this impoverishment, or, more precisely, the end of its centuries-old experiment:

*Silete theologi in munere alieno!* [Theologians must remain silent within foreign walls!] So said humanistic jurists to theologians at the end of the 16th century, in order to establish an independent jurisprudence of *jus gentium*. Three hundred years later, at the end of the 19th century, jurisprudence, in the name of legal positivism, chose to remain silent with respect to all the great contemporaneous legal issues. *Sileamus in munere alieno* [We must remain silent within foreign walls]. With this rejection of international
law, Europe stumbled into a world war that dethroned the old world from the center of the earth and destroyed the bracketing of war it had created. 
(Schmitt 2003: 239)

Overcoming this disjunction between law and politics marks not only the historical and conceptual foundation of Schmitt’s reflections on both Staatsrecht and Völkerrecht, but also his distinctiveness in International Relations theory, what I shall call his ‘realist institutionalism’. First, I will analyse the meaning of this concept, which can legitimately seem an oxymoron in contemporary International Relations theory, since most institutionalists reject realist assumptions and most realists downplay the role of institutions. Second, I will focus on the fundamental subject of Schmitt’s institutionalism: the state. Schmitt places it at the centre of modern international politics, as do realism and neorealism. However, he attributes to it a totally different role: the state is not conceived to be the sole, real actor behind the institutional scene but, rather, the very creator and guarantor of that scene. Finally, I will discuss Schmitt’s image of history, which also escapes the common realism–institutionalism distinction. On the one hand, it rejects the realist dogma of the immutability of international politics, clearly recognizing the important changes that the jus publicum Europaeum had introduced into the international sphere. On the other hand, Schmitt’s image of history also rejects the progressive and optimistic image of contemporary institutionalism, opposing it with Schmitt’s own catastrophic and somewhat nostalgic vision of the demise of European international law.

This inevitability of demise is, at the same time, the outcome and the inspirational source of Schmitt’s thought. If he recognizes in the institutional dimension the connective tissue of the international scene, it is precisely because he is observing that scene’s collapse, the moment when ‘the plankings begin to creak’ – as a German poet contemporary of Schmitt, Gottfried Benn, put it. Instead of continuing to support the building from the inside, the planks come to the surface, become visible, and allow us to read their history in their cracks. Facing such a crisis landscape Schmitt, first, retraces its origin, then its long course, until the institutional dimension reveals itself to be very different from how it is portrayed in most of the so-called institutional theories of International Relations: that is, it is not an innovation of the twentieth century, but, rather, the most impressive element of continuity in the modern history of international politics; not the negation of power relations, but, rather, the expression of their ability to give form to international life; not a manifestation of universalism, but, rather, the last sign of the exceptionalism and centrality of Europe.

A realist institutionalism

That Carl Schmitt belongs to the realist tradition cannot be seriously put into doubt. All of the major assumptions that underlie his thought prove it: the pre-eminence of political over economic relations; the centrality of conflict, upon which his concept of the political rests (Schmitt 1996); and his insistence on the
decisive role of the ‘state of exception’, which permeates both his domestic and
his international reflections and founds his very definition of sovereignty
(Schmitt 1988). His constant references to the classics of political realism, from
Thomas Hobbes to Jean Bodin to Donoso Cortés and the counter-revolutionary
Catholicism of the nineteenth century, which he also conceives to be decisionist
(ibid.), further support this point.

Nevertheless, the retrospective reconstruction of the history of modern inter-
national relations which Schmitt offers reveals not a history of power politics,
but, basically, one of institutions (Schmitt 2003). From the recognition of
foreign states to the legitimation of territorial changes, from the succession of
states to the occupatio bellica, from the system of international conferences to
the status of neutrality, the *jus publicum Europaeum* is a monument to the
impact of institutions on international life. Through the secularization of the
public sphere and the neutralization of conflicts that resulted from the civil wars
of religion, its fundamental contribution has been to transform international
cohabitation into a ‘relation between specific, spatially concrete, and organized
orders’ (Schmitt 2003: 158), ‘able to be conducted with comitias (courtesy) and
with jus (probity)’ (ibid.: 146). Modern international politics becomes in the era
of the *jus publicum Europaeum*, not the materialization of the Hobbesian state of
nature, but, rather, the political and juridical response to it, as well as to the
experience that provides its ‘existential truth’ (ibid.: 127): civil war.

This interest in the institutional dimension of the international sphere
distinguishes Schmitt’s thought in two fundamental ways from the kind of
realism that has prevailed in International Relations. First, without renouncing
the idea that international politics is characterized by the absence of government,
Schmitt explicitly puts the significance of anarchy into perspective, not only
by recognizing that order can exist in anarchy, as realists and neorealists also
do, but, beyond them, by understanding that the international order is something
more than the (ever changing) result of power relations; it also depends, at a more
profound level, on a (more persistent) set of political, juridical and cultural
restrictions which, over the last three centuries, have allowed international
competition to develop according to certain rules and, above all, in keeping
within certain limits; namely, the limits whose crisis Schmitt witnessed.

As in the parallel reflections of the English School of International Relations
– although clearly outside its Grotian cadence (Bull 1966; Wight 1994) – the *jus
publicum Europaeum* places international anarchy in a societal and, more
importantly, juridical web. As Schmitt puts it in *Der Nomos der Erde*:

> From Hobbes and Leibniz to Kant, from Samuel Rachel to Johann Ludwig
> Klüber, all significant authors have claimed that in international law states
> live as ‘moral persons’ in a state of nature, i.e., that the representatives of
> *jus belli*, without a common, institutional, higher authority, confront one
> another as sovereign persons with equal legitimacy and equal rights. One
> can view this situation as anarchistic, but certainly not as lawless…. At
> first glance, everything in this interstate international law among equal
sovereigns appears to have hinged on the thin thread of treaties that bound these leviathans together. . . . But, in reality, strong traditional ties – religious, social, and economic – endure longer.

(Schmitt 2003: 147–148)

In realizing that anarchy can result in something different from the Hobbesian paradigm – as it already has in history – Schmitt rejects the other cornerstone of contemporary realism: the assumption that international politics has remained immutable through the centuries (Waltz 1979; Gilpin 1987). Once placed in its particular institutional context, each form of international coexistence – from the Christian medieval up to the modern international system – reveals itself to be radically different from the others. Continuity and discontinuity, immutability and catastrophe follow and interweave within institutions; institutions which are born, on the one hand, to produce expectations and to overcome contingencies, while being, on the other hand, themselves a contingency, a fact that does not fundamentally change what is really immutable in politics – Schmitt’s dialectic between friend and enemy (Schmitt 1996) – but, rather, changes the nature of the players, the extent of the playing field, and the rules of the game. With respect to orthodox realism, the meaning of immutability changes in this conception, becoming more complicated and, at the same time, more accurate. On the one hand, the assumption of immutability may even be reinforced by the rediscovery of the institutional framework of the *jus publicum Europaeum*, not because it constitutes the only element of *continuity* in the history of modern international relations, but, rather, because it constitutes one of them, and precisely the one that has made it possible to give other mutations a form. On the other hand, the assumption of immutability emerges relativized by the recognition that the *jus publicum Europaeum* also marks the *discontinuity* between the modern international system of states and other past, present or future models of international cohabitation, both in Europe and in the rest of the world.

It is precisely here, in his interest in the modern international system, that Schmitt’s institutionalism reconnects with the realist tradition. Unlike other more recent institutionalisms, especially those he saw emerging from the League of Nations and post-war international law, Schmitt is not interested in the institutions explicitly created during the twentieth century in contrast to the international politics of the past; instead, he turns his attention to institutions rooted in the past, as a cultural and juridical counterpoint to power politics. He does not focus on the institutions that sprang from a *declared* (and ideological) project of transformation, like the League of Nations and the United Nations, but, rather, he turns his attention to institutions so durable as to have accompanied the entire course of modern political history and, therefore, *naturally* able to assert themselves while no longer being recognized as institutions. Schmitt’s approach does not focus on specific institutions such as international regimes or formal organizations, but on the more fundamental practices in which these have been inserted and on which the very nature of international cohabitation depends: a nature that political realism also recognizes, while failing to perceive its institutional footprint.
This surprising reversal is the first and fundamental particularity of Schmitt’s realist institutionalism. Institutions are not conceived as substitutes for the realist game of international politics; instead, it is the realist game of international politics that is conceived as an institution. Schmitt, differentiating himself from idealists, accepts the key principles of realist analysis – the centrality of states, the balance of power, and international anarchy itself. However, unlike orthodox realists, he realizes that these principles are not mere assumptions, but institutions. The major characteristics commonly attributed to international politics share the features of an institution: from the notion of international politics as (basically) inter-state politics, to the concept of boundary, to the very distinction between domestic and international politics and domestic (or civil) and international war. Schmitt realizes that an authentically realist analysis of international relations should not base itself on these assumptions, but, on the contrary, should take them as a principal focus of investigation.

It is no accident that this impressive rewriting of realism culminates in Schmitt’s analysis of war. Coherent with his realist approach, he considers war to be the crucial phenomenon of international life, not because it is omnipresent, but because it is revelatory (like any exception) of what may be overlooked or concealed in ‘times of unproblematic security’ (Schmitt 2003: 82). Nevertheless, unlike contemporary realists, Schmitt considers war to be the opposite of a manifestation of the anarchic and immutable nature of international politics. As he explains it, it is unwise to indiscriminately define any use of force in the form of war as anarchy and to hold this definition to be the last word on the juridical question of war: ‘anarchy and law are not mutually exclusive’ (ibid.: 187). On the contrary, the ability to acknowledge a justus hostis is the starting point of any international law, just as the inability to do so is the unambiguous sign of its demise. The Hobbesian analogy between international politics and the state of nature makes way for contrasting results. On the one hand, the war of all against all does not cease to be one of the possible outcomes of anarchy, as the frightening recurrence of civil war shows. On the other hand, this looming threat creates the need to contain anarchy, not by juxtaposing a set of institutions to the intractable reality of war, but by transforming war itself into an institution.

It is exactly the ‘rationalization and humanization of war’ that Schmitt conceives to be the fundamental contribution of the jus publicum Europaeum. The role of the state in its domestic sphere – to neutralize conflict by giving it form – is transferred into the international sphere with inter-state war. The essence of European international law was the bracketing of war (eine Hegung des Krieges).

The essence of such wars was a regulated contest of forces gauged by witnesses in a bracketed space. Such wars are the opposite of disorder. They represent the highest form of order within the scope of human power. They are the only protection against a circle of increasing reprisals, i.e. against nihilistic hatred and reactions whose meaningless goal lies in mutual destruction.

(Schmitt 2003: 187)
While being the result of the absence of government *par excellence*, war also becomes, at the same time, the place of the highest institutionalization of international life — *guerre en forme*, as Schmitt writes, in contrast to the frightening lack of form of civil war. It is something similar to a duel, an armed clash between territorially determined *personae morales* who recognize the *jus belli* in one another, and, thus, manage to give legal form to enemies, clearly distinguishing them from criminals (*aliud est hostis, aliud rebellis*).

In this historical and juridical reconstruction, the meaning of inter-state war is radically different from how it is portrayed in both orthodox realism and liberal institutionalism. The latter, comparing inter-state war to domestic pacification, considers it the paramount expression of international anarchy. Schmitt, on the contrary, comparing it to civil war, considers inter-state war the paramount expression of how anarchy is put into form by the *jus publicum Europaeum*. Compared to the complete indefiniteness of civil war, inter-state war turns out to be a circumscribed phenomenon, clearly delimited in space and time, and open, not to whomever has the power to fight – as would be the case in unlimited anarchy – but only to those who assume the juridical form of the state and respect the norms and procedures of the *jus publicum Europaeum*. The historical significance of inter-state war is to be found in its restrictions as well as its acceptability. As another realist scholar interested in the institutional dimension of international relations, Hedley Bull, puts it,

> the development of the modern concept of war as organized violence among sovereign states was the outcome of a process of limitation or confinement of violence. We are accustomed, in the modern world, to contrast war between states with peace between states; but the historical alternative to war between states was more ubiquitous violence.

*(Bull 1977: 185)*

**The state as the adequate bearer of the European order**

The realist stamp of Schmitt’s institutionalism becomes clearer when confronted with the problem of the persistence and/or the crisis of institutions. Consistent with his anti-formalistic approach, Schmitt makes the persistence of the *jus publicum Europaeum* dependent on two concrete historical conditions. The first is the twofold dichotomy between land and sea and between European and non-European space (Schmitt 1997, 2003), which Schmitt sums up in the concept of *nomos* and the connection it establishes between *Ordnung* (order) and *Ortung* (orientation). This dichotomy, the product of the great appropriations of the sixteenth and seventeenth centuries, is the concrete foundation of the *jus publicum Europaeum*, namely, its *nomos*.

The concrete, practical, political forms, arrangements, and preconceptions that developed for the cohabitation of continental European power complexes in this interstate epoch clearly demonstrates that the essential and
very effective bond, without which there would have been no international law, lay not in highly problematic, voluntary ties among the presumably unrestrained wills of equally sovereign persons, but in the binding power of a Eurocentric spatial order encompassing all these sovereigns. The core of this nomos lay in the division of European soil into state territories with firm borders, which immediately initiated an important distinction, namely that the soil of recognized European states and their land had a special territorial status in international law. It was distinguished from the ‘free’ soil of non-European princes and peoples open for European land-appropriation. In addition, there arose yet a third area as a result of the new freedom of the sea, which in this form had been unknown to the previous international law. This was the spatial structure inherent in the idea of a balance of European states. It made possible a continental law of European sovereigns against the background of the immense open spaces of a particular type of freedom.

(Schmitt 2003: 148)

None of the institutions of the jus publicum Europaeum are intelligible (or historically defendable) in isolation from their belonging to a delimited and concrete space, a space that does not isolate one sovereignty from another but, rather, compels all of them to consider all of the others. First, the balance of power, as the fundamental principle of international cohabitation, was not based upon a general and spatially undetermined principle. On the contrary, it was the binding force of a specific spatial system within which every power was interested in any relevant territorial change that occurred within the European state system, while the great land appropriations of extra-European territory, such as the Russian conquest of Siberia, could pass unnoticed (ibid.: 189). Second, the recognition of new states essentially consisted of a declaration on the part of the great powers that the relevant territorial change could be sustained by the overall structure of the existing spatial system (ibid.: 191–192). Finally, peace itself, in the context of the jus publicum Europaeum, was not ‘an abstract concept, but had a concrete meaning in the European spatial order’ (ibid.: 249), as it had previously had in Christian medieval law, when it was considered ‘not a free-floating, normative, general concept but, rather, one oriented concretely to the peace of the empire, the territorial ruler, of the church, of the city, of the castle, of the marketplace, of the local juridical assembly’ (ibid.: 59).

The other condition, which brings Schmitt’s reflections on international politics back to the decisionist approach of his juridical thought (Schmitt 1988, 2004a), is the existence of an ‘adequate bearer’ of the system. It is here that the clearest foundation of Schmitt’s realist institutionalism, the centrality of states, is found. Emerging from a century of civil wars of religion, ‘a simple question was raised with respect to the interminable legal disputes inherent in every claim to justa causa: Who decides? (the great Quis judicabit?) Only the sovereign could decide this question, both within the state and between states’ (ibid.: 157). Unlike most contemporary institutionalisms – but, once again, like the English School of International Relations – the state is seen, not as an obstacle to, or a
break from, the development of international institutions, but as the instance that brings the new legal order, the chief protagonist of the secularization of public life and the guarantor of its main task, that is, the bracketing of war.

All definitions that glorify the state, and today no longer generally are understood, hark back to this great accomplishment, whether or not they later were misused and now appear to have been displaced. An international legal order, based on the liquidation of civil war and on the bracketing of war (in that it transformed war into a duel between European states), actually had legitimated a realm of relative reason. The equality of sovereigns made them equally legal partners in war and prevented military methods of annihilation.

(Schmitt 2003: 142)

Nevertheless, the centrality of states, like the centrality of war, has a different meaning from that ascribed to it by orthodox realism and neorealism, according to which the state appears as the permanent monopolizer of politics, a rational egoist (with an inclination towards autism), a power pole and a generic actor simultaneously. First, unlike in the most naive realism, the equivalence between state and politics is not taken for granted by Schmitt. On the contrary, he recognizes this equivalence as the primary ‘locus’ for the tension between the secularized and disruptive logic of modern politics and the opposite need for a constraining force – a force that is itself immersed in the loss of foundation that marks the Modern. On the one hand, by defining the political as the intensity of the degree of association or dissociation of men, and not as a particular and separate domain (Schmitt 1996), Schmitt conceives of it as a perpetually disruptive force, destined to continuously shift from one spiritual centre to another and to undermine, each time, the political unity founded upon the previous centre (Schmitt 1993). As Schmitt puts it, the European people continuously migrate from a battlefield to neutral terrain, and neutral terrain, as soon as it is conquered, immediately transforms itself into a battlefield again, so it becomes necessary to search for new neutral spaces (ibid.). On the other hand, the state is seen as the last subject able to oppose this lack of restraint. As the heir to the essentially juridical logic of the Church, the state arduously (if not desperately) aims to keep in check and to give form to the ‘fanatical roughness of unrestrained prophecies’ (Schmitt 1984: 24). Suspended over the abyss of the eternal flow of the political from which it has emerged, the equivalence between state and politics always appears to be on the point of sinking into it again, just as inter-state war always seems to be on the point of sinking anew into the unlimited violence of civil war.

Second, the egoism of each state as a bearer of special interests is limited not only by the egoism of other states – as strategic discourse holds – but also by their reciprocal recognition. According to Schmitt, this is the other major achievement of the jus publicum Europaeum: its ability to overcome the old
The ‘realist institutionalism’ of Schmitt

notion of border as a limit aimed to ‘separate a pacified order from a quarrel-some disorder, a cosmos from a chaos, a house from a non-house, an enclosure from the wilderness’ (Schmitt 2003: 52). Different from the mirror images of the Roman *limes* (military frontier), the Chinese *Great Wall* and the Islamic *Dar-el-Islam*, ‘the border between two territorial states of modern European international law did not constitute an exclusion, but rather mutual recognition, above all the fact that neighboring soil beyond the border was sovereign territory’ (ibid.). In the very conception of international politics as inter-state politics exists this pluralistic dimension, which is not accidental, but founded on the very conceptual nature of politics. The state is the carrier and guarantor of a political *pluriverse*, irreconcilable with a universalistic vision of international law and order and, even more, with any political use of the concept of humanity (Schmitt 1996, 2003). Far from fortuitous, this pluralistic image results from the conceptual nature of the political itself. As long as one state exists, writes Schmitt in *The Concept of the Political* (Schmitt 1996: 53–54), there will always be other states because it is not possible for one single world state that includes the whole earth and all mankind to exist. As long as this political and juridical *pluriverse* lasts, the recognition of other states will not only signify the simple factual realization that ‘he dictates to me as much as I dictate to him’ (Clausewitz 1984: 77), but will also signify the legal recognition of his right to wage war and, therefore, of his nature as a legitimate enemy.

Third, the fundamental difference between the state-centrism of Schmitt and that of contemporary realism and neorealism consists in the very role that the state performs in the international sphere. While according to orthodox realism states are considered to be the fundamental actors of international politics simply because they possess the most power resources (Waltz 1979), Schmitt claims that the centrality of states expresses itself as much in law as in power politics. In one case, the state is nothing more than a ‘power pole’. In the other, it is also, and especially, the carrier of legal mediations, that is, the source from which all of the institutions and concepts of the *jus publicum Europaeum* are born, starting with those that allow war to be put into form. As Schmitt says, ‘the European portion of humanity has lived, up until some time ago, in an age in which juridical concepts were totally marked by the state and assumed the state as the model of political unity’ (Schmitt 1972a: 90). The state is the centre from which all of the lines that give the architecture of European international law its classical features radiate.

What is classic in such a model of political unity, solidly pacified within and unified actor towards the outside world, like one sovereign relating to other sovereigns? Its classicism consists in the possibility for clear and unambiguous distinctions: inside and outside, war and peace; during war, military or civilian, neutral or not neutral. All of this is clearly distinguishable and cannot be intentionally confused.

(Schmitt 1972a: 91–92)
Finally, there remains one last, but not less important, deviation from the most prevalent kind of realism in International Relations. The realist and neoreal-alist obsession with power tends to dissolve the expression ‘state’ into the more generic expression ‘international actor’ so as to completely lose its historical and legal peculiarity with respect to other influential actors. Schmitt, on the contrary, never ceases to consider the state itself to be a specific institution, historically and legally determined and, therefore, historically and legally reversible. As he puts it,

> you hear one speak of the ‘ancient state’ of the Greeks and Romans rather than the *polis* and *Romana respublica*, the ‘Germanic Medieval state’ rather than the *Reich*, and even the Arab, Turk and Chinese states. In this way, a concrete and specific form of political organization absolutely temporally and historically conditioned loses its historical localization and its particular content.

*(Schmitt 1958: 376)*

### A reversed image of history: from anarchy to nihilism

The last and most decisive particularity of Schmitt’s realist institutionalism also results from his interest in the constituent institutions of modern international politics as well as their concrete foundations. The image of the twentieth century put forward in *Der Nomos der Erde* is exactly the opposite of how it is portrayed in both liberal institutionalism and the kind of institutionalism epitomized in the League of Nations and the United Nations. For Schmitt, the twentieth century appears to be, not the century of a difficult but unrestrainable construction of a large web of (new) international institutions, but, rather, a century that sees the collapse of the classic institutions that constituted the European system. It is no longer the century of international law *par excellence*, but, quite the opposite, the powerless witness of its self-destruction. It is, above all, no longer the chief protagonist in the overcoming of anarchy and war, but instead the battleground of wars lacking any limits and rules.

At this point, two facts should be remembered: first, international law sought to prevent wars of annihilation, i.e., to the extent that war is inevitable, to bracket it; and second, any abolition of war without true bracketing resulted only in new, perhaps even worse types of war, such as reversions to civil war and other types of war of annihilation. In Geneva, however, there was much talk about the proscription and abolition of war, but none about a spatial bracketing of war.

*(Schmitt 2003: 246)*

This dissolution of the *jus publicum Europaeum* is the result of the collapse of both historical-concrete pillars of its foundation. The first pillar, upon which the original linkage between *Ordnung* and *Ortung* was founded, is the centrality
of Europe. Differentiating himself from most of contemporary International Relations theory – which precisely here reveals its matrix as an ‘American social science’ (Hoffmann 1977) – Schmitt recognizes the ‘overthrow’ of Europe as the fundamental event of the twentieth century as well as the cornerstone of his own intellectual experience. As he writes in the preface to the first post-war Italian edition of his writings, ‘in the course of the last half century, Europe has lost its role as the center of world politics – and this is the period during which my scientific writings have appeared’ (Schmitt 1972b: 21). More than an epochal redistribution of power on a world scale, Schmitt recognizes in the end of Euro-centrism the collapse of the institutions and concepts that Europe had developed over the course of the previous centuries and upon which it had founded the first global international law in history. Schmitt reproaches the planetary expansion of international law precisely with the loss of the ‘consciousness of the spatial structure of its former order’, through the adoption of ‘an increasingly more superficial notion of a universalizing process that it naïvely saw as a victory of European international law’ (Schmitt 2003: 233).

The dissolution into general universality simultaneously spelled the destruction of the traditional global order of the earth. It was replaced by an empty normativism of allegedly recognized rules, which, for a few decades, obscured consciousness of the fact that a concrete order of previously recognized powers had been destroyed and that a new one had not yet been found.

(ibid.: 227)

The other foundation, of which Schmitt witnessed the collapse, is the grand artefact of European legal science: the state. Before becoming a commonplace in contemporary political science, the end of the political monopoly of the state already appears as a central theme of Schmitt’s reflections and also as another crucial dimension of his historical experience:

the age of states is, alas, arriving at its end: it is useless to speak of it anymore. It carries with it the entire superstructure of concepts related to the state, held up by a Euro-centric science of the state and international law, through the course of a conceptual elaboration that lasted for four centuries. The state as a model of political unity and the holder of the most extraordinary of monopolies, that glowing creation of European formalism and Western rationalism, is about to be overthrown.

(Schmitt 1972a: 90)

The end of the equivalence between ‘the state’ and ‘politics’ also clearly indicates that Schmitt’s thought cannot be reduced to the realism/institutionalism distinction. Unlike such realists as Hans Morgenthau (1948) and Kenneth Waltz (1979), Schmitt would no longer even dream of including the centrality of the state among the basic characteristics of realism. Nevertheless, unlike most
liberal critics of realism, Schmitt does not attribute this crisis to the dissolution of politics into economics, or the state into economic globalization; on the contrary, he attributes it to the state’s inability to grasp the new current of political intensity (Schmitt 1996, 2004b). Once enmity retransforms itself from the relative into the absolute, states are ‘no longer able to integrate their own members and adherents so totally as a revolutionary party does its active fighters’ (Schmitt 2004b: 10). As always in Schmitt’s reflections, it is the evolution of the political that breaks up the old politico-juridical edifice of politics and war. Once the ‘old regularity’ of the state is ‘worn down to mere convention and game’, a new figure capable of restoring ‘the seriousness of war’ arises (Schmitt 2004b: 63). This figure is the partisan, not the technician or the entrepreneur, who sweeps away the state’s grip on politics and war. The inconceivability of war among states promises not peace but, rather, an outflow of violence that overcomes the state.

Schmitt’s realist institutionalism reveals itself to be a philosophy of crisis. Lacking a spatial localization and an adequate bearer of order, the new international law is condemned, on the one hand, to mirror the modern utopia of malleability and social engineering and, on the other, to lose itself in modern immanence, in a historically unavoidable degenerative process that recalls the opposition between Kultur and Zivilisation, typical of German culture of the period. It is no accident that Schmitt compares the ‘generic international law’ that emerges from the dissolution of the jus publicum Europaeum to other ‘generalizations’ deprived of a topos: first, that of the Hellenistic age, when the polis had already been transformed into a cosmopolis (Schmitt 2003: 50); and second, to the declining stage of the concrete Christian medieval order, when the concepts of scholasticism and medieval jurisprudence were maintained while deprived of their spatial dimension (ibid.: 133–138; 181–182). In the latter case, Schmitt interestingly observes that the combination of the concepts of scholasticism and medieval jurisprudence with those of humanistic juridical science or the preceding Roman law resulted in a ‘manner of thinking and speaking reminiscent of the disorientation of many purely juridical apologists during the last world war’ (ibid.: 182).

The demise of the anarchical society of states, which liberal institutionalism and democratic globalism see as paving the way towards a global society and a universalistic vision of international law and order, is reversed by Schmitt in the fall into a formless universe, the last manifestation of the ‘connection between utopia and nihilism’ (ibid.: 66). Instead of focusing on the proliferation of international regimes and organizations, so celebrated by liberal institutionalists, Schmitt shifts his attention to the new law’s inability to give war a legal answer, that is, to provide the response on which the effectiveness of international law always depends. The revival of the doctrine of the just war, in which legal globalism recognizes a return to the most ancient and sound conceptions of war, appears, according to Schmitt, as the very expression of the powerlessness and abstractness of the new law (ibid.: 119–125). In comparison to its medieval precedent, it lacks reference to a concrete institutional order, an adequate bearer
of such an order (as the Church was before the civil wars of religion) and also a substantive idea of justice. While aiming to carry out the *summum bonum*, transforming war into an international crime, the revival of the just war actually leads to the *summum malum*, the ‘dreadful nihilistic destruction of all law’ (ibid.: 187) and a return to the legal and moral discrimination of enemies.

The inability of the new international law to keep a hold on reality also explains the divorce between law and politics we started with. In the preface to *Der Nomos der Erde*, Schmitt uses an incisive expression: jurisprudence, he writes, is today ‘sundered between theology and technology’ (ibid.: 38). Fifty years later, most analyses of international institutions risk ending up in the same condition. On the one hand, their focus on technicality has become political-scientific as well as legal. This tends to increasingly enclose the study of institutions in a *hortus clausus* of norms and policies, shielded by the magic of the word ‘pure’ and inspired by an almost surrealist notion of ‘concreteness’ that suggests that all of one’s attention should be devoted to how institutions work, without wasting time by asking whether or not they affect reality. As Michael Walzer, whose ideas are clearly divergent from Schmitt’s, puts it:

legal positivism, which generated major scholarly works in the late nineteenth and early twentieth centuries, has become in the age of the United Nations increasingly uninteresting. . . . To dwell at length upon the precise meaning of the Charter is today a kind of utopian quibbling. And because the UN sometimes pretends that it already is what it has barely begun to be, its decrees do not command intellectual or moral respect – except among the positivist lawyers whose business it is to interpret them. The lawyers have constructed a paper world, which fails at crucial points to correspond to the world the rest of us still live in.

(Walzer 2000: xviii–xix)

On the other hand, the aspiration to a *civitas maxima* of legal globalism, the twentieth-century idea of world government and the more recent idea of a global democratic governance, all push institutionalism towards an extreme form of political theology which transforms the recognition of the crisis of the old Euro-centric world into the heralding of a new world that is freely malleable – a social construction *ex nihilo* that only retains the secret, but apparent, stamp of being Western from its predecessor. In transforming the end of European centrality into the beginning of a new (albeit abstract) Great Game of Western Universalism, ‘Western global centralists’ (Bull 1977: 302–305) engage in a secret and paradoxical dialogue with the figures whom Schmitt, from the beginning of his intellectual life, had recognized as the archetypes of the inability to keep a hold on reality: Romantics. As products of bourgeois security *par excellence* (Schmitt 1991: 78–108), they also perceive their inability to keep a hold on reality not as a loss but, instead, as the *occasio* of an endless, individualistic deception that allows them to continuously create always new, though always occasional, worlds without substance, without functional relationships, without
certain direction. As Schmitt observes, these worlds, deprived of conclusions, definitions and decisions, have no form and are guided mainly by ‘the magic hand of chance’. At the end of this ludus globi, Romantics are condemned to a condition similar to that of the fraudulent in Swedenborg’s hell: sitting on a narrow barrel, they see wonderful figures pass over their heads, which they mistake for the true world, a world they even think they are destined to govern (ibid.: 78).

Bibliography


2 Geopolitics and *gross*politics

From Carl Schmitt to E. H. Carr and James Burnham

*Mika Luoma-aho*

**Introduction: Schmitt and *gross*politics**

In 1939, with Germany’s foreign policy becoming a major issue in European affairs, Carl Schmitt’s *Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte* was certainly noticed. Several German newspapers published long articles describing Schmitt’s *Großraum*-theory, and the foreign press also took notice of Schmitt’s lecture: two British newspapers presented Schmitt as the theorist behind Hitler’s expansion in Europe (Bendersky 1983: 237–242, 250–252). Though it is not often recognised as such, *Völkerrechtliche Großraumordnung* is also an academic landmark: it anticipated a genre of International Relations (IR) theory that emerged in the 1940s, the subject of which was international order in the post-war era. Recurrent in all this speculation was an attempt to come up with new concepts to replace the traditional national state with something geographically bigger and more powerful. For Schmitt, this concept was of course *Großraum* (Schmitt 1991). In Schmitt’s *Großraumordnung*, the United States, the Soviet Union, and the British and Japanese empires had their respective *Großräume*, with Central Europe fast becoming the backyard of the German Reich.

Schmitt’s predictions on the future of Germany soon proved wide of the mark. Where he did fare better was in foreseeing the political form of the emerging international order. Schmitt’s was a geopolitical (or geo-jurisprudential, see Gyorgy 1943: 682) conceptualisation to mark the end of the era of international politics and the beginning of that of ‘*gross*politics’ (if I may), where the world political order was ruled by, not territorial states, but ‘hemispheric’ powers. This order was premised on a de facto repudiation of one of the fundamental norms of state sovereignty laid down in the Treaties of Münster and Osnabrück signed in Westphalia in 1648: equality of states in international relations.

The purpose of this chapter is twofold. First, it discusses the evolution of Schmitt’s geopolitics from his Weimar works to his post-1936 writings, from the state to the *Großraum*. In his Weimar writings, and especially in his 1932 essay *Der Begriff des Politischen*, Schmitt developed a historical understanding of the state as the political form of the international order of Westphalia. In the late 1930s and early 1940s, Schmitt articulated the foundations of a new order in
which multinational *Großräume* led by great powers would replace the geopolitical form of the state. Schmitt’s affiliation with the Nazi regime in the years 1933–1936 earned him a reputation as the *Kronjurist* of the Third Reich, and stigmatised his work for the rest of his intellectual career.

The second aim of this chapter is to show that while Schmitt might have bet on the wrong horse, he got it right in principle: post-war international order was that of the great powers, and in need of theory. In the early 1940s Anglo-American IR began to work on a post-nationalist or post-authoritarian theory of ‘great power’. William T. R. Fox captures the intellectual mood in his 1944 work, *The Super-Powers*:

> The Western state system has always been dominated by a few great states. . . . Because some states have great power and others have much less, there will always be the danger that the government of some great power will see in that difference an opportunity for cheap and profitable aggression. But power can be used to protect as well as to enslave. In the world we are going to have to live in, differences in power do and will exist. Our problem is to discover the conditions of security in that world.
> (Fox 1944: 4)

In Western *gross*political theorisation, two intellectuals stand out: the Englishman E. H. Carr and the American James Burnham. The former stands out as an academic first and foremost: Carr is today considered not only as an eminent historian, journalist and diplomat, but as one of the classical writers of political realism and modern IR. While the latter also had an academic background, he nevertheless stands out as an influential activist: Burnham is seen today as one of the founding fathers of American neo-conservatism. Carr and Burnham were different in many other ways but, like Schmitt, they shared an intellectual passion for *Großräume* – Carr even used the term in his work. Unlike Schmitt, however, Carr and Burnham did receive contemporary acclaim for their theories. Both, like Schmitt, deserve to be read today. Carr’s post-war political Europeanism serves as a potent antidote to the prevalent Euro-scepticism in Britain today, and with America’s continuing its war against terror on a universal front, Burnham has become a true prophet of our time.

**Schmitt’s conceptions of the (geo)political**

In his Weimar writings, Schmitt developed a historical understanding of the state as the political subject of the international order of the *jus publicum Europaeum*. To avoid any complications with the Nazis after his dismissal from the party, Schmitt did not deal with domestic or party politics after 1936, but turned his attention to the study of international relations instead (see Bendersky 1983: 242). Even though in the 1920s he had still defended the political form of the state, in the late 1930s and early 1940s Schmitt articulated the foundations of a new political form to succeed the state: that of *Großraum* laid on the legal principle of the Monroe Doctrine.
Schmitt’s famous dictum of the political always came – for him at least – with temporal and spatial coordinates. Since ‘the political’ concerned relations with the enemy, any organised entity able to distinguish its friends from its enemies can, by definition, be identified as a political entity. Keeping strictly to Schmitt’s use of the term, the political condition could exist only between territorial entities, i.e. in the geopolitical sphere of international relations, which was by nature a domain of enmity *par excellence* (Schmitt 1996: 46–47; see also Ulmen 1996: 12–13). Schmitt operationalised his conception of sovereignty in terms of political subjectivity. For Schmitt, the temporal criterion of state sovereignty was the authority to distinguish friends from enemies in a concrete political situation: the moment ‘in which the enemy is, in concrete clarity, recognised as the enemy’ (Schmitt 1996: 67).

In his 1925 critique of the Versailles Treaty, Schmitt argued that the Rhineland had been made an ‘object’ of international politics: its destiny was no longer in the hands of the German state, but in those of the ‘Pact powers’. This new form of political subjectivity exercised in the name of the League of Nations was rendered possible by giving primacy to international law over international politics. Since objects are created in terms of international law by subjects powerful enough to create and enforce that law, entities thus created are devoid of the ability to make their own political decisions. If the interests of the controlling political subject are at stake, it uses its right of intervention to overstep the sovereignty of the controlled political object (Schmitt 1988a: 28–29). For Schmitt, political subjectivity – that is, the authority to make the friend/enemy distinction and the power to enforce it territorially – was a conceptual marker for indicating sovereignty in international relations.

Schmitt’s conception of sovereignty derived meaning from his polemics against Hans Kelsen’s pure normativism. For Kelsen, the state was not sovereign but only part of a hierarchical structure of norms, of which the highest was international law (1967). The occupation and demilitarisation of the Rhineland on the pretext of international law diminished the territorial sovereignty of the Weimar state. Schmitt argued *contra* Kelsen that political life cannot be regulated by legal norms, because societies encounter crises that must be resolved by use of political authority (see Gottfried 1990: 57–62; Schwab 1989: 44–51). The nature of the state that emerged as a result of Schmitt’s polemics against normativism was decisionist: the will of the sovereign stands above the law of the land.

The reason why Schmitt chose to speak of international relations in terms of political subjects and objects, and not simply states, was the fact that, for him, modern states were no longer *the* political subjects of international relations. Yes, Schmitt admired the state because, as the main agency of secularisation, it had ended the religious wars of the *respublica Christiana* by limiting them territorially to duels between earthly sovereigns (Freund 1995: 15). Since then, new ‘religious’ wars had begun against which this limit no longer functioned. Legal texts such as the Treaty of Versailles and the Kellogg–Briand Pact had criminalised war and transformed it into international police action. Walking in the
footsteps of another political catholicist, Joseph de Maistre, Schmitt saw humanitarianism as a dangerous political ‘religion’, which in its attempt to neutralise the political nature of man succeeded only in bringing chaos and violence in its wake.

In the place of *jus publicum Europaeum* another international order was developing but, in Schmitt’s view, it was an order without a territorial orientation. While the shell of the old order continued to provide a kind of a model, international law had become a collection of loose principles existing in a geopolitical chaos. Once it had become difficult to distinguish a European state from a colonial or other quasi-state outside Europe, the European state system had lost its homogeneity. Confusion resulted from the fact that no new geopolitical concepts had been developed to grasp the new concrete situation. Schmitt’s conceptual solution to the problem was *Großraum* (see Ulmen 1987: 43–71).

The term *Großraum* was not Schmitt’s own invention, but he conceptualised it with the means and methods of his training in international law. The term was not first used as a juridical concept. It gained general currency in Weimar Germany as *Großraumwirtschaft* (bloc economy), an idea that fertilised the ground for claims to German hegemony in Europe (see Murphy 1997: 61–63).

Schmitt dissociated his *Großraumtheorie* from the geopolitics of the notorious Haushofer school (Schmitt 1991: 15–19) which understood *Geopolitik* as a scientific aid to the conduct of statecraft (see e.g. Toal 1996: 46). One of the key concepts of Haushofer’s geopolitics that came to link political geography with the Third Reich was *Lebensraum*, a term that became well known with Friedrich Ratzel’s *Der Lebensraum* of 1901. Ratzel equated the Darwinian idea of the struggle for existence with the struggle for space: all life forms on the planet were involved in a ceaseless quest for living space. Although his work was mainly in plant and animal geography, Ratzel emphasised the existential meaning of *Lebensraum*, and the analogy with Darwinism among nations was picked up by the geopoliticians of the Haushofer school.

For Schmitt, the political form of *Großraum* stood between the political categories of the state and the universe (Schmitt 1995: 237). A *Großraum*, Schmitt asserted, was an area dominated by a power representing a distinct political idea, which was formulated with a specific opponent in mind – that is, the distinctions between friend and enemy were determined by this particular political idea. Schmitt saw the legal precedent for the international order of *Großräume* being set in the Monroe Doctrine of 1823. Geopolitically, the Monroe Doctrine designated an area far exceeding the territorial boundaries of the United States, thus creating a new form of political subjectivity above and beyond the territorial nation-state. At the time of its declaration, the American government avowed it would not intervene in European political affairs and reciprocally forbade extraneous intervention in the Western Hemisphere. With the Monroe Doctrine, the United States accepted the responsibility of protector of independent ‘Western’ nations and affirmed that it would steer clear of European affairs (Schmitt 1991: 22–33). The Monroe Doctrine not only sought to isolate the Western Hemisphere from Europe and the rest of the world but, for Schmitt, constituted a
major break with one of the fundamental legal norms of the *jus publicum Europaeum*: the principle of equality of states in international law.

This principle was, however, effectively codified in Europe some years before President Monroe spoke. The directing cabinet of the Congress of Vienna of 1814, which determined the shape of Europe after the Napoleonic wars, was based not on the signatory states of the Treaty of Paris, but on the distinction between ‘great’ and ‘small’ powers. The four allies – England, Russia, Prussia and Austria, together with France and Spain – were considered great powers, with concomitant political rights distinct from any derived from international law. At the congress the cabinet effectively redrew the map of Europe and left to the small powers only the decision as to whether to accept this settlement or not (Peterson 1945: 534).

For Schmitt, the core of the original Monroe Doctrine, a political entity with its political idea being to exclude extraneous intervention in its sphere of interests, was a genuine *Großraum* principle. The Western Hemisphere was basically a defensive concept, but from its very beginning it was conceptualised against the Old World, and thus had an anti-European element. The Western Hemisphere can also be seen in a moral and cultural sense as constituting a new Europe with genuine European values, but on American soil. As Schmitt later made clear, this was precisely the *political* idea of the Western Hemisphere (Schmitt 1997: 261–267).

According to Schmitt, the original Monroe Doctrine had three important consequences in international law: the independence of American states, the exclusion of colonisation from their territory, and non-intervention in their territory by non-American powers and reciprocal non-intervention by American powers outside American territory. The Monroe Doctrine was not a treaty between legal subjects; its meaning was defined, interpreted and implemented by its political subject – that is, the United States – alone (Schmitt 1991: 22–27). This is where Schmitt broke free from his earlier work on state sovereignty: *Großraum* was a political form claiming supremacy over territorial and national absolutes of interstate politics.

Schmitt saw the binary opposite of the original Monroe Doctrine as political universalism. Unfortunately for him, this was precisely where President Theodore Roosevelt steered the doctrine at the end of the nineteenth century. This process culminated in 1917, when in his speech to Congress President Woodrow Wilson effectively declared that the principle of the Monroe Doctrine must be universalised (Schmitt 1991: 32–33). As a result, the geopolitical scope of the Doctrine broadened from the Western Hemisphere to include the whole world and all of humanity. Thus, in the history of American foreign policy, the Monroe Doctrine had been transformed from a defensive concept of isolation to an offensive instrument of global intervention (Schmitt 1998c: 295–297).

Against the universalist turn in United States’ foreign policy, Schmitt stressed the importance of the original meaning of the Doctrine and the principle it enshrined. Schmitt argued that his *Großraumtheorie* could be applied to different historical and geographical contexts. Schmitt envisioned a rise of a new
**Großraum** in Central and Eastern Europe to counterbalance the universalism of the Western Hemisphere. In his view, a central component of this **Großraum** was the concept of the **Reich**, which referred to the power representing a distinct political idea that drew the boundaries for and excluded intervention in the regional sphere of a **Großraum** (Schmitt 1991: 23, 49). In Schmitt’s view, the state of Germany, with around sixty million Germans and located in the middle of Europe, was not large enough to be a great power in itself, but was powerful enough to stand its ground (Schmitt 1988b: 107). Just as the United States, the British Empire, the Soviet Union and the emerging Japanese Empire each had its **Raum**, Schmitt hoped that Germany’s would be Europe (see Bendersky 1983: 257).

For Schmitt, the concept of the **Reich** did not refer exclusively to Germany’s role in Europe, but marked political subjectivity in all **Großräume** (see Gruchmann 1962: 23). Still, Schmitt’s reasoning had a distinct meaning in concrete political existence. The West and the East both claimed the right of intervention around the world on the basis of universal principles. Schmitt suggested that perhaps Germany could resist such intervention in Europe in the same manner as the United States had (originally) done: by prohibiting intervention in its sphere of interests (Schmitt 1988d: 302). Germany’s **Großraum** in the middle of Europe would stand between the universalist projects of liberalism and bolshevism but this required the emergence of a new type of international law that went beyond the norm of equality of states.

Schmitt’s **Großraumtheorie** intrigued domestic commentators in the late 1930s and early 1940s, but, it was also criticised for lacking clarity and being too abstract. Critics quickly pointed out that Schmitt had said nothing about the actual internal nature or the precise political order of the German **Großraum**, nor had he made any concrete suggestions regarding the new type of international law he said was necessary (see Gruchmann 1962: 121). According to Bendersky, this vagueness was often intentional in order to avoid contradicting the official party theorists (1983: 255–256). It is widely accepted that Schmitt’s 1939 lecture and later publications on the subject were in line with Hitler’s foreign policy in Central and Eastern Europe. However, Schmitt did not advocate war or the Nazi conquest of Europe, and neither did his works on **Großraum** proclaim such objectives. Once the war began, Schmitt accepted it as a matter of fact and sought to justify Germany’s position (Scheuerman 1999: 169–173). After 1941 and Barbarossa, however, German foreign policy could no longer be accommodated even into his conceptual framework.

**Großraum theory in the West**

He might not have been an altogether likeable chap, and it certainly is difficult to agree with him on all accounts, but what follows is a modest attempt to document that Schmitt’s diagnosis of the history and structure of the international order was, essentially, correct, in the sense that it was subscribed to by two leading post-war IR theorists, one in Britain and the other in America.
(along with Hans J. Morgenthau) must be regarded today as the most genuinely Schmittian theorist of early IR. Not only did his realism fit precisely into the same mould as Schmitt’s, but he also attempted to unite Europe as a Großraum against the political forces of pseudo-universalism. The links between Burnham and Schmitt are less historical than they are theoretical. While he may not have read or even heard of Schmitt, Burnham took his warning on the perils of political universalism, turned it upside down and articulated it in terms of American foreign policy, the legacy of which we are witnessing today.

**E. H. Carr and the British Reich**

In 1936, Edward Hallett Carr (1892–1982) was appointed to the Woodrow Wilson Chair of International Politics at the University of Wales, Aberystwyth – the first professorship of its kind at any university. Carr’s appointment to the post was highly controversial, because during his years at the Foreign Office he had been sceptical of the League of Nations and critical of ‘Wilsonian’ international relations. This made his accepting the chair seem, to some at least, a blasphemy.

Carr’s *The Twenty Years’ Crisis, 1919–1939* of 1939 is considered today a landmark publication in IR’s so-called ‘First Great Debate’: the one in which the ‘realists’ challenged the ‘idealists’ – or ‘utopians’, as Carr preferred to call them. Though it is misleading to talk of a First Great Debate, as no exchange between realist and idealist (or utopian) points of view ever actually occurred (see Wilson 1998), Carr’s book and the ensuing discussion did bring about some paradigmatic organisation into a menagerie of theories and approaches that constituted early IR. Stanley Hoffmann (1977: 43) has described the work as ‘the first scientific treatment of modern world politics’, and John Vasquez (1983: 16) called it ‘a devastating and seminal critique’.

According to Carr, utopian political science paid little attention to existing facts or to the analysis of cause and effect, but rather devoted itself ‘to the elaboration of visionary projects for the attainment of the ends which they have in view – projects whose simplicity and perfection give them an easy and universal appeal’ (Carr 2001: 6). This was also the teleology of IR as a discipline: its starting point was the disaster of the First World War and its object was to obviate the occurrence of another such way. But when these visionary projects broke down – much as the League of Nations began to break down in the 1930s – the analysis of reality forced itself upon IR as an essential element of study. At the heart of the idealism challenged by realism was a political assumption which Carr called the doctrine of harmony of interests, according to which individuals pursuing their own good unconsciously encompassed the good of the community, the ‘whole’. Generalised, the doctrine suggested that there was no conflict between selfish and moral behaviour, because when individuals were left to act naturally according to their self-interest, they jointly produced ideal social outcomes. What was true of individuals was assumed (by the utopians) to be also true of nations: by taking care of themselves, states did service to all humanity
(Carr 2001: 42–61). The doctrine often took the political form of an argument claiming that every nation had an identical interest in peace, and that any nation that decided to disturb the peace acted not only against its own interest but against everyone else’s interest – against the interest of man. This assumption asserted the primacy of ethics over politics: war was not only irrational, but bad.

Based on the premise that there existed a state of general and universal harmony among mankind, idealism went on to assume that, under certain institutional conditions, a system of peace among nations could be established. The purpose of IR was to discover those conditions, help to design the necessary institutions and bring about a peaceful revolution in international politics. President Wilson was a living embodiment of the political logic of idealism. For him, democracy equalled peace and dictatorship equalled war. Eradicating dictatorship, by replicating the political institutions that prevented violence in democratic societies on a global scale, would bring international peace. Institutions such as the League of Nations and the Permanent Court of International Justice were based on these (ideo)logical foundations.

And all this Carr refuted:

What confronts us in international politics today is . . . nothing less than the complete bankruptcy of the conception of morality which has dominated political and economic thought for a century and a half. Internationally, it is no longer possible to deduce virtue from right reasoning, because it is no longer seriously possible to believe that every state, by pursuing the greatest good of the whole world, is pursuing the greatest good of its own citizen, and vice versa. . . . The inner meaning of the modern international crisis is the collapse of the whole structure of utopianism based on the concept of harmony of interests.

(ibid.: 58)

Realism indicted utopianism for its professedly abstract political principles. According to Carr, the doctrine of harmony of interests was an ingenious moral device by the privileged group to justify and maintain its dominant position. Likewise, theories of international morality were always produced by dominant nations in international society. International order or solidarity was always the watchword of those who felt strong enough to impose it on others. Utopian postulates were not absolute and universal, but political principles based on a particular interpretation of national interest at a particular time. The Versailles Treaty of 1919 was Carr’s case in point. The political purpose of the treaty was not world peace and the good of nations – though they were of course touted on every occasion – but the elimination of one great power by the others which won the First World War.

In other words, peace and harmony were sound in principle, but in politics they had to be backed up by authority. According to realist anthropology, principles could not command; people did not willingly submit to the will of others because the others were right or good but because they were stronger. In this
sense, politics was always \textit{power politics}. Carr applied the term ‘political’ to those issues that involved, or were thought to involve, the power of one state in relation to another: ‘[o]nce this conflict has been resolved, the issue ceases to be “political” and becomes a matter of administrative routine’ (ibid.: 97). The \textit{ultima ratio} of power in international relations was war: ‘[e]very act of the state, in its power aspect, is directed to war, not as a desirable weapon, but as a weapon which it may require in the last resort to use’ (ibid.: 102). War was the extreme of international politics just as revolution was the extreme of domestic politics.

Carr’s conception of the political – a conflictual relation between states contained in the context of violence – is unadulterated Schmittian political theory. I cannot document Carr having read Schmitt, but he certainly seems to have taken a leaf out of his \textit{Der Begriff des Politischen} (1996).

The normative order of utopianism having already collapsed, its international order was on the brink of escalating into the chaos of another world war. According to Carr, it was simply too late in the day to demand more national self-determination – as Wilson did with his famous Fourteen Points. The conditions which had made the rise of nationalism and the institutionalisation of the sovereign state in nineteenth-century Europe possible were beyond restoration. In the twentieth century, the status of the national state as the final and acceptable unit of international organisation was challenged on two fronts. On the one hand, it was struggling to sustain the moral challenge of internationalism: the ethos of rights and well-being, not of nations, but of \textit{man}. On the other hand, its power was being sapped by modern technological developments which were making \textit{the state} obsolescent as the unit of military and economic organisation (Carr 1945: 38).

Thus, the national state was likely to be superseded by something else and political power in the new post-war (or post-utopian) international order redivided (Carr 2001: 207–220). Ideas such as state sovereignty were becoming more obscure, even misleading, as international power moved away from the nominal conventions of the old order. Certain aspects of the international order, however, were not subject to change. Carr’s first premise was the continuing relevance of political collectivism: units of international power in the post-war order would be held by groups, not individuals, and antagonism between these groups would be endemic:

\begin{quote}
[G]roup units in some form will certainly survive as repositories of political power, whatever form these units may take.\ldots\text{ It is profitless to imagine a hypothetical world in which men no longer organize themselves in groups for purposes of conflict; and the conflict cannot once more be transferred to a wider and more comprehensive field.}
\end{quote}

\text{(ibid.: 213)}

To put it in Schmitt’s terms, Carr was a \textit{political pluriversalist}, to whom the world political was one divided into more than one political entity.\textsuperscript{2}
Carr’s second premise was that political units would retain their distinctively territorial form. Power had never been entirely divorced from the possession of territory, and ‘modern technique, military and economic, seems to have indissolubly welded together power and territory’, to the extent that ‘it is difficult for contemporary man even to imagine a world in which political power would be organized on a basis not of territory, but of race, creed or class’ (ibid.: 211). However, Carr marked a trend in territoriality towards integration and formation of ever larger political and economic units. This trend began in the latter part of the nineteenth century and was connected with the industrial revolution and growth of capitalism, and with the development of ‘technical instruments of power’ (ibid.). In Nationalism and After (1945), Carr ventured to predict – not inaccurately, as the post-1945 settlement moved – the shape of the political units of the coming international order. Having eliminated, on the one hand, the possibility that independent sovereign states could claim the international power they had lost or were losing in Europe and the world over and, on the other hand, that a single world power exercising supreme control over mankind was conceivable in the near future, Carr forecast a compromise between the two poles. Political power in the post-war international order was likely to be redivided on a continental scale:

If these predictions are realized, the world will have to accommodate itself to the emergence of a few great multi-national units in which power will be mainly concentrated. Culturally, these units may best be called civilizations: there are distinctively British, American, Russian and Chinese civilizations, none of which stops short at national boundaries in the old sense. Economically, the term Grossraum invented by German geo-politicians seems the most appropriate. The Soviet Union is pre-eminently a Grossraum; the American continents are the potential Grossraum of the United States, though the term is less convenient as applied to the British Commonwealth of Nations or the sterling area which are oceanic rather than continental agglomerations. Militarily, the old and useful term ‘zone of influence’ has been discredited and may well have become too weak to express the degree of strategic interaction required; but the United States has coined the convenient ‘hemispheric defence’ to cover the zone of influence defined by the Monroe Doctrine.

(Carr 1945: 52)

The ‘German geo-politicians’ Carr refers to means just one: Carl Schmitt. Carr nowhere cites Schmitt directly, but both cite Friedrich Naumann’s Mitteleuropa (1915). It was Schmitt, however, who build his Großraumtheorie on the legal precedent of the Monroe Doctrine. It is not entirely clear whether or not Carr had read Schmitt at some point between The Twenty Years’ Crisis and Nationalism and After, but he certainly had read about him: on the eve of the war, The Times had reported on Schmitt as the mastermind behind Hitler’s foreign policy (see Bendersky 1983: 257–258). Even though he was still acting as professor at
Aberystwyth in 1939, Carr often wrote leaders for the paper and two years later became its assistant editor. Thus far, Carr’s grosspolitics has received very little scholarly attention, despite – or perhaps because of – the link to the ostracised Schmitt.

Even though Carr cites Grosbraum as an economic concept, his theory had an explicitly geopolitical dimension. Carr, like Schmitt, premised his theory on the fact that the era of the jus publicum Europaeum, grounded in the political subjectivity of the state, was irrevocably over. Carr, again like Schmitt, identified the Monroe Doctrine as the precursor of the new international order, where some states had great power and others had much less. He, moreover, similarly acknowledged the power of the United States and the Soviet Union in their respective Grosräume, and invested hope in Europe as a potential power between the two.

Where Carr and Schmitt clearly disagreed was on the question of the Reich of the European Grosbraum. For Schmitt it was Adolf Hitler who had articulated the political idea of the European Monroe Doctrine, asserting responsibility for protecting German minorities in Central and Eastern Europe. Carr’s international order also required the emergence of a European Grosbraum to neutralise the pseudo-universalism of liberalism and bolshevism, but one led by the British Reich. Alone, Great Britain was no match for the great powers, and was beginning to look like a secondary power. As such, Britain would be faced by a fearful dilemma: ‘it would have the choice of subordinating itself to the policy either of the Soviet Union or of the United States of America’ (Carr 1945: 71).

If there was anything Britain could do to avoid this fate, it must begin, Carr asserted, by radically altering its international policy. What was needed was a shift of focus from an empire in ruin – the Commonwealth – to a continent in ruin:

[W]estern Europe, even if she can renew her vitality and escape from the thrall of traditions once glorious, but now stifling to fresh growth, still lacks the leadership and central focus of power which would be necessary to her among the great multi-national civilizations of the ‘hemisphere’ or Grossraum epoch.

(Carr 1945: 73)

Rome, France and, most recently, Germany had all claimed leadership of European civilisation, but had abused their power and fallen from grace. After the Second World War, Carr wrote, the unprecedented situation had arisen in which ‘the two European powers most able to influence the destinies of Europe – Russia and Britain – are situated at its eastern and western extremities and are not exclusively or primarily European powers at all’ (1945: 73). It seemed inevitable that the nations of continental Europe were to be drawn into closer relations with either (or both) of these two powers. Writing in the early post-war years, he could already see signs of the Soviet Union asserting ‘hemispheric’ political subjectivity over the states of Eastern Europe. ‘A natural corollary’ to
this ‘would be the establishment of more intimate links, couched in terms appro-
priate to the western tradition, between Britain and the nations of western
Europe’ (ibid.: 73–74). For Carr, the ‘appropriate western tradition’ was not of
the sort exported by the United States: under the British Reich, Europe would be
united by the ‘desire to find an answer based on principles which diverge both
from the Soviet ideology of state monopoly and from the American ideology of
unrestricted competition’ (ibid.: 74).

Like all power, power in the new international order was prone to abuse. There
was a danger that the Großräume might develop a new imperialism which
would only be nationalism writ large, and leave the problems of international
relations precisely where they were. Nevertheless, Carr was hopeful: ‘a political
unit based not on exclusiveness of nation or language but on shared ideals and
aspirations of universal application may be thought to represent a decided
advance over a political unit based simply on the cult of a nation’ (ibid.: 66).
Just as the movement for religious toleration had followed the devastation of
the wars ending the order of the respública Christiana, Carr reasoned, national tol-
eration would stem from the carnage of the two world wars ending that of the
jus publicum Europaeum.

Carr’s vision of a British Western Europe was, of course, premature. When
Winston Churchill delivered his famous ‘iron curtain’ speech in 1946, the
unfolding of the Cold War became only a matter of time and, in this war, Britain
was not a Reich of its own hemisphere. After accepting Marshall Plan aid in
1947 and allowing the American air force to have bases on British soil in 1948,
Carr had to concede that Britain had no choice but to stand with – or behind –
the United States, and that the only major objie of its international policy
was to prevent war from breaking out between the great powers (see Haslam

James Burnham’s struggle for the world

When Schmitt and Carr published their grosspolitical works, James Burnham
(1905–1987) was teaching at the New York University’s Washington Square
College, holding the position of chief adviser to the exiled communist leader
Leon Trotsky, and serving as leading spokesman for the American section of the
Fourth International, the Socialist Workers’ Party. However, Trotsky’s approval
of some of Stalin’s policies – most importantly, the pact with Hitler and the
Soviet attack on Finland in 1939 – coupled with growing scepticism about
Marxism as an ideology led Burnham to sever his ties with Trotsky and resign
from the party in 1940.4 The following year Burnham published his first and
probably best-known book, The Managerial Revolution (1941), in which he pre-
dicted that the universal struggle between capital and labour would be won, not
by socialism, but by what he termed ‘managerialism’ – a new kind of society
with its own ruling class and political institutions, which would rule the capital-
ists as well as the proletariat (Burnham 1941: 7–11).

Even though he had abandoned Marxism politically, the historical determinism
of Marx is palpable in *The Managerial Revolution*. In late capitalism, Burnham theorised, the functions of management became more distinctive, more complex and more crucial to the whole process of production; those who performed these functions now constituted as a class of their own – a powerful class that actually controlled the capital owned (in name) by the bourgeoisie. The managers would combat the ‘anarchy’ of capitalism by restraining its private property economy, parliamentary form of government, and individualist values. Indeed, Burnham saw managerialism manifested in the totalitarian states of Stalinist Russia and Fascist Germany, where sovereignty had shifted its locus from democratically elected political bodies to the administrative bureaux of the managerial elite: ‘[i]n structure, mode of functioning and personnel, the administrative agency, board, or commission appears as the typical institution for the localisation of sovereignty in managerial society, as parliament did in capitalist society’ (1941: 129).

Burnham was not convinced that in managerialism the managers would unite in an ‘international’, a managerial world state, as Marxism had predicted would occur with the proletariat. Instead, Burnham expected the grip of the national state on sovereignty to gradually loosen and three conglomerate ‘super-states’ to emerge in international society and clash for world dominance. In *The Managerial Revolution*, Burnham forecast that Japan, Germany and the United States were likely to form the nuclei of these super-states. At this point in time, Burnham did not see the Soviet Union as one of the super-states of tomorrow, but forecast that it was likely to split apart, with the western half gravitating towards Europe and the eastern half towards Asia. In *The Struggle for the World* (1947), however, Burnham fixed his eyes on ‘Russia’ as the main rival of the United States in world hegemony.

Burnham’s vision of the emergence of continental powers had global implications. The ‘lesser’ peoples of the world, increasingly impotent to stand up to the might of the metropolitan areas, had no choice but to line up behind one or other of the super-states of tomorrow. According to Burnham, a multiplicity of nations and peoples would continue to exist in the foreseeable future, but only *formally*: ‘polite fictions of independence may be preserved for propaganda purposes; but it is the reality of and not the name of sovereignty we are talking’ (Burnham 1941: 154). The permanent seats on the UN Security Council had codified the fact that smaller nations were no longer serious independent factors in world politics.

Having turned his back on Marxism, Burnham now keenly attacked its doctrines. Among its key faults Burnham identified political universalism, its desire to unite the world and its peoples. This Burnham dismissed:

> The world is potentially one in the light of a possible ideal of brotherhood, of common humanity. The world is actually one, at least at a certain level, through the direct or indirect influence of a particular technology and method of economic production. Politically, and most deeply of all, culturally, the world is many.

(Burnham 1947: 31)
There was nothing wrong with having ideals of a ‘common humanity’ or a ‘world community’, but Burnham warned that the attempt to turn such desires or theories into reality was, as history had shown over and over again, a recipe for chaos and violence. Burnham too was, in Schmitt’s terms, a political pluriversalist. Burnham also shared Schmitt’s negative view of the human condition. According to his anthropological pessimism, men were ‘not rational in their actions but predominantly irrational, not filled with love only but also selfishness, not good but a strange mixture of evil and good’ (ibid.: 25).

Where Burnham clearly disagreed with Schmitt, however, was on the role of the United States in the new international order. Whereas Schmitt was concerned about the transformation of the Monroe Doctrine from a defensive doctrine of isolation to an offensive instrument of global intervention, Burnham argued that this was precisely what had to be done. The course was basically set when the United States entered the Second World War – ‘the first formative war of managerial society’ – joining its allies against the other super-states, Germany and Japan (Burnham 1941: 218). Thus began the world struggle of managerial super-states. The struggle was bound to be inconclusive, Burnham argued, as none of the super-states was able (or necessarily even willing) definitely to conquer the other central areas and rule the world. This, however, would not prevent the struggle from taking place, and in this struggle offence was America’s best defence:

From her continental base, the United States is called on to make a bid for maximum world power as against the super-states to be based on the other two central areas. For her to try to make this bid is hardly a matter of choice, since survival in the coming system can only be accomplished by the expansive attempt. For the United States to try to draw back into a national shell bounded by the forty-eight states would be fairly rapid political suicide.

(ibid.: 218–219)

Germany and Japan had been defeated, but the Soviet Union had taken their place in the struggle for the world. According to Burnham, the western and eastern civilisations were to engage in battle for world supremacy, and this battle would be either won by one or the other, or lost by both.

Why did Burnham see the struggle for the world as inevitable? As already mentioned, he clearly saw how the world was divided politically, and he was also keen to divide mankind into different cultural and even racial categories. But if the United States wanted to live and prosper as a nation it simply could not risk having an enemy like communist Russia, one with even a conceivable amount of potential and intent to threaten its existence. Though the world political was not one but many, it had become, in an age of world-wide movements and atomic weapons, simply too dangerous a place for a balance of power. This is pluriversalism with a vengeance.

Since The Managerial Revolution, another decisive element had been
introduced: atomic weapons. According to Burnham, the threat of nuclear war had become the means for one super-state effectively to rule the world – a fact he had not been able to see in *The Managerial Revolution* (Burnham 1947: 59). World government, grounded in the legal fiction of equality of nations and embodied in the institution of the United Nations, was not in a political position to solve the problem of mutually assured destruction in the atomic age. A ‘World Empire’, in which the United States ‘would hold more than its equal share of political power’ and a world monopoly of atomic weapons, was the only conceivable solution (ibid.: 60). American Empire extended to wherever its power would be decisive, not for everything or even nearly everything, but ‘for the crucial issues upon which political survival depends’ (ibid.: 189); to phrase it in Schmittian terms: wherever the United States was able and willing to act as the political subject.

To exercise imperial political subjectivity the United States had to abandon the norms and institutions of the old international order. To begin with, a genuine super-state could not afford to respect the equality of states in international law or a balance of power in international society, but instead must ‘be prepared to make an open bid for world political leadership’ (ibid.: 184). Thereby, the doctrine of non-intervention in the affairs of other states – ‘already little more than a verbal shell’ (Burnham 1947) – would have to be disregarded altogether and the capability for quick, firm and sufficient US intervention anywhere in the world maintained. Furthermore, the United States would have to accept world-wide propaganda as an arm of its imperial policy, the meaning and goal of which must become ‘publicly intelligible and convincing’ (ibid.) for all the peoples of the world. It was of utmost importance, however, that the United States should distinguish its friends from its enemies, and let it be unequivocally known that there is something to gain from being its friend, and much for enemies to lose. This distinction could be put into practice only if the United States was, and was known to be, able and ready to use force: ‘[t]he force may not have to be used, or may have to be used only sparingly. But it must be there, as the final premise, or the political syllogism is incomplete’ (ibid.: 186).

As a first strategic step towards the American World Empire, Burnham proposed that Great Britain with its dominions and the United States become partners in an ‘imperial federation’ (ibid.: 197). According to Burnham, the two nations confronted a common fate: either they would survive together or they would be destroyed together in the struggle against communism. A mere formalisation of the transatlantic alliance would accomplish nothing, but full political union between the two nations would ‘be a catalyst which would instantaneously transform the whole of world politics’ (ibid.: 196). In the first stages of the federation Britain would necessarily be the junior partner, in light of the disparity of material power between the two, a fact which Burnham identified as the greatest political obstacle for the British to the formation of Anglo-America.

As a second step, Burnham demanded that Anglo-America superintend the political integration of Europe, thereby consolidating it as the continental supplement of the Western bloc. According to Burnham, politically divided and
economically tattered after the world wars, Europe was not capable of entering the world stage as an independent super-state. Rather, its potential was left to be harnessed by either the West or, Burnham feared, by communism: ‘[p]ermitting Western Europe to remain divided and quarrelling means permitting communism to conquer Western Europe’ (ibid.: 199). After taking up its role as the ‘receiver’ of the British Empire and Western Europe, the United States needed to take steps to protect its hemispheric ‘base’ by gradually extending the sphere of its political subjectivity, beginning with the Western Hemisphere. Burnham actually suggested that in doing this the United States should take heed of Nazi foreign policy in Europe and aim at ‘the de facto elimination of independent sovereignty in all nations and colonies of the area except the United States, and thus the creation of a single interrelated territory so far as de facto political sovereignty goes’ (Burnham 1941: 219).

Even though an American World Empire was the only conceivable solution for the United States in the post-war international order, Burnham accepted that a foreign policy open to accusations of ‘imperialism’ or even ‘fascism’ would no doubt become, sooner or later, a burden for America. He therefore suggested that it be given a more altruistic name from the start:

[i]t will be useful to give a name to the supreme policy which I have formulated. It is neither ‘imperial’ nor ‘American’ in any sense that would be ordinarily communicated by these words. The partial leadership which it allots to the United States follows not from any nationalist bias but from the nature and possibilities of existing world power relationships. Because this policy is the only answer to the communist plan for a universal totalitarianism, because it is the only chance for preserving the measure of liberty that is possible for us in our Time of Troubles, and because it proposes the sole route now open towards a free world society, I shall henceforth refer to it as the policy of democratic world order.

(Burnham 1947: 226–227, emphasis in original)

With his policy, Burnham did not make a case for world democracy as much as he did for American order. Apart from stating the obvious – that he would much rather have democracy than totalitarianism, and anything rather than communism – he gave very little for the cause of democratic peace.

The Soviet Union has been defeated and communism mostly eradicated from the world. Burnham played his part here: not only did he write a number of widely read books on American political affairs during the Cold War, but he also served as an intelligence officer for the United States government and a founding editor of one of the most eminent conservative journals in America today, The National Review. George H. Nash, an influential chronicler of the conservative intellectual movement, has argued that more than any other single person, James Burnham supplied the theoretical formulation for American victory in the Cold War (Nash 1976: 91). In 1983, four years before his death, President Ronald Reagan decorated Burnham with the Presidential Medal of
Freedom, one of the highest civilian awards in the United States, for ‘an especially meritorious contribution to the security or national interests of the United States, or to world peace’.6

Discussion

Essentially, Schmitt’s post-1936 writings on international law and geopolitics can be interpreted as elaborations of his conception of the political, which he first articulated in 1927, but they also established a larger conceptual apparatus that broadened his theorem of the political into something of a geopolitical philosophy of history. This work culminated in the publication of *Der Nomos der Erde* in 1950 (Schmitt 1997).

Schmitt was not alone in his project. Inter-war Germany, fertilised by intense nationalism and revanchism,7 virtually blossomed with geopolitical pseudo-science, demanding to take on Europe, if not the world. In this intellectual climate Schmitt was among the most consistent and systematic, and certainly among the least völkisch thinkers. This, however interesting it may be, does not make Schmitt’s großpolitics important. What makes it important is that it was in accordance with the facts, and that Schmitt was quite possibly the first theorist of international law and international relations to articulate what exactly happened when President Monroe gave his seventh annual address to the United States Congress, and what had really begun almost a decade before in the Congress of Vienna: the dismantling of the Peace of Westphalia. The world was no longer legally divided into independent, autonomous states – if indeed it had ever been – but into a limited number of powerful super-states reigning over the vassal states within their sphere of interests.

This dismantling might not have been quite as discernible to an average inter-war German as it certainly must be for almost everyone today. There is a world of difference in the sovereignty enjoyed by the United States of America and by, say, the state of Iraq. Both have the formal legal status of independent, autonomous states, but this is where the similarities end. Even if you find it useful to call Iraq today a state, you simply cannot call it the political subject of the territory of Iraq.

E. H. Carr wanted Britain to do with Western Europe what Schmitt wanted Germany to do with Central Europe: take responsibility for conceiving a super-power strong enough to stand its ground in the new international order. The means to this end were of course different and in some ways conflicting, but the ends were conceptually indistinguishable. Both Schmitt and Carr saw the potential of Europe in the new nomos of the Großräume, and also saw that to realise this potential fully Europe had to have a political subject, a Reich willing and able to make authoritative decisions in Europe’s name. Decades of economic and political integration since the world wars have not constituted a Reich out of the European Union, and there is little indication of anyone letting the EU become the political subject of Europe any time soon. The discussion on the future of Europe, as it is debated between the ‘federalists’ and the ‘intergovern-
mentalist’s in the member states, is a purely theoretical one which tries to grasp the problems of contemporary existence with the concepts of a bygone era.

In fact it was James Burnham who presaged Carr’s worst fear – that Britain might ignore the post-war opportunity to assert itself as a Western European Großraum. By suggesting a union of unequals between Britain and the United States in 1947, Burnham eased the political terms of what is known as the ‘special relationship’ between the two nations today. Burnham also presaged Schmitt’s nightmare by trading political pluriversalism for the national interest of the United States of America. This Burnham achieved by articulating America’s policy of world order in terms of democracy. According to Schmitt, every Großraum defines itself not only territorially but also ideologically, and this definition is always made with a specific opponent in mind. During the Cold War, America’s ethos became that of democratic order in a world endangered by the dictatorship of communism. The fact that the political idea of democracy does not imply any general or specific form of social or international order did not present a problem for Burnham – after all, it was America that fought in democracy’s name, not vice versa. This was the political syllogism that led it to victory against the Soviet Union, and one that continues to guide it today in its War against Terror.

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Notes

1 The term Großraum does not translate well into English, though ‘greater region’, ‘large space’, ‘supra-state’, ‘sphere’ and ‘bloc’ have been used in the literature.
2 According to Schmitt (1996: 53),

   The political entity presupposes the real existence of an enemy and therefore coexistence with another political entity. As long as a state exists, there will thus always be in the world more than just one state. A world state which embraces the entire globe and all of humanity cannot exist. The political world is a pluriverse, not a universe.

3 For Schmitt (1991: 46, 47), this protection did not in any way compromise other nations or nationalities in Germany’s zone of influence.
4 For a good biography of Burnham’s, see Kelly (2002).
5 According to Schmitt (1996: 58), all genuine political theories presuppose man to be evil, with a predisposition which may appear as ‘corruption, weakness, cowardice, stupidity, or also as brutality, sensuality, vitality, irrationality, and so on’.
7 Revanchism (from the French revanche, ‘revenge’) is defined as ‘a policy of retaliation, especially to recover lost territory’ (Compact Oxford English Dictionary).
8 I suppose this can be debated. According to Michael Doyle (1986: 1156), an apparent absence of war between liberal democracies for two decades provides statistical grounds to argue that liberal democracies establish ‘a separate peace’ within the international system.
Bibliography


3 From humanized war to humanitarian intervention

Carl Schmitt’s critique of the Just War tradition

Chris Brown

Introduction

The term ‘humanitarian intervention’ is a rather unfortunate recent coinage. It refers to circumstances where one state or a coalition of states intervenes by force in the supposedly domestic affairs of another state ostensibly in the interests of the population of the latter, for example to prevent or curtail genocide or other gross violations of their human rights. It is unfortunate because, apart from the fact that the adjective ‘humanitarian’ in itself raises all sorts of issues that will be addressed later in this chapter, it directs attention towards the motives of the intervener as the key defining quality of this kind of action, with the implication that unless the intervening states are pure at heart the intervention in question will not count as properly humanitarian. Since, *ex hypothesi*, states almost always act for a variety of reasons, some altruistic, most not, this kind of purism generally leads to the conclusion that no humanitarian interventions have taken place, and that the claim of such motivation always hides some darker intent. This way of looking at the issue is, I think, mistaken. From the point of view of the victims of genocide or other forms of serious oppression, the motives of their rescuers are not a matter of immediate importance – to take one obvious example, had the French or US governments acted effectively to end the genocide in Rwanda in 1994, it seems unlikely that those whose lives had been saved thereby would have worried too much about exactly why their rescuers acted. In such extreme cases outcomes are what matter rather than intentions; indeed, in this particular case it was precisely because any US action would have had to have been motivated by altruism, since it had no substantial material interests in Rwanda, that no such action took place.

Having made this point, I will simply assert – since the scope of this chapter does not allow me to discuss in detail the facts of each case – that there have been a number of interventions since 1990 where states have used force in circumstances where action has actually ended, or curtailed, or prevented large-scale human rights abuses and where the motives of the interveners were to bring about this state of affairs, or, at a minimum, were not inconsistent with this outcome. Such was, I think, the case in northern Iraq in 1991, in Bosnia in 1994/1995, in Kosovo and East Timor in 1999 and, under rather different
circumstances, in Sierra Leone in 2001. This chapter is devoted to trying to tease out how these actions should be understood. I have suggested some problems with the term ‘humanitarian intervention’, but some would wish to preserve this coinage suitably shorn of its more implausibly altruistic implications. The term ‘humanitarian war’ is also sometimes used, and the claim made that this kind of military action is qualitatively different from previous uses of military force. This seems plausible, but what does this qualitative difference amount to? And what principles are appropriate for judging the morality of this kind of use of force?

One obvious place to look for such principles is in the Just War tradition which has seen somewhat of a revival in the last thirty years, largely on the back of Michael Walzer’s highly influential study Just and Unjust Wars (Walzer 1977; see also Walzer 2004; Johnson 1981; Elshtain 1991). The notion of ‘Just War’ emerged out of Christian, medieval natural law and in particular the writings of St Thomas Aquinas, although some of the basic categories go back to St Augustine; the central notion here was that peace was the norm, but that in certain circumstances, when peace was violated, violence might be required to rectify this injustice. These notions may not be inherently theological (although the assumption of peace as the norm might be so described) but, in any event, Aquinas was not a particularly congenial source for Walzer, whose roots are in Jewish and socialist thought, and his achievement was to recast the theological notion of a Just War in secular terms, arguing that we can make sense of notions such as just cause, last resort, proportionality, right authority and the protection of the innocent in modern, secular and legal terms. Recast in this way, a set of questions emerges that can be asked in order to assess the morality of any particular use of military force: is there a just cause, which usually means self-defence, but could involve the prevention of gross violations of human rights? Is force the last resort (which could also be the first resort – the notion of last resort is about the logic of a situation, not a time line)? Is it proportional to the offence? Have steps been taken to protect the innocent, as far as possible? Do those who use force have the authority so to do?

These are complex questions, which invite nuanced and shaded answers. In Walzer’s account they are designed to map out a position somewhere between those realists who have no particular problem with the use of force as such, but believe that state interest should be the determining factor, and those pacifists who are committed to social justice but believe that force is never the right answer. As a firm opponent of America’s war in Vietnam, Walzer had no sympathy with the amoralism of the former position, but as a defender of Israel’s right to exist, as expressed in the Arab–Israeli War of 1967, he believed the latter to be morally indefensible. What was needed was categories that discriminated between different uses of force, not categories which treated all such uses as morally equivalent. The very nature of this intermediate position makes the idea of clear-cut black and white answers to the core Just War questions implausible.

On the face of it, the very fact that Just War thinking works with shades of
grey would seem to make it well equipped to guide our thinking on so-called humanitarian interventions, and indeed it has been used in this way, by me among others (Brown 2000, 2002). Predictably enough, realists and pacifists find nothing to admire in the distinctions Just War thinking encourages us to make, but what is slightly more puzzling is the opposition of thinkers who fall into neither camp. Ken Booth, a long-standing anti-realist, but a thinker whose radicalism is not pacifist in any conventional sense of the term, provides an illustration of the hostility of this camp in an essay written in response to the Kosovo campaign of 1999 entitled ‘ten flaws of just wars’ (Booth 2000). His ten flaws summarize two different kinds of criticisms which ought to attract different kinds of responses. The first set is essentially contingent; he suggests that Just War thinking encourages bad strategy, self-righteousness, self-delusion and disregard for human security. In response, one might agree that these are bad things in any circumstances, but one would also want to add that such vices are by no means the prerogative of Just War thinkers but rather can be – and have been – exhibited by realists and pacifists (and pretty well everyone else for that matter).

Booth’s second set of criticisms are much more to the point; the propositions that Just War is used to justify escalation, destroy opponents, promote the militarization of problems and legitimize war contain much more specific, less generic, charges, and the reasons given for these criticisms are much more closely related to the structure of Just War thinking than to the personality faults of Just War thinkers. Just War thinking does indeed legitimize some kinds of violence, arguing that some problems should be militarized; the sense that in a conflict where one has justice on one’s side escalation and destruction may have a dynamic of their own is not simply an expression of self-righteousness. There are real issues here – although it would be perfectly possible to share Booth’s critique of the Kosovo campaign while preserving the notion of a Just War, arguing that while there might be Just Wars, this wasn’t one.

The American comedian Henny Youngman had a mildly sexist response to the question ‘How’s the wife?’ – ‘Compared to what?’ 3 A good question for social scientists in general but especially apposite here. What seems out of place with this set of criticisms, to me at least, is not their general cogency, but the difficulty of placing them within a wider framework. What is the alternative to Just War thinking? Compared to what does it legitimize war, promote escalation, etc.? Booth – who is used here as representative of a particular kind of radical thinking in international relations – is not a pacifist and certainly not a realist. Within what kind of framework can his critique of Just War thinking be placed?

The thought of Carl Schmitt may be helpful here – not so much because Booth is a closet Schmittian but because Schmitt makes much the same criticisms of the idea of Just War as Booth and other radicals but goes further, providing a fully worked out context within which these criticisms make a great deal of sense. Moreover, although Schmitt does have some affinities with at least classical realism, his critique of Just War is far more deeply grounded than their critique: realists who are bitterly critical of Just War thinking essentially base their opposition on the pragmatic argument that prudence is the most important
virtue, and is undermined by the habits of thought encouraged by Just War thinking. Schmitt offers a far more basic critique of the idea, locating it within a particular account of international order which is subversive of the public law of Europe as the latter developed out of its medieval roots, an account of international order which in the twentieth century was particularly associated with Anglo-American thought. Exploring Schmitt’s critique will give us a stronger case against the notion of the Just War – but it may also, indirectly, give us reasons to defend this notion.

**Carl Schmitt and the *jus publicum Europaeum***

In *The Nomos of the Earth* Schmitt offers an account of the rise of the modern European territorial state, and the spatial differentiation upon which that institution is based, that runs contrary to a great deal of the conventional wisdom of the early twenty-first century (Schmitt 2003). Whereas a number of modern writers have noted with disapproval the emergence of a clear distinction between intra- and extra-European international relations and with it notions of ‘difference’ that have, arguably, underpinned European racism and imperialism – see, for example, Todorov’s *The Conquest of America* (1987) – Schmitt regards the emergence of this distinction as a basic achievement of Renaissance humanism. Equally, the Catholic natural lawyers of the Salamanca School, usually admired for their defence of human equality and decent treatment for the ‘Indians’ of the Americas, are regarded by Schmitt as reactionaries trying to sustain an outdated, theological conception of world order. Schmitt’s reasoning here is largely based on his critique of the notion of the Just War, which he regards as an essentially theological notion which legitimized total war. Just War theorists may have attempted to limit the role of violence in human affairs, and the Catholic Church in the Middle Ages certainly did try to use its influence to ban certain weapons and enforce truces, but these measures were always subverted by the basic logic of the Just War, which, according to Schmitt, by inviting the judgement that one side in a conflict is ‘just’ involved identifying the other as ‘unjust’, with the concomitant that the unjust must be defeated whatever the cost, even if this meant using banned weapons or taking the conflict to extremes.

The line of argument here is immediately, if superficially, familiar: Just War justifies escalation, feeds self-righteousness, legitimizes war – this is very much the contemporary critique of Just War thinking as presented, from different perspectives, by Booth and other critics. There is, however, an important difference; Schmitt does not dodge the Henny Youngman question. He is quite clear that there is an alternative normative and conceptual framework against which Just War thinking ought to be judged, and much of *The Nomos of the Earth* is devoted to defending this alternative and bemoaning its delegitimation by the sea-going Anglo-Saxons, who promote a conception of world order that has had the effect of reinstating the medievalism and extremism of the Just War.

This alternative framework emerges from the development of the sovereign, territorial state in Europe, which involved a spatial disposition of the Continent
that undermined the jurisdiction of the Catholic Church and the Empire. The political order is no longer committed to the preservation of God’s Order in the world, and the staving off of the reign of the Antichrist, but instead is based on Reason of State.\textsuperscript{4} The European princes create among themselves a \textit{jus publicum Europaeum}, a secular legal order under which they recognize each other’s rights and interests, \textit{within Europe} (the proviso here is crucial). Beyond the line, in the extra-European world, Europeans engage in large-scale appropriations of land, respecting neither the rights of the locals nor each other’s rights, but within Europe a different \textit{modus vivendi} is possible. In the extra-European world appalling atrocities occur which would not happen, or at least ought not to happen, in Europe.\textsuperscript{5}

As between European rulers within Europe, war became ‘bracketed’ – rationalized and humanized. Rather than a divine punishment, war became an act of state. Whereas in the medieval order the enemy must necessarily be seen as unjust (the alternative being that one was, oneself, unjust – clearly an intolerable prospect), the new humanitarian approach to war involved the possibility of the recognition of the other as a \textit{justus hostis}, an enemy but a legitimate enemy, not someone who deserves to be annihilated, but someone in whom one can recognize oneself, always a good basis for a degree of restraint. This, for Schmitt, is the great achievement of the age, and the ultimate justification for – glory of, even – the sovereign state.

\textit{[An] international legal order, based on the liquidation of civil war and on the bracketing of war (in that it transformed war into a duel between European states), actually had legitimated a realm of relative reason. The equality of sovereigns made them equally legal partners in war, and prevented military methods of annihilation.}

\textit{(Schmitt 2003: 142)}

The new thinking about war also opened up the possibility of neutrality as a legal status; since war was no longer justified in accordance with a theological judgement based on notions of good and evil, it became possible for third parties to stand aside if their interests were not engaged. Equally, the ordinary subjects of belligerent rulers need not feel obliged to become emotionally engaged in the fray. War becomes a matter for sovereigns and their servants, civil and military; the kind of wider involvement that might be appropriate to a war between good and evil becomes strictly optional.\textsuperscript{6}

Thus was established what Schmitt clearly regarded as a kind of golden age in European international relations, a golden age that would be sabotaged in the twentieth century by the United States, with the reluctant, ambiguous, assistance of the United Kingdom – two maritime powers whose commitment to the \textit{jus publicum Europaeum} was highly qualified in the case of the UK, non-existent in the case of the US.
The United States and international law

A superficial reading of Schmitt, focusing on his subtitle, might take the concept of the *jus publicum Europaeum* (hereafter JPE) to be synonymous with the notion of international law (*Völkerrecht*), but for Schmitt the two notions are completely different, indeed opposed to one another. Schmitt objects to the notion of international law for two, interconnected, reasons. First, international law lacks the spatial aspect which is central to the JPE; it purports to offer a universal account of international order, blurring the crucial distinction between the European and the non-European worlds. But second, and more important, international law is, for Schmitt, a progressive, liberal project which is subject to the same critique as he delivers against liberalism in general, namely that it undermines the political and acts as a cover for special interests. This point requires some elaboration.

Schmitt’s account of politics is developed in opposition to liberalism. For Schmitt, liberalism purports to undermine the key feature of politics, the distinction between friend and enemy (Schmitt 1985, 1996). Liberalism, he argues, seeks to moralize and legalize politics, reducing the political process to a set of morally authoritative rules, attempting, as it were, to take the politics out of politics. This is a doomed enterprise – in any political constitution what is crucial is the ability to decide upon the ‘exception’, the point at which the rules no longer apply – but it is also a pernicious enterprise, because it involves covering particular political interests with a cloak of morality, pretending that a political decision emerging out of the friend–enemy distinction is actually the product of a moral judgement that cannot be opposed without falling into moral turpitude.

It is easy to see how this position feeds into a reading of progressivist international law; indeed, this position gels with at least part of the classic realist critique of the latter – on which see, for example, E. H. Carr’s critique of utopian moralizing as a strategy employed by the ‘haves’ against the ‘have-nots’ (Carr 2001). It is equally easy to see how Schmitt associates this notion of international law with the United States – but it is worth noting that for Schmitt, unlike Carr and other realists, the liberal internationalism of Woodrow Wilson is not central to this critique, or rather is simply a continuation of early American policies. The key date here is not 1919 but 1823, the proclamation of the Monroe Doctrine which symbolizes the emergence of a new kind of imperial rule. The Monroe Doctrine purports to warn off European powers from attempting to take new territories in the Americas, but actually involves an assertion of American power over the rest of the Western hemisphere. This is a new kind of Empire, a hegemony under which the US dominates usually without actually formally ruling; the US often intervenes in the affairs of the lesser American powers, and sometimes does so militarily, but always in the name of progressive values and in the putative interests of the locals – this is a form of rule that is both more effective than traditional empire because it does not involve the usual administrative costs, but also more hypocritical, because it denies its own nature, pretending to exercise power only in the interests of others. The US is revealed
by the Monroe Doctrine to be an anomalous power – neither ‘European’ in the spatial sense conveyed by the notion of the JPE but equally not non-European. It is this anomalous status (partly shared by the other English-speaking sea power) which, once US power becomes actual rather than latent and the form of rule embedded in the Monroe Doctrine becomes potentially universal, destroys the old order, in a way that a purely outside power (Bolshevik Russia, for example) could not, although the Bolsheviks could, perhaps, physically destroy the old Europe.

The League of Nations Covenant (which specifically endorses the Monroe Doctrine) represents the global extension of this hegemony. The US did not join the League, but American economic power underwrote the peace settlement and, eventually, in the Second World War, US military power was brought to bear to bring down the *jus publicum Europaeum* and replace it with ‘international law’, liberal internationalism and, incipiently, the notion of humanitarian intervention in support of the liberal, universalist, positions that the new order had set in place. On Schmitt’s account, the two world wars were fought to bring this about – and the barbarism of modern warfare is to be explained by the undermining of the limits established in the old European order. In effect, the notion of a Just War has been reborn albeit without much of its theological underpinnings. The humanized warfare of the JPE with its recognition of the notion of a ‘just enemy’ is replaced by the older notion that the enemy is evil and to be destroyed – in fact, is no longer an ‘enemy’ within Schmitt’s particular usage of the term but a ‘foe’ who can, and should, be annihilated.

**Schmitt and the modern left**

It is easy to see the attraction of Schmitt’s international thought to radical critics of humanitarian intervention and the Just War tradition. His opposition to liberalism and progressivism is highly congenial to post-Marxist, post-modern writers as well as to conservatives (and reactionaries), while his critique of the hypocrisy of the English-speaking powers is attractive to more modernist, Chomskyan, thinkers. His account of American imperialism in Latin America cloaked in a mantle of humanitarianism provides an obvious model for a critique of later humanitarian interventions, and his sensitivity to the new forms of power represented by American economic hegemony is equally congenial. Moreover, he provides a full-blown framework within which these critiques can be situated. The kind of ad hoc critique of Just War thinking offered by Booth and other radicals suffers because it is ad hoc – the points made have resonance, but there is little sense of how they fit within a coherent vision of the world. Schmitt offers such a vision; he can tell us where notions of humanitarian intervention come from, he can show us an alternative account of ‘humanism’ that does not grow out of the barrel of a Western gun, he can give us a conception of war which purports to be more humanitarian than that which emerges from the Just war tradition. He can answer Henny Youngman’s question: ‘Compared to what’ is Just War thinking flawed? In short, he offers the fullest, most intellectu-
ally substantial critique of the recent revival of Just War thinking available, a critique that anyone who wishes to continue to work within that tradition must confront.

Most of the rest of this chapter addresses this task, but first there are one or two preliminary features of Schmitt’s critique which need to be examined, specifically Schmitt’s politics and his rather selective use of historical materials. As to the former, it has become somewhat bad form to refer to Schmitt’s leanings towards Nazism, in much the same way that it is considered bad form to refer to Heidegger’s rather briefer flirtation with the Nazis, but it has to be said that Schmitt’s quasi-Nazi take on the world is not without significance in an assessment of his international thought (Scheuerman 1999). Although Schmitt was expelled from the Nazi Party in 1936, when The Nomos of the Earth was written in the early 1940s it certainly retained traces of his earlier allegiance. The claim that the barbarism of the two world wars could be attributed to Anglo-American liberal internationalism, and that Wilsonianism was, in effect, responsible for the Second World War needs to be assessed in this light. It is certainly a commonplace of realist analyses of 1930s international relations that liberal internationalism contributed to the outbreak of the Second World War by confusing Western public opinion as to the nature of the international order and preventing it from adequately assessing the nature of the threat posed by Hitler, but this is hardly the same as regarding liberal internationalists as actually responsible for the war.

One can read Schmitt as arguing the more passive point that the real failure of liberal internationalism lay in its inability to offer an alternative basis for order to the JPE, but still, on Schmitt’s account, Germany in 1939–1945 was fighting a defensive war against US and British imperialism and the horrors of the war, such as saturation bombing of cities, emerged directly from the crusading approach of the Anglo-Saxons, symbolized by their relentless demand for German unconditional surrender. Sixty years on, this appears every bit as self-serving an account of the war as it would have done at the time to the many victims of Hitler’s war.

Other features of Schmitt’s rather selective account of the history of the European states-system also deserve to be challenged. Central to this history is the notion that the bracketed, humanized wars of sovereign states were less terrible than the religious wars they replaced, or the modern crusades they would be replaced by. It is certainly the case that there were brief periods in modern European history, especially in the mid-eighteenth century, when the notion of war as a duel between enemies who recognized each other as legitimate bore some relationship to the facts – although even then the general level of brutality towards civilians was higher than anecdotes such as that told by Laurence Sterne would suggest. In any event, these periods were few and far between. Most of the time, the more civilized features of war during the era of the public law of Europe were experienced only by the princes who declared them, and perhaps a few aristocrats and senior military officers. More, Schmitt makes life easy for himself by defining his period in a way that helps his case – thus the Thirty
Years War is described as a religious conflict which predates the idea of war as a duel between sovereign states, and yet religion was only one element in that conflict, and often not the most significant element. Catholic France and the Papacy ended up effectively on what was nominally the ‘Protestant’ side of the conflict which hardly suggests deep religious motivations.

Still, even though one might wish to challenge Schmitt’s history – and it would require a much longer study to do it properly – this does not necessarily get to the core of the issue which is his, and later critics’, characterization of Just War thinking as essentially and necessarily leading to the demonization of the enemy and legitimating total war. This is the core of the debate about the relevance of Just War thinking to both the humanitarian war of the classic European states-system and the humanitarian interventions of today (or at least the 1990s).

The Just War reconsidered

Booth and other modern critics of the Just War deliver the same criticisms as Schmitt, but on a contingent/psychological basis – that is to say, they see the behaviour of Just Warriors as extremist because that is what they observe of individuals who use Just War language, and they explain this by the alleged sense of superiority that believing oneself to be ‘justified’ brings with it. However, as noted above, this line of reasoning is not particularly convincing, because self-satisfied self-righteousness is by no means peculiar to the Just War tradition. Schmitt offers a more compelling critique, arguing that the extremism of Just Warriors is best explained by examining the theological origins of the notion. The Christian world order of the Middle Ages – the respublica Christiana – believed itself to be under potential assault from the Antichrist; the role of the Empire in the respublica Christiana was to restrain the Antichrist, and the notion of Just War emerges as no more than an ancillary notion associated with this role. However, as time goes by it becomes increasingly divorced from this context and it is at this point that the logic of escalation and the removal of restraints on the conduct of the Just become apparent. By the late Middle Ages, Just War thinking has become a recipe for extremism and this tendency is even more apparent in the modern revival of the notion in the form of humanitarian intervention.

What has happened is that a set of ideas that make sense in one context are being applied in another; we no longer set the use of military force within a context that revolves around the prevention of the coming of the Antichrist – instead we try to derive from the Just War tradition a set of rules that can be applied in any circumstances to the use of force. We ask of any particular action whether the force employed is intended to right a wrong, is the last resort, is proportional to the offence, has reasonable prospects of success, is undertaken with proper authority, and with care being taken, as far as possible, to protect the innocent; if we feel we can put a tick in all these boxes, then we feel we can act with justice on our side, with all the possibilities for legitimating extreme action that this implies. In short, from Schmitt’s perspective, Just War has been turned
into an archetypically liberal notion: the political basis of decisions to use force that was characteristic of the *jus publicum Europaeum* is replaced by a legalistic and moralistic account of the justification for force.

This is, I believe, a quite compelling argument, and it defines the task for anyone who wishes to continue to use Just War notions in thinking about international relations, which I do; effectively one must redraw the idea of the Just War so that it neither reflects a lost medieval Christian order, nor fits into contemporary, liberal, moral reasoning. This may seem to be a tall order, but I believe it is actually much less difficult than one might imagine, because Schmitt’s way of setting up the problem excludes or devalues a line of reasoning that is the product neither of the *respublica Christiana* nor of contemporary liberalism, a line of reasoning often termed ‘neo-Aristotelian’. Such reasoning follows the Aristotelian injunction, summarized by Stephen Toulmin, that ‘sound moral judgment always respects the detailed circumstances of specific kinds of cases’ (1990: 32). Along with Schmitt, neo-Aristotelianism is critical of the search for universal legal and/or moral rules, and, again following Schmitt, neo-Aristotelians associate this tendency with the characteristic moral theories of liberalism, in particular Kantianism and utilitarianism. However, unlike Schmitt, Toulmin at least locates the origin of this tendency not with the Anglo-American thought of the nineteenth and twentieth centuries, but much earlier – in fact, just at the point where Schmitt’s *jus publicum Europaeum* is first established, in the early seventeenth century.

This is when, Toulmin argues, the moral insights of Renaissance humanism and the classical world were put aside. Under the influence of Descartes and Hobbes, along with many lesser talents, formal logic came to displace rhetoric, general principles and abstract axioms were privileged over particular cases and concrete diversity, and the establishment of rules (or ‘laws’) that were deemed of permanent as opposed to transitory applicability came to be seen as the task of the theorist. Toulmin suggests that at this time moral reasoning became ‘theory-centered’ rather than ‘practically-minded’ (1990: 34). Moral reasoning became a matter of following a theoretically validated rule, rather than of making a practical judgement, and was impoverished thereby, losing the emphasis on cultivating the facility for the making of moral judgements which, as Bernard Williams has maintained, was characteristic of older, pre-modern or classical moral philosophies (1985, 1993). Toulmin and Williams are not, of course, alone in holding this position; in recent years, there has been a revival of interest in Greek moral theory, and, in particular, in the notion of the ‘virtues’ – those qualities of mind that human beings can cultivate in order to enable them to be more effective moral agents. (Anscombe 1958; Nussbaum 1993; Crisp 1996; Statman 1997).

Neo-Aristotelian thought places Just War theory in a new light; if we return to the set of questions outlined on p. 57 we can see that they are actually not best understood as comprising a set of rules that invite a yes/no answer, a tick in a box. Rather, they invite the exercise of different kinds of political and moral judgement. The existence of a ‘just cause’ for action calls for precisely the kind
of political judgement that Schmitt regularly invokes, while ‘proper authority’ requires a combination of political, legal and ethical judgement. Whether violence is actually the ‘last resort’ can only be decided on the basis of a diplomatic-strategic judgement, likewise issues of proportionality and a reasonable prospect of success. ‘Innocence’ is a moral category, but whether proper care is taken to protect the innocent requires a different, more complex judgement. In short, what we have here is neither a pro-forma check-list of criteria whereby action is deemed just only if we are able to put a tick into each box – Schmitt is right to resist this notion – nor do we have a set of criteria that can be interpreted solely by theologians, ethicists or lawyers. Indeed, most of these questions invite the judgement of politicians, diplomatists and strategists, with only occasional assistance from lawyers or ethicists.

By employing Just War thinking in this way, one is neither endorsing the kind of theological position that might cause one to become convinced of one’s own sanctity and thereby lose all sense of restraint, nor allowing legal/moral reasoning to swamp the kind of essentially political judgements that Schmitt believes to be central. It is, however, the case that, underlying this way of thinking about Just War, an essentially moral position is being taken more or less for granted, namely that, other things being equal, violence is undesirable, and therefore that resorts to force require some kind of special justification. Is this necessarily a theological position? Obviously it could be, but I see no necessity here – there are good secular reasons for believing that violence is, other things being equal, a ‘bad thing’. This is certainly a moral judgement but it is one that can be arrived at from a number of different political and ethical positions; to employ a couple of Rawlsian terms, there is an overlapping consensus between a fair number of reasonable, comprehensive doctrines around the general undesirability of violence as a mode of human interaction.

Schmitt would not be part of such a consensus. His account of the *jus publicum Europaeum* and the notion of war as a duel, something that can be bracketed as between *justis hostes*, is specifically based on the notion that the use of force does not have to be justified to any external authority or to oneself. This is an essential feature of the ‘humanized war’ that Schmitt endorses as an alternative to the horrors of Just Wars. Although he does not put the matter in this way, he is effectively offering us a devil’s bargain; accept that violence is simply a part of human existence – forget the attempt to require that violence be justified – and in exchange you will have a world where violence will actually be more controlled and less dangerous to human well-being than it otherwise would be (Luttwak 1999).

Should we accept this bargain? More to the point, can we accept this bargain – is the offer still on the table? The answer to both questions is, I think, no. To give up the attempt to control and minimize the role of violence in human affairs would be pure defeatism, but, in any event, as Schmitt himself acknowledges, the world of the *jus publicum Europaeum* is gone and gone for good. Much to his regret – but should it be to ours? – the old European world has been undermined by the new universalism. The successive attempts by Wilhelm II and
Hitler to carve out for Germany an imperial role as the dominant power in the Eurasian land-mass have been defeated by the universalist principles represented, in very different ways, by the Anglo-Saxons and the Bolsheviks. The Nomos of the Earth has a somewhat elegiac ring to it which from Schmitt’s perspective is understandable, though it is less clear why his position would be endorsed by any twenty-first-century thinker.

**Conclusion**

Schmitt’s normative position is impossible to sympathize with, but the clarity with which he develops his argument is admirable, as is his recognition of the changes in world order that took place in the seventeenth and again in the twentieth centuries. It is not necessary to share in Schmitt’s nostalgia for the jus publicum Europaeum in order to admire the precision with which he delineates its characteristics. He presents an account of the European states-system which is rather more compelling than the version of international society associated with English School writers (Butterfield and Wight 1966; Bull 1977), or with the much less clearly defined a-historical world of modern neo-realist theorists (Waltz 1979; Baldwin 1993). The Nomos of the Earth is a book that should be on the reading list of any international relations theorist.

Still, one might admire, but one should not endorse. The picture of the world that Schmitt presents invites us to accept that the ‘humanized wars’ of the modern European states-system represent not simply in practice, but also in theory, an advance over the ‘just wars’ that preceded them, and the ‘humanitarian wars’ that have followed them. That these humanized wars were generally less terrible than their predecessors and successors is an empirical judgement that can be contested, but that the attempt to control and limit the role of violence in human affairs is necessarily futile and counter-productive is a normative position that deserves to be rejected.

Ultimately, Schmitt’s critique of the notion of the Just War rests upon a shaky empirical base and an undesirable normative position – but it still represents one of the most compelling critiques of the notion available. Schmitt’s critique of the Just War is not a critique that is based on contingencies – how Just Warriors behave – but on fundamentals. He takes us to the heart of the problem and demonstrates that both the medieval Christian and the modern, liberal, legal/moral account of Just War are unacceptable – but if we believe that it is desirable to reduce the role of violence in human affairs this should simply stimulate us to rework the relevant categories to try to produce a more viable account of the circumstances under which the resort to force might be justified.

**Notes**

1 I am grateful to Douglas Bullock and William Hooker for comments on an earlier version of this paper, likewise to all my fellow participants in the Panels on Schmitt at the fifth Pan-European International Relations Conference in the Hague in September 2004; none of the above are, of course, responsible for the contents of this chapter.
2 The French situation was somewhat different: they had extensive interests in Rwanda but, embarrassingly, these interests meant they were committed to supporting the perpetrators of the genocide rather than its victims.

3 Thanks to Bill Galston for reminding me of this line in another context.

4 I am aware that there is a line of thought in Schmitt interpretation that sees him as essentially a theological writer who places the issue of God’s order in the world at the centre of all his thought; a central concept here is that of the *katechon*, the being referred to in a (contested) interpretation of 2 Thessalonians 2:1–8 as having the role of staving off the Apocalypse and the coming of the Antichrist. Although in the original Greek text *ho katechon* seems to refer to a person, Schmitt interprets the term more widely; in this context, it should be noted that, to Schmitt’s way of thinking, although the modern state system does not understand itself as *ho katechon*, it operates as such by preventing the world-unity that is a necessary precondition for the Apocalypse. I am grateful to Will Hooker for this point.

5 The ‘Amboyna Massacre’ of 1623 is perhaps the most famous illustration of this point. The Dutch and English East India companies were then competing for the spice trade of the East Indies; neither was satisfied with the division of the spoils set out in a trade treaty between the United Provinces and England of 1619, and in retaliation for an English attack on the Dutch ‘Factory’ on Jakarta, the Dutch at Amboyna on the Molucca Islands turned on the English Factory there – the ten English factors (i.e. traders) who survived the initial attack, and their nine Japanese assistants, were subsequently tortured to death.

6 During the Seven Years War between Britain and France – more accurately, of course, between George II and Louis XV – the English novelist Laurence Sterne describes absent-mindedly in *A Sentimental Journey* his attempt to take the regular packet-boat between Dover and Calais, the war having slipped his mind. Fortunately he was able to attach himself to the entourage of a French nobleman returning to Paris after a trip to London, so all was well. Even during the Napoleonic Wars, where national emotions were certainly engaged, there was a regular cross-channel service under a flag of truce, and British scientists attended conferences in France under safe-conducts, and vice versa.

7 It would be easy to latch on to particular cases where Allied behaviour fits Schmitt’s pattern (for example, over area bombing) but this does not validate the picture taken as a whole – and there are sins of omission here which need to be taken on board. The fact that several times more civilians died in the siege of Leningrad than from the Allied bombing campaign does not excuse the latter, but deserves a mention somewhere.

8 Originally, the notion of proper authority was designed to exclude ‘private’ wars – proper authority meant the prince; nowadays it is sometimes taken to refer to some kind of international legitimation – a UN Security Council vote, perhaps – but this needs to be argued for as an interpretation, rather than assumed.

9 And there is no legitimate role for rentaquote archbishops, unless it be to insist that the questions are posed – certainly there is no reason to think that the views of theologians and clerics on the strategic consequences of the use of force are of any more significance than those of any other citizen.

**Bibliography**


Part II

The crisis of order (*nomos*) in the post-9/11 era
4 Global terrorism and the state of permanent exception

The significance of Carl Schmitt’s thought today

*Alain de Benoist*

**From the partisan to the ‘global’ terrorist**

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

This new designation of the enemy explains why numerous authors have recently returned to various aspects of Carl Schmitt’s works in their examination of the present world situation, with the majority making reference to the war operations led by the Americans and the measures taken by Washington in the fight against Islamic or global terrorism. In the same vein, we will compare the ‘global terrorist’ with the figure of the partisan, as evoked by Carl Schmitt in his famous ‘Theory of the Partisan’ (2004c [1963]).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 disjunction. The partisan fights an eminently political battle but, as he fights usually against the state, his politics are, at the same time, outside the sphere of the state. In other words, the partisan’s actions show that there are wars other than those between states, and similarly, that states are sometimes not the only political enemies.

Schmitt distinguishes clearly between the figure of the partisan, as in guerrilla wars of the beginning of the nineteenth century against Napoleon’s occupation of Prussia and Spain, and the modern revolutionary fighter.³ Both are certainly irregular fighters and act outside the state’s legality but in the name of a contrasting legitimacy that they claim to represent. Both are mavericks, who describe themselves as ‘resistance fighters’, while being regularly stigmatized by the public authorities who deny them all rights of resistance or insurrection, as
not only ‘illegal’, but also ‘illegitimate’ combatants. Both (and this is obviously the point which interests Schmitt the most) possess a keen awareness of the distinction between friend and enemy, as they do not even need a designated enemy to combat (just as the terrorist’s enemies are never designated as such by any legal or public authority). Moreover, through their acts, both the partisan and the terrorist erase the traditional distinction between civilians and the military, combatant and non-combatant. Originally, the civilian was typically supposed to be excluded from any participation in war, and this is why he enjoyed the particular privilege of being protected. Partisans themselves, however, are not necessarily, and in fact are rarely, part of the military, being rather civilians who have decided to take arms and who often consider other civilians as the allies of their enemies.

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

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

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

(Schmitt 2004c: 24–25)

This loss of 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’ does not impose limits on his own choice of methods. Convinced of fighting a totally ‘just’ war, he becomes radical, in both the ideological and the moral senses. He regularly designates his enemy as a criminal, and in return he is himself designated as such. With the revolutionary fighter, hostility becomes absolute. For Lenin, Schmitt says,

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

(ibid.: 46–47, 77)

Schmitt adds that,

where war is pursued by both sides as a non-discriminatory clash . . . the partisan remains a marginal figure, who does not avoid the framework of war and does not change the overall structure of the political phenomenon. When, however, one goes on to regard the enemy as a real criminal, when a war, such as a civil war, is fought between class enemies and its primary goal becomes the annihilation of the government of the state enemy, in this case, the explosive revolutionary efficiency of the criminalization of the enemy transforms the partisan into the true hero of the war. He enforces the death penalty against criminals and, for his part, risks being treated as a criminal or a vandal. This is the war of justa causa which does not recognize a justus hostis.

(ibid.: 31)

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

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

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

(ibid.: 67, 78)

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

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

It is undeniable that certain forms of ‘terrorism’ have been recognized as legitimate in the recent past, first in the Second World War, during which members of the Resistance were invariably denounced as ‘terrorists’ by the German occupying forces, and then at the time of decolonization, when many terrorist groups presented themselves as ‘freedom fighters’ hoping to wrest independence from their colonial powers through armed uprisings. After 1945, innumerable armed minorities, liberation movements or guerrillas all presented themselves as resistance organizations confronting state systems that condemned them as ‘subversive’ groups and ‘terrorists’. When their struggles ended and they obtained international recognition, the methods that they had used seemed to be retrospectively justified. This lends credit to the idea that in certain cases, terrorism can be legitimate. Of course, it is often said that terrorism can never be justified in situations or countries where social and political demands can be expressed otherwise. However, opinions have remained divided as to what constitutes ‘good’ and ‘evil’ terrorism and, to a certain degree, the assessment about its moral or immoral character has been, de facto, left to propaganda or plain subjectivity.

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

Still today, people who are seen as ‘resistance fighters’ by some are very often branded ‘terrorists’ by others. The usage of the terms has proved to be unstable and, even, interchangeable. While supporting Islamist movements in order to balance the influence of secular Arab nationalist movements, the United States did not hesitate to support certain terrorist groups, notably in Nicaragua, Angola and Afghanistan during the Cold War, just as after the first Gulf War it supported opposition Iraqi groups responsible for numerous booby-trapped car bombings (Cockburn 1996). The Taliban, called ‘freedom fighters’ during the Soviet invasion of Afghanistan, became ‘terrorists’ when they started to use the same methods against their former allies. The militants of the Kosovo Liberation Army (KLA/UCK), seen as ‘resistance fighters’ while NATO forces bombarded Serbia, became terrorists when they targeted Macedonia, which was allied with NATO and the United States. And these are but a few examples.
The problem of the status of terrorism with respect to the binary pair legality–legitimacy is further complicated by the existence of state terrorism, which might be considered a ‘legal’ kind of terrorism. In fact, the latest definitions of terrorism do not exclude this type of state terrorism, which has always had more victims than illegal violence at the ‘sub-state’ level (Chaliand 1997: 10). If one defines terrorism as a way of causing the greatest possible harm to the greatest number of innocent victims, as a way of deliberately killing innocents taken randomly in order to demoralize and to spread fear in the hearts of the population, or also as a way to force their leaders to capitulate, then the terror bombings of German and Japanese civilians in the Second World War, for example, certainly fall into this category, since, in all these cases, non-combatants were deliberately and randomly targeted.

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

The new terrorism

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

Another important characteristic is its even more increased deterritorialization. Post-modernity means the end of territorial logic and, as a result, the figure of the partisan, to which Schmitt still attributed a prominent ‘telluric’ character, becomes completely deterritorialized. Paul Virilio goes so far as to speak about the ‘end of geography’, which is probably excessive, as the basic principles of geopolitics remain (Virilio 2000: 9). However, today, the privileged form of terrorist activity is the network. What we call ‘Al-Qaeda’, for example, is not a
classic type of organization, localized with a set hierarchy, but a loose collection of tangled networks. These terrorist networks have become even more important because the post-modern 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 deterritorialization. The parallel which has often been made, including by President George W. Bush, between the attacks of 11 September 2001 and Pearl Harbor in 1941, is, in this respect, completely erroneous. The 1941 attack was an action from a country clearly situated on a map: Japan. The 11 September 2001 attacks, however, are the actions of a series of transnational networks.

Similarly, the war against terrorism does not have any territorial boundaries because the enemy does not identify (or does so infrequently) with a given territory. The United States may have been able to carry out a war in Afghanistan, accused of harbouring Al-Qaeda groups, but in reality, these groups were only there in part or provisionally. The ‘global’ war started by the United States against terrorism is a war between rootless, deterritorialized partisans, who 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 deterritorialization–globalization that favours the emergence of a new form of terrorism, at the same time that it opens up new ways of carrying out activities. And as the United States, as defined by Schmitt, is the maritime power par excellence, and as globalization itself obeys a form of ‘maritime’ logic, we can say that the war against terrorism comes entirely under the logic of the Sea.

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

The police also do not conclude ‘peace treaties’ with criminals. In this way, there is nothing political in police activities, at least when they involve combating criminals and wrong-doers. However, there is a clear ‘moral’ dimension: crime is not only socially, but also morally, contemptible. The police character
of the war against terrorism reveals this point of view. It puts forward implicitly, as Rik 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 criminal sphere’ (2004: 113). But what is it exactly? Is terrorism a new political form of war, or is it a new form of criminality? (See Daase 2002; Falk 1986; Klitsche de la Grange 2001.) Terrorism is, after all, a war of peacetime, and this entails the increasing inability to distinguish between the notions of ‘war’ and ‘peace’. This is in itself significant, because in this epoch of the fight against global terrorism, the confusion between police and army duties has grown to such proportions that it destroys the distinction between domestic and international affairs.7

From the point of view of those who combat terrorism, things are clear. In public discourse terrorists are irrevocably described as criminals. This is not a new phenomenon. During the French Revolution, the Vendean insurgents were officially denounced as ‘brigands’. After the assassination in September 1901 of the American President William McKinley by an anarchist, his successor, Theodore Roosevelt, called anarchists ‘criminals against the human race’. But the equation terrorist = criminal, justified and supported by the violent, blind and unpredictable character of terrorist actions, has also been used in the past to disqualify members of the Resistance or ‘freedom fighters’ in anti-colonial struggles. This equation made it possible for them to be considered common law delinquents, which justified, for example, their being refused the status of political prisoner when arrested. Along the lines of semantic analysis, remarks Pierre Mannoni, the terrorist is regularly described using terms ‘such as “criminal”, “assassin”, “bandit”, reducing him to the rank of violent undesirables, disturbers of order and social peace, or as “barbarian”, “savage”, “blood-thirsty madman”, inclining towards mental insanity or an uncivilized, brutal state of nature’ (2004: 41). Terrorists, in other words, are denounced as criminals or madmen.

That kind of denunciation transforms the terrorist into a man who cannot have anything in common with the people whom he attacks. Therefore, the terrorist becomes an Other, a real hostis humani generis: ‘[t]he image of the Other is constructed as an image of somebody who will never “be like us”’ (Ragazzi 2004). This is constantly affirmed both by politicians and by the media: whichever cause terrorism is claiming to defend is really ‘incomprehensible’. In the United States, it is maybe still more incomprehensible, as the Americans, convinced of having created the best society possible – or even the only one truly acceptable – have a tendency to find it unimaginable that someone could reject the model of society which they champion. The idea that the United States is a ‘land of the free’ – the ultimate model of organization of society, and a nation ‘chosen’ by Providence – is so widespread that it obviously facilitates the representation of terrorists as sick, perverted or mad people: in September 2001, how could ‘normal’ people not believe in the ‘goodness’ of the Americans? The mere fact that the terrorists ‘detest the United States and everything it represents’8 made them appear as outcasts – and, as the United States identifies itself as the ‘Good’, the terrorists can only be incarnations of ‘Evil’. Terrorism is
therefore stigmatized as irrational and criminal at the same time, stripped of all logic, and fundamentally portrayed as having no proper political objectives. This description of the terrorist, as either mad, criminal or both, resonates of course with public opinion, which often views terrorist acts as both unjustifiable and incomprehensible at the same time (‘why do they do it?’, ‘but what do they want?’). These reactions can be easily understood, but the question is whether the usage of such terms can help the analysis of the true nature of terrorism, and the identification of its causes.

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

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

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

(2004: 21–22)

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

The public authorities confronted with terrorism often repeat that ‘one does
not negotiate with terrorism’ – even if, in reality, they often negotiate with ter-
orrists, albeit in a concealed manner, for example with the secret payment of
ransoms in order to obtain the liberation of hostages. Global terrorism also
seems to disdain negotiation in favour of inflicting the greatest damage possible.
However, if one admits that the true goal is never the specific targets of the ter-
rorist acts, but what the terrorists hope to attain through these acts, for example a
change of attitude by a government or a modification of its policies, one must
also admit that there occurs some kind of ‘negotiation’. The terrorists are
attempting to achieve something through terrorism – that France should cease to
support the Algerian regime, that the United States should change its policies in
the Middle East, that Russia should withdraw its troops from Chechnya, etc. The
statement, ‘we do not negotiate with terrorism’, is therefore to be understood as
a simple refusal to cede to these demands. Of course, it is in reference to the
methods utilized in order to force them to capitulate, methods considered imme-
diately as unacceptable because they involve hurting ‘innocents’ or taking civil-
ians as ‘hostages’, that the public authorities justify their refusal to give in. But it
is also obvious that they would not give in even if the same demands were pre-
sented to them in a ‘reasonable’ fashion. This is why terrorists, who know this
perfectly, prefer to fall back on the most extreme methods – methods supposed
to achieve what they would not achieve otherwise, though it is also these
methods which are used to justify the refusal to accede to their demands.

Schmitt distinguishes between the traditional partisan and the ‘absolute parti-
san’, who, animated by his revolutionary faith, breaks all norms. But Schmitt
does not draw this distinction in order to make the absolute partisan a criminal.
On the contrary, he recognizes in him a figure that is eminently political. He
notes that the ‘intense political character of the partisan must be kept in mind,
precisely because it makes it possible to distinguish him from the ordinary crim-
inal and thief, whose motives are concerned purely with private enrichment’
(Schmitt 2004c: 19). Even when they do not appear to have any aim beyond the
specific target, all terrorist acts are political messages that must be deciphered.
For the terrorist, the terror is always potentially ‘convertible to political capital’
(Kemp 2004). The terrorist is certainly a hostis, a political enemy as meant by
Schmitt, but it is precisely this strictly political dimension of terrorism that the
‘police’ rhetoric erases. This is not to say that terrorist acts are not also crimes.
But these are political crimes that cannot be recognized as such without taking
into consideration the context, as well as the causes which permit them to be
qualified as such. In other words, a political crime is first and foremost political,
and this is why it cannot be equated with crimes of common law, although this obviously does not mean that it should be treated with more leniency.

Terrorism, moreover, is not ‘irrational’, and the works of Schmitt are very useful in helping us understand this. It is not more (or less) irrational than the logic of the market, which is also grounded in religious foundations, since it divides the world between ‘believers’ (in the all-powerful ‘invisible hand’ and ‘spontaneous’ economic regulations) and ‘unbelievers’. Let us add that it is also erroneous to label Islamic terrorism as ‘nihilist’, as nihilism is probably what Islamic thinking detests the most. Nihilism is precisely what Muslims accuse the West of succumbing to, by having created a world in which 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 among the moralistic condemnations and indignation of the media. ‘Even blind attacks, affecting anonymous victims’, writes Mannoni,

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

(2004: 8)

During the period of the Cold War, the Soviet Union represented a ‘symmetrical’ adversary to the United States. The confrontation of the United States with global terrorism is more of an asymmetrical confrontation. In a classic war, according to Mannoni,

there is a direct proportional link between a strong spatial extension, a moderate to strong intensity and a continual frequency; terrorism is characterized, to the contrary, by a relationship of inverse proportionality between a weak spatial extension, an extreme intensity and an irregular frequency.

(ibid.: 29)

Not long ago, during the Cold War, we aimed at a balance of power (or of ‘terror’). Today the key notion is that of asymmetry (rather than dissymmetry, which denotes solely an inequality of quantitative order between the forces present).

The ‘war against terrorism’ is an asymmetrical war by its very nature: it is precisely because the terrorist does not make use of methods of classic confrontation that he resorts to terrorism. This asymmetry existed already during the era of the classic partisan, which enraged Napoleon. With global terrorism, this asymmetry becomes generalized at all levels. There is asymmetry in terms of actors: on the one hand, the heavy structures of states, on the other, the fluid logic of transnational networks. Then, there is also asymmetry in terms of objectives: terrorists
know where and how they will attack, their adversaries do not know (or know only imperfectly) where and how to respond. Moreover, there is asymmetry in terms of methods: on 11 September 2001, in the space of a few minutes, battle ships, atomic bombs, F16s and cruise missiles became obsolete in the face of a dozen fanatics armed with knives and boxcutters (see Verstrynge 2005).

The most important asymmetry, however, is of the psychological order: an immense gap separates men for whom many things are worse than death and a world where individual life is a pure fact of immanence and is regarded as a good which nothing can surpass. People of the West live today in a ‘disenchanted’ (entzauberte) world where, for the majority of people, nothing is superior to life. Throughout history, however, this sentiment has been the exception rather than the rule. Percy Kemp speaks here, very rightly, of the ‘anthropocentric choice that was made from the Renaissance onwards, to put Man, rather than God, at the center of the universe, and to substitute the fear of death for that of hell’ (2004: 19) In today’s world, there is a radical asymmetry between terrorists, who are ready to give their lives in suppressing the lives of others, precisely because they are not paralysed by the ‘fear of death’, and those for whom this behaviour is completely ‘incomprehensible’ because, for them, life is always more valuable than anything else. It is this asymmetry that leads the side of the victims to denounce terrorism as ‘absurd nihilism’: the rationality of the secularized western world makes it unable to understand the motivations linked to a logic (that it itself had known in its past) for which there are causes – good or bad, of course – which are worthy of the sacrifice of life. From such a ‘rational’ view, the refusal to sanctify the worldly life, the absence of ‘fear before death’, can only be that of a ‘fanaticism’ that is also a form of criminal madness. Between those who are thinking of the other world and those who are thinking about their pension, there can be no possible common ground. For the terrorists, death is eventually a reward. Faced with this desire of death raised as an ultimate weapon, the West is inevitably disarmed.

But terrorism is also asymmetrical in yet another sense, in that it has a formidable impact on public opinion by killing relatively few people – many 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 newsworthy, because they result in the simultaneous death of dozens or hundreds of people – whereas one never talks about car accidents, even though they kill many more people, in total, than air accidents. Similarly, terrorism does not claim as many victims as ethnic wars and massacres, such as happened in Rwanda, but it elicits stronger reactions because it is more spectacular. Moreover, this spectacular character cannot be dissociated from its objective. Terrorism’s real impact is in the psychological domain.

The objectives of global terrorism

The first aim of global terrorism is to weaken mind structures and to destabilize habits of behaviour. Evoking the actions of present-day terrorists, Mannoni
writes quite correctly that it is less ‘about “shaking people from their apathy”, as in the era of historical revolutionaries, than to generalize this apathy by stripping their enemies of their faculties for defense or initiative’ (2004: 10). For his part, Jordan Paust observed in the 1970s that the goal of the terrorist act was to ‘use the terror and anguish of the victims to force their principal target to adopt a given conduct, or to modify their policies in the ways they wished’ (1977: 21). This definition shows very well how the ‘principal target’ is never the immediate target, but one that the terrorists hope to reach through a ricochet (it is in this sense that a terrorist act can be compared to a kidnapping). Already at the time of the terror bombings of civilians in Japan and Germany during the Second World War, beyond the victims themselves the targets were the German and Japanese governments. The same goes for global terrorism, whereby the actions aim at a secondary, rather than primary, effect. The attacks are only the means of conditioning public opinion or of putting pressure on governments and their policies. Terrorism desires to move spirits and to disarm public will. The sought-for goal, for example, is not so much to destroy the Twin Towers of the World Trade Center, but to traumatize the population by the spectacle of their destruction. This is an important difference from the partisan or the guerrilla fighter, who almost always pursues 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 intrinsically spectacular character of the big terrorist attacks and the sensation which the media create from them. Terrorism strikes the sight as much as it makes an impression on the imaginary. The creation of a shocking and disturbing spectacle that elicits emotional upheavals and immediate visceral reactions confers on terrorism its power of impact: the attacks of 11 September 2001 are perfect examples of this. The development of terrorism, therefore, is intimately linked to the expansion of the global media which, getting hold of the news in ‘zero time’ – everywhere at the same time – effectively multiply terrorism’s effect. How effective the shock of an attack is does not depend as much on its intrinsic scale as on what one says of it: if one does not say anything about it, it is as if it never took place. There is, then, a type of perverse, though organic, link between terrorism and the media (Alexander and Latter 1990; Mannoni 1992). Terrorism can therefore be construed as a card game for four players, a murderous game in which the four elements cannot be dissociated: the terrorists, the victims, the ‘principal target’ (the established public authorities) and the media.

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

We said earlier that terrorism is a war of peacetime, perhaps even a war disguised as peace. It is also both a ‘global’ and a total war. After 11 September 2001, the White House gave the codename ‘Infinite Justice’ to its plan to wage war on terrorism. By definition, ‘Infinite Justice’ does not know any limits. Addressing Congress at that time, George W. Bush said that this war would not end ‘until every terrorist group of global reach has been found, stopped and defeated’. He also declared: ‘[w]e want total victory in Iraq: we will get total victory.’ This means clearly that anything which is not a total victory will 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 senses of the word’, meaning that this is a war which cannot be ended, and also a war without a precise objective (1999: 5). It is without end on both sides, because the terrorists cannot seriously hope to vanquish their adversaries, while the latter cannot seriously hope to eradicate terrorism. As Schmitt had predicted, global terrorism has many days ahead of it.

From ‘state of emergency’ to state of permanent exception

Faced with terrorism, the old doctrine of ‘containment’ has become obsolete. The fight against terrorism is now a fight that is at once offensive by nature, but also preventive. It affirms the right to unlimited pursuit and, in authorizing the pursuer to cross all borders, permits him at the same time to affirm his hegemony in the world. But it is also a fight which makes great use of the notion of ‘urgency’ and which finds an outlet in the state of exception. Characteristic of ‘times of distress’, the state of exception resembles the ‘state of necessity’ that historian Theodor Mommsen (1870) paralleled with legitimate defence. In a state of exception, a state finds itself abruptly confronted with an extreme peril, a mortal menace that it cannot face without having recourse to methods which, following its own norms, would be unjustifiable in normal times. The situation of urgency or the state of exception can be defined in other terms as the brutal occurrence of rare events or unpredictable situations which, because of their menacing character, require immediate response with exceptional measures, such as restriction of liberties, martial law, state of siege, etc., considered as the only suitable responses to the situation.

The notion of the ‘state of emergency’ (Ernstfall) or the state of exception (Ausnahmezustand) plays a central role in Schmitt’s political and constitutional theory, where it is clearly linked to his critique of liberalism (see Schmitt 1985: chapter 1). For Schmitt, the exception being unpredictable, it is vain to believe that one can determine in advance the methods with which to respond to it. Liberalism, inspired either by neo-Kantian formalism or by Kelsenian positivism,
cannot understand the nature of the exception, 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.

Schmitt adds that, in suspending legal norms, the exception helps us to understand and appreciate the nature of the political, in the sense that it reveals to us the domain of the sovereign, meaning in this case the concrete capacity to make a decision in the face of an urgent or exceptional situation. The state of exception reveals both who is sovereign and also where sovereignty lies, in the very moment that it makes the decision appear (Entscheidung) in its ‘absolute purity’. In such conditions, one can see that the politically sovereign instance does not coincide automatically with the state. ‘Souverän ist, wer über den Ausnahmezustand entscheidet (Sovereign is he who decides on the exception)’, writes Schmitt (2004a: 13). This famous formula can be understood in two ways: first, he who is sovereign is he who decides in the case of exception, and second, also sovereign is he who decides about the exception itself, that is he who decides that it is no longer a normal situation and that the rules no longer apply. There is therefore a close connection between the exception and the decision, which Schmitt identifies as the ‘premier cause’ of all political society. To Schmitt, the purest expression of the political act is the decision in (and about) the case of exception (or emergency): the suspension of legal norms in the case of exception constitutes the ultimate manifestation of political sovereignty. Sovereignty, he underscores, is not so much the power to make laws as the power to suspend them. But one would be wrong to interpret this affirmation as an apology for arbitrariness. On the one hand, Schmitt emphasizes that in making decisions in a case of exception, the sovereign is not rendered free by circumstances to act according to his own pleasure, but he is, on the contrary, obliged to act in a way that makes him responsible for them. On the other hand, he stresses that the exception defines the rule in the sense that we cannot understand a rule without taking into consideration its limits, which is to say the circumstances that can make it inapplicable. In other words: whoever decides to derogate from the norm is equally fixing the norm.

The state of exception is also important because it reveals the original non-normative character of the law. Moreover, it is not the law/right (Recht) which is suspended in the state of exception, but only the normative element of the law (Gesetz). Through this, the state of exception unmasks the ‘existential’ character of laws. The exception is essential, not because it is rare, but because it is unpredictable. Like the enemy himself, who cannot be determined beforehand by a pre-existing general norm – because enmity can only be defined in a specific temporal context – the exception cannot be codified in advance. In linking the law (Recht) to its non-legal source, that is the sovereign decision, Schmitt attacks all forms of constitutional rationalism, notably the theory of the rule of law (Rechtsstaat) or the positivist theory, according to which the sovereign must, under all circumstances, submit himself to the rule of law. The occurrence of an exceptional case (Ausnahmezustand), with all that is implied, shows that it

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

The theory of the case of exception shows the highly concrete character of Schmittian thought: if he challenges formal and abstract theories, it is first because he is attuned to the context. Here, we remember that Schmitt formulated his doctrine under the troubled circumstances which Germany was undergoing from 1917 to 1919. The famous Article 48 of the 1919 Constitution of the Weimar Republic, to which Schmitt devoted numerous writings, defined the state of emergency in the constitutional sense of the term. This Article, which could be compared with Article 16 of the Constitution of the Fifth French Republic, grants extraordinary powers to the President in order to face situations of exception, including the right to call on the armed forces to contain 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 thirty countries were at that time in a state of emergency. The Constitution of the United States itself foresees the suspension of habeas corpus ‘when in cases of rebellion or invasion the public safety may require it’ (Art. I, § 9, cl. 2) – but instead of making this a privilege of executive power, it assigns this power of suspension to Congress. During the Civil War, President Abraham Lincoln decided to suspend habeas corpus – without, however, deferring to Congress – just as after the attack on Pearl Harbor, President Franklin D. Roosevelt interned all Americans of Japanese origin as a preventive measure. During the Cold War, the confrontation with the Soviet Union also led the United States to adopt certain measures of exception which were supposedly justified by the demands of ‘national security’. Here we can cite the National Security Act of 1947 which, from then on, puts the notion of ‘national security’ at the centre of American foreign affairs preoccupations. The constitutional effects of the Cold War have been studied many times (see Yergin 1977). One can remember how these
effects also influenced domestic politics in the period of McCarthyism, when a systematic reinterpretation of the rights of American citizens took place and surveillance procedures for those suspected of being communist sympathizers were adopted. Between 1950 and 1970, Congress adopted no fewer than 470 acts to reinforce executive power in order to confront exceptional situations. None of these acts have been repealed since the dismantling of the Soviet power.

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

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

One month later, on 24 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 of the House of Representatives. It authorized notably the Federal Bureau of Investigation (FBI) to conduct secret investigations on the private lives of persons suspected of terrorism, to use spyware in their computers, and to indefinitely keep records of their internet navigations. It also authorized the Secretary of Justice to arrest and detain all foreigners suspected of putting national security in danger.12 On 13 November 2001, 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 arrest and detention of suspects for an indeterminate length of time. They have also legalized their deportation, their solitary confinement in prison without charge or 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 matter of communications surveillance in both national and foreign territories. More than
1,200 foreigners were arrested on simple suspicion in the aftermath of 9/11. Four months later, 900 of them were still incarcerated, without any precise charges brought against them and without having had the opportunity to appear before a judge or the possibility of having a lawyer. For its part, the ‘Military Order’ of 13 November deemed that its sources could be kept secret, that the accused would have no recourse against their arrest and incarceration and that their rights of defence would be ‘severely limited’.

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

In the name of fighting terrorism – a common, imminent peril – numerous civil liberties have been suspended in the United States. Moreover, in the wake of 9/11, a climate of fear has prevailed, leading to new attacks on civil liberties. The most common current allegation has been that of ‘threats’ against ‘national security’, two concepts which evoke emergency or exception, but which also remain blurred, facilitating their political and judicial usage, as well as their utilization as a pretext for restraining political liberties. Moreover, it can be seen that the concept of ‘national security’ is constantly increasing in scope: from its original essentially military resonance, it has come to encompass all domains of social or international life.

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

Kim Lane Scheppele shows that the exceptional measures decided by the Bush administration have been taken in consideration of a state of exception not only at the national but also at the international level. Scheppele also suggests that these measures have not ceased to proliferate, which is of course the most important point. While in the ‘classic’ case of exception, as Schmitt defines it, the measures adopted to confront a situation of emergency are generally of short duration, taken in a way that permits a progressive return to normality, in the case of the measures taken following 9/11 we have seen the contrary situation, in which a system of exceptional measures is 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’ (2004: 3).

This conclusion has been shared by many observers who note, first, that the definition of terrorism given by the public authorities is very extensive, since it takes into consideration not only the acts themselves but the intentions. This indeterminacy easily permits them to criminalize certain behaviours, to generalize suspicion, to justify preventive detention, etc. Second, as it targets suspects, the anti-terrorist legislation applies inevitably to the entire population, an evolution that can engender a big upheaval in the entire penal system. But the fight of ‘Good’ against ‘Evil’, utilized so often as a theme in American public rhetoric, has also a function of diversion. It masks the realities of social insecurity and projects outwards the internal contradictions of the country making use of this rhetoric. The discourse on ‘internal security’ prolongs and strengthens the discourse on ‘national security’ while bringing it to civil society. The insistence on ‘security’, always in a larger and more extensive sense, is accompanied by a tendency to remove from public debate all the problems which it brings, thus ending in a new form of ‘depoliticization’. The attacks on liberties are made possible by the expectations of citizens in the domain of security: the desire for security trumps the desire for liberty. And security will trump liberty as long as we live in a world where threats are omnipresent and invisible at the same time. Along the same lines, the fight against terrorism reinforces the authority of the dominant American power on the international scale, as it is presented as best suited to ensure ‘global protection’.

In the end, terrorism restores legitimacy and gives a new role to the state, which had seemed increasingly impotent in the face of influences and planetary challenges linked to globalization. In fact one may speculate whether the state, whose decline as the privileged instance of the political had been clearly seen by Schmitt in the 1930s is about to rediscover a new legitimacy through its presumed ability to provide global security and to fight 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 repercus-
sions at the international level, because the fight against terrorism requires the transnational cooperation of the police forces and the intelligence services. On the other hand, however, they undeniably revive a state structure that has become increasingly obsolete, the national elites finding ‘in the anti-terrorist war an excellent occasion to perpetuate their power and to introduce . . . laws which permit them to impose as much on their enemies as on their own civil society’ (Kemp 2004: 22). The state, in other words, cannot legitimize itself other than through security and, therefore, makes use of the citizens’ irrepressible desire for security in order to reinforce its influence by restraining liberties. As Jean Baudrillard noted well, the true victory of terrorism is having precipitated the entire West into a climate of fear and obsession with security, which itself is only a veiled form of permanent terror (2001).

In any case, it is no surprise that the name Carl Schmitt has frequently been cited in these commentaries and critiques. According to Jean-Claude Monod, ‘the attack of 9/11 confirms perhaps the link foreseen by Schmitt between the (literally) theological comprehension of the enemy and the figure of the “motorized partisan” (2004: 55). However hostile to Schmitt’s ideas, Monod acknowledges that the critique of the German jurist finds today a relevance which is particularly obvious when the White House decrees the doctrine of ‘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 confrontation with the ‘Axis of Evil’.

(ibid.: 56)

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

When the state of exception becomes general and permanent, it loses its character of exception. Pierre Hassner writes that . . . ‘tyrannical governments may be distinguished from others by the manner in which they seek to make the exceptional situation permanent rather than seeking a return to normality and respect for the rule of law’ (2003: 200). If the adoption of measures of exception by the United States seems to respond to the Schmittian model – while paradoxically contradicting the idea, equally supported by Schmitt, that ‘liberal’ regimes are, by nature, incapable of facing a state of exception – the fact that it may lead towards a permanent state of exception – an exception without exception –
is completely foreign and even opposed to Schmittian thought. But here again, Schmitt’s works help us understand what is at work in the establishment of this permanent state of exception: a conception of enmity which is triggered by theology and ‘morality’. The conclusion that one can draw from this is that ‘liberal’ regimes are perfectly capable of taking measures of exception – but that they also, given their representation of the enemy, tend to transform the exception into a permanent norm. Agamben quotes here the visionary views of Walter Benjamin, according to whom ‘what is effective from henceforth is the state of exception in which we live and which we can no longer distinguish from the rule’ (Agamben 2005: 59). Robert Kurz writes in the same spirit: ‘[t]hat which, in the past, came under the domain of the exception becomes today the normal or permanent state’ (2005: 79).

Notes
1 See especially Assheuer (2001: 54); Hacke (2002: 29–32); Stjernfelt (2002); Rogeiro (2003); Thiele (2004); Rasch (2004); Lausten (2004); Stirk (2004); Merlo (2005). William Rasch has tried to translate Schmitt’s views on the conflict into terms borrowed by Luhman and Lyotard: see Rasch (2000). Jacques Derrida has suggested a new reading of Schmitt in reference to the present-day international situation: see Derrida (2004). Georges Corm estimates that ‘the drift of events since 9/11 and the war-like atmosphere created by the United States for engraving in the minds of everyone the necessity of a total war against the terrorist monster’ only confirm the ‘penetrating views’ of Carl Schmitt (Corm 2005: 194). A special issue of the journal CR: The New Centennial Review has also been entirely devoted to Carl Schmitt’s theory of the partisan (Michaelsen and Johnson: 2004) with texts by Alfred Clement Goodson, Rodolphe Gasche, Gil Anidjar, Alberto Moreiras, Sigrid Weigel, Eva Horn, Miguel E. Vatter and Werner Hamacher.
2 Schmitt’s book brings together the text of two conferences held in Spain in March 1962, a few months after the erection of the Berlin Wall. Several commentators estimate that it is no accident that Schmitt focused on this subject at that moment of the Cold War.
3 Schmitt cites a Prussian general, according to whom Napoleon’s campaign against Prussia in 1806 could be considered a partisan war: see Laclau (2005).
4 Besides, if the new partisan has become less and less ‘telluric’, it is because the ancient form of territorial domination has also become obsolete: these days, it is more beneficial to colonize minds or to control markets than it is to conquer and annex territories.
6 On the link between terrorism and globalization, and the gap that globalization creates between countries depending on a global ‘center’ and functioning through networks (‘functioning core’) and the others, see Barnett (2004).
7 From the year 2000, the blending of internal security and military strategy systems has been presented in the United States as the best way to face the terrorist threats. See Pumphrey (2000). The September 2002 report entitled The National Security Strategy of the United States of America observes that ‘today, the distinction between domestic and foreign affairs is diminishing’ (2002: 31). The specialists in the fight against terrorism are also increasingly collaborating with criminologists: see Raufer (2005); and on the idea of an international police (‘Globo-Cop’), see Dal Lago (2003).
9 It is the same idea that we find in Machiavelli (as when he cites the example of Cincinnatus) and, during the modern period, in the famous work of Rossiter (1948).
10 Ferejohn and Pasquino (2004) do not hesitate to argue that the constitutional possibility of suspending the law is a characteristic trait of the ‘non-absolutist western legal tradition’. See also Negretto and Rivera (2000) and Ackerman (2004).
11 War Powers Resolutions, proclamation no. 7463 (14 September 2001).
12 In November 2003, Congress passed an amendment to the Patriot Act (‘Patriot II’) which permits federal agencies to require that internet providers give them information without needing judicial approval. Also, the ‘Domestic Security Enhancement Act’ of 2003 allows the authorities to deprive any citizen accused of terrorism of his citizenship, giving to the public authorities a discretionary power in terms of the recognition of citizenship. These measures have been renewed in 2005. For more details, see Scheppele (2004), who specifies that he has examined the circumstances under which these measures were taken ‘in the light of Carl Schmitt’s writings on the nature of the state of exception’.
13 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 were officially declared ‘obsolete’ by Alberto Gonzales, Attorney General of the United States, when he was still a member of the White House staff.
14 See Amnesty International Annual Report (2005: Foreword). On Guantánamo prison, see Briebosch and Weyembergh (2003); Saar and Novak (2005). Johns (2005) paradoxically supports the idea that such a prison comes more under the norm than the exception, and proposes a very heterodox reading of Carl Schmitt’s doctrine. In November 2003, the Supreme Court of the United States decided to make a decision about the legality of the detention of foreigners at Guantánamo. On 28 June 2004, it declared that the Guantánamo base was well under the jurisdiction of the United States, and accorded to the detainees the right to contest their imprisonment before an American court. In March 2006, the American authorities were forced to reveal the names of the detainees in Guantánamo. Also, on 29 June 2006, the last day of its term, the Supreme Court of the United States ruled that the military commissions which had been established to try the detainees of Guantánamo Bay lack ‘the power to proceed because its structure and procedures violate both the UCMJ [Uniform Code of Military Justice] and the four Geneva Conventions signed in 1949’ (2006: 4).
15 Today, we possess enough information and testimonies to know that torture has been used constantly, in the context of the war in Iraq and the fight against terrorism; see Levinson (2004: 5–9).
16 See Massei (2005); on the consequences of the adoption of the ‘Patriot Act’ on the citizens of the United States, see Steinmetz (2003); Williams (2003); Norris (2004); Hamm (2005); Harvey and Volat (2006).

Bibliography


5 Partisan warfare, terrorism and the problem of a new nomos of the earth\textsuperscript{1}

Gary L. Ulmen

No new nomos of the earth can obtain without common agreement on the laws of war. Carl Schmitt understood this very well, which is why the concluding section of his book, *The Nomos of the Earth*, contains a chapter on ‘Transformation of the meaning of war’ and ends with a chapter on ‘War with modern means of destruction’. It is thus quite consistent that Schmitt concluded his treatise, ‘Theory of the Partisan’, with the statement: ‘The theory of the partisan flows into the question of the concept of the political, into the question of the real enemy and of a new nomos of the earth’ (Schmitt 1963b: own translation; see also 2004a: 78, 2004b: 68).\textsuperscript{2} These two works should be considered together, and in light of *Der Begriff des Politischen* (1963a), not only given the political situation today, but also and more importantly because Schmitt’s national and international political thinking belong together. His mature political thinking was always geopolitical.

As Schmitt notes, his theory of the partisan is not simply another corollary of the concept of the political (on these corollaries see Schmitt 1963a: 97–124), but rather a consideration of a specific and significant phenomenon that in the second half of the twentieth century ushered in a new ‘theory of war and enmity’ (Schmitt 1963b: own translation; see also 2004b: 5). By the same token, the theory of the terrorist at the end of the twentieth and beginning of the twenty-first centuries has ushered in a new theory of war and enmity. Yet today, there is little understanding of the theory of the partisan or of the terrorist, and virtually no understanding of the transformation of war and enmity that has occurred since the collapse of the Eurocentric era of international law at the end of the nineteenth century, let alone since 11 September 2001. Schmitt’s theory of the partisan immediately raises the question of the distinction between the partisan and the terrorist that logically culminates in the theory of the terrorist, which again flows into the question of the concept of the political, into the question of the absolute enemy, i.e. the foe (Ulmen 1987; Schwab 1987), and of a new nomos of the earth in the twenty-first century.

Since the 1990s, fewer than ten of the more than 100 bloody conflicts that have occurred worldwide have been waged by recognized states. In fact, the majority of these conflicts have been internal challenges to these states by smaller, sub-national groups and organizations. Clearly, a new situation exists
that requires new concepts and new thinking – i.e. a new political realism and a new political theory – for reasons unforeseen not too long ago.\textsuperscript{3} Carl Schmitt often cautioned against the danger of transferring concepts from one age or situation to another, as this inevitably leads to political confusion. Today, this confusion is manifest in the United Nations, in the United States, in Europe, in disagreements between the United States and Europe, and in numerous other disputes in Asia and around the world. Today, the very notion of laws of war has no common ground. In fact, the meaning of war has been transformed so fundamentally that the concept of war and rules of conduct must be reconsidered (Crefeld 1991, 1999).\textsuperscript{4}

Of course, partisan warfare has been around for at least as long as recorded history. The Roman legions encountered it in places as disparate as Palestine and Britain during their attempts to control the Empire. In the American Revolutionary War, George Washington was able to defeat a much larger English army during the so-called ‘forage war’ by utilizing partisan warfare in New Jersey, even though he abhorred the idea (see Fischer 2004: 346ff.). By 1780, Francis Marion, the so-called ‘Swamp Fox’, had seen enough of war to realize that the Continentals were overlooking a very profitable field – partisan warfare. He obtained permission to organize a company that at first consisted of twenty ill-equipped men and boys, and his guerrilla activities in South Carolina soon began to take its toll on the British, especially Cornwallis. However, the first example of guerrilla operations on a grand scale was in Spain between 1808 and 1813, which is why Schmitt begins his theory of the partisan at that point.

Mao Tse-tung, certainly the greatest theorist of partisan warfare, also recognized the Spanish case to be a watershed (Mao 2000: 10). In fact, the term guerra, which means ‘small war’, stems from the Spanish national struggle against the French (Beckett 2001: xi). Mao is certainly right in asserting that only when Lenin came on the scene did partisan warfare receive the potent political injection that was to alter its character radically. But Mao insisted that guerrilla operations must be considered not an independent form of warfare, but rather one step in the total war, one aspect of the revolutionary struggle (Mao 2000: 41). During the American Civil War (1861–1865), there were Confederate partisan fighters who were nothing more than terrorists, but the basic distinctions between soldiers, partisans and terrorists are conceptually and politically clear.

Schmitt sticks with the ‘classical’ definition of the partisan, which means that the term refers to specific historical figures and situations. Conceptually, as Schmitt says, the horizon of his investigation ranges from the Spanish guerrilla of Napoleonic times to the well-equipped partisan of the 1960s, from Empecinado, via Mao Tse-tung and Ho Chi Minh, to Fidel Castro and Raul Salan. By avoiding loose definitions, Schmitt is able to identify specific characteristics of the partisan. For one, the partisan is an irregular fighter, which means that his actual target is the regular soldier in uniform. But the intense political character of the partisan distinguishes him from an ordinary thief or criminal. Despite this distinction, the armed partisan remains dependent on cooperation with a regular organization; he cannot exist in a political no-man’s-land. In addition to irregu-
larity, another characteristic of the partisan is his increased mobility of combat. Then, there is his *telluric* character, i.e. his basically *defensive* posture, meaning that his hostility is spatially limited. As Schmitt was well aware, ‘a *motorized* partisan loses his *telluric* character and becomes only the transportable and exchangeable tool of a powerful central agency of world politics, which deploys him in overt or covert war, and deactivates him as the situation demands’ (Schmitt 1963b: own translation; see also 2004b: 14). This *motorized* partisan was already a sign of a changed historical situation, even as is Schmitt’s observation that: ‘As regards contemporary partisans, the antithetical pairs of regular–irregular and legal–illegal usually become blurred and interchangeable’ (Schmitt 1963b: own translation; see also 2004b: 11). Nevertheless, until today the partisan remains an irregular fighter, and combat against partisans is often only a mirror image of partisan warfare.

Schmitt also observes that from World War II until today, despite all characteristic links and mixtures, there are still basically two types of partisans: defensive, authochthonous defenders of the homeland; and globally aggressive revolutionary activists. The antithesis between the two remains, because each is based on a fundamentally different type of war and enmity. Even though the various types of partisan warfare are still confused and fused in the praxis of contemporary warfare, they remain so different in their fundamental presuppositions that they ‘test the criterion of the friend-enemy opposition’ (Schmitt 1963b: own translation; see also 2004b: 21). As Schmitt notes, the 1949 Geneva Conventions were already an indication of the disintegration of traditional European international law based on the state, even though the uniform codes have only European experiences in view, i.e. not Mao Tse-tung’s partisan warfare. Moreover, the degree to which the essential distinctions of ‘classical’ positions were blurred or even challenged opened the door ‘for a type of war that consciously destroys these clear separations. Then, many discretely stylized compromise norms appear only as the narrow bridge over an abyss, which conceals a successive transformation of concepts of war, enemy, and partisan’ (Schmitt 1963b: own translation; see also 2004b: 23). After 1945, belligerent acts around the world assumed a distinctly partisan character.

Of course, this new situation was brought about by resistance movements against the Nazis in Europe and by the revolutionary program of international communism in Europe and Asia. Generally speaking, the European movements adhered to the *telluric*-defensive type of partisan warfare, whereas the Asian movements adhered to the revolutionary-aggressive type. After World War II, it was the latter type of partisan warfare that became dominant. Even for Clausewitz, guerrilla warfare was a highly political matter, meaning that it had a revolutionary character. In Schmitt’s view, it is not the state, even the ‘total state’, that is ‘totalitarian’, but rather the revolutionary *party*, which is the only true ‘totalitarian’ organization. What Lenin learned from Clausewitz was not only that war is the continuation of politics by other means, but that the friend–enemy distinction is primary in the age of revolution. Lenin’s alliance of philosophy and the partisan, says Schmitt, caused nothing less than the destruction of the
whole Eurocentric world that Napoleon had hoped to rescue and that the Congress of Vienna had hoped to restore. For Lenin, partisan warfare was consistent with the methods of civil war.

Generally speaking, civil war is military conflict between two or more approximately equal political governments for sovereignty over people and territory native to both, whereas revolution is a change, not necessarily by force or violence, whereby one system of legality is terminated and another is constituted within the same country (Edwards 1942: 523–525). Civil war is horizontal, whereas revolution is vertical. Civil war, as compared with foreign war, is war for complete conquest – for the extinction of the enemy government – by at least one side, whereas foreign war, at least in modern times, generally is waged only for certain specific and limited aims. As Schmitt observed, ‘In civil war, the enemy no longer has any common concepts, and every concept becomes an encroachment on the enemy camp’ (Schmitt 1991: 36). Indeed:

Civil war has something gruesome about it. It is fraternal war, because it is pursued within a common political unity that includes also the opponent, and within the same legal order, and because both belligerent sides absolutely and simultaneously affirm and negate this common unity. Both consider their opponent to be absolutely and unconditionally wrong. Both reject the right of the opponent, but in the name of the law. Civil war is subject essentially to the jurisdiction of the enemy. Thus, civil war has a narrow, specifically dialectical relation to law. It cannot be anything other than just in the sense of being self-righteous, and on this basis becomes the prototype of just and self-righteous war.

(Schmitt 1950: 56–57)

Elsewhere, Schmitt wrote:

Just war, i.e. the deprivation of the rights of the opponent in war and the self-improvement of the just side means: transformation of state war (i.e. of war in international law) into a war that is simultaneously colonial war and civil war; that is logical and irresistible; war becomes global civil war and ceases to be war between states.

(Schmitt 1991: 29)

Schmitt further clarified the distinction:

Civil war is bellum, with just cause on both sides, but both sides in – justus hostis. Law, i.e. the form of just war, sanctifies death in war; but how does the reality of civil war or social war compensate for the crime of suicide? Formal legal war justifies killing; the form, not the justa causa. That is lacking in civil war. Civil war is not simply war without form (on the contrary, it serves the forms of law and justice), but it’s the most gruesome formal destruction of form. Whoever is compelled to participate in civil war
is compelled to kill, which is not justified by any formally justified order. Given that he kills, is he obliged to kill, is he obliged to kill because of his opponent? Or is it the total situation of civil war (the self-destruction, the suicide of the macros anthropos [large man, i.e. the state]) because the suicide of the individual participant certainly is not justified, also not excused, but only absorbed, and certainly by the specific reality of the situation?

(Schmitt 1991: 31–32)

Of course, for Schmitt, the overcoming of civil war was the core of interstate war in the *jus publicum Europaeum*, and during the Eurocentric epoch of bracketed war partisan warfare remained a marginal phenomenon. But the situation had changed significantly by the early 1960s. Schmitt rightly observed that linking homeland resistance with the aggressiveness of the international communist revolution was dominating partisan warfare worldwide. This is why he insisted that the theory of the partisan was the key to knowledge of political reality. Today, it might be said that the theory of the terrorist is the key to knowledge of political reality. Schmitt’s theory of the partisan contains an implicit theory of the terrorist, but much is left to be done.5

Like partisan warfare, terrorism has been around since the beginning of recorded history, meaning that guerrillas throughout history often have resorted to terrorist tactics to achieve their goals. However, terrorism and partisan warfare are not synonymous, and the distinctions should be kept in mind. Terrorism emerged in its own right as a separate phenomenon alongside urban guerrilla warfare in the late 1960s and early 1970s (Beckett 2001: xiv). Like partisan warfare, terrorism is a political concept (Hoffman 1998: 14). It is violence or the threat of violence used in pursuit of a political end. But unlike partisan warfare, terrorism is a planned, calculated and systematic act. Of course, the definition of terrorism has changed many times since the French Revolution, but after World War II the term regained the revolutionary connotations with which it is most commonly associated today. Like the partisan, the terrorist is irregular; but unlike the partisan, he does not depend on cooperation with a regular base; he can and does exist in a political no-man’s-land. Like the partisan, the terrorist is illegal, but unlike the partisan, his illegality is illegitimate, meaning that it has no point of reference. Like the partisan, the terrorist has increased mobility of active combat. But unlike the partisan, he is not essentially defensive, but rather offensive. Moreover, unlike the partisan, the terrorist is not telluric, meaning that his hostility is not spatially limited (Hardman 1942: 575–579).

Generally speaking, the partisan has a real enemy, who is fought in a war, however irregular, and who has some claim to humanity and legitimacy, whereas the terrorist has an absolute enemy, who must be annihilated. This is where the transition from the partisan to the terrorist is most evident, and where the distinction is conceptually clear. In Che Guevara’s book on guerrilla warfare, written in 1960, he asserted that it was necessary to distinguish clearly between
sabotage, a revolutionary and highly effective method of warfare, and terrorism, a measure that is generally ineffective and indiscriminate in its results, since it often makes victims of innocent people and destroys a large number of lives that would be valuable to the revolution.

(Guevara 1998: 21)

However, in his 1967 ‘Message to the Tricontinental’, Che Guevara made the transition from guerrilla fighter to terrorist. Specifically, he said that hatred is an essential element of the struggle, namely,

a relentless hatred of the enemy, impelling us over and beyond the natural limitations that man is heir to and transforming him into an effective, violent, selective, and cold killing machine. Our soldiers must be thus; a people without hatred cannot vanquish a brutal enemy. We must carry the war into every corner the enemy happens to carry it: to his home, to his centers of entertainment; a total war.

(Guevara 1998: 173)

The advent of modern international terrorism occurred on July 22, 1968, when three armed Palestinian terrorists, belonging to the Popular Front for the Liberation of Palestine, hijacked an Israeli El Al commercial flight en route from Rome to Tel Aviv (Hoffman 1998: 67). For the first time, terrorists began to travel from one country to another to pursue their attacks. They also began to target innocent civilians from other countries, who often had little, if anything, to do with the terrorist cause or grievance, simply in order to attract attention and gain publicity. Clearly, these dramatic technical changes in terrorism were facilitated by technological advances, and the terrorist is dependent on keeping one step ahead of counter-terrorist technology. Consequently, the fundamental organizational imperative of the terrorist to act also derives from finding ways to circumvent or defeat his presumed enemy’s security measures. Even so, the driving force of terrorism is not technology, but political will.

While terrorism and religion share a long history, it was not until 1980, as a result of the revolution in Iran the previous year, that the first ‘modern’ religious terrorist groups appeared. Since the 1990s, the growth in the number of religious terrorist groups as a proportion of all active terrorist organizations has increased appreciably. But the foundation of the new terrorism has an explicitly Islamic (specifically, Islamist) base. Its particularity can be traced to the fatwa that the Saudi exile Osama Bin Laden and a fugitive Egyptian physician, Ayman al Zawahiri, issued from their Afghan headquarters for an Arabic newspaper in London to publish in the name of the ‘World Islamic Front’. Specifically, they called for the murder of any American as the ‘individual duty for every Muslim who can do it in any country in which it is possible to do it’ (Al-Quds al-’Arabi 1998: 3). Moreover, Bin Laden stated: ‘We do not have to differentiate between military or civilian. As far as we are concerned, they are all targets’ (9/11 Commission Report 2004: 47). Although the original focus of this Islamic war was
the United States, it is actually against all ‘infidels’, in particular those in Western societies, because this Islamist view considers all modernity, represented by the West, to be an attack against the faith of Islam.\textsuperscript{6}

For the religious terrorist, violence is first and foremost a sacramental act or divine duty executed in direct response to some theological demand or imperative. Thus, religious terrorism is more theological than political, since its perpetrators are unconstrained by political, moral or practical constraints that may affect other terrorists. Like Che Guevara in his ‘Message to the Tricontinental’, religious terrorists are engaged in what they regard as a total war. They seek to appeal to no other constituency than themselves. Their goal is not war as usually understood, but annihilation of the foe. Thus:

\begin{quote}
Annihilation of the foe, however, is the attempt (claim) to \textit{create ex nihilo} \textit{[from nothing]}, to create a new world on the basis of a \textit{tabula rasa}. Whoever wants to annihilate me is not my enemy, but my satanic pursuer. The question that I should ask in relation to him no longer can be answered politically, but only theologically. The most concrete type of dialectical theology comes about when the annihilator claims that he wants nothing more than to annihilate the annihilator.

(Schmitt 1991: 190)
\end{quote}

While political terrorists tend to cloak themselves in the terminology of military jargon, and consciously portray themselves as \textit{bona fide} fighters, if not soldiers, the most radical religious terrorists do not even demand to be treated as prisoners of war (POWs). And, I would strongly argue here, that they should not be, because terrorists are not soldiers.\textsuperscript{7} This is as true for secular terrorists as for religious terrorists. In normal war, that is, in war as it has been fought during the European epoch of international law, there are rules and accepted norms of behavior that prohibit the use of certain types of weapons, proscribe various tactics, and outlaw attacks on specific categories as targets. In theory, if not always in practice,

the rules of war as codified in the Hague and Geneva conventions, not only grant civilian non-combatants immunity from attack, but also prohibit taking civilians as hostages, impose regulations governing the treatment of POWs, outlaw reprisals against civilians or POWs, recognize neutral territory and the rights of citizens of neutral states.

(Hoffman 1998: 34)

Fighters who do not wear uniforms, have no rank, do not display weapons openly, target civilians, and in some cases commit suicide in order to perpetrate mass murder have no status in any conventions of war. One of the fundamental principles, if one can call it that, of international terrorism is a refusal to be bound by rules of warfare and codes of conduct.\textsuperscript{8} Even a cursory view of terrorist practices over the past few years demonstrates that they have violated all
such rules and codes. In Schmitt’s terms, terrorists are ‘outside the law’ (Schmitt 1963b: own translation; see also 2004b: 6).

What does this mean concretely? Outside what law? Obviously, it means outside international law in general and the laws of war in particular. But clearly, only a remnant or a feeble custom remained of either after the collapse of the European system at the end of the nineteenth century. Little was left at the end of World War I, and nothing but a sham at the end of World War II. Clearly, there is an element of special pleading in Schmitt’s treatise on *The Nomos of the Earth*, given the total defeat of Germany by the allied powers. Nevertheless, Schmitt’s thesis regarding the situation of international law and the laws of war is undeniable. Moreover, his thesis regarding the transformation of war is also undeniable.

Just war, i.e. the de-legitimation of the opponent and the self-empowerment of the just side; that means: transformation of state war (i.e. of war in international law) into a war that is at once colonial war and civil war; that is logical and irresistible: war becomes global civil war and ceases to be interstate war.

(Schmitt 1991: 29)

He, argues, moreover,

The terrible transformation of the world, which has been accomplished by a headlong expansion of power, lies in that things beyond the measure of our physically given sense of perception have been made visible, audible, perceptible; perceptible and thus capable of possession. The new concept of ownership or, much more: the domination of functions; *cuius regio, eius economia*, now *cuius economia, eius regio*. That is the new *Nomos* of the earth; no more *Nomos*.

(Schmitt 1991: 16 July 1948)

This was especially clear to Schmitt with the onset of the Cold War:

Berlin lies in the flight path between New York and Moscow; in this flight path West and East meet. But these lines have no orientation and no order, and to demonstrate this is precisely the meaning of my *The Nomos of the Earth*.

(Schmitt 1991: 20 August 1948)

In a world without orientation, without order, in a world without *nomos*, all talk of international law and laws of war are self-serving and politically suspect, whether done by the United Nations, the European Union or the United States. In particular, the very vocabulary of the former *nomos* needs to be examined critically in light of the new situation. What, after all, does ‘war’ mean today? Such expressions as a ‘war against terrorism’ have a hollow ring. How does one
fight a ‘war against terrorism’, and is it possible to construct a new world order with no common rules? If the rules apply only to one side and not the other, then the result is mutual suicide. Clearly, that is not a political alternative, but rather a renunciation of the political. Politically speaking, the only logical policy against international terrorism, especially religious terrorism, is not ‘war’ as commonly understood, but what Schmitt called ‘pest control’, since the situation today exhibits the characteristics of what Schmitt called ‘global civil war’ (Schmitt 2003: 28, 305). Schmitt did not approve of either ‘pest control’ or ‘global civil war’, but he always faced squarely the ‘concrete situation’. Given the current situation, the only possible construct for a new world order at the present time is a common struggle against this new foe. But this is highly unlikely without a profound understanding of the transformation of war and enmity.

Notes
1 For a contextualization of the core arguments of this chapter see my extensive introduction to Schmitt (2003: 9–34).
2 Although unacknowledged in the issue (Schmitt 2004a), this is my translation. However, shortly before publication, there were some editorial disagreements about some passages of my translation, which were changed, so I removed my name. Indicative of the problem is that the last sentence (2004a: 78) is garbled, which is why it differs from the one quoted here. In its present state, the translation is unreliable. My corrected translation will soon be published in book form by Telos Press. In the meantime, English-speaking readers may also consult the translation available in Schmitt (2004b).
3 In the introduction to Schmitt (2003), I wrote that ‘Globalization and new, larger political entities require a new political realism and a new political theory dealing with a new type of law regulating “international” relations.’ I deliberately put the word international in quotation marks, because I was looking beyond the age of nation-states. My focus was on larger political entities, which Schmitt had foreseen in his theory of Grossraum. The events of 11 September 2001 caused me to reassess the political situation: see Ulmen (2001).
4 Crefeld (1991) is on the right track, but he does not go far enough, even though his book on the transformation of war is touted as ‘The most radical reinterpretation of armed conflict since Clausewitz’.
5 Of course, here I can only indicate the scope of the problem. I intend to pursue this investigation in a monograph tentatively titled ‘The Transformation of War in the 21st Century’.
6 Recognition of this fact is not an endorsement of the thesis presented by Huntington (1996), which is too simplistic and is certainly not a solution for ‘the remaking of world order’.
7 Recognition of this fact, however, is not a license for torture, which was official French policy during the Algerian war, as described in vivid detail in General Paul Aussaresses (2002). Despite abuses by the Americans and the British in Iraq, which, in my opinion, have been duly punished, torture is not official American or British policy. But it is certainly necessary to treat terrorists differently than soldiers, which is why the incarcerations at Guantanamo are legitimate.
8 It is significant to note that both the Hague and the Geneva conventions occurred after the collapse of the jus publicum Europaeum. See Rosenne (2001) and ‘Geneva Conventions’, in thefreedictionary.com.
9 As regards the United States in particular, this is evident in two recent books with diametrically opposed positions by Sands (2006) and Yoo (2006).
Bibliography


6 War, violence and the displacement of the political

Linda S. Bishai and Andreas Behnke

Recent academic trends have associated the work of Carl Schmitt in general, and his concept of the political in particular, with the excesses of George W. Bush’s foreign policy. Lon Troyer, for example, argues that Schmitt’s friend–enemy distinction is the inspiration for President Bush’s ‘bi-furcation’ of the international system: ‘The friend–enemy distinction in the sphere of international relations is ordered, in Bush’s words, according to the great divide in our time … not between religions or cultures, but between civilisation and barbarism’ (Troyer 2003: 262). Another intellectual, German historian Hans August Winkler, sees Schmitt’s critique of liberalism vindicated through the influence of Leo Strauss on work in the neo-conservative Project for the New American Century think-tank in Washington, DC (Winkler 2003: 1).

Both of these perceptions of Schmitt suffer from some severe misconceptions. While Troyer at least understands the distinction between friend and enemy, his observation of certain hallmarks of the Bush administration’s foreign policy mistakes Schmitt’s acerbic criticism of liberalism and its universalist rhetoric for an endorsement of these policies. As for Winkler’s assertion, it is surely oversimplification to reduce Leo Strauss to a mere ‘conduit’ for Schmitt’s ideas. More significantly, though, it is paradoxical and utterly ironic to refer to the great ‘enemy of liberalism’ (Lilla 1997) as the conspiratorial source of the current ‘imperial liberalism’ (Rhodes 2003: 131–154) that constitutes the basis of the Bush administration’s foreign policy.

The purpose of this chapter, then, is twofold: to salvage Schmitt’s critique of liberalism, and to ‘unlock’ the concepts of the political and of politics, that have been displaced in favour of a liberal moralist discourse that refuses to recognize the conditions of its own impossibility. The use of Schmitt in this context is perhaps best described as a pharmakon, both poison and remedy, ambivalent in itself, and used to tease out the ambiguities and antinomies of liberalism. The next section discusses Schmitt’s contemplation on the justifiability of war, in particular how Schmitt’s ideas about war deny any easy appropriation by the liberal project. The purpose here is to develop a particular ‘realist’ conception of war and violence that emphasizes the need to restrain and limit (einhegen) it.

The third and fourth parts present a pathology of liberal thinking in International Relations (IR) theory and international law. Critics of the Democratic
Peace Theory (DPT) have so far paid little attention to the second prong of the liberal project, that is, the reconstitution of international law according to the liberal world-view. We will argue that these two aspects of the liberal project – DPT and the liberal reconstitution of international law – are internally related and mutually reinforcing. The final section summarizes the findings of the previous parts into a critique of the liberal project in international affairs.

**Enmity as a limitation of violence**

The central argument in Schmitt’s political theory is that all social realms are based on particular distinctions, and that the realm of the political is based on the distinction between friend and enemy (Schmitt 1996a: 26). This ‘bellicose’ formulation is often misunderstood as an argument for the intensification of conflict, as an apology and legitimation for aggressive, war-prone foreign policies. But for Schmitt, the central problem of the realm of the political is the possibility of order and the limitation (Einhégung) of violence in the absence of a central authority.

For Schmitt, as a realist, conflict is what characterizes the human condition and one of the primary tasks of politics is to make conflict endure, rather than to abolish it. Difference as an ontological condition of political life makes any attempt to eradicate its expressions in favour of identity the ultimate act of violence. But for conflict to endure, it must be made endurable. Limits on its scope and intensity have to be imposed to keep it from deteriorating into a war of all against all, with the sole aim of mutual annihilation.

To misunderstand Schmitt as an apologist for violence and aggression is arguably a reflection of the contrary liberal world-view with its preference for identity, unity and universality. Within the liberal world, conflict is primarily an expression of a dysfunction, of a breakdown of an order that always ontologically precedes that conflict.

For Schmitt, on the other hand, conflict itself is infinite, as is the principle of difference underlying it. At some point, then, we need to bundle differences into social, more or less cohesive units that can partake in politics. The requirement for this cohesion is the suspension of difference on the inside, and its externalization into the outside realm of the political.

Conflict is possible as a structure of difference, and such a structure is only possible as a differentiation of unities, a differentiation, that is, of bundled differences. Thus, the specific nature of politics is determined by the specific constitution of opposed unities, making the origins of politics already political, already a battle about what constitutes a politically legitimate unity.

(Rasch 2000: 2)

At some level, then, conflict has to be suspended in order for it to be possible. That is, social collectives have to suspend conflict and create a space of relative
internal order and identity. For the last 300 years or so, the state has been the level at which political conflict has to be conducted and which therefore defines the line between unity and plurality, cohesion and conflict, order and anarchy. As such, the state is secondary to the political; it instantiates a particular historical and contingent decision about where to suspend and externalize difference and where to start the realm of politics between these entities.3

More precisely, the state is based on a political decision between friend and enemy. It is political in the sense that the decision decides the undecidable (Derrida 1992: 24–25). There are no grounds for the decision other than the need for the decision itself. Political decision cannot refer to the logic of another realm, be it economy, aesthetics or morals, to find such a foundation. Political order, in Schmitt’s view, defines and justifies itself.

The sovereign state becomes the condition of possibility of identity, norms and rules that are to be effective within a social collective. Sovereignty in this sense designates a position from which the decision about friend and enemy is taken. Sovereign, according to Schmitt, is he who decides on the exception, both in terms of norms and space (Schmitt 1996b: 13).4 In what Derrida calls a ‘coup de force’, the sovereign sets himself as the authority that makes decisions about the moment of the validity of norms as well as the spatial scope of their validity. Within such spaces, a consensus about (national) identity and basic norms has to be enforced. In other words, the decision about these conditions of community has to be depoliticized via ideological constructs such as nationalism and other systems of signification through which socially and politically constituted identities become naturalized.

As Schmitt emphasized, the concept of the political also implies a limit on the intensity of conflict, as it contains a normative preference for the distinction between friend and enemy, not friend and foe. While the latter differentiation tends towards total war and annihilation, the former rests on a modicum of mutual respect and restraint (Schmitt 1991: 119; Schwab 1987; Ulmen 1987). Moreover, this external limitation on the intensity of conflict must be understood as the outcome of the former limitation on the scope of conflict. Truth, as Foucault (1980a: 131) suggests, is

a thing of this world: it is produced only by virtue of multiple forms of constraint. . . . Each society has its régime of truth, its ‘general’ politics of truth: that is, the types of discourse which it accepts and makes function as true.

Truth exists within a ‘geography of knowledge’, and once ‘knowledge can be analyzed in terms of region, domain, implantation, displacement, transposition, one is able to capture the process by which knowledge functions as a form of power and disseminates the effects of power’ (Foucault 1980b: 69). Within the context of the international system, truth therefore is pluralized, and any universalist arrogation of truth runs up against the anarchical economy of knowledge in the international system. The agonism of international politics is paired, or should be paired, with an ‘agnosticism’ in terms of universal and metaphysical
claims to truth. The political space of the international system is therefore best characterized as universal pluralism, with sovereignty as the nodal point in this paradoxical structure. Universalist claims are therefore themselves political, as they ‘project’ and delimit particularistic truth claims beyond their recognized realm (Walker 1993: 63). Consequently,

When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent. At the expense of its opponent, it tries to identify itself with humanity in the same way as one can misuse peace, justice, progress, and civilization in order to claim these as one’s own and to deny the same to the enemy.

(Schmitt 1996a: 54)

In the case of humanity, the ‘confiscation’ of this concept becomes particularly noxious, as it denies the ‘other’ the quality of being human, turning him instead into an outcast of humanity, a monster. Against such incarnations of ‘evil’, violence must strive towards eradication, warfare towards pre-emption. As William Rasch has elaborated,

If humanity is both the horizon and the positive pole of the distinction that that horizon enables, then the negative pole can only be something that lies beyond that horizon, can only be something completely antithetical to horizon and positive pole alike – can only, in other words, be inhuman.

(Rasch 2003: 136)

War against this ‘foe’ cannot accept any limits, morally charged with a decision on good and evil, it therefore tends towards ‘total war’ (Schmitt 1988: 33).

It is worthwhile to contrast this moralist notion of war with Schmitt’s own, which can only be justified in terms of a defence against an existential threat and has no moral or ethical meaning beyond this:

If such physical destruction of human life is not motivated by an existential threat to one’s own way of life, then it cannot be justified. Just as little can war be justified by ethical and juristic norms. If there really are enemies in the existential sense as meant here, then it is justified, but only politically, to repel and fight them physically.

(Schmitt 1996a: 48–49)

War, in other words, cannot muster any moral justification in the sense of it becoming an instrument for the imposition of a universal ‘good’. Three factors militate against such a moralization of warfare. First, there is the argument that no ‘good’ can justify the killing of men. For Schmitt, the very logic of war, the killing of other men, works against its instrumentalization beyond self-defence. Second, to link war with morals and virtue in such fashion is to remove the central constraint on warfare. War as the enforcement of universal (humanitarian-
ian) values tends towards its total, unrestrained form. War against ‘evil’ cannot recognize the dignity of the ‘other’; it cannot stop short of the annihilation of the foe. And third, as the world is a ‘pluriverse’ rather than a universe for Schmitt, no norm can provide a universally accepted rationale for war (Schmitt 1996a: 53).

Schmitt’s interpretation of the international system therefore focuses on the principle of difference and makes it the basis of his understanding of the political. It is important to emphasize the radical nature of his conceptualization of difference, which exceeds the liberal understanding of it. Whereas the liberal appreciation of difference is always modified by, and contingent upon, its ability to contain this difference within an unpolitical, or rather depoliticized, epistemology, for Schmitt difference is pluriversal or more precisely, heterologous in itself. Difference is different in itself, there is no one site from which to assess, oversee and map it. Difference extends to the epistemic realm itself, undermining any attempt to constrain its effects by universalizing the categories of difference. The world appears different from different perspectives.

For the liberal imaginary, this pluralization of truth is a scandal for it denies the possibility to map, oversee and administer global political space. It questions and undermines any pretense to an unpolitical, transcendental knowledge about the world that can provide the legitimacy for liberal interventions and applications of violence.

In essence then, Schmitt’s contribution to the current debate over American foreign policy, empire and liberal imperialism is a critical reflection on the particular rendition of the relationship between truth, politics and violence that underlies the liberal project. What unites the different aspects of this project is an understanding that places truth outside and before politics, and considers violence to be either justified in the realization of the former or the result of a blatant denial of it. What liberalism is concerned with is, in other words, to turn the pluriverse of international politics into a universe, in which the effects of difference are controlled from a ‘meta-sovereign’ site that provides the truth about those different regimes of truth in global politics.

The liberal project I: Democratic Peace Theory

Democratic Peace Theory (DPT) starts with the observation that liberal democratic states do not go to war with each other. This, its proponents proclaim, is as close as we have come to an empirical law in international relations (Lynn-Jones 1996: ix). Much of the literature and debate within DPT is about the proper explanation of this phenomenon. Some scholars explain it by reference to cultural and normative factors, arguing that ‘decision-makers in democracies follow norms of peaceful conflict resolution that reflect domestic experiences and values’ (Lynn-Jones 1996: xviii). Other students of DPT focus on the structural and institutional characteristics of democracies, arguing that mechanisms such as checks and balances, separation of power, and the need for public debate constrain the options to go to war.
What unites these variations on the theme of DPT is the shared commitment to treat ‘democracy’ as an epistemologically unproblematic predicate of certain states. As Lynn-Jones explains, the debate over DPT is in effect a debate with the realists over the relevance of ‘unit-level characteristics’ for the explanation of states’ behaviour (Lynn-Jones 1996: x). What is routinely missing from this explanation is a consideration of the conditions of possibility for coding ‘democracy’ as a unit-level variable in the first place. What appears to be a mere methodological problem in fact contains an epistemological and philosophical intervention, the radical nature of which DPT must hide in order not to undermine its own logic. Through this ‘methodological’ move, the political is ostracized and the ground prepared for its replacement with a moralist discourse.

Perhaps the best way to problematize this move in terms of its political as well as philosophical implications is to remember that ‘democracy’ is an ‘essentially contested concept’, a concept, in other words, that defies a closure through fixed definition (Gallie 1955/1956).

These concepts defy any such fixation, as they are an essential part of the political contestations that they on the surface seem only to describe or analyse. The uses of the concept ‘democracy’ in political discourse are therefore always political themselves, as they privilege one particular instantiation of it over others, thus legitimizing one form over its alternatives. Thus, the liberal definition of democracy cannot claim any universal applicability. As Gallie points out, claims about this particular definition reflect our grasp of a particular historical truth . . . as to how democracy has taken root and flourished in the west. But if they are put forward as universal political truths expressing the necessary conditions of any genuinely democratic aspirations or achievements, then they are surely open to question. (ibid.: 182, fn. 3)

The consequences of the identification of ‘democracy’ as an essentially contested concept are also relevant for our assessment of DPT. First, it is logically impossible to adjudicate between contending claims of what democracy really is. More specifically, democracy becomes a purely formal concept, exactly because its contested nature defies any substantive definition. Second, the assumption of a ‘scientific perspective’ also offers only another reordered structure of complexity.

To the extent that the investigator stakes out a position on these conceptual contests and we know about it, he can be said to participate in our politics itself. For these contests over the correct use of partly shared appraisal concepts are themselves an intrinsic part of politics. (Connolly 1993: 39)

DPT, in other words, deconstructs itself. Its self-understanding as a scientifically detached and objectified stance outside the political processes, through which
the meaning of ‘democracy’ is established, becomes itself as political a move as the distinction between democracy and its others.

Within states, a temporal adjudication of the contest on the meaning of democracy is possible, and even necessary. Here, constitutions usually decide about the structure of democracy and the reading of new developments as democratic or undemocratic. Yet in the realm of international politics there is no such institutionalized position from which to adjudicate conceptual contests. Within the international system, no ‘voice’ is present to declare one form of political organization more democratic than the other. If there is any ‘democratic-ness’ in the international system, it resides exactly within the contestability and the actual contest of different political and social designs.

The task DPT faces is therefore a formidable one. It has to extract ‘democracy’ from the very contest that defines its possibility in the international system and fashion a purely descriptive and analytical concept out of an essentially contested one. DPT can only work with a fixed and stabilized meaning of democracy that does not show much regard for the historically and culturally contingent articulations of this term within political discourse.

Based on this methodological reification of democracy, the term becomes available for differentiation between types of states. More specifically, different types of states can now be hierarchically ordered according to their democratic-ness or lack thereof. Democracy becomes an objectified set of values and norms that sets states apart not only in terms of being different, but also in terms of being better.

DPT, in other words, takes sides. As Ido Oren’s study on the ‘The subjectivity of the “democratic” peace: changing perceptions of Imperial Germany’ demonstrates, ‘democracy’ [in the US foreign policy discourse] is usually coded in terms of current American normative and empirical structures (Oren 1996: 263–300). Any contestability of this particular ordering of democracy’s complex internal structure is disregarded. Consequently, ‘democracy’ should be read as ‘of our kind’ or ‘America-like’. As the author demonstrates, this normative structure between the American self and foreign other is indeed an important feature in the formulation and execution of America’s foreign relations.

DPT is therefore an active intervention into the anarchical logic of international politics. ‘Anarchy’, as Alexander Wendt (1992) has put it so succinctly, ‘is what states make of it’ and part of what they make of it is the designation of identities as friends or enemies. The uses and abuses of ‘democracy’ are part and parcel of these processes and should be considered part of the subject matter of our critical studies, rather than serving our methodological assumptions.

The fact that we can identify DPT as an expression of a political move itself, however, does not yet tell us how and to what effect it intervenes in the logic of international politics. For Schmitt, conflict was made endurable by the creation of an agonistic structure of mutual restraint between equal sovereigns. Conflict, to repeat the point, is inherent in politics, and not something imported into an otherwise harmonious system by ‘pathological’ actors. Moreover, there is an economy of truth in the international system, (more or less) isomorphic with its
anarchical structure. As truth is always involved with power, it hardly exceeds the boundaries of the latter, tying it intimately to the geographics of sovereignty and anarchy.

DPT goes up against all of these features. For liberalism, anarchy understood this way is a scandal that needs to be resolved. First of all, truth becomes centralized, as it now becomes possible to give voice to the proper identification of democracy and the universal validity of the values associated with it. Consequently, the agonistic respect that characterizes the relationship between states in Schmitt’s realism is now replaced with a hierarchical relation, in which ‘tolerance’ defines the benevolent, and ‘intervention’ the belligerent extremes (Rawls 1999). Liberalism therefore creates a hierarchy of states in which some are virtually a priori suspicious, dangerous and threatening. As such, they are the object of constant strategic surveillance, concern and, if needed, intervention by democratic states.

DPT therefore produces a particular ontology of the international system, in which the meaning of anarchy is virtually voided of any content. The dispersion of power, truth and identities into a ‘system of difference’ is now overcome and resolved into a binary and logocentric definition of identities in terms of democracy and its ‘other’. Convinced of the universality of its own civilizational standards and understanding difference as potential danger, DPT opens again the possibility of a ‘discriminatory concept of war’ (Schmitt 1988). War now becomes either the use of force for a greater, indeed universal good, or it is considered a perpetration, a rebellion against the order, or a crime (ibid.: 42–43). The introduction of a discriminatory concept of war therefore ultimately abolishes war. What it does not abolish is violence among states. In fact, to the extent that this new law of war extinguishes the limitations and inhibitions that were founded on the mutual recognition of states as equals, it opens the floodgates of ‘total war’, because a perpetrator, a ‘rogue state’, does not deserve the equal respect of the world community. It has to be punished, its crime eradicated, its leadership removed. War turns from instrumental to righteous, from justifiable to just (Schneider 2002: 168).

There remains one problem for the liberal project in its desire to overcome the logic of anarchy. International law traditionally insists on the sovereign equality of states and does not acknowledge the existence of a priori categories of states. Even the UN Charter, while outlawing ‘the threat or use of force’ in the international relations of states, only disciplines states that violate this prescription after the fact, and includes non-intervention among its fundamental tenets. The normative assumptions of international law thus far refuse to bow to the ‘facts’ of DPT.

It is therefore only logical that the liberal project involves a second track, attempting to redefine the basic assumptions of international law in order to make them ‘fit’ the liberal ontology of global politics.
The liberal project II: liberal reformulations of international law

‘The . . . behavioural distinctions between liberal democracies and other kinds of States, or more generally between liberal and non-liberal States, cannot be accommodated within the framework of classical international law’ (Slaughter 1995: 504–505). According to the liberal logic, international law needs to be revolutionized. Its idealized assumption about the sovereign equality of all states has to be modified to allow for the special status of liberal democracies, and for the inferior status of non-democracies. International law as practice and academic discipline has to overcome its ‘reality deficit’ and ‘suspicions of its own irrelevance’ by acknowledging the ‘facts’ of international life. Only this way will law be effective and relevant in terms of producing desirable political outcomes. Law, in other words, must now focus on its regulatory aspects, surrendering its constitutive function to define and establish agency and identity in international politics to the empirical facts of DPT.

There are a number of problems associated with this particular move. First of all, it remains unclear why ‘reality’ should replace ‘fiction’ in international law. All legal and political systems are based on fictions. Nonetheless, these fictions serve a particular purpose, as they reduce the complexity of ‘real life’ and allow the formal political processes to function relatively smoothly. To play legal fiction off against the facts of reality in order to salvage a purportedly lost ‘relevance’ is therefore disingenuous and unnecessary.\(^8\)

Second, it is not immediately clear that international law should let such a functionalist approach define its disciplinary identity. As Martti Koskenniemi has pointed out,

> Answers to the question about (valid) law are conditioned upon the criteria for validity that a legal system uses to define its substance. . . . Doing away with it has definite social consequences. Not least of these is the liberation of the executive from whatever constraints (valid) legal rules might exert over them.

(Koskenniemi 2000: 31–32)

Koskenniemi’s observation about the domestic effects of a functional instrumentalization of law takes on even more urgency in the international realm with its much weaker institutionalization of law. And it points to the danger that such an approach to law could lead to a delimitation of violence in the conduct of states. If the question of the general validity of law that regulates the behaviour of states is replaced by a concern with the most effective realization of political outcomes, the question about the relationship between means and ends becomes problematic again.

For liberal international lawyers such as Slaughter, Reisman and Fox, ‘liberal democracy’ defines a class of states that is a priori privileged in terms of its contribution to, and behaviour within, the international system. Thus the question of the extent to which the ‘compliance with international law itself help[s]
constitute the identity of a state as a law-abiding state and hence as a “liberal state” can never be addressed (Koh 1997: 2650). The essentialized identity of liberal democracies itself warrants faith in their behaviour. Accordingly, the limits on the use of force that are imposed indiscriminately on democracies and non-democracies alike by traditional international law need to be relaxed in favour of the former the better to control and contain the behaviour of the latter. At a minimum, the general rules of international law should be defined and set by democratic states, even when they apply to non-democratic states as well (Slaughter 1995: 515).

More significantly, though, all non-democratic states are inherently more dangerous than democracies. They are ‘viewed prima facie as unreasonable, unpredictable, and potentially dangerous.... Illiberal States may seek ends such as conquest, intolerance, or impoverishment of others’ (Owen 2000: 354). Instability and violence are consequently caused by the residual presence of non-democratic regimes ‘in a world of liberal states’. In its most extreme form, the argument comes to the conclusion that ‘a government founded on any principle other than some form of self-government should no longer qualify for recognition as an independent state’ (Slaughter 1993: 236). As Byers and Chesterman have pointed out, this would ‘deprive about one-third of the world’s States of the protection of Article 2(7)’ of the UN Charter (Byers and Chesterman 2000: 283). This, however, is hardly a problem for the liberal project. In fact, it is part and parcel of their attempt to eradicate the sources of conflict and violence in the international system. In order to enable democracies to take up this duty, traditional international law’s prohibition of intervention and protection of state sovereignty ‘will not do’ (Feinstein and Slaughter 2004: 136). Because danger and insecurity are imported into the system via the bad nature of particular regimes, the existence of, for instance, weapons of mass destruction does not in itself constitute a problem. They do turn noxious, however, as soon as they are in the hands of ‘rulers without internal checks on their power’, ‘rulers who menace their own citizens as much as they do their neighbours and potential adversaries’ (ibid.: 137) or ‘individuals who seek absolute power at home or sponsor terrorism abroad’ (ibid.: 140).

These rulers and their regimes can be identified by evaluating their behaviour according to the criteria already documented in the UN system: the rule of law and human rights; rights of association and organization; freedom of expression and belief; and personal autonomy and economic rights.

The liberal project thus establishes an epistemic hegemony over its ‘other’. Self-determination and the notion that the people within a society themselves evaluate the political performance of its leadership are eliminated in favour of an apparently objectified yet clearly liberal gaze. And in order to prevent the ‘problem cases’ from exercising their potential for violence, liberal states are empowered to exercise their potential for violence in
the form of diplomatic pressure or incentives, economic measures, or coercive action, often in combination. It can also incorporate new strategies such as indicting individual leaders... [or] support for non-violent resistance movements that are dedicated to democratizing their governments.

(ibid.: 145)

The crucial point here is that for liberal international lawyers, ‘the duty to prevent’ can and should be exercised pre-emptively. The fact that Saddam Hussein did not in fact possess weapons of mass destruction did not remove him from the liberal project, as the ‘nature of his regime’ defined his dangerousness, giving reason to ‘prosecute Saddam Hussein for crimes against humanity committed back in the 1980s’ (ibid.: 139). In other words, the prosecution would be a matter of expediency, with the goal not the pursuit of justice, but the elimination of a particular regime. Again, the functionalist and purely regulatory truncation of international law shows its face.

Finally, given the duty to prevent assigned to liberal states, the UN Security Council is but one of various institutional structures through which to conduct the intervention. It is an expedient choice, rather than the exclusive one, as it still has ‘unmatched legitimacy’. However, given the urgency of the cause, less legitimate alternatives for enforcement, that is regional organizations or unilateral actions, are acceptable too once the UN Security Council is ‘paralyzed’ (ibid.: 148). In this case, a unilateral intervention might be ‘illegal but legitimate’. Again putting purpose ahead of process, the ends justify the means. As for Iraq, ‘even without such evidence [of weapons of mass destruction] the United States and its allies can justify their intervention if the Iraqi people welcome their coming and if they turn immediately back to the United Nations to rebuild the country’ (Slaughter 2003: A33).

Leaving aside whether a ‘return back’ to the institution that was shunned in the decision-making process about the intervention in the first place can really establish the post hoc legitimacy of the intervention, and how to establish the response of the ‘Iraqi people’ in an unambiguous fashion, what becomes clear in these formulations is that liberal war is ultimately an ontological war, a war against a different form of being, rather than a war against a strategic enemy. Its most consistent formulation defines the foe simply in terms of its adherence to allegedly universal definitions of ‘popular sovereignty’ and dispenses with any kind of consideration of the extent to which such a country produces a manifest strategic threat. At stake now is whether a state is based on ‘popular sovereignty’ rather than the ‘anachronistic’ rule of

some home-grown specialist in violence who seizes and purports to wield the authority of the government against the wishes of the people, by naked power, by putsch or by coup, by the usurpation of an election or by those systematic corruptions of the electoral process in which almost 100 percent of the electorate purportedly votes for the incumbent’s list.

(Reisman 2000: 243)
What counts in modern international law instead is ‘the sovereignty of the people and not a metaphysical abstraction called the State’ (ibid.: 252). This argument, however, is problematic in so far as it stipulates a possible distinction between the state as ‘a metaphysical abstraction’ and the people as the real and primary referent of sovereignty (ibid.: 252). Reisman further muddies the water by offering the paradoxical observation that ‘international law still protects sovereignty, but . . . it is the people’s sovereignty rather than the sovereign’s sovereignty [sic!]’ (ibid.: 243).

At a minimum, these formulations further obscure the relationship between state, people and sovereignty. First, it remains unclear to what extent a ‘people’ can have a claim to political status in the absence of the institutional structure of the state. Second, what exactly happens to the sovereign when his sovereignty is no longer recognized? Reisman seems to suggest that sovereignty is both essence (the sovereign) and attribute (his ‘recognizable’ sovereignty). Finally, the reality of the ‘people’ themselves is dubious. Reisman begins to acknowledge this issue, if in a marginal way, when he discusses the nitty-gritty of restoring democracy, a process he admits can be ‘messy, unpleasant, costly and susceptible to abuse’ (ibid.: 254). For example, we might find the ‘absence of a consensus on who should govern’, have doubts about the ‘integrity of the elections’, or see ‘diverse groups vying for power’. So ‘no one can be sure that the unilateral intervener from the outside is implementing popular wishes. To varying extents, the intervener will be shaping them’ (ibid.: 254; emphasis added). In other words, the people in question are not necessarily sovereign at all, if sovereignty entails autonomous decision on their own political order. However, the outside intervention in fact reproduces the very logic that justified and led to the intervention in the first place: the ‘usurpation’ or ‘corruption’ of an election and the free will of the people. To invoke ‘popular sovereignty’ as a legal ground for outside intervention thus deconstructs itself, revealing itself as a political act or, in Derrida’s terms, a coup de force, creating what it purports to merely represent (Derrida 1992).

Unlocking the political in the liberal project

It might appear paradoxical to find a political ideology – usually concerned with the possibility of order in the face of a plurality of world-views – engaged in the theoretical and political exorcizing of the ‘other’. What this peculiar articulation of liberalism within the international context therefore reveals are the boundaries of liberalism itself, the limits it imposes on plurality and difference, and the outline of the ‘fundamental unity’, the ‘common trunk’ from which diversity may ‘branch out’ (Connolly 1995: 93).

Underlying the liberal project to rearticulate the logic of international politics and to overcome the effects of anarchy are two central assumptions about the identity of its referent subjects and about the logic of history. Both assumptions impose severe limits on the expressions of plurality that liberalism can tolerate. First, ‘liberal ideology holds that individuals everywhere are fundamentally the
same, and are best off pursuing self-preservation and material well-being. Thus all individuals share an interest in peace, and should want war only as an instrument to bring about peace’ (Owen 2000: 344). And further, ‘liberal States are believed to be reasonable, predictable, and trustworthy, because they are governed by their citizens’ true interests, which harmonize with all individuals’ true interests around the world’ (ibid.: 353–354). Difference, in other words, is but an appearance that hides a deeper, underlying harmony and identity of ‘mankind’. Politics is therefore first and foremost a matter of bringing this harmony about. Any mechanism preventing this from happening – the anarchical structure of the international system, international law and institutions – is by definition illegitimate. It is this assumption of metaphysical identity that warrants the claims by liberal states to speak for ‘You, the people’ (Byers and Chesterman 2000), to suspend their right to self-determination, as circumstances do not permit it to be exercised by the people themselves. Concomitantly, this harmony provides a telos for the liberal project. The story told by liberals like Fox, Reisman and Slaughter is one of an approaching ‘world of liberal states’ (Slaughter 1995). International institutions are paying increasing attention to standards of human rights and democracy in countries, even authorizing interventions by force to re-establish democratic regimes. ‘History may not be over yet, but the United Nations and other international organizations are doing their best to end it’ (Owen 2000: 343). As the democratization of the international system is therefore no longer an ideal far removed from the realities of international politics, it becomes unacceptable not to realize this final epiphany of the liberal subject.

Based on these two mutually reinforcing assumptions, the liberal project can displace the political and articulate instead a discourse of moral obligation for the liberation of the oppressed individuals in non-democratic states. Suspending the international (legal) system between mutually reinforcing notions of individualism and universalism, the political and its concern with the limits of community and violence are displaced. In its stead we find a boundless, and therefore empty, political subjectivity, and a notion of war that assumes its metaphysical justness – and thereby knows no inherent limits. In other words, ‘intervention becomes the normal and central legal institution in this system’ (Schmitt 1988: 17).

A third assumption of liberalism connects this arrogation of voice to speak for other people with the DPT. While democracy within liberal societies is supposed to provide the conditions of possibility for political plurality, its articulation in the theoretical context of the international society resists its own pluralization. As argued above, DPT is based on the problematic assumption that in the international realm, democracy defines identity rather than plurality. In the liberal mind, democracy becomes homologous; the heterologous conditions of the anarchical system are too much for it to bear.
Conclusion: reinstating the political

From a Schmittian perspective, nothing of this should come as a surprise. One can try to deny, suppress, or displace the political, yet one can never abolish it. The problem is in what fashion the political emerges in different ideologies.

As Gary Ulmen has pointed out, for Schmitt, the ‘key to the concept of the Political is . . . not enmity but the distinction itself’ (Ulmen 1987: 189). The political is therefore based on the reality of difference and of plurality in international society. One should not exaggerate this point and romanticize this reality too much. Neither identity nor difference can claim moral or ethical priority as such. Hence, no moral privilege can be assigned to the ‘other’, as some ‘post-modern’ ethics have tried to do. The main concern for realists like Schmitt is instead to limit the inherent violence in a system of difference that has no recourse to a higher political, judicial or moral authority. Irreconcilable differences abound, and violence is thus a systemic condition, always implicated in the decisions between self and other, friend and enemy, and always a potentiality in the relations between these entities. For Schmitt, the distinction between friend and enemy establishes a limit for conflict by associating it with what William Connolly has called ‘agonistic respect’ (Connolly 1994: 166–167). In Schmitt’s terms, ‘according to traditional international law, war finds its right, its honour and its dignity in the fact that the enemy is no pirate and no gangster, but a “state” and a “subject of international law”’ (Schmitt 1988: 48–49). The recognition of sovereign equality, and the concomitant recognition that the only universally acceptable norm is the absence of universal norms, imposes a modicum of restraint upon the exercise of violence, as it divests states of morality and truth as legitimizing resources. Again, if ‘agonistic respect’ sounds too romantic in this context, one might justify the restraint imposed upon the exercise of force against other states by the prudent recognition that ‘our’ ideas, values and principles may not be the solution to the problems in other places. Moreover, and in regard to the liberal fondness for liberating ‘oppressed’ people,

the right of self-determination that is at the heart of the democratic entitlement vests in none other than the people, and . . . it is they – not some foreign power that they have similarly not elected – who must determine their own destiny.

(Byers and Chesterman 2000: 291)

Against this, liberalism identifies violence as the by-product of the continued presence of ‘otherness’ in the international system. Consequently, instead of limitation, its goal is elimination. Or more precisely, perhaps, violence is to be ‘channelled’ so as to abolish itself, by reserving the legitimate right to exercise it to liberal democracies. Violence becomes justified and legitimate when it is used by these states to eradicate its own sources, that is, the presence of ‘otherness’. At best, non-democratic regimes can hope for toleration – itself a form of ontological violence (Connolly 1994: 43) – by democratic states. Ultimately,
however, their presence, which keeps history from fulfilling itself, needs to be
terminated. Accordingly, war takes on a different notion. For realists, it is the
extension of the political, an expression of a systemic condition in which irre-
concilable differences might have to be settled by force. In the absence of an
authority to decide the justness of such causes, war is purely instrumental in set-
tling the score. For liberals, war becomes discriminatory, as it is legitimate when
exercised by the ‘right’ agents for the sake of democracy and peace. War on the
other hand deteriorates into pure aggression and criminality when conducted by
the ‘other’. Given that the ‘other’ is the source of residual conflict and violence
in the international system, war is ultimately about the eradication of ‘other-
ness’, not about the settling of scores between different entities. As long as this
is not accomplished, war is but suspended. The distinction between war and
peace therefore becomes blurred, as the presence of the ‘other’ constitutes a
permanent threat. Peace and peaceful means of diplomacy and statecraft become
the extension of war, as the imminent end of history and the coming of a ‘world
of liberal states’ can afford no lasting peace and recognition of the ‘other’.

If the realists have it right, we can expect the world to continue to offer resis-
tance to this liberal eschatology. The problem with this is that it will most likely
simply make liberalism double its efforts and raise the level of violence further.
As long as war is exercised for the sake of the ascetic ideal of its own abolition,
it will continue to eliminate its limits.

Notes
1 See Culler (1982: 142–144) for a discussion of Jacques Derrida’s notion of the phar-
makon.
2 See for instance Jürgen Habermas’s discussion of Schmitt (Habermas 1997: 141ff.).
   For a critical review of Habermas’s position on Schmitt see Behnke (2005).
3 But see also Schmitt’s discussion of a pluralistic state (1999: 195–208).
4 All translations from German to English are by Andreas Behnke.
5 As Susan Sontag (2004) has pointed out, this process of dehumanization has become
an integral part of the American ‘war on terror’ and finds its most blatant expression
in the treatment of the prisoners at Abu Ghraib and Guantanamo.
6 Interestingly, Gallie’s construction of an ‘artificial example’ to highlight the inherent
logic of essentially contested concepts in which different ‘teams’ vie for ‘champi-
onship’ in a setting without any judges or referees in a sense emulates the anarchical
structure of the international system.
7 See Bishai (2000) for a critical analysis of this shift towards intervention.
8 We would like to thank Pål Wrange for bringing this point to our attention.
9 But see the somewhat more moderate position of John M. Owen IV (2000) who iden-
tifies sovereignty as an ‘objective other than peace’ that the UN continues to uphold
and which needs to be balanced with the spread of liberal peace via intervention.
   However, it is unclear from his presentation what function or objective sovereignty is
actually fulfilling in the international system and why the UN continues to ‘take state
sovereignty seriously’. Ultimately, it is an obstacle on the path towards making the
world a more peaceful place by intervening against non-liberal/non-democratic states.
10 Whatever limits on the exercise of violence still exist are a matter of expediency and
potentially counterproductive consequences; see for instance Reisman (2000: 249)
Bibliography


& Humblot.
7 Crossing the line?

Carl Schmitt on the ‘spaceless universalism’ of cosmopolitanism and the War on Terror

Louiza Odysseos

Locating the line

In 1955 Martin Heidegger contributed an essay, ‘Concerning (or about) “the line”’ [Über die Linie], to a Festschrift commemorating the sixtieth birthday of novelist and essayist Ernst Jünger (Heidegger 1998 [1955]). Heidegger’s essay, formulated as a letter, was a response to Jünger’s own essay ‘Across the line’ [also Über die Linie], in which the author used the metaphor of ‘the line’ to meditate on the question of nihilism in the modern age and the possibilities of its overcoming (1950; see also 1991). Jünger had suggested that overcoming nihilism could only be possible by crossing the line that constituted ‘the border between two world eras’ (Heidegger 1998: 294). Crossing the line, he maintained, would enable the exiting ‘from the zone of consummate nihilism’ and move humanity ‘to the realm of a “new turning of being”’ (ibid.). Jünger’s meditation concerned the transgression of the line, the ‘across’, and what came after this crossing. Heidegger, however, challenged this view as misguided: one had to discuss the line, the distinction or boundary, and try to understand its meaning and implications: ‘you look across and go across the line; I simply take a look at the line that you have represented’ (ibid.). Heidegger wanted, rather, ‘to think ahead to this locale of the line and thus locate the line’ (ibid.; emphasis added). In other words, Heidegger argued that thinking about world eras, and modernity in particular, required meditation ‘about’ or ‘concerning’ the line, rather than a call to cross it.

This exchange about the ‘the line’ between Jünger and Heidegger was also contemporaneous with Carl Schmitt’s reflections in his seminal book, Der Nomos der Erde, on the genesis and demise of the first spatial order, which was uniquely ‘global’ in scope and which he called the nomos of the earth (Schmitt 2003 [1950]). In International Relations we refer to this same order as the ‘Westphalian system’, designating in this way the system of relations among ‘sovereign’ states in an anarchical environment, commonly understood to have been established by the Peace of Westphalia of 1648. It is used more broadly to refer to the ontology of international politics where the state is the primary sovereign actor (see Brown 2002; Teschke 2003). Schmitt’s account, however, is much richer than the one found within the mythology of International Relations:
he traces the creation of this spatial, or ‘nomic’, order (Surin 2005: 191) to the unrepeatable event of the European ‘discovery’ of the New World and analyses it in terms of its international law, the *jus publicum Europaeum*.

Importantly, Schmitt’s analysis of Westphalia as a ‘nomos of the earth’ argues, unlike its IR counterpart, that it was predicated on a set of distinctions, or *lines*, drawn between European soil and the so-called ‘free space’ of non-European soil. Schmitt also suggests that one of the main purposes of the *jus publicum Europaeum*, was the facilitation of the colonial (political, military and economic) land appropriation of this ‘New World’. Drawing lines, which divided and distributed the entire earth, was made possible by what Schmitt called ‘global linear thinking’, an integral part of the emerging spatial consciousness of modernity, in which he situates Westphalia (see Schmitt 2003: 87ff.; and Odysseos and Petito, Introduction to this volume, on the concept of *nomos*). Moreover, in acknowledging the emergent patterns of limited interstate warfare in Europe, on the one hand, and struggles for power and land appropriation in the non-European world, on the other, Schmitt’s *Nomos* also recounts the ways in which this order had achieved *eine Hegung des Krieges* in Europe; how, in other words, it had succeeded in ‘bracketing’, that is in limiting, rationalising and, in a sense, humanising war, precisely on the basis of drawing such lines.

The *Nomos* is also, at the same time, an elegy for the collapse of this order and its international law at the beginning of the twentieth century. Indeed, the history of the legal and spatial order of *jus publicum Europaeum* is narrated and evaluated in light of its demise but also in light of Schmitt’s concerns about the re-emergence of a new kind of universalism in world politics with inescapable effects on the conduct of war and the management of enmity. Such a universalism aimed at the denigration of lines and distinctions, of the erasure of ‘inside’ and ‘outside’, in favour of the realisation of the cosmopolitan ideal of a universal humanity. For Schmitt, erasing the line which the *nomos* of the earth had drawn between Europe and the rest of the world signalled the dissolution of this order, on which European jurisprudence was founded, into the legal positivism of the post-First World War (and, therefore, *post-Westphalian*) era. He argued that the subsequent ‘spaceless universalism’ was unable and unwilling to draw lines and spatial distinctions. It was wanton idealism, however, to think that the unwillingness or inability to draw concrete lines would actually mean their total dissipation and lead to a world of boundless inclusion: ‘*[f]*or it is not that exclusions are miraculously made absent once distinctions are not formally drawn’ (Rasch 2005: 256). Rather, he suggested that spatial distinctions, much like conflict itself, were inevitable (Rasch 2000). Quite the contrary, he feared that lines and distinctions in a ‘spaceless universalism’ would be drawn conceptually, without explicit reflection on their concrete spatial implications, precipitating a crisis both in the peculiar statist-institutional character of world politics and in the treatment of enemies (see Colombo, Chapter 1 in this volume; Odysseos and Petito 2006).

In the *Nomos*, but also in earlier works such as *The Concept of the Political*, Schmitt had criticised the political discourse of humanity that characterised such
universalism, and that still describes much cosmopolitan thinking today, as pret-
tending to cross, or even erase, the line between self and other (Schmitt 1996).
Schmitt argued, however, that the discourse of humanity merely draws a differ-
ent, more dangerous line than the one that had been drawn spatially between
European and non-European space during the era of the *jus publicum Europaeum*. Those who use the discourse of ‘humanity’ politically designate
themselves arbiters of ‘humanity’, drawing a line between who is human and
who is inhuman, who is good and who is evil, who is ‘freedom-loving’ and who
is ‘freedom-hating’, to borrow from the vocabulary of US foreign policy since
the terrorist attacks of 11 September 2001.

I argue in this chapter that Schmitt’s insistence on locating ‘the line’ is fruit-
ful for reflecting politically on recent claims made by cosmopolitan thinking
about its own ability to erase the lines drawn by the ‘Westphalian order’ through
the idea of a universal and absolute humanity. What is important, I argue with
Heidegger, is not to erase the line, but *to locate it in the claim of its transgres-
sion* and to reflect on what purposes it served or still serves. The line deserves
reflection while the assumption of its erasure often leads to new forms of domi-
nation and ever more violent wars. Examining the relevance of this cosmopoli-
tian claim regarding the dissipation of lines and relating it to the master
discourse of humanity which motivates and grounds it illuminates significant
relationships between cosmopolitanism and the War on Terror pursued by the
United States and its ‘coalition of the willing’ since 2001.

Next, the chapter briefly discusses Schmitt’s claims of the achievements of
the *jus publicum Europaeum* regarding war and enmity and highlights their dis-
sipation with the arrival of a ‘spaceless universalism’ based on the discourse of
humanity, which still forms the basis of much cosmopolitan thinking today. The
third section provides a critique of the discourse of a universal humanity, while
the fourth part examines the relationship of cosmopolitanism to the War on
Terror, interrogating the assumption that the two are antithetical and suggesting,
instead, that there are a number of ways in which they are intricately connected.

**Bracketed war and just enemies in the nomos of the earth**

Schmitt’s alternative account of ‘Westphalia’ gives pride of place to the
achievements – almost peculiar from our twenty-first century perspective – of
this *nomic* order (for a longer treatment see Rasch 2005; and Odysseos and
Petito, Introduction to this volume). Here I revisit two of these achievements:
first, the evolution of bracketed war and, second, the development of the notion
of a *justus hostis*, a just enemy. Both are worth examining, I argue, precisely
because they offer a diagnosis of contemporary world order.

The first achievement concerns the aforementioned ability of the Westphalian
order to bracket and regulate war: the lines or distinctions (the so-called ‘amity
lines’) drawn between European soil and the ‘free space’ available for appropri-
ation facilitated the bracketing of war on European soil. The amity lines set
aside two distinct areas considered ‘open spaces’ (Schmitt 2003: 94–95): on the
one hand, the landmass of the New World, whose belonging to the native populations was not recognised, and on the other, the newly mapped and navigable seas. In both types of ‘open space’, force could be used freely and ruthlessly as these were areas ‘designated for agonal tests of strength’ amongst European powers (ibid.: 99). In other words, Schmitt argues that the sharp distinction drawn between Europe and the rest of the world made it possible for states to find ways in which to gauge their opponents’ strength, usually by striving for appropriation of lands in the New World or by fighting limited wars on European soil. Schmitt does not deny that this spatial distinction ‘presupposed the consignment of unrestrained violence to the rest of the world’ (Rasch 2005: 258), and, in part, this is why his understanding of Westphalia is so much more interesting than the one commonplace in International Relations, although it might appear shocking to readers expecting the wholesale condemnation of violence and war, while being, at the same time, cynical about the veracity of such condemnations.

In this peculiar way, therefore, the interstate order which existed until 1914 had sought, through the spatiality of its international law, ‘to prevent wars of annihilation, i.e. to the extent that war was inevitable, to bracket it’ (Schmitt 2003: 246). It is important to distinguish such ‘bracketing’ from attempts to abolish or banish war, that is, to end war as such, which are characteristic of both classical and contemporary liberalism (Joas 2003). The *jus publicum Europaeum* recognised that ‘any abolition of war without true bracketing resulted only in new, perhaps even worse types of war, such as reversions to civil war and other types of wars of annihilation’ (Schmitt 2003: 246). It accepted war as an inevitable occurrence of international political order and in doing so laid a foundation for ‘a bracketing of war’: ‘[t]he essence of such wars was a regulated contest of forces gauged by witnesses in a bracketed space. Such wars are the opposite of disorder’ (ibid.: 187).

The acceptance of this type of regulated but limited warfare also enabled the recognition of the opponent as an enemy on equal grounds. This development of the notion of *justus hostis*, associated with the denigration of *justa causa* (just cause), in the commencement and waging of war, is the second achievement of this order. The concept of an ‘equal and just enemy’ evolved alongside the emergence and consolidation of the modern state as the predominant political entity (see Teschke 2003 for a contrary account), as well as the weakening of the moral authority of the Church. Under these conditions, warfare became divorced from substantive causes of justice. Since war was the means by which land could change ownership status, ‘war came to be judged in terms of its outcome’ and, indeed, became a type of political relation amongst states (Schmitt 2003: 100). Any enemy which had the form of a state was a just enemy and war could be waged against it. This avoided wars of conviction, creed and religion (that is, based on a *justa causa*) which had historically taken war to an extreme, seeking the enemy’s annihilation. For Schmitt, whose belief was that war was an inevitable part of political life, this regulation of war without substantive cause meant a ‘rationalization, humanization and legalization’ of war; regarding an
enemy as both just and as an equal partner meant that peace could be made with that enemy. His ultimate destruction was not sought, but conflict with him was possible and regulated by established norms and rules. The development of the notion of *justus hostis* and the elimination of just cause, moreover, also indicated an order of relations and a system of war which recognised the enemy’s ‘right’ to resistance and self-defence.

Schmitt associates the ‘*nomos* of the earth’ with the emergence of limited and regulated wars that sought balance and the avoidance of preponderance, rather than the extermination of the enemy in the name of a just cause. William Rasch explains that the ‘medium’ of Westphalian

self-organization was violence (war); yet, by virtue of mechanisms of reciprocity, by virtue, that is, of a similarly emergent self-regulation of violence called international law (the *jus publicum Europaeum* of which Schmitt sings his praises), the conduct of warfare among European states was restrained and controlled.

(2005: 257)

It is important to reflect on Schmitt’s alternative account of the achievements of the Westphalian order, not in a celebratory denial of its drawbacks and repercussions, especially seen in its colonising of the non-European world, but because today we are still confronted with the effects of its dissolution, discussed below and in the subsequent section. In the context of the War on Terror, such dangerous effects can be seen clearly in the re-emergence of unlimited war and just cause in international politics, as well as the renewed designation of enemies as unjust.

**The collapse of the Westphalian spatial order**

Schmitt had identified the *jus publicum Europaeum* with the advent of modernity, which he associated with the rise and dominance of the nation-state in European politics and jurisprudence. The collapse of this order, then, signalled the end of modernity and brought about epochal changes in the conduct of politics and war (Schmitt 1996; Zarmanian 2006). While he did ponder what new political forms would emerge from the ruins of the old order (see Schmitt 2003: 354–355; Luoma-aho, Chapter 2 in this volume), at the time of writing the *Nomos* Schmitt believed that international politics was still caught up in a ‘spaceless universalism’, a term which is still useful in capturing the current global situation today, despite claims that the end of the Cold War has meant a victory for the US leading to an American Empire (Cox 2003, 2004; see also Reid 2005). I would like to explore this ‘spaceless universalism’ under the heading of today’s cosmopolitanism and discuss some of the repercussions of its claim to ‘erase’ the lines or distinctions drawn by Westphalia and to promote the political idea(l) of a universal humanity.

Schmitt had argued vehemently against the ‘spaceless universalism’ which
followed the *jus publicum Europaeum*. The major public actors of the post-First World War order were unable and unwilling to draw lines and spatial distinctions, espousing instead normative and institutional ideals of a universal and absolute humanity.3 For Schmitt, the era of a ‘spaceless universalism’ transformed the notion of *nomos* ‘from a spatially concrete, constitutive act of order and orientation ... into the mere enactment of acts in line with the *ought*’ (Schmitt 2003: 78), in other words, into a normativism that hesitates to draw distinctions and which is, as a result, unable to humanise war and enable (an albeit limited) peace despite its reliance on the discursive practices of ‘humanity’.

Schmitt’s concern was that the political ideal of a common or universal humanity, first promoted by the League of Nations and subsequently by the United Nations (despite the UN Charter’s precarious compromise between promoting human rights and affirming state sovereignty and non-intervention), would not rid the world of exclusions. Schmitt’s analysis in the *Nomos* led him to argue that a certain ‘“dialectic” of inclusion and exclusion’ operated in each historical era; similarly, apportioning and dividing the earth served to concretise each political epoch, and was, therefore, at the basis of political order. Such exclusions and divisions should not be ignored or could not be easily rescinded, as was believed by the League of Nations (Rasch 2003: 121). The hesitation of the post-First World War era, and presumably our current reluctance, to draw such distinctions could be seen to be misguided, therefore: ‘[e]very new age and every new epoch in the coexistence of peoples, empires, and countries, of rulers and power formations of every sort, is founded on new spatial divisions, new enclosures, and new spatial orders of the earth’ (Schmitt 2003: 79). Rather, the unwillingness or inability to concretely draw lines would not entail their permanent erasure but, rather, might indicate the return of substantive conceptual distinctions that could lead to even more horrendous ‘otherings’ and exclusions, as is arguably occurring within the current environment of the War on Terror.

Below, I examine certain cosmopolitan discourses particularly prevalent in international politics since 1989 and the ways in which the discourse of humanity perpetuates the aforementioned dialectic of inclusion and exclusion. Subsequently, I reflect on whether, and how, the War on Terror functions according to a similar dialectic: the creation of unity in the Western world, which is threatened and needs securing, and which excludes those whose assumed fundamentalist tendencies motivate them to act against ‘freedom’. The new lines drawn by this ‘spaceless universalism’ are conceptual and are only now, perhaps, finding their spatial expression. Conceivably, just as non-European space (and practices within this space) ‘functioned as the “environment” that guaranteed the overall unity and identity of the internally differentiated “system” that was Europe’ (Rasch 2003: 121), today lands which harbour ‘global terrorism’ might well begin to function as that ‘environment’ which maintains the overall unity of the ‘West’, mobilised by the fear of terror and its just war against it. Under these conditions, lines between self and other are, nevertheless, just as exclusionary and have, possibly, just as grave repercussions as did the lines drawn between self and other under the *nomos* of the earth.
Cosmopolitanism: erasing lines?

Historically, much of cosmopolitanism’s critique had been directed towards the Westphalian system whose emphasis on state-centricity and sovereignty had arguably prevented the emergence of cosmopolitan law and world peace (see Kant 1991; Linklater 1998). Since 1989, however, a year iconic for the fall of the Berlin Wall and the velvet revolutions in Eastern Europe, a newly revived cosmopolitanism has heralded an ethical and political perspective promoting global inclusivity, based on the claim of a universal humanity. The Cold War had reached its conclusion and the geopolitical imperatives that had mocked such a cosmopolitan perspective as utopian were assumed to have dissipated with the discrediting of statism (in the form of really existing communism) and of ethnic particularisms. Moreover, the nation-state’s control of its economy appeared to be under threat by processes of financial and economic globalisation. This allowed cosmopolitan thought – at once a theoretical outlook, a diagnosis of the ills of the current epoch and a universalist normative perspective (Fine 2003: 451) – to articulate hybrid political alternatives to the international state system, particularly in the form of global liberal governance and cosmopolitan law. The new cosmopolitanism, appealing to both academics and policymakers, could now be seen as a necessary analytical perspective responding to the demands of this new age and as a political project erasing lines and making porous the boundaries of the exclusionary territorial interstate order.

The overcoming of the sovereign nation-state is one of the keystones of cosmopolitan thinking: its centrality in the Westphalian order, as well as its tendency towards war and self-interested behaviour, has been considered one of the main obstacles to greater international cooperation and integration. Liberal cosmopolitanism, therefore, encourages the ‘crossing of the line’ for people, capital, commerce and justice, arguing that ‘[w]e no longer live, if we ever did, in a world of discrete national communities’ (Held 2002: 74). A second tenet of cosmopolitanism is the promotion of the individual. Recognising that globalisation was intimately connected with ‘individualization’, Ulrich Beck proclaimed that we were now living in the ‘second age of modernity’, an age that had at its centre, not the state, but the individual. Beck advanced a view of cosmopolitanism which turns on its head the staples of the pluralist international society. This second ‘cosmopolitan’ stage of modernity, Beck suggests, is distinct from the modern statist order of international law, where ‘international law (and the state) precedes human rights’ (Beck 2000: 83). This cosmopolitan second stage involves the construction of a legal, ethical and political order that properly reflects the centrality of the rights-bearing individual, who is no longer grounded in community and state, but rather that itself grounds a new order, in which ‘human rights precedes international law’ (ibid.) Such a cosmopolitan order seeks the denigration of distinctions, such as ‘war and peace, domestic (policy) and foreign (policy)’ which had supported the Westphalian system (ibid.). This order, moreover, ‘goes over the heads of the collective subjects of international law [states] to give legal status to the individual subjects and justifies their
unmediated membership in the association of free and equal world citizens’ (Habermas 1997: 128). It presupposes, in other words, that politics, law and morality ought to converge and be explicitly grounded on ‘a legally binding world society of individuals’ (Beck 2000: 84).

Within the contemporary literature it is often acknowledged that there are at least two distinct strands of cosmopolitanism. The first maintains a critical attitude towards some ‘run-away’ or negative processes of globalisation and promotes ‘human rights’ and desirable standards by which global capitalism has to abide (see, for example, Falk 1995). The second strand of cosmopolitanism ‘run[s] parallel to the discourse of globalisation and rhetorically complement[s] it’ (Gowan 2003: 51), being neo-liberal in its ideological orientation. Moreover, it considers the Westphalian principles of sovereignty and non-intervention as conditional, in that they ‘can be withdrawn should any states fail to meet the domestic or foreign standards laid down by the requirements of liberal governance’ (ibid.: 52). State sovereignty, in other words, becomes restricted by ‘the simple but uncontested sovereignty of liberalism itself’ (Rasch 2003: 141). This neo-liberal cosmopolitanism claims to promote human rights against sovereignty but often betrays an ‘arbitrary attitude towards enforcing of universalist liberal norms of individual rights’ despite its resting on the argument of a humanity that is ‘finally on the verge of being unified in a single, just world order’ (Gowan 2003: 52).

While this distinction is partly useful, the two strands of cosmopolitanism tend to reinforce each other and, more importantly, rely heavily on the political discourse of humanity for their justification. This discourse calls forth, and justifies, a (re)ordering of international politics: towards global governance, in the first strand, or as a result of ‘just’, ‘humanitarian’ interventions and other such militarised responses, in the second strand. Next, I examine important concerns articulated about the discourse of humanity before turning to the relationship between cosmopolitanism and the War on Terror.

**The political discourse of ‘humanity’**

Despite the attractiveness of the new cosmopolitanism in the academy and policy circles, the cosmopolitan perspective has been frequently criticised, for example, as an elite and Western theory masking materialist and ideational inequalities through its ideals of humanity and inclusion (Calhoun 2003: 88); as arising from historical projects of colonialism (Brennan 2003); and as containing imperialist projects within its visions of world government through the construction of disciplinary regimes (Gowan 2003). While such critiques are certainly worth exploring, I provide here a critique of the idea of a universal humanity, examining the cosmopolitan claim about the erasure or crossing of exclusionary lines, which is enabled by the spreading of a specific understanding of modern subjectivity around the globe. In particular, meditating on the line as erased and redrawn by cosmopolitanism’s discourse of universal humanity illuminates important concerns about politics, war and enmity in the phenomenon of liberal
cosmopolitanism today. Furthermore, it highlights the ways in which this discourse relates to the War on Terror as initiated after the terrorist attacks of 11 September 2001, explored in the following section.

In *The Concept of the Political* Schmitt had already indicted the increased usage of the terminology of ‘humanity’ by both theorists and institutional actors such as the League of Nations (1996). This initial critique allows us to articulate four distinct criticisms of contemporary cosmopolitanism’s recourse to the discourse of humanity. The first objection arises from the location of this discourse in the liberal universe of values. By using the discourse of humanity, the new cosmopolitanism reverberates with the nineteenth-century ‘ringing proclama-
tions of disinterested liberal principle’ (Gowan 2003: 53) through which ‘liberal-
ism quite successfully conceals its politics, which is the politics of getting rid of politics’ (Dyzenhaus 1998: 14). For Schmitt, the focus of liberal modernity on moral questions aims to ignore or surpass questions of conflict altogether: it is therefore ‘the battle against the political – as Schmitt defines the political’ in terms of the friend/enemy distinction (Sax 2002: 501; Rasch 2000).

The second criticism has to do with the imposition of a particular kind of monism: despite the lip-service to plurality, taken from the market (Kalyvas 1999), ‘liberal pluralism is in fact not in the least pluralist but reveals itself to be an overriding monism, the monism of humanity’ (Rasch 2003: 136). Similarly, current cosmopolitan perspectives, while praising ‘customary differences’, think of them ‘but as ethical or aesthetic material for a unified polychromatic culture – a new singularity born of a blending and merging of multiple local constituents’ (Brennan 2003: 41). In fact, one might go as far as to suggest that there are two ways in which the discourse of a ‘universal humanity’ has a disciplining effect on peoples and polities. The first, noted by a number of commentators, is that, politically, cosmopolitanism shows little tolerance for what it designates as ‘intolerant’ politics, which is any politics that moves in opposition to its ideals, rendering political opposition to it illegitimate (Rasch 2003: 136). Liberal cosmopolitan discourses are also defined by a claim to their own exception and superiority. They naturalise the historical origins of liberal societies, which are no longer regarded as ‘contingently established and historically conditioned forms of organization’; rather, they ‘become the universal standard against which other societies are judged. Those found wanting are banished, as outlaws, from the civilized world. Ironically, one of the signs of their outlaw status is their insistence on autonomy, on sovereignty’ (ibid.: 141).

The second disciplining effect of the discourse of humanity can be discerned in the tendency to normalise diverse peoples through ‘individualisation’. The paramount emphasis placed on legal instruments and entitlements such as human rights transforms diverse subjectivities into ‘rights-holders’. ‘[T]he other is stripped of his otherness and made to conform to the universal ideal of what it means to be human’, meaning that ‘the term “human” is not descriptive, but evaluative. To be truly human, one needs to be corrected’ (Rasch 2003: 140, 137; see also Young 2002; Hopgood 2000). The international human rights regime, which cosmopolitanism champions as a pure expression of the centrality
of the individual, can therefore be seen as the exportation of modern subjectivity around the globe.

Third, in Schmitt’s own words, ‘humanity is not a political concept, and no political entity corresponds to it. The eighteenth century humanitarian concept of humanity was a polemical denial of the then existing aristocratic feudal system and the privileges accompanying it’ (1996: 55). Outside this historical location, where does it find concrete expression but in the politics of a politically neutral ‘international community’ which acts, we are assured, in the interest of humanity? The ‘international community is coextensive with humanity . . . [it] possesses the inherent right to impose its will . . . and to punish its violation, not because of a treaty, or a pact or a covenant, but because of an international need’, a need which it can only determine as the ‘secularized “church” of “common humanity”’ (Rasch 2003: 137, citing James Brown Scott).4

Finally, and most importantly, there is the relation of the concept of humanity to the other, and to war and violence. In its historical location, the humanity concept had critical purchase against aristocratic prerogatives; yet its utilisation by liberal discourses within a philosophy of an ‘absolute humanity’, Schmitt feared, could bring about new and unimaginable modes of exclusion (1996, 2003).

By virtue of its universality and abstract normativity, it has no localizable polis, no clear distinction between what is inside and what is outside. Does humanity embrace all humans? Are there no gates to the city and thus no barbarians outside? If not, against whom or what does it wage its wars?

(Rasch 2003: 135)

‘Humanity as such’, Schmitt noted, ‘cannot wage war because it has no enemy’ (1996: 54), indicating that humanity ‘is a polemical word that negates its opposite’ (Kennedy 1998: 94). In The Concept of the Political Schmitt argued that humanity ‘excludes the concept of the enemy, because the enemy does not cease to be a human being’ (1996: 54). In the Nomos, however, it becomes apparent that, historically examined, the concept of humanity could not allow the notion of justus hostis, of a ‘just enemy’, who is recognised as someone with whom one can make war but also negotiate peace. Schmitt noted how only when ‘man appeared to be the embodiment of absolute humanity, did the other side of this concept appear in the form of a new enemy: the inhuman’ (Schmitt 2003: 104). Without the concept of the just enemy associated with the notion of non-discriminatory war, the enemy had no value and could be exterminated. The concept of humanity, therefore, reintroduces substantive causes of war because it shatters the formal concept of justus hostis, allowing the enemy now to be designated substantively as an enemy of humanity as such. In discussing the League of Nations, Schmitt highlights that, compared to the kinds of wars that can be waged on behalf of humanity, the interstate European wars from 1815 to 1914 in reality were regulated; they were bracketed by the neutral Great Powers and were completely legal
procedures in comparison with the modern and gratuitous police actions against violators of peace, which can be dreadful acts of annihilation. 
(Schmitt 2003: 186)

Enemies of humanity cannot be considered ‘just and equal’. Moreover, they cannot claim neutrality: one cannot remain neutral in the call to be for or against humanity or its freedom; one cannot, similarly, claim a right to resist or defend oneself, in the sense we understand this right to have existed in the jus publicum Europaeum. Such a denial of self-defence and resistance ‘can presage a dreadful nihilistic destruction of all law’ (ibid.: 187). When the enemy is not accorded a formal equality, the notion that peace can be made with him is unacceptable, as Schmitt detailed through his study of the League of Nations, which had declared the abolition of war, but in rescinding the concept of neutrality only succeeded in the ‘dissolution of “peace”’ (ibid.: 246). It is with the dissolution of peace that total wars of annihilation become possible, where the other cannot be assimilated, or accommodated, let alone tolerated: the friend/enemy distinction is no longer made with a justus hostis but rather between good and evil, human and inhuman, where ‘the negative pole of the distinction is to be fully and finally consumed without remainder’ (Rasch 2003: 137). With this in mind, I turn in the next section to the War on Terror and its relation to the discourse of humanity and cosmopolitanism.

A ‘modernity without violence’? Cosmopolitanism and the War on Terror

The terrorist attacks of 11 September 2001 at first appeared to have ‘struck a blow’ against the cosmopolitan perspective, because the ‘renewal of state-centred politics and a “war on terror” seeking military rather than law enforcement solutions to crime’ were contrary to both its worldview and its privileged means of dealing with conflict (Calhoun 2003: 86–87). Rather than be swept to the sidelines of the debate, however, the cosmopolitans quickly emerged as some of the staunchest critics of the War on Terror, US unilateralism and the curtailment of civil liberties in liberal polities more generally (see Held 2004; Ignatieff 2004). Indeed, one might go as far as to say that the War on Terror has replaced the nation-state as their subject of critique.

Cosmopolitan thinkers such as Jürgen Habermas, Richard Falk, David Held and others saw the War on Terror and the international politics of the US since 9/11 as a direct affront, not only to cosmopolitan aspirations, but also to the existing multilateral order and international law. Falk and David Kreiger, for example, while commenting on the demonstrations against the pre-emptive war in Iraq noted that, ironically, many of the protesters ‘do not yet realize that they are also fighting to retain an international order based on multilateralism, the rule of law and the United Nations itself’ (Falk and Krieger 2002). Jürgen Habermas lamented the damage that was inflicted on the UN in early 2003, in the aftermath of the failed UN Security Council negotiations and the US
decision not to seek a second resolution authorising the war in Iraq. He feared
that a dangerous precedent was set by avoiding the customary justification of
war through the UN. For cosmopolitan thinking, he argued, ‘[t]he crucial issue
of dissent is whether justification through international law can, and should be
replaced, by the unilateral, world-ordering politics of a self-appointed hegemon’
(Habermas 2003: 368; emphasis added). David Held, moreover, is concerned
that such a ‘security doctrine of unilateral and pre-emptive war’ contradicts both
the achievements of liberal internationalism with its belief in progress, war
avoidance and negotiation amongst parties in conflict, and also power politics
with its emphasis on balancing power and threat amongst states in the inter-
national system (Held 2004: xii).

After the fall of Saddam Hussein’s monument in Baghdad in April 2003,
Habermas further condemned the US for relinquishing the moral high ground it
had held since 1945, by pursuing this illegal pre-emptive war in Iraq: ‘[f]or half
a century the United States could count as pacemaker for progress on this
cosmopolitan path. With the war in Iraq, it has not only abandoned this role; it
has also given up its role as guarantor of international rights’ (Habermas 2003:
365; see also Byers 2003). More recently, Held has protested even more vehe-
mently against the political choices of the Bush administration, which he sees as
both politically dangerous but also as missing opportunities to ‘building bridges
between its geoeconomic and geopolitical interests and the priorities of political
and social justice’, thereby strengthening the cosmopolitan political project
whose trajectory had seemed so assured in the 1990s (Held 2004: xiii). Held
regards the choices made by the US after 9/11 as a backward step indicating a
return to a ‘Hobbesian state of nature’ and the weakening of rule-based multilat-
eral governance to which states incrementally submitted themselves after 1945.
He disavows the possibility, entertained by Habermas, that we are now in an era
in which the liberal cosmopolitan project might be actualised through the explic-
itly hegemonic project of the US (ibid.: xv).

That the cosmopolitans are outraged is obvious and sincere. Indeed, many
scholars of politics, in this volume and elsewhere, share their disquiet about US
political choices and the political environment created by the War on Terror.
Increasingly, however, there has emerged a different sort of uneasiness, arising
from a historical as well as theoretical/philosophical critique of liberal modern-
ity in which the cosmopolitan promotion of universal humanity, and its vision
of the erasure of lines, is situated. Furthermore, even cosmopolitans themselves
acknowledge that it is important to locate the cosmopolitan perspective and the
War on Terror within the philosophical trajectory that forms their condition of
possibility, rather than continue to protest that the War on Terror is the very
antithesis of cosmopolitanism (see Fine 2006).

Of course, questions about the relationship between war and liberalism/
cosmopolitanism have been historically posed either from a traditional political
realist perspective or, alternatively, from a historical materialist perspective (as
evaluated by Reid 2004). More recently, moreover, scholars have offered an
understanding of liberalism ‘as a strategy for the gradual dissemination of
principles that derive from war within the power relations that pervade the societies it governs' (ibid.: 67). This section, therefore, examines the claim that the War on Terror does not indicate a crisis in cosmopolitanism but, rather, is the quintessential liberal cosmopolitan war. It suggests that, despite the prominent sense in which the War on Terror is portrayed as the antithesis of cosmopolitan orientations and aspirations, there are arguably two relationships between cosmopolitanism and the pursuits of the War on Terror. These are examined in turn below.

**Liberalism and violence**

The first relationship arises from their joint location in a long line of thought and policy offering both a worldview and a political programme of modernity in which violence and war dissipate, in which war is gradually replaced by rules and principled behaviour (see Held 2002; Joas 2003). One might say, in other words, that both the War on Terror and liberal cosmopolitanism are located within the modernist vision of the end of war. Hans Joas has eloquently called this ‘the dream of a modernity without violence’ (2003: 29). That cosmopolitanism seeks ‘perpetual’ peace is often acknowledged through cosmopolitanism’s intellectual debt to Immanuel Kant (1991). That the War on Terror is located in this understanding of modernity is less obvious, perhaps, but becomes increasingly apparent when one examines the rhetorical framing and understanding of the War on Terror as a fight that will not be abandoned until terrorism is rooted out. The terrorist acts of 11 September 2001 in the seat of this dream, the United States of America, were an unforgivable affront to this modernist and liberal cosmopolitan vision of perpetual peace.

At the same time, modernity’s dream to end war has repeatedly had the opposite effect, signalling a much neglected paradox, that ‘[a] political project based concretely upon an ideal of “peace” has continually produced its nemesis, war’ (Reid 2004: 65). It is not only that the search for peace has time and again led to war – it is the very intensification of war within the horizon of liberal modernity that is worth investigating. Schmitt’s own assessment in the *Nomos* of prior liberal attempts to abolish war, such as those undertaken by the League of Nations, suggests that ‘any abolition of war without true bracketing [has historically] resulted only in new, perhaps even worse types of war, such as reversions to civil war and other types of wars of annihilation’ (2003: 246). Reid, more recently, echoes this insight:

Not only does the recurrence of war throughout modernity serve to underline its paradoxical character. But the very forms of war that recur are of such increasing violence and intensity as to threaten the very sustainability of the project of modernity understood in terms of the pursuit of perpetual peace.

(2004: 65)
The War on Terror, therefore, is an exceedingly exemplary manifestation of the paradox of liberal modernity and war: of the occurrence of ever more violent types of war within the very attempt to fight wars which would end ‘war’ as such. Moreover, it is an example of how the cosmopolitan order’s emphasis on the erasure of geopolitical lines through universal humanity fails not only to end war, but even to bracket and limit it, causing not its humanisation but its intensification and dehumanisation.

With Schmitt, we might recall that a new type of war also requires a new type of enemy: ‘it is an apparent fact’, Rasch argues, ‘that the liberal and humanitarian attempt to construct a world of universal friendship produces, as if by internal necessity, ever new enemies’ (2003: 135). As discussed above, the discourse of humanity enables the creation of ‘a category of political non-persons, since those who fall outside of these delineations become . . . subject to a demonization which permits not simply their defeat, but their elimination’ (Bellamy 2000: 85). In the case of the War on Terror, the ‘freedom-hating’ recalcitrant others, those subjects of other ‘modernities’ entangled with the liberal one (Therborn 2003), become those to be excised from the global liberal order. The War on Terror denies any rationality or justice to its enemies and, perhaps, to those who oppose its practices. Schmitt’s argument in the Nomos reminds us that the unlikely, but significant, achievement of the Westphalian order was the development of the notion of justus hostis, alongside the concept of non-discriminatory war, which allowed war to become limited in nature but also peace to be considered possible with one’s enemies. Nowadays, when enemies are denied this procedural kind of ‘justness’, peace cannot be made with them, nor are they allowed a right to differ, resist or defend themselves. Importantly, cosmopolitans and their critics are now jointly faced with the incessant usage of the notion of an unjust enemy in the War on Terror, which relies on the re-introduction of just cause for one’s own side and points to an ‘other’ who has to be fought until there is no more resistance.

**Spreading the modern subject: the War of Terror as a disciplining environment**

The second relationship between the War on Terror and cosmopolitanism is their common commitment to the production and spreading of modern liberal subjectivity. This commitment is explicitly made in the case of cosmopolitanism and more implicitly in the case of the War on Terror, understood as a set of biopolitical and military practices. Given the centrality of the individual, war in the present stage of liberal modernity becomes an activity that spreads modern subjectivity and subjectivist socio-political practices (cf. Beck 2000). The types of war and violence that become possible in a liberal cosmopolitan age are those which promulgate modern subjectivity, which make incrementally real the ideal of a universal humanity, which abstract human political diversity from its local constructions and retain only its cultural and aesthetic spectre (cf. Brennan 2003). The War on Terror might be seen, in this way, as the latest (violent) form
of a longer project intent on subjectivising peoples, who have only partially been subjectivised through colonialism, through the expansion of global capitalism, through the international biopolitical operations of the UN system in the last half of the twentieth century (cf. Reid 2005) and through other kinds of ‘humanitarian’ wars prominent since the end of the Cold War.

As to the means of spreading the modern liberal subject, the War on Terror contains what were traditionally recognisable as ‘war practices’, but also newly comprises ‘peace practices’ among its operations. Peace and war ‘must be understood in accordance with a substitutive value that makes the two terms absolutely contemporary with one another, starting with the inversion both of their functions and of their “classical” relations’ (Alliez and Negri 2003: 110). The War on Terror, in reinforcing the distinctions between ‘us’ and ‘them’, between good and evil, between just war and unjust enemies, also erases the lines, once so evident, between war and peace.

In one way, then, Held is correct to claim that the War on Terror is a return to a ‘Hobbesian state of nature’ (2004). If we understand the ‘state of nature’ to be an ‘educational’ tool or environment employed by Thomas Hobbes in order to restrain the unruly participants in the English civil war, then we can see its function as a disciplining device, helping to convince

imperfectly domesticated subjects that they, in their present state, should consent to remain there and should commit themselves more fully to the habits and principles that ensure the stability of their condition, even though that condition does and must carry many ‘inconveniences’.

(Connolly 1988: 27–28)

Just as the device of the ‘state of nature’ was able to achieve results for classical liberalism by exalting the need and desire for the Sovereign, the War on Terror can be understood to serve a similar purpose and to entail, therefore, a similar relationship with liberal cosmopolitanism. The War on Terror is, in part, that environment which (re)creates fearful and disciplined subjects both inside and outside liberal polities. It reminds citizens, as Hobbes’s construct of the ‘state of nature’ did, that the Sovereign is needed and ought to be strengthened. Inside the polity – let us take the US as an example – the practices of the War of Terror, such as its constant raising of colour-coded terror alerts, its advice to citizens on cultivating readiness to deal with disaster, its general logistical manipulation of citizens (Reid 2004, 2005; Department of Homeland Security 2006) – all these practices discipline and control the subjects of liberal societies by suggesting that the distinction between inside and outside no longer holds; that the line between a domesticated inside and anarchic outside has been blown up along with the Twin Towers; and that the danger, which the Hobbesian solution had banished to the outside, beyond the line, has almost certainly returned. For, as soon as liberal citizens stop being afraid, they may begin to question more persistently the weakening of their civil liberties. Moreover, the internal disciplining of liberal publics dissuades citizens from seeking reasons for pre-
emptive wars and occupations outside their own polities, from requiring justifications for the undertakings of the War on Terror in the world outside liberal states.

Outside the liberal polity, the War on Terror endeavours to rid us of the scourge of global terrorism, and the singular way of achieving this is to spread modern subjectivity and its attendant liberal political institutions around the globe. Recall the emphasis of the Bush administration on the desirability of a newly democratic Iraq, whose liberated citizens can participate in promoting a safer and more peaceful Middle East:

[the war] can be won by spreading freedom. It can be won by [sic], if the United States continues to lead the world and encourage those who long for freedom to seek freedom, and to work with governments to put institutions in place that allow women to have rights and honor human dignity and human rights.

(CNN 2004)

Outside the liberal polity, moreover, the threat entailed in dichotomous determinations of ‘with us or against us’ is intended to shape peoples, only partly subjectivised through other means, into subjects, however incomplete or imperfect the results. The second relationship of the War on Terror to cosmopolitanism, then, pertains to the rise of modern subjectivity and the institutions that it makes possible, as well as their global exportation. When threatened, the apparatus of liberal cosmopolitanism responds by radicalising its normal mode of operation (which is the spread of modern subjectivity through commerce, cultural exchange and other biopolitical modes) and attempts to impose a liberal order by spreading modern subjectivity through military means. Norms of sovereignty and non-intervention, and international law more broadly, cannot be understood as serious obstacles to this kind of war because, as Habermas notes regretfully, in the age of the War on Terror ‘wars that make the world better . . . need no further justification’ (2003: 367).

This relationship cannot be easily dismissed as a conspiratorial fantasy of anti-liberals: it is attested to by cosmopolitans themselves. Habermas, for example, acknowledges the liberal origins of the US policy since 9/11 and the War on Terror: ‘the neoconservatives make a revolutionary claim’ he argues: ‘if the regime of international law [based on an interstate order] fails then the hegemonic imposition of a global liberal order is justified even by means that are hostile to international law’ (ibid.: 365).

Habermas is not suggesting that this is a desirable way of creating a cosmopolitan order. Indeed, he is concerned about the prudence of such choices and the potentially dire consequences of undermining international law, but he does not doubt the liberal, even cosmopolitan, credentials of the War on Terror. The neo-conservative vision of a global political order, he argues, ‘while not betraying liberal goals . . . is shattering the civil limits that the UN Charter – with good reason – had placed on their realisation’ (ibid.).
The dissatisfaction and concern that Habermas and other cosmopolitans feel about the War on Terror cannot be denied nor should it be misrepresented. It is important, however, to offer such an analysis of the relationships between cosmopolitanism and the War on Terror precisely in order to understand and respond to them more fully.

**Conclusion**

Responding to the processes of current world ordering is a potentially ceaseless task for academics, citizens and policymakers alike. In this chapter I turned to Schmitt’s insights about the political specificity of Westphalia as the *nomos* of the earth and drew upon its peculiar ‘achievements’ in order to highlight certain ways of thinking about current cosmopolitan claims about crossing and erasing lines, about unifying and ordering ‘humanity’, and the world political processes of subjectivisation which ensue from such a project. In particular, I examined the designating and managing of enemies within the political discourse of humanity and suggested that there are, contrary to commonly held views, two relationships between cosmopolitanism and the War on Terror as a set of subjectivising practices. Using Schmitt’s account of the bracketing of war and the development of the notion of *justus hostis* within the *jus publicum Europaeum*, I highlighted the dangers of the present political re-emergence of unjust enemies and, indeed, of the ‘inhuman’, as well as discriminatory and increasingly violent forms of war.

The usage of the *Nomos* is not a denial of the problematic aspects of Westphalia or the limits in Schmitt’s account of this order (see, for example, Brown, Chapter 3, Dean, Chapter 14, and Burgess, Chapter 11, in this volume). The emphasis on bracketed war and just enemies, therefore, should not be read as inviting ‘a reassertion of the lines of enmity and their attendant nomic underpinnings’ (Surin 2005: 194); nor should it forgo the necessary effort to further situate such insights in contemporary world politics, beyond the discussion above (see Zolo, Chapter 9, Mouffe, Chapter 8, and de Benoist, Chapter 4, in this volume). It is, however, a reminder that the transgression of lines evoked by the political discourse of universal humanity is not an assured path to a modernity without violence; rather, seeking to end war has historically led, not to its limitation and humanisation, but to its ever more intensified and violent occurrence. Therefore, one initial response, as offered above, might lie in relinquishing prevalent assumptions about the antithesis of cosmopolitanism and the War on Terror so as to recast concerns about current world orderings more productively by recalling the *Nomos*’s emphasis on limiting war and on avoiding the precipitous consequences of unjust enmity.

**Notes**

1 This chapter is a much shorter version of a paper entitled ‘Über die Linie? Carl Schmitt and Martin Heidegger on line(s) of cosmopolitanism and the War on Terror’ presented at the Fifth Pan-European International Relations Conference, The Hague, 9–11 September 2004.
2 Schmitt documents how, in fact, there were three lines drawn at different historical junctures and resulting in distinct spatial orders: the distributive rayas (2003: 90–92, 287), agonal amity lines (2003: 92–99, 287) and the final global line of the Western Hemisphere (2003: 99–100, 281ff.), which did not concern land appropriation as did the previous two lines but which displaced Europe, the old West, with a new, truer and more just West.

3 With the exception of the Western Hemisphere that functioned as a ‘new global line’: see Schmitt (2003: 281–294).

4 Scott was a jurist and prominent political figure in the United States at the beginning of the twentieth century.

5 I thank Martin Shaw for highlighting the incomplete nature of such subjectivisation. See also Mouffe, Chapter 8 in this volume.

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Habermas, J. (1997) ‘Kant’s idea of perpetual peace, with the benefit of two hundred


Part III

Searching for a new *nomos* of the earth
My aim in this chapter is to foreground the importance of the thought of Carl Schmitt for an understanding of the situation in which we find ourselves today after the end of the bipolar world order. Contrary to all those who claim that the end of the Cold War has opened up the possibility for the universalization of liberal democracy and the establishment of a cosmopolitan new world order, I will argue, using Schmitt’s insights, that it is the fact that we are now living in a unipolar world, with the unchallenged hegemony of the United States, which is at the origin of our current predicament, and that the only way out lies in the establishment of a multipolar world order.

Before entering into the main discussion, it is necessary first to discard a mistaken view. Several authors have suggested that the strategy of the neo-conservatives who are behind George Bush’s ‘war against terrorism’ is influenced by Carl Schmitt’s view of politics as a friend/enemy dichotomy. Some of them have been trying to trace this influence through Leo Strauss and his importance to the intellectual formation of several neo-conservatives like Paul Wolfowitz. Their aim is to make Bush’s politics appear really sinister because of its supposed intellectual origins in somebody deemed to be a ‘Nazi thinker’. They claim that it is because it envisages politics in a Schmittian way that the approach of the neo-conservatives creates a dangerous polarization between the ‘civilized world’ and the ‘enemies of freedom’ and that it needs to be challenged. In other words, Bush’s war against terrorism is presented as the direct implementation of a Schmittian understanding of the political. To avoid the ‘clash of civilizations’ to which this type of politics is leading, we are told, we must come back to the liberal approach and work towards the establishment of a cosmopolitan world order.

It is of course not my intention to defend Bush’s politics against his detractors. On the contrary, I will argue that Schmitt can help us to make a much more incisive critique of Bush’s politics. More importantly perhaps, against all those who believe that Bush’s politics represents a parenthesis in the traditional American perspective, a parenthesis that could easily be overcome with a different government in Washington, I contend that Schmitt allows us to grasp the continuity between the traditional perspective and the politics carried out by the Bush government.
As far as Bush’s politics is concerned, it is clear that a profound misunderstanding underlies the conflation between Schmitt’s approach and the one promoted by Bush’s government. To be sure, Schmitt repeatedly emphasized that the ‘*differentia specifica*’ of the political was the friend/enemy dichotomy. But he always stressed that such a dichotomy should be drawn in a properly political way, not on the basis of economics or ethics. He specified that the enemy should never be the ‘personal’ enemy – *inimicus* in Latin – but the ‘public’ enemy, *hostis* in Latin (Schmitt 1976: 26). He would certainly not have condoned Bush’s use of moral categories of ‘good’ and ‘evil’ to designate his enemies and his messianic discourse about the American duty to bring freedom and democracy to the world. This was precisely the kind of discourse for which he criticized liberalism.

Indeed, Schmitt was a keen critic of liberal universalism with its pretension of offering the true and only legitimate political system. For him the world was a pluriverse, not a universe, and he was adamant that any attempt to impose one single model worldwide would have dire consequences. In *The Concept of the Political*, he denounced the way in which liberals were using the concept of ‘humanity’ as an ideological weapon of imperialist expansion and he showed how humanitarian ethics served as a vehicle of economic imperialism. As he pointed out,

[w]hen a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent. At the expense of its opponent, it tries to identify itself with humanity in the same way as one can misuse peace, justice, progress and civilization in order to claim these as one’s own and to deny the same to the enemy.

(Schmitt 1976: 54)

This, in his view, explained why wars waged in the name of humanity were particularly inhuman, since all means were justified once the enemy had been presented as an outlaw of humanity. The current definition of the frontier between friend and enemy as one between the civilized world and its enemies would no doubt have been denounced by him as an avatar of the liberal rhetoric.

In fact, far from justifying Bush’s strategy, Schmitt’s approach provides us with many insights to undermine its basic tenets. Debunking its moralistic discourse, it brings to light the rhetorical moves used by the current US government to confiscate and monopolize the idea of civilization. By declaring, as Bush did in one of his speeches, that ‘those who are not with us are against us’ the current American strategy renders illegitimate all forms of opposition to the attempt to impose a ‘Pax Americana’ on the whole planet.

Schmitt reveals how this kind of discourse, far from being new, has for long been at the core of American politics. He thereby helps us to locate Bush’s strategy in the wider context of the various steps taken by the US to enforce its global hegemony. In ‘Völkerrechtlichen Formen des modernen Imperialismus’, [66x588]
a text published in 1932 which is extremely relevant for our present predicament, Schmitt examined the new form of imperialism represented by the US (Schmitt 1994 [1932]). Its specificity consisted in playing with the antithesis economy versus politics, claiming – in an eminently political way – that economy and commerce were ‘apolitical’. He argued that, thanks to the Monroe Doctrine proclaimed in 1823, the US had managed, first, to exclude the great powers from the American continent, so as to subject all the nations of that continent to its exclusive hegemony, and later to justify its sole right of intervention in those countries in the name of international police actions to secure democracy.

Schmitt was particularly interested in a new juridical form invented by the US, the ‘contract of intervention’, which allowed them to intervene in the affairs of another state on the pretext of helping it to defend its independence or the property and liberty of its citizens. Officially such states remained independent and sovereign, but in practice they were taken under the control of the US which could decide to intervene when it considered its interests were in jeopardy. Such contracts of intervention were mainly signed with Central American countries and Schmitt examines in detail the case of Cuba, which the US ‘liberated’ from Spain in 1898. The young republic was quickly forced to sign a ‘contract of intervention’ which allowed the US to maintain troops, control several strategic bases, receive important economic and financial concessions and even intervene in Cuba’s internal affairs in order to guarantee its independence and maintain the peace. Indeed, the Marines repeatedly landed in Cuba in the 1900s and each time the US declared that it was not an intervention since the contract of intervention gave it the right to intervene. For instance, when it intervened in 1919, it was under the pretext of guaranteeing independent elections. No great effort is needed to find many parallels with what is happening in Iraq today.

Schmitt saw the Kellogg–Briand Pact of 1928 as representing a further step in the attempt by Washington to establish its global hegemony. After Woodrow Wilson forced the League of Nations to recognize the Monroe Doctrine in its article 21 – a recognition which amounted to acknowledging the superiority of American principles – the Americans managed through the Kellogg–Briand Pact to take away from the League of Nations the power to make the crucial decisions about world peace. Indeed, the pact did not condemn war or try to abolish it; its aim was to outlaw war as an instrument of national politics. This means that an important question was left open: to decide which wars were acceptable and which were not. The decision was of course made by the US government, which thereby established itself as the arbiter of what should be considered war and what envisaged as a mere operation of peace maintenance and public security. The aim of the Americans, Schmitt claimed, was to give the Kellogg–Briand Pact, with respect to the whole world, a similar function to the one played by the Monroe Doctrine in the American continent.

While no doubt critical, Schmitt was also clearly impressed by the capacity of US imperialism to manage to secure the interpretation of the decisive political strategic notions like peace, disarmament, order and public security. As he put it,
One of the most important phenomena in the juridical and intellectual life of humanity is that those who retain real power are also able to define the meaning of concepts and words. *Caesar dominus et supra grammaticam*: Caesar also reigns over the grammar. (Schmitt 1994: 202)

**Bipolarity versus multipolarity**

Another aspect of Schmitt’s work is of great relevance for thinking about international politics. After the Second World War, he dedicated an important part of his reflections to the decline of the political in its modern form and to the loss of the state’s monopoly of the political. According to him, this was linked to the dissolution of the *jus publicum Europaeum*, the inter-state European law which for three centuries had made possible what he calls in *Der Nomos der Erde* ‘eine Hegung des Krieges’ (keeping war at bay) (Schmitt 1974). He was concerned by the consequences of this loss of monopoly because he feared that the decline of the state was creating the conditions for a new form of politics which he referred to as ‘international civil war’. It is in this context that, in *Theory of the Partisan* written in 1963, he examined the figure of the partisan which he presented as the product of the dissolution of the classical state order structured around the demarcation between what is political and what is not political (Schmitt 1963).

How could one envisage an alternative to such a dangerous situation? What kind of order could replace the *jus publicum Europaeum*? Those questions were at the centre of Schmitt’s preoccupations in several writings of the 1950s and early 1960s, in which he discussed the possibility of a new ‘nomos of the earth’. In an article of 1952 he examined how the dualism created by the Cold War and the polarization between capitalism and communism could evolve, and he imagined several possible scenarios (Schmitt 1952). He rejected the idea that such a dualism was only the prelude to a final unification of the world, resulting from the final victory of one of the antagonists which had managed to impose its system and its ideology worldwide. The end of bipolarity was likely to lead to a new equilibrium guaranteed by US hegemony. However, Schmitt also envisaged the possibility of another form of evolution consisting in the opening of a dynamics of pluralization whose outcome could be the establishment of a new global order based on the existence of several autonomous regional blocs. This would provide the conditions for an equilibrium of forces among various large spaces, instituting among them a new system of international law. Such an equilibrium would present similarities with the old *jus publicum Europaeum* except that in this case it would be truly global and not only Eurocentric. This was clearly the kind of evolution that he favoured.

Schmitt did not believe that the existing dualism could last and he was acutely aware of the possible consequences of the establishment of a unipolar world order. He was convinced that, by establishing a ‘true pluralism’, a multipolar world order alone could provide the institutions necessary to manage conflicts and avoid the negative consequences resulting from the pseudo-
universalism produced by the generalization of one single system. He was, however, too aware that such a pseudo-universalism was a much more likely outcome than the pluralism he advocated. And unfortunately his fears have been confirmed since the collapse of communism.

Since 11 September 2001, Schmitt’s reflections on the status of a ‘post-statist politics’ and the dangers of a unipolar world have become more relevant than ever and I believe that they can help us grasp the nature of terrorism. As Jean-François Kervégan has suggested, they allow us to approach the question of terrorism in a very different way from the one currently accepted, that is, as the work of isolated groups of fanatics (Kervégan 2002). Taking our bearings from Schmitt, we can see terrorism as the product of a new configuration of the political which is characteristic of the type of world order being implemented around the hegemony of a single ‘hyper-power’.

I agree with Kervégan that Schmitt’s insights about the consequences of a unipolar world order are extremely illuminating for an understanding of the phenomenon of terrorism. It is certainly the case that there is a correlation between the now unchallenged power of the US and the proliferation of terrorist groups. Of course in no way do I want to claim that this is the only explanation. Terrorism has always existed, due to a multiplicity of factors. But it is undeniable that it tends to flourish in circumstances in which there are no legitimate political channels for the expression of grievances. It is therefore no coincidence that since the end of the Cold War, with the untrammelled imposition of a neo-liberal model of globalization under the dominance of the US, we have witnessed a significant increase in terrorist attacks. Indeed the possibilities of maintaining socio-political models different from the Western one have been drastically reduced and all international organizations are more or less directly under the control of Western powers led by the Americans.

Even liberal theorists like Richard Falk and Andrew Strauss, who argue in favour of a cosmopolitan order, acknowledge the link between terrorism and the present world order when they say:

[wl]ith the possibility of direct and formalized participation in the international system foreclosed, frustrated individuals and groups (especially when their own governments are viewed as illegitimate and hostile) have been turning to various modes of civic resistance, both peaceful and violent. Global terrorism is at the violent end of this spectrum of transnational protest, and its apparent agenda may be mainly driven by religious, ideological and regional goals rather than by resistance directly linked to globalization. But its extremist alienation is partly, at the very least, an indirect result of globalizing impacts that may be transmuted in the political unconscious of those so afflicted into grievances associated with cultural injustices.

(Falk and Strauss 2003: 206)

Falk and Strauss believe that the solution to our present predicament lies in a ‘democratic transnationalism’ whose core would be constituted by a Global
Parliamentary Assembly (GPA) providing a global institutional voice for the people of the world (Falk and Strauss 2001). They present the mission of such an assembly – whose powers should always be exercised in accordance with the Universal Declaration of Human Rights – as contributing to the democratization of global policy, not only in its formulation but also in its implementation. We need, they say, an international framework capable of democratically accommodating the growing institutionalization of civic politics and this Global Parliamentary Assembly could provide the beginnings of a democratic form of accountability for the institutional system.

Their version of cosmopolitanism relies mainly on the role of civil society and sees the state as the central problem. It asserts that citizens’ groups and business and financial elites are beginning to recognize that they have a common interest in mounting a challenge to states which should cease to act as their representatives in the international arena. According to them, many of the leading figures in world business, like those who meet at Davos, have an enlightened sense of their long-term interests and are very sympathetic to the idea of democratizing the international system. The organized networks of global civil society and business should therefore be able to impose their democratizing projects on reluctant governments. The objective is to establish a global institutional democratic structure enabling the people of the world to bypass the states and to have a meaningful voice in global governance, thereby creating a peaceful global order.

While agreeing with Falk and Strauss on the importance of establishing an institutional framework that would allow for the expression of grievances, I find their solution completely inadequate. It is not only that their belief in the enlightened self-interest of the business elites is thoroughly unconvincing. My main quarrel with their proposal is that they can only envisage democracy at the world level as the globalization of the Western model. Their ‘global civil society’ is composed of citizens, visualized as liberal individuals, fighting to defend their rights against possible encroachment by the state. This is a typically liberal vision which does not show any sensitivity to different cultural traditions and takes the individual ‘Western style’ as the highest form of achievement. Now, it is precisely against the imposition of such a model of society worldwide that we are currently witnessing strong resistances.

I submit that it is high time to acknowledge the pluralist character of the world and to relinquish the Eurocentric tenet that modernization can only take place through Westernization. We should relinquish the illusion that antagonisms could be eliminated through unification of the world, achieved by transcending the political, conflict and negativity. It is also necessary to abandon the idea that the aim of politics is to establish consensus on one single model.

The central problem that our current unipolar world is facing is that it is impossible for antagonisms to find legitimate forms of expression. It is no wonder, then, that those antagonisms, when they emerge, take extreme forms, putting into question the very structure of the existing international order. It is, in my view, the lack of political channels for challenging the hegemony of the
The neo-liberal model of globalization which is at the origin of the proliferation of discourses and practices of radical negation of the established order. In order to create channels for the legitimate expression of dissent we need to envisage a pluralistic world order constructed around a certain number of great spaces and genuine cultural poles.

The new forms of terrorism reveal the dangers implicit in the delusions of the universalist globalist discourse which postulates that human progress requires the establishment of world unity based on the adoption of the Western model. This is why, against the illusions of the universalist-humanitarians, it is urgent to listen to Schmitt when he reminds us that ‘[t]he political world is a pluriverse, not a universe’ (Schmitt 1976: 53). This is, I believe, the only way to avoid the ‘clash of civilizations’ announced by Huntington (1996) and to which, despite its intentions, the universalist discourse is, in fact, contributing.

Bibliography


The re-emerging notion of Empire and the influence of Carl Schmitt’s thought

Danilo Zolo

9 The re-emerging notion of Empire and the influence of Carl Schmitt’s thought

The reemerging notion of empire

In this chapter I intend to present a critical analysis of the contemporary use of the notion of ‘empire’. I also propose, on the basis of Carl Schmitt’s philosophy of international law, a specific use of the notion of ‘empire’ to denote the United States’ global hegemony as ‘imperial’.

The revival of the notion of ‘empire’ within Western political theory is in my view evidence of the present profound transformation of international arrangements. There is an evolutionary crisis of the nation-state that is leading to the erosion or alteration of some of its traditional functions, as well as to its taking on new significant tasks. At the same time, we are witnessing a phenomenon of dislocation and concentration of a large part of states’ sovereign powers in favour of new international actors: military, political, economic and communicative. Among these subjects there are a few ‘great powers’, first of all the United States of America, which obtain increasing advantages – as great powers, not as nation-states – through the systemic mechanisms of distribution of power and wealth. These mechanisms are scarcely affected by the formal prerogatives of state sovereignty.

These phenomena – paralleling the increasing integration of international factors that is being called ‘globalisation’ (Zolo 2004a) – were accelerated in the late twentieth century after the end of the Cold War, the demise of the bi-polar world order, the collapse of the Soviet Union and the emergence of the United States as the only world superpower. And they were further accelerated after 11 September 2001 and the US-led wars against Afghanistan and Iraq.

A methodological caution

I think a methodological caution is required about the overall meaning of the term ‘empire’ in its current use within Western political culture. In this lexical context the term ‘empire’ takes on a semantic value and a symbolic scope that tend to crystallise in a real paradigm. Besides individual variations, this imperial paradigm points to a political form with three morphological and functional features.
First, imperial sovereignty is a centralised, expanding and very strong political sovereignty. Through it the empire exerts an ‘absolute’ commanding power over peoples inhabiting its domestic territory. This direct power is complemented by a broader area of political, economic and cultural influence on other political bodies, which may have adjacent territory and preserve full formal sovereignty, though this is in fact a limited sovereignty. From this point of view, as Carl Schmitt argued, the ‘Monroe Doctrine’ – initially applied by the United States in Latin America and then extended to the whole world – has been a typical expression of imperial expansionism (Schmitt 2003 [1974]).

Second, the centralised and absolutist institutions of imperial power – imperial authority is by definition legibus soluta (above the law) at the international level and wields a non-‘representative’ power at the domestic level – go hand in hand with a wide and plural range of different, separate and distant ethnic groups, communities, cultures, idioms and religious creeds. Central power keeps a more or less intense control on them, but this is not a threat to their identities and relative cultural autonomy. In this specific meaning the paradigmatic model is that of the Ottoman Empire, with the institution of millet and the common practice of religious tolerance. The combination of anti-egalitarian absolutism and ethnic-cultural pluralism distinguishes empire from the national and representative features of the European state characterised by the rule of law.

Third, imperial ideology is universalist and pacifist. The Empire is conceived as a perennial entity: it is a supreme power keeping peace, security and stability for all peoples on earth. Pax imperialis is by definition a stable universal peace. The use of military force is only meant to promote peace. The Emperor is the one single emperor who does or may rule the whole world by divine right (or providence): one basileus, one logos, one nomos. As imperator, the emperor is the supreme military commander; as pontifex maximus he is the supreme minister of worship; as worship princeps he administers sovereign justice. The imperial regime sees and establishes itself as mono-cratic, mono-theistic and mono-normative.

Clearly, the remote but determinant origin of this paradigm is the Roman Empire, from Augustus to Constantine, with its arrangements, its practices, its ideology (Poma 2002; Wells 1992; Veyne 1997), though in a somewhat ‘informal’ version in the meaning of Doyle (1986). Obviously, a full understanding of the complex origin of this Roman archetype would require study of the empires that developed in Europe after the fall of the Roman Empire, and were more or less directly influenced by its model. Think, for example, of such political forms as the feudal Germanic Empire, the Byzantine Empire, the Ottoman Empire, the Spanish Empire (Bussi 1957–1959; Ostrogorski 1940; Kitsikis 1985; Musi 2002; Braudel 1982). There seems, however, to be no direct influence from ancient – Middle Eastern, Mesopotamian, Chinese – empires. Rise of the Napoleonic Empire (Di Rienzo 2002) and the colonial empires, whether as long-standing as the British Empire or of more recent date (Mommsen 1969; Betts 1975), seem to be scarcely relevant.

In current political science and international relations theory there are, in my
view, three usages of the notion of ‘empire’ – corresponding to an abated ‘infor-
mal’ Roman archetype – apart from the Marxist notion of ‘imperialism’ that is
still marginally present in certain neo-Marxist theories of international relations
that took hold in the 1960s and 1970s (see Baran and Sweezy 1966; Frank 1969;

An imperial Europe?

During the twentieth century, in the context of the crisis of the nation-state,
authors such as Julius Evola (1978) and Arthur Möller van Den Bruck (1935)
revived the imperial idea as a sort of correction of the ‘mechanical’ and ‘ration-
alist’ power of the modern European state. The notion of imperial auctoritas,
laden with ethical values and personal contingencies, was contrasted with the
formal and impersonal notion of potestas. These views were indirectly influ-
enced by the idea of ‘empire’ (Reich) which Carl Schmitt had developed and to
which he had given an anti-universalist national meaning (volkhaft). Schmitt’s
notion of ‘broader space’ (Großraum), that is, a macro-organisation of the polit-
cal domain shaped in accordance with the Monroe Doctrine, suggested an inter-
national order relying not on the formal legal equality of states but on the
balance between continental or sub-continental areas aggregated by one or more
powers capable of a hegemonic function.2

Today the French so-called ‘New Right’, and in particular Alain de Benoist,
are again proposing an imperial idea which largely echoes Schmitt’s formul-
ation. As is well known, the label ‘New Right’ is highly controversial both in
France and in Italy, where Marco Tarchi, its most authoritative advocate, now
definitely rejects it. After all, the very inclusion of de Benoist within the Nou-
velle droite has become troublesome, as is his inclusion within the European
political right wing. Both de Benoist and the movement GRECE (Groupement
de Recherches et d’Études pour la Civilisation Européenne), inspired by his
thought, reject nationalism and liberalism out of hand in the name of both a cul-
tural Europeanism and a ‘localist pluralism’.

This is the root of the idea of an ‘imperial Europe’ admitting of a wide inner
political plurality, not nationalist but ethnic and regional. De Benoist rejects de
Gaulle’s idea of the ‘Europe of fatherlands’: he denounces liberalism and state-
centred nationalism as economic and ideological devices producing social
uprootedness and cultural uniformity. De Benoist contrasts the Americanisation
of France and Europe with a ‘heathen’ culture which he traces back to the Indo-
European origins of the European tradition. And he complements his proposed
imperial Europeanism with a harsh polemic against the ‘imperialism’ of the
United States, seen as the ultimate expression of dehumanisation, vulgarity and
stupidity. Imperial Europe, he claims, will be created against the United States
or will not be created (de Benoist 1996; Taguieff 1994).

According to de Benoist there are two models for building Europe: the
empire and the nation. The nation is nowadays too big to regulate local problems
and too small to deal with global, especially economic, issues. ‘Empire in the
more traditional meaning – de Benoist argues – is the only model that can reconcile the one and the many: it is the *politia* that organizes the organic unity in its different components, while respecting their autonomy’ (Taguieff 1994: 130). The problem, he adds, is that since Maastricht there has emerged no design of an autonomous Europe, politically sovereign and determined to adopt an equivalent of what the Monroe Doctrine has been for the United States (the influence of Schmitt’s thought is conspicuous here). Instead, we are facing a Europe without a project, legitimacy or political identity.

De Benoist’s proposal does have interesting aspects, even though, needless to say, the imperial European model seems unlikely to be accepted by either liberal European political forces or a European left wing shaped by the liberal democratic tradition. As we have seen, the imperial paradigm implies an absolutist and anti-egalitarian conception of power, though tolerant and consistent with ethnic and cultural pluralism. And the very idea of a ‘heathen’ – rather than simply ‘secular’ – Europe does not seem easy to propose, since European culture stems from Greek philosophy, Roman law and the Enlightenment, but also from the three monotheistic religions that flourished on the shores of the Mediterranean sea: the Jewish, the Christian and, last but not least, the Islamic.

Moreover, it is unclear whether de Benoist’s reference to the model of the Monroe Doctrine, following Schmitt, points to an ‘imperial Europe’ under the influence of one or more hegemonic states – possibly France and Germany – and whether his idea of empire is consistent with an egalitarian structure of the relationships between different European nationalities, and hence with the equal protection of European citizens’ basic rights. In fact, both issues are relatively alien to the positions of the French ‘New Right’ (Zolo 2004b).

**Hardt and Negri: an apology for global Empire**

In their successful book *Empire*, Michael Hardt and Antonio Negri maintain that the new ‘world order’ imposed by globalisation has led to the disappearance of the Westphalian system of sovereign states (2000). Nation-states no longer exist, other than as thin formal structures that still survive within the legal system and international institutions. The world is no longer ruled by state political systems. It is governed by a single power structure that bears no significant analogy with the modern state of European origin. It is a decentred and deterritorialised political system that makes no reference to national or ethnic traditions and values, and whose political and normative substance is cosmopolitan universalism. For these reasons, Hardt and Negri believe ‘Empire’ to be the most appropriate name for this new kind of global power.

The ‘imperial constitution of the world’ – say Hardt and Negri – is distinguished from a state constitution through its functions: imperial sovereignty is not aimed at the political and territorial inclusion and assimilation of subordinated peoples and countries, as was typical of state imperialism and colonialism during the nineteenth and twentieth centuries. The new imperial rule works through political institutions and legal arrangements essentially meant to secure
world order, that is, a ‘universal enduring peace’ allowing for the normal operation of the market economy. The Empire performs the function of ‘international policing’, possibly by means of war, and prospectively even neutral judicial tasks. Imperial power is even appealed to by subjects because of its ability to settle conflicts from a universal, that is basically impartial, standpoint. Significantly – it is an insightful remark of Hardt and Negri – after a long eclipse the theory of *bellum justum*, which is a medieval, typically universalist and imperial doctrine, has flourished again in English-speaking culture since the 1990s.

However, it would be wrong to think that Empire – or its central expanding core – is constituted by the United States and its closest Western allies. Neither the United States nor any other nation state, Hardt and Negri insist, ‘can today form the centre of an imperialist project’ (2000: 15). Global Empire is something completely other than classical imperialism, and it would be a serious theoretical mistake to confuse the two.

This is a very intricate point from both a theoretical and a political point of view, and has raised a wide debate. It has been argued, and I personally share this view, that in Hardt and Negri’s book ‘Empire’ seems to fade into a sort of ‘category of the spirit’: it is present everywhere because it coincides with the new global dimension. But, some have objected, if everything is imperial, nothing is imperial. How do we identify supranational subjects that bear imperial interests and aspirations? Against whom do we enact anti-imperialist critique and resistance? Excluding the political and military apparatuses of great powers, first of all the United States, who plays an imperial role (Negri and Zolo 2002: 8–19)?

Yet another aspect of Hardt and Negri’s position has been criticised. It seems dependent on the ‘ontology’ underlying their analysis: the dialectics of history, in the meaning characteristic of Hegelian Marxism and Leninism. According to Hardt and Negri, global Empire represents a positive victory over the Westphalian system of sovereign states. Having put an end to states and their nationalism, Empire has also ended colonialism and classical imperialism and opened up a cosmopolitan perspective that should be welcomed.

In their view, any attempt to reassert the role of nation-states in opposition to the present imperial constitution of the world would express a ‘false and harmful’ ideology. The philosophy of the anti-globalisation movement and all forms of naturalist environmentalism and localism must therefore be rejected as primitive and anti-dialectical positions, or in other words as substantially ‘reactionary’. Communists – as Hardt and Negri declare themselves to be – are universalist, cosmopolitan, ‘catholic’ by vocation: their horizon is that of the whole of mankind, of ‘generic human nature’, as Marx wrote. In the last century the working masses relied on the internationalisation of political and social relations. Today the ‘global’ powers of Empire should be controlled but not demolished: the imperial constitution is to be preserved and directed towards non-capitalist goals. For Hardt and Negri, while it is true that policing technologies are the ‘hard core’ of the imperial order, this order has nothing to do with the practices of dictatorship and totalitarianism of the last century.
From the standpoint of the transition to a communist society the building of Empire is ‘a step forward’: Empire ‘is better’ than what preceded it because ‘it does away with the cruel regimes of modern power’ and ‘provides greater possibilities for creation and liberation’ (Hardt and Negri 2000: 56, 208). There surfaces a sort of imperial optimism rooted, in my view, in the metaphysical dialectics of Hegelian Marxism. As we shall see, this ‘imperial optimism’ runs counter to Schmitt’s realist and anti-universalist position, even though Schmitt is ready to acknowledge the end of the ‘state’ order of *jus publicum Europaeum* and to outline a world order based upon the post-state notion of *Großraum*.

**The United States as a ‘global empire’**

In agreement with such Italian authors as Massimo Cacciari (2001) and Giulietto Chiesa (2002) and against Hardt and Negri’s position, I would maintain that the notion of ‘empire’ – and ‘global empire’ – may be correctly used for denoting the power structure hinging upon the United States. In arguing this point I refer to the ‘spatial’ realism and anti-normativism of Carl Schmitt’s philosophy of international law, as it was stated in works such as ‘Völkerrechtliche Formen des modernen Imperialismus’ (1940 [1933]) and ‘Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremden Mächte: Ein Beitrag zum Reichsbegriff im Völkerrecht’ (1995 [1939]), and revised in his *The Nomos of the Earth* (2003).

First, in Carl Schmitt’s theory of empire I subscribe to the critique of the universalist project of the Monroe Doctrine by the United States. According to Schmitt, United States strategies shifted little by little from the original idea of a pan-American *Großraum*, particularist and defensive, to a kind of expansionistic interventionism, far beyond the Caribbean and Latin American areas. This universalist and globalist – imperial – projection of the Monroe Doctrine had its supreme expression in Woodrow Wilson’s idealism and deeply influenced the structure of the League of Nations in a universalist and globalist direction. This worldwide development, Schmitt wrote in *Der Nomos der Erde*,

has reached a clear dilemma between universalism and pluralism, between monopoly and polyopoly. The question was whether the planet was mature enough for a global monopoly of a single power or whether a pluralism of coexisting *Großräume*, spheres of influence, and cultural spheres would determine the new international law of the earth.

(2003: 243–244)

Second, I think that Schmitt was far-sighted in denouncing the global and polymorphic dimension of United States empire. The United States managed to impose a global monopoly of its economy, its idea of world order, even its lexicon and theoretical vocabulary: ‘*Caesar dominus et supra grammaticam* (Caesar also reigns over the grammar)’ (Schmitt 2003). However, as Schmitt wrote in his *Der Nomos der Erde*, the American superpower established itself as
a global empire above all because of its overwhelming military supremacy. If military force is conspicuously out of balance, the very notion of war decays. The adversary becomes a mere object of coercion, and hostile behaviour becomes so harsh that it cannot be limited or regulated (Schmitt 1991: 429–430). Only those who are inescapably inferior appeal to international law against the overwhelming power of the enemy. On the other hand, those enjoying full military supremacy assert their *justa causa belli* on the basis of their invincibility and treat their enemies as bandits or criminals:

The discriminatory concept of the enemy as a criminal and the attendant implication of *justa causa* run parallel to the intensification of the means of destruction and the disorientation of theaters of war. Intensification of the technical means of destruction opens the abyss of an equally destructive legal and moral discrimination. . . . Given the fact that war has been transformed into police action against troublemakers, criminals, and pests, justification of the methods of this ‘police bombing’ must be intensified. Thus one is compelled to push the discrimination of the opponent into the abyss.

(Schmitt 2003: 321)

Third, I think that Schmitt’s philosophy of international law should be given careful consideration when he argues that a reduction in the number of international conflicts and of the destructive power of modern war cannot be achieved through ‘non-spatial’ and universalist institutions such as the League of Nations and the United Nations. On the contrary, the project of a peaceful world requires a neo-regionalist revival of the idea of *Großraum*, together with a reinforcement of multilateral negotiation between states as a normative source and a democratic legitimisation of the processes of regional integration.

Within the framework of this philosophy of international law and relations, Schmitt’s anti-normativist and anti-universalist position joins the anti-normativist and anti-universalist position of theorists such as Martin Wight (1966) and Hedley Bull (1977). Bull, in particular, emphasised the need to detach normative categories from the Enlightenment and Jacobin conception of the international order. Against Kelsen’s normativist and cosmopolitan view of the international domain, Bull has again forcefully proposed ideas such as the balance between great powers, pre-emptive diplomacy, multilateral negotiation among states, *jus gentium* as a body of international customs slowly developed over time, capable not of eliminating war but of making it less discriminating and less destructive (Bull 1977; Colombo 2003).

Starting from these theoretical premises I contend that the power of the United States may be called ‘imperial’ according to a complex meaning that is in some ways different from the ‘Roman archetype’. This new meaning accounts for the new elements that processes of globalisation and the resulting transformation of war in a global direction have brought to international relations, as well as to the realms of the economy, communications and legal norms. I tentatively propose the following four conceptual specifications of the notion of
‘global empire’ that, in my view, may be used today to describe the political system of the United States (Zolo 2003: 223–240).

First, today the United States’ power can be said to be ‘imperial’ and ‘global’ in a geopolitical sense, for it is a power that, through its absolute military hegemony, tends to operate economically and militarily in a non-spatial dimension. State power has always been anchored to a territorial domain, as have inter-state wars. On the contrary, the ‘global wars’ waged by the United States are not wars between sovereign states. Their guiding strategy is directed towards universal goals such as ‘global security’ and a ‘new world order’. The conquest of territorial spaces for continuous occupation and annexation in one way or another is alien to the ‘informal’ strategies of the United States empire. Imperial war tends to be waged as ‘air war’, and, in a rapidly approaching future, also as an extra-terrestrial space war.

Second, the United States’ power can be said to be ‘imperial’ and ‘global’ in a systemic sense, that is, in the meaning of general systems theory. The foreign policy of the United States is engaged in a permanent contest to decide who will be leader of the world system of international relations, who will dictate the systemic rules, who will have the political power to determine the allocation of resources of wealth and power, and who will succeed in imposing his own world view and concept of order. In the most authoritative documents of its administration the United States declares itself to be the only country that, in its capacity as a ‘global power’, can ‘project power’ worldwide. To meet the global interests, responsibilities and duties it ascribes to itself, it must extend its influence, reinforcing ‘America’s global leadership role’, with the dual goal of enhancing its own internal security and promoting its ‘vital interests’ in the international arena by reinforcing its worldwide system of military bases, its satellite espionage network and, last but not least, its tactical and strategic nuclear weaponry.

Third, the power of the United States can be said to be ‘imperial’ and ‘global’ in a strictly normative sense, for it has a tendency to ignore the rules of international law. The United States considers itself subject neither to the prohibition on the ‘private’ use of force (jus ad bellum) enshrined in the Charter of the United Nations nor to the laws of war (jus in bello) developed by the modern international legal system. The formal distinction between combatants and non-combatants allows room for the use of weapons of mass destruction that essentially affect civilian populations. And prisoners of war are treated without the slightest respect for the Geneva Conventions. US wars are decided by an authority that not only sees itself as legibus soluta but, to use Schmitt’s lexicon, operates as the sovereign source of a new nomos of the earth in a situation – the threat of global terrorism – of permanent ‘global exception’. The notion (and practice) of ‘pre-emptive war’ is the most eloquent expression of this will to subvert the existing international order, still based upon states’ sovereignty.

Finally, the United States can be considered to be a ‘global empire’ in an ideological sense, because it constantly appeals to universal values to justify its use of force. It justifies war on the basis not of partisan interests or particular goals but of a superior, impartial standpoint and of values which it believes are,
or may be, shared by all humankind. The United States advocates a monotheistic world view – biblical and fervently Christian in the case of President George W. Bush – in the face of the value pluralism and social complexity of the world. While fighting the inhumane and bloody ideology of global terrorism, the United States claims it is waging a ‘humanitarian war’ – hence a ‘just war’ in the classical, theological and imperial meaning of the phrase – against the enemies of humankind who deny the universality of such values as liberty, democracy, human rights and the market economy. It is therefore a ‘discriminating’ war in Schmitt’s meaning: a war that makes enemies criminals in order to dehumanise their image and legitimise perhaps extremely inhumane behaviour against them, as enemies of humankind. Think of Guantánamo and the special tribunal which sentenced Saddam Hussein, Iraq’s former dictator, to death in November 2006.

**Conclusion**

In my view, if we acknowledge that the United Nations is paralysed and there are currently no prospects for an effectively binding ‘supranational’ international law, then we should revalue Schmitt’s ‘macro-spatial’ perspective. Of course, before this kind of order can be achieved complex economic, technological, cultural and religious conditions must be met that make a dialogue between the world’s major civilisations possible. A united Europe comes to mind first: a Europe that rediscovers its political autonomy and cultural identity – its Mediterranean roots, first of all – and can start a dialogue across the Mediterranean and with Arab-Islamic cultures in general. And we cannot but think of China, whose ambition to hold the balance of world power over coming decades is ever more apparent and plausible. Nor should we overlook the strategies that such countries as Argentina and Brazil are endeavouring to devise in order to resist the US pan-Americanist attack (in the form of the Free Trade Area of the Americas) on the economic and political autonomy of the Mercosur area and the whole of Latin America. We should also pay attention to the processes of polarisation of African economies and politics around such gravity centres as Nigeria and South Africa. In this picture the proposal by the current Brazilian government of a strategic alliance between countries such as China, India, South Africa and Brazil against the economic unilateralism that currently dominates globalisation processes might be a valuable project. In sum, we should acknowledge that today there are no alternatives to ‘macro-spatial’ interaction, other than the current clash between the US hegemony and the terrorist response, between the nihilism of imperial wars and the anarchical nihilism of a terrorism that is becoming widespread in all continents.

Carl Schmitt wrote, once again with surprising far-sightedness: ‘contrasted with the nihilism of a centralised order, achieved through the modern means of mass destruction, anarchy may appear to desperate mankind not only as the lesser evil but indeed as the only effective remedy’ (Schmitt 1950: 18).
Notes

1 A *millet* was a religious community that acted as a peripheral administrative agency of the Empire: see Prévélakis (1994) and Zolo (2002: 7–36).


3 Also, some American authors have proposed an apologetic, rather than critical, use of the notion of ‘Empire’ to denote the United States’ global power: see Ignatieff (2003) and, for an authoritative critique, Nye (2004: 17).

4 On the tendency of US imperial domination to impose its own vocabulary, wording and concepts upon subject peoples, see Schmitt (1933: 179–180).

5 They are available online in the survey *War, law and global order* on the *JURA GENTIUM* website at www.juragentium.unifi.it, (2001 and 2002).

Bibliography


10 Against world unity
Carl Schmitt and the Western-centric and liberal global order

Fabio Petito

In this age of globalization and cosmopolitan thinking, International Relations and Legal and Political Theory seem, in one way or another, all to point to the moral and political necessity of some sort of world political unification: as a way to govern globalization, to democratize international politics, to avoid conflicts, to prevent massive violations of human rights, and to prosecute crimes against humanity. In a more specific way, the idea of ‘world unity’ works as a kind of positive taken-for-granted utopia in many of the normative discourses on international politics: the end-point, perhaps unrealistic, but still capable of orienting the construction of a just world order, something close to what Stephen Toulmin aptly called ‘the hidden agenda of modernity’ (1990; cf. also Zolo 1997). In other words, the implicit utopia of a cosmopolis helps to frame both the passionate words of Ulrich Beck, for whom the twenty-first century is urging a new ‘cosmopolitan vision’ (2006), and the policy-oriented suggestions of the supporters of a global democratic governance (Commission on Global Governance 1995; cf. Aksu and Camilleri 2002). This cosmopolis has even found unexpected resonance in the social-scientific analytical reasoning (and, as such, arguably more revealing) of leading IR theorist Alexander Wendt who, in a recent contribution, argued that a world state is, in the long run, inevitable (2003).

Against this harmonious chorus, the apocalyptic warnings of Carl Schmitt, who throughout his life saw a unified world as the reign of the Antichrist, are a disturbing but beneficial dissonance for they allow us to highlight the implicit problematic assumptions and political dangers of this dominant view. This is even more urgent in the present moment of world politics when we see the apparently paradoxical convergence of unilateral-militarist and liberal-humanitarian themes that immediately remind us of Schmitt’s powerful indictment, ‘whoever invokes humanity wants to cheat’ (1996a: 54), as well as of his perceptive remarks on the two-sided political nature of the concept of humanity, whereby the fight in the name of humanity implies the denial to the enemy of the very quality of being human (2003a: 103–104). But let us proceed gradually: in the first part of this chapter, focusing on Schmitt’s post-Second World War writings on world order, I critically discuss Schmitt’s speculations on the possible configurations of a ‘new nomos of the earth’ emerging from the ashes of the traditional Eurocentric order of international law, the jus publicum Europaeum;
in the second section, while criticizing some aspects of his analysis of the post-
Second World War world order, I argue that his international thought offers
some interesting theoretical insights into the post-1989 international condition
and, in particular, what I see as its Western-centric, liberal and global nature; the
final section refers back to the beginning of this chapter by making a ‘Schmittian’
critique of Wendt’s above-mentioned argument according to which a world
state is, in the long run, inevitable. The conclusions, proceeding from Schmitt’s
stance against world unity and going beyond (and, perhaps, against) him, point
in an evocative and rather preliminary manner to an intellectual strategy for
articulating a more pluralist world order adequate for a multicultural and global-
ized international society.

In search of a ‘new nomos of the earth’: Schmitt’s reflections
on post-Second World War world order

In a short essay written in 1954 when the bipolarity of the Cold War had clearly
crystallized as the structure of the international system, Schmitt argues that the
new nomos of the earth might have three alternative forms:

The first, and apparently the simplest, would be that one of the two partners
in the present global antithesis would be victorious. The dualism of East and
West then would become only the last stage before an ultimate, complete
unity of the world. . . . A second possibility might be an attempt to retain the
balance structure of the previous nomos. . . . That would mean that
England’s former domination of the oceans be expanded to a joint domina-
tion of sea and air, which only the United States is capable of doing. . . . The
third possibility [would be] a combination of several independent
Großräume or blocs.

(2003d: 354–355)

I cannot do justice to the complexity of the arguments behind each of these three
alternative scenarios here – especially since I agree with the continuity thesis of
Schmitt’s intellectual journey (cf. Burchard 2006) – but for the purpose of this
chapter it will be enough to briefly examine them in their reverse order.

It is well known that in the hypothesis of a balance of Großräume Schmitt
envisaged the possibility of a renewal, at a different level, of the rational con-
struction of the jus publicum Europaeum, whose end he had dramatically nar-
rated in the final part of The Nomos of the Earth1: the pluriverse of Großräume
would represent a ‘true pluralism’ responding, on the one hand, to the end of
the state’s monopoly on politics and, on the other, to the need for a new jus gentium,
spatially grounded in relatively internally homogenous and meaningfully differ-
entiated ‘greater spaces’ (2002: 355; cf. Piccone and Ulmen 1990). In other
words, this solution would be the opposite of the forcefully criticized spaceless
universalism and empty normativism of the positivist International Law incor-
porated par excellence into the project of the League of Nations. In his late
writings of the 1950s and 1960s Schmitt briefly speculated on the possible ‘third factor’ that might inaugurate this new era of pluralism (of greater spaces); in one place (1986: 4) he specifically identified ‘China, India, Europe, the Commonwealth, the Hispanic world, the Arab bloc, or some other unpredictable grouping’ as possible candidates, while, in another article (Schmitt 1990; cf. Kervégan 1999), he saw the rise of the ‘Third World’ as the third power that could break the bipolar configuration of the world and open the way for the emergence of a plurality of *Großräume*. But none of this had happened when in 1985, at the beginning of the end of the Cold War, Schmitt died at the age of 97. I will come back later to the possibility that the post-1989 international situation might be vindicating Schmitt’s predictions and *desiderata*.

The second possible form of a new *nomos* would be ‘a continuation of the former hegemonic balance structure . . . [whereby] . . . America is, so to speak, the greater island that could administer and guarantee the balance of the rest of the world’ (2003d: 355). Schmitt saw this scenario as having ‘the greatest chance of accepted tradition and custom on its side’ (ibid.) not only because it had been the form of the *jus publicum Europaeum*, grounded in a spatial order where the balance of territorial states on the European continent was related to the maritime British Empire; but also because, in my view, his understanding of the Cold War was close to the reading of those who interpreted it primarily as a *Pax Americana* and who postulated, as for example did Robert Gilpin (1981, 1987), a parallel between the nineteenth-century British Empire and the twentieth-century US as the indispensable provider of last resort of an international liberal economic order.

In fact the similarity between Schmitt’s second scenario and certain major theorizations in International Relations scholarship does not stop here: Schmitt also discussed the central issue of American power in his late writings. The reconceptualizations of power in international relations – beyond its exclusively military connotation – as soft, structural or cultural hegemony (Nye 1990; Strange 1996; Cox 1981) all point, in fact, independently of their irreducible theoretical differences, to the consensual and ideological dimension of American power, which Schmitt described as that mix of ethics and economics, of ‘official absence and effective presence’, representing the ‘real magnetic fields of human energy’ of American consensual leadership (2003a: 255). It is interesting to note that when Schmitt tries to articulate these American ‘magnetic fields’ as a space of authentic US influence that goes beyond the Western hemisphere as asserted in the Monroe Doctrine, he includes a space of economic wealth (internal and external markets), a space of influence of the dollar and a space of cultural expansion of language and of moral prestige – ‘*Caesar dominus et supra grammaticam*’ (Schmitt 1994: 202) – which closely resemble the three structures of power that Susan Strange identifies in the description of American global reach, namely the structures of production, finance and knowledge – beyond of course the traditional one of security (Schmitt 1990; cf. Ulmen 2003: 29–30; Piccone and Ulmen 1990: 31–32; Strange 1996).  

Finally, Schmitt articulates the overwhelmingly feared (though perceived as
unlikely) possibility of the unity of the world. In this case, ‘[t]he victor [of the Cold War] would be the world’s sole sovereign. He would appropriate the whole earth – land, sea, and air – and would divide and manage it in accord with this plans and ideas’ (Schmitt 2003d: 354). A few lines later, Schmitt adds: ‘[g]iven the effectiveness of modern technology, the complete unity of the world appears to be a foregone conclusion’ (ibid.). But before turning to Schmitt’s analysis of this issue – in the final part of this chapter – I would like to suggest a reading of Schmitt’s three scenarios against the background of his own predictions. In the above-mentioned article on the post-Second World War world order, written in the early 1960s, Schmitt (1990) had presented a sort of linear development scheme: the first ‘monist’ phase of the Cold War, from 1942 to 1947, whose main manifestation was the creation of the United Nations based on the common perception of a coming world unity, had been followed by a ‘dualist’ phase with the emergence of the bipolar confrontation, which, because of its unstable and fragile nature, was likely to turn – this was Schmitt’s hope – into a third multipolar phase of the pluriverse of Großräume (cf. Kervégan 1999: 70; Ulmen 2003: 29). In one of his last published articles in 1978, Schmitt confirmed his view, identifying two industrially developed Großräume, the US and the USSR, whose ‘internal’ political bottlenecks were overcome in the same way as in a federal state or confederation of states, and a third one in fieri, China, not yet completely capable of preventing political interventions by other powers in its greater space. In this respect, world politics had become again a world balance of power. However, the picture would have been incomplete if what was beyond the line, to use the Nomos’s wording, was missed: a sphere ‘of so called non-aligned states in which there is still a certain political freedom of movement’ but which had become an area of conflict and competition between the three recognized Großräume (1987: 80–81). These were Schmitt’s final written explorations of the issue of a new nomos of the earth: appropriation had now become a matter of industrial development and markets (cuius industria, eius regio) – ‘only a large industrial sphere allows the possibility of a Weltraumnahme (global appropriation)’ – with the main division of the earth being between industrially developed zones and less developed zones (1987: 79 and fn. 18).3

It was Schmitt’s belief that this ‘trend of supra-state spheres of industrial development has thus far not led to world political unity’ (1987: 80). Since, however, a new nomos had not yet crystallized, Schmitt was reasoning in terms of possibilities which, given his own concept of the political, could not be disciplined by and reduced to any sort of predetermined and necessary process. That is why he still kept his critical eye on world unity until the end of his life, suggesting in the same essay that:

[i]t is possible to conceive of the political unity of humanity through the victory of one industrial power over the other. . . . This would be a planetary appropriation of industry. . . . The day world politics comes to the earth, it will be transformed into a world police power.

(ibid.; emphasis in original; cf. Koskenniemi 2002: 419–421)
The Western-centric and liberal global order: Schmitt and the post-1989 condition

That things have not gone as Schmitt predicted is unimportant as well as hard to express, since nothing was further from his way of thinking than the idea of social-scientific prediction. *Ex post*, however, using Schmitt’s three scenarios against the background of his own ‘predictions’, we could say that from the dualist phase, which contained elements of ‘hidden unipolarity’ like that conceptualized by supporters of the thesis of the *Pax Americana* and arguably also grasped by Schmitt’s ‘hegemonic balance structure’ scenario, we have moved, with the victory of the West over the East, to a monist phase – predicated on some sort of world political unification, arguably to a much greater extent than in 1942, since there is now ‘only one game in town’ – against which the aspiration to a counter-hegemonic multipolar scenario is gaining momentum (though this tells us little about the content of the new *jus gentium* which is yet to come). In other words, the Schmittian sequence, monism, dualism, pluriverse, might well come about in the long run but *ex post* we have to recognize that the dualist phase of the Cold War contained more elements of monism than pluralism and that, in some way, the dualist phase was a sort of bracketing of a stronger monism that contemporary international politics has still to confront in the very concrete form of the overwhelming political and ideological dominance of a US-centred Western and liberal global order. Fred Dallmayr has given a powerful description of what I have in mind in the first paragraph of his *Alternative Visions*:

> Ever since the demise of the Cold War, the world finds itself in a situation that is unprecedented in human history, in which the entire globe is under the sway of one hegemonic framework: that of Western civilization, with its economic, technological, and intellectual corollaries. None of the previous empires in history – neither the Roman, Spanish, and British empires nor the Chinese Middle Kingdom – had been able to extend their ‘civilizing mission’ to the entire globe or humankind as a whole. Today all the countries and peoples in the world stand under a universal mandate or directive: to ‘develop’ or to ‘modernize’ and hence catch up with the civilizational standards established and exemplified by the West. ‘Globalization’ involves to a large extent the spreading or dissemination of modern Western forms of life around the globe.

*(Dallmayr 1998: 1)*

As the quote also suggests, this ‘hegemonic framework’ shows an intriguing resemblance to well-known imperial models but, at the same time, seems to require substantially different analytical categories if it is to be comprehended. In my reading, any attempt to understand the present world order theoretically needs to confront its Western-centric, liberal and global nature. Schmitt’s international thought provides some interesting insights and directions to articulate
this triple nature of the present order and in the remainder of this section I briefly sketch some of these possibilities.

The ‘global linear thinking’ of a US-centred Western hemisphere

The Western-centric nature of the present world order can be fruitfully comprehended from the viewpoint of the *global linear thinking*, which Schmitt develops in *The Nomos of the Earth* (2003a: 86–100). Schmitt talks of the Western hemisphere as a central category of US foreign policy discourse since the formulation of the famous Monroe doctrine in 1823. The Western hemisphere represented, in Schmitt’s language, the American *Großraum* defining the US sphere of special interests, namely the American continent. It originated as a defensive line around a security zone, a line of self-isolation, as well as an anti-European line based on contempt for the old and corrupt Europe and, in this sense, it was, according to Schmitt, a kind of quarantine line, a *cordon sanitaire* which separated a contaminated region from a healthy one. At the same time, however, it carried with it the moral claim, grounded in the Calvinist-Puritan belief of being ‘elected’, to express the true European civilization and international law. In the powerful words of Schmitt, this meant that the true ‘Occident’, ‘the centre of civilization shifted further West, to America’ (2003a: 281–294). But it was during the transition of ‘the twenty years’ crisis’, to use E. H. Carr’s words (2001), that the originally isolationalist nature of the Western hemisphere – still visible in the 1939 Panama declaration in which the European belligerents were told not to take any hostile actions within the security zone of the American continent – degenerated into a universalistic-humanitarian global interventionism, articulated for example in the 1941 official declaration of the US entry into the war as a reversion to the older and sounder views of the Just War tradition (Schmitt 2003a: 259–280). With this act, the most essential component of the *jus publicum Europaeum*, the rationalization and limitation of war, chanted its swansong and, with it, the old *nomos* of the earth.

The global interventionism of the US as the *defensor fidei* of the Free World continued throughout the Cold War, justified by the ideological bipolar confrontation; and it has arguably been intensified in the post-1989 era in the name of human rights (humanitarian interventions) and more recently in the name of the need for a global security and democracy (preventive war and war against terror). The change is well exemplified by the fact that Central and Southern America, still perceived as the special interest of the US, the *Reich* of the Western hemisphere, in the original formulation of the Monroe Doctrine, are today only secondary strategic areas compared to the Greater Middle East, Central Asia and the Far East, that is, the rest of the world. In this context, Schmitt’s analysis of the Western hemisphere is also still very topical because it does not hide, as many uses of this concept tend to do, its political origin as the first counter-attack of the New World against Old Europe and therefore foregrounds the issue of so-called transatlantic tensions with a strength necessary, in my view, to capture the centrality this issue will have in the future of international politics.
But the central role of the only world superpower is insufficient to articulate the meaning of the new world order, in the same way that *nomos* cannot be reduced only to its spatial orientation (*Ortung*) but must include also a politico-legal order (*Ordnung*) for ‘all law is law only in a particular location’ (2003a: 98). In my view, therefore, liberalism is the other necessary ingredient to describe the present global predicament. Liberalism, however, is an extremely flexible and multifaceted concept, and Schmitt, who was well aware of that, defined it as an ‘extraordinary intricate coalition’ of many different things: subjectivism, individualistic thought, parliamentary democracy, economy, ethics and technology (1996a: 26, 76; cf. Galli 2000). Overall, liberalism was both the ideology incapable of grasping the defining distinction of the political – that between friend and enemy – and the key to ‘the politics of the Anglo-American sea-powers oriented towards global trade and competition, and only indirectly – through universal ethics – towards conflict and war’ (Galli 2000: 1598).

The centrality of liberalism as the structuring and sustaining *pensée unique* of the post-Cold War condition is both a self-evident truth and, at the same time, something in need of greater theoretical elaboration in the context of international relations. In terms of dominant political discourse, however, the strongest argument remains that of Francis Fukuyama according to whom world history reached its end as a dialectical process with the defeat of communism, and liberalism, now the only game in town, represents the only *rational* model available worldwide in the now final consolidation of the linear progress of mankind (1992). From this perspective, the problem of the new international order is greatly simplified – if not finally resolved – by the globalization of liberalism, i.e. the greater international homogeneity based on the liberal values of free market, democracy and human rights, the new forms of legitimacy of the system, which provides the conditions to develop some form of cosmopolitan governance and fulfil the Kantian ideal of perpetual peace; in International Relations jargon, the final victory of liberalism, by expelling or at least substantially mitigating the two defining features of modern international society, war and anarchy, marks the end of history of international relations as we have known them.

For Schmitt, however, the unstoppable force that was already operating behind liberalism was technology: not only the material impact of technology on politics, which he also recognizes with reference, for example, to military issues, but also, and more essentially, the nature of technology as a new pseudo-religion or *Weltanschauung* of the masses in the successive stages of neutralization and depoliticization that characterize the dynamics of modernity. In his view, the European mind had moved in the last four centuries from one central sphere of neutrality to another – ‘from the theological, over the metaphysical and the moral to the economic . . . to the absolute and ultimate neutral ground [of technology] . . . since apparently there is nothing more neutral’ (1993: 138) – in
an impossible effort to overcome the tragic nature of politics and finally transform it into a worldwide bureaucratic and rational administrative machine (cf. McCormick 1993). It should now be clear why Schmitt could argue that ‘today the destiny of the world is technology not politics, technology as unstoppable process of absolute centralization’ (1996b: 118) and link this major shift with the scenario of world unity as well as, contra Fukuyama, with Marxism and the experience of real socialism (more on this unexpected association later).

Globalization as spatial revolution

Finally, I want to suggest some way in which Schmitt’s thought might contribute to reflections on the global nature of world order or, in other words, the issue of globalization. In The Nomos of the Earth Schmitt argues that during the nineteenth century the rise of a global economy brought about a common economic law, a private international law, whose liberal constitutional standard was more important than the political sovereignty of each politically self-contained (but not economically) territorial state (2003a: 235). In other words, Schmitt had seen with clarity the growing role of economic power to the point where he argued that it was ‘precisely here – in the economy – [that] the old spatial order of the earth lost its structure’ (ibid.: 237). Importantly Schmitt observes that this epoch-making revolution could not have taken place if the international law of laissez-faire had not joined together with the principle of the freedom of sea, whose interpreter was the British Empire. England, which had not developed the dualism between public and civil law characteristic of the continental state, was able to enter into a direct relationship with the private component present in every European state. This reconstruction – already a powerful argument in favour of an earlier periodization of globalization to the nineteenth century – seems also to suggest that contemporary economic globalization cannot be grasped without reference to the implicit (legal and economic) common constitutional standard and the role of the US as the protector and guarantor (as lord of air and space technology) of the stability of the system.

What is, however, perhaps more interesting is the notion of spatial revolution that Schmitt develops in Land and Sea (2002) a short book from his later writings, which Franco Volpi has aptly referred to as ‘one of the first books to tell the history of globalization’ (2002: 135). According to Schmitt, the very essence of every great historical transformation is the change in the images and concepts of space that embraces all aspects of human existence (2002: 59, 70). Such a transformation took place in the age of the discovery of America and of the first circumnavigation of the earth and this is why we can talk of the first global spatial revolution between the sixteenth and seventeenth centuries. This spatial revolution of the new globale Zeit found its political synthesis, its new nomos, in the spatial ordering of the jus publicum Europaeum. But this product of Western rationalism was based on the fundamental contraposition between Land and Sea that took shape as a result of a unique historical event, the British conquest of the seas, ‘when at the end of the Sixteenth century, the British island detached
itself in ideal terms from the destinies of the continent to undertake its own adventure on the seas’ (Marramao 2000: 1586). According to Schmitt, the industrial revolution and even the technological revolution of the twentieth century find their historical condition sine qua non in this historical event.

It is interesting here to note how much of the contemporary theoretical debate on globalization is centred on the category of space: global interactions interpreted in terms of space/time compression and deterritorialization as the key to this complex process ‘whereby many social relations become relatively de-linked from territorial geography, so that human lives are increasingly played out in the world as a single place’ (Scholte 2001: 15). For Schmitt it is the awareness and perception of space that humankind has in a particular era which is central. From there, a new spatial order emerges. How is space perception changing today through the process of globalization? Is the world increasingly perceived as a borderless single place in which human lives are increasingly played out through, for example, virtual space? What are the political consequences of this space revolution? These are some of the key questions that would need to be explored by an approach focusing on the Schmittian idea of spatial revolution.

If globalization can be interpreted as a new spatial revolution, it also represents a further step towards the intensification of the spaceless, centralizing and neutralizing tendency of technology, to the point where world unity would seem to be the only rational and coherent possible legal and political order. We know that Schmitt would not have agreed with this conclusion, although perhaps more on the grounds of a normative resistance than of the present historical trends. In the final pages of Land and Sea, Schmitt begins to sketch a new stage of the global spatial revolution (starting from certain technological developments such as aviation and radio) but at the same time refrains from doing so, considering the time for such reflections premature. One thing, however, he knew for certain: this new technologically driven spatial revolution would bring a final end to the Land/Sea division, this fundamental link between domination of the seas and world domination, and with it, any possibility of revitalizing the first global spatial ordering of the earth. With this in mind I want to come back to where I started, that is, the predominant theory according to which world unity is today both the trend in fact and the inevitable political solution.

On the inevitability of a world state: a ‘Schmittian’ critique of Alexander Wendt

Rather than reviewing the large amount of literature that confirms this consolidation of a cosmopolitan preference for world unity in post-1989 international theory, I focus on a recent contribution by a leading IR theorist, Alexander Wendt, in which he argues that a world state is, in the long run, inevitable (2003). But before I proceed, two premises are in order.

First, what is preliminarily interesting about Wendt’s position is the very special status his constructivist theory of international politics has acquired in
the contemporary landscape of IR theories: to cut a long story short, I would contend that Wendt’s position captures the present ‘spirit’ of the discipline (which of course remains in many respects very variegated). In the words of some of his reviewers, constructivism represents the ‘middle ground’, the ‘new orthodoxy’, the ‘via media’ (Adler 1997; Kratochvil 2000; Smith 2000) coming out of all the post-1989 IR ‘cultural wars’ and, as a consequence, it can also be arguably regarded as representative of a more general trend in International Relations.

Second, in the preface to his Social Theory of International Politics Wendt prefers to define his theory – juxtaposing it to the Realism that tends to dominate North American IR scholarship – ‘as a kind of Idealism, a Structural Idealism’ (1999: xiii). By this he means, however, to oppose at the explanatory level the individualist and materialist epistemological underpinnings of the dominant rational actor approach of the IR mainstream and not to suggest any normative position on the desirable future of international politics. But in this challenging and dense article under the provocative title ‘Why a world state is inevitable’, the very normative programme of inter-war Idealism personified by the US President Woodrow Wilson and the League of Nations – the idea of a world government – reappears in all its coherence and clarity: the original political meaning of a self-proclaimed (structural) idealism is finally vindicated, although this time the argument is made, we are told, on the basis of a teleological scientific explanation.\textsuperscript{9} This teleological argument assumes that the international system will inevitably move to the end-state of a World State as a result of the struggle for recognition, within the state, and the logic of ‘anarchy’, which generates a tendency for military technology and war to become increasingly destructive, outside the state. The process moves from a system of states to a society of states to a universal security community, to a collective security system and, finally, to a world state. In a parallel way, an always thicker collective identity is developed through, and associated with, each of these stages.

\textit{The problem of territorial sovereignty}

What brings this article within the scope of our discussion is twofold: first, Wendt tackles what for Schmitt is ‘the very real and comprehensive question raised in every juridical question’, that is, whether humanity is ready for the world centralization of political power (2003b: 335); second, he does so by using Schmitt’s definition of sovereignty against, we could say, its author’s intention and, more importantly, as a kind of implicit symbol of what makes progress towards a world state inevitable. In fact, Wendt writes:

\begin{quote}
In Carl Schmitt’s view, sovereignty comes down to the ability to decide unilaterally that certain individuals or groups are not part of the community and so may if necessary be killed. The unaccountability of such decisions will emerge below as a \textit{key driver} in world state formation.
\end{quote}

\textsuperscript{2003: 505; emphasis added)
And in a similar vein, while arguing that the solution of collective security is still ‘not enough’ (in teleological language, ‘unstable’) because ‘it would have no right to prevent a state from seceding and then arming itself for aggressive purposes’, Wendt adds:

more importantly, collective security does not fully satisfy desires for recognition. For what, in the end, is the retention of sovereignty if not retention of the right to decide, unilaterally, to revoke an actor’s recognized status and possibly kill them?

(ibid.: 523)

And, finally, the full power of the ‘Schmittian definition’ is ironically used against Kant’s opposition to a world state on the grounds that it would be despotic:

It is the essence of sovereignty that power and violence can be exercised against non-members without any accountability. Is not that ‘despotism’? . . . Whether justified or not, to whom is the United States accountable for its recent killing of thousands of civilians in Kosovo, Afghanistan, and Iraq? Whatever the accountability problems in a world state might be, they seem far less than those in anarchy.

(ibid.: 526)

As the above quotes suggest, it is the unaccountable nature of the decisionism associated with sovereignty that, according to Wendt, makes the territorial state in the long runrationally indefensible from the perspective of the struggle for recognition. Wendt is to some extent right in defining as ‘unaccountable’ the state’s decision to resort to the physical killing of the domestic enemy (civil war) or the public enemy (inter-state war), for these are purely political decisions that transcend (and cannot be reduced to) the established state of law: ‘the sovereign is he who decides on the exception’, on the extreme possibility of conflict and its friend–enemy grouping (Schmitt 1985: 5; Schmitt 1996a: 38–39). In other words, ‘the political entity is by its very nature the decisive entity . . . [it] decides the extreme case and determines the decisive friend–enemy grouping’ and, by doing so, reveals itself as the sovereign (Schmitt 1996a: 43).

Here, the first internal contradiction of Wendt’s argument can be outlined. If Wendt agrees with Schmitt on the ‘unaccountable’ nature of state sovereignty – to the point of making it a defining pillar of his definition of state – he does not understand that this can not be ‘blamed’ on the territorial state but on the very Schmittian notion of sovereignty that he uses. In other words, the cession of sovereignty from the territorial state to a world state (assuming that this is possible) would bring about ‘a single sovereign of the world’ (Schmitt 2003d: 355) that could not escape the logic of the political, that is, the need to decide on the exception and the friend–enemy grouping. This is why Schmitt could say that
‘the day world politics comes to the earth, it will be transformed in a world police power’ (1987: 80) and could in no way entertain the optimism of Wendt about ‘the temporary disruption’ that such a world state would have to face ‘as crime, not politics or history’ (Wendt 2003: 528). On the contrary, Schmitt warned against such a development for it would coincide not with the end of violence but with its limitless nihilist intensification. He was already seeing such a development in action in the concepts of the discriminatory (just) war and the enemy of humanity:

Given the fact that war has been transformed into a police action against troublemakers, criminals, and pests, justification of the method of this ‘police bombing’ must be intensified. Thus, one is compelled to push the discrimination of the opponent into the abyss.

(2003a: 321)

And,

if one discriminates within humanity and thereby denies the quality of being human to a disturber or destroyer, then the negatively-valued person becomes an unperson and his life is no longer the highest value: it becomes worthless and must be destroyed.

(1987: 81)

This world is not the World State that Wendt, at the end of his article, sees as desirable and normatively superior to other solutions, although he immediately adds that this is irrelevant to his scientific argument (2003: 529). I wonder, however, whether the civilian deaths of the recent conflicts, to which Wendt refers in the quotation given on p. 176 above, could not be thought of (hypothetically) as unavoidable side effects of a worldwide legal (law-enforcing) police operation (let’s say led by a WASP sheriff) against criminals (Kosovo), terrorists (Afghanistan) and outlaws (Iraq). Perhaps not, since Wendt might agree with Schmitt that ‘a war waged to protect or expand economic power must, with the aid of propaganda, turn into a crusade and into the last war of humanity’ (Schmitt 1996a: 79).

The problem of a philosophy of history

There is a second aspect of Wendt’s article to which I would like to draw attention via Schmitt’s thought on world unity. Wendt argues that his ‘theory is progressivist, although in an explanatory rather than normative sense’ (2003: 492). More importantly, he admits that it is based on a ‘scientific conjecture’ – the international system will indeed result in a certain end-state – formed on some relevant (though not decisive) empirical evidence that seems to suggest that there is ‘a tendency for political authority to consolidate in larger units’ (ibid.: 503). I do not want to engage with the sophisticated epistemological arguments
of which Wendt is a master; rather, following Schmitt, I want to suggest that what is at stake in any argument for world unity today is nothing but a philosophy of history and, in this respect, Wendt’s teleological theory of a world state marks no difference and perhaps is even more ‘honest’: is not a teleological argument in the social sciences by definition a philosophy of history?

As we have already pointed out, for Schmitt, technology, as the unstoppable process of absolute centralization, is the destiny of the contemporary world and, as a consequence, world unity appears to be ‘inevitable’ and only a matter of time (in Wendt’s estimation, 100–200 years). But the technology Schmitt is talking about is not reduced to the industrial-economic and military-scientific trends that are identified by all the supporters of cosmopolis, Wendt included, as drivers behind world political unification. What Schmitt is primarily concerned with is technology as the thinking and the pseudo-religion of the great masses of industrialized countries: at the heart of this spirit of technicity is a ‘belief in an activist metaphysics – the belief in unlimited power and the domination of man over nature, even over human nature; the belief in the unlimited receding of natural boundaries, in the unlimited possibilities for change and prosperity’ (1993: 141). Only from this perspective of absolute ‘faith in progress and in the unlimited perfectibility’ of human nature, can the ideal of world unity, this modern version of civitas maxima, bring the promise of ‘a paradise on earth’ (1986: 5).

Shared by the East and the West during the Cold War and by Marxism and liberalism as heirs of the Enlightenment, this view is, Schmitt argues, a philosophy of history ‘in the [very specific] sense that the word “philosophy” acquires with the Enlightenment as opposed to any religious conception of history’ (ibid.: 6). In other words, ‘here “philosophy of history” is to be opposed to “theology of history”’ (ibid.: 6). In the era of philosophy of history – Schmitt argues in the introduction to a collection of articles devoted to his favourite enemy of the Enlightenment, Danoso Cortés – in order to prove oneself to be politically right, one must show oneself to be ‘on the side of the things to come’ (1996b: 15–16; emphasis added). This is the only argument available in today’s political struggles and it cannot but lead us to either nihilism or global civil war. This is why today, according to Schmitt, ‘the philosophy of history is our problem’ (1986: 4) and we need to recover a conception of history ‘whose essential and specific content is the event, which happens once and does not repeat itself’ (ibid.: 8).

From this perspective, Wendt’s teleological argument masks, willy-nilly, the very same philosophy of history with its unquestioned faith in rationality and progress. This is clearly revealed in the last paragraph of his article, where he draws what he calls ‘an interesting policy implication for grand strategy’, showing to the highest degree the working political logic Schmitt has identified in every philosophy of history. Wendt argues:

if a world state is inevitable . . . rather than go down with the ship of national sovereignty, states should try to ‘get the best deal they can’ in the
emerging global constitution. . . . In short, better to ‘get with the program’ than wait till it gets you.

(2003: 529–530)

In other words, when it comes to politics, the only thing Wendt can say is: better to be on the side of the things to come. And by doing so, his teleological explanation is revealed for what it really is: a philosophy of history in the sense that Schmitt had identified as the problem behind any argument for world unity.

In the economy of the chapter’s overall argument, a ‘Schmittian’ reading of Wendt reveals two key normative working logics of the present preference for world unity: the identification of territorial sovereignty as the dark side of politics, the summum malum (the greatest evil) to be got rid of, and an implicit philosophy of history aiming at a summum bonum (the greatest good). Unfortunately, as Alessandro Colombo clearly shows in Chapter 1 of this volume, rather than opening the way to an eternal peace, the end of state sovereignty and the endorsement of philosophy of history mark, for Schmitt, the end of a limitation and humanization of war and the entrance to the dangerous era of the limitless intensification of war and global civil war.

Concluding remarks: for an intellectual strategy beyond Schmitt

Schmitt’s post-Second World War writings on world order offer a fascinating journey, bounded by two lines that could not be crossed: the first line is that of the past, of unrepeatable and unique history, the line of jus publicum Europaeum, and the second one is that of the future, an impossible concept beyond history, the line of World Unity. Between these two lines Schmitt searched for a new nomos of the earth. His predictions, or perhaps hopes, of the emergence of a pluriverse of Großräume through the fragile structure of the Cold War turned out to be in vain or maybe only premature. Schmitt’s thought, however, provides a wealth of insights and intellectual resources to articulate our present global condition and, in this respect, The Nomos of the Earth should be numbered among the classics of international political thought.

I have tried to show the potential of his thought by articulating an understanding of contemporary international relations as a Western-centric and liberal global international society. Schmitt’s analysis confirms what Hedley Bull and Adam Watson wrote in the introduction to their The Expansion of International Society: ‘[w]e certainly hold that our subject can be understood only in historical perspective, and that without an awareness of the past that generated it, the universal international society of the present can have no meaning’ (1984: 9). Not only that: the international society tradition associated with the English School should be enriched by an encounter with the philosophical depth of the notion of nomos, in order to avoid the reification of the inter-state system and its modern matrix and to face the challenge posed by the deeper layer of ‘spatial revolution’, legitimacy and intellectual sphere (concretely, in my view, this would
require a confrontation of the issue of liberalism and technology in the context of international politics. Conversely, Schmittian analysis of the present global condition should confront the central intuition of the English School’s reading of the expansion of international society, that is, the challenge, intensified from the Second World War onwards, to Western dominance within universal international society, what Bull calls the ‘revolt against the West’, and especially its cultural stage characterized by a search for the cultural authenticity of the non-Western world (Bull 1984). Today Schmitt’s argument (1990) that anti-colonialism lacks the capacity to create a new spatial order is insufficient because we have entered the era of cultural revolt against the West, something that a self-confessed Eurocentric thinker living spatially and temporarily at the very heart of twentieth-century Europe could not really see – and in this respect Schmitt knew very well that the view from an island (and what an island, he would have added) such as England is very different to the one from the landmasses of continental Europe (cf. Schmitt 2002).

Perhaps it is in connection with this last point – the return to a world politics of cultures and religions challenging the very liberal and Western-centric matrix of contemporary international society (cf. Petito and Hatzopoulos 2003) – that the supreme topicality of Schmitt’s apocalyptic stance against world unity lies. The future nomos of the earth, adequate for a multicultural and globalized international society, cannot be only liberal and Western-centric: it will require a significant conception of the presence of different cultures and civilizations. A fundamental void looms with cosmopolitan liberalism, a political tradition that forecloses the centrality of cultural and religious identity in the everyday practices of existing communities, reducing politics to what Havel has polemically called a technology of world order (cf. Petito 2003).

Against this background, we need an intellectual strategy that problematizes any cosmopolitan international theorizing constructed, as in the case of Wendt, through an easy opposition to territorial sovereignty seen as sumnum malum and the endorsement of a philosophy of history aiming at a sumnum bonum. From this perspective, the call for a ‘dialogue of civilizations’ is not wishful thinking but a realistic response to the political need to create the intellectual and practical preconditions of a future jus gentium and pluralistic world order whose aim is not to create a paradise on earth, but rather and in the first instance to prevent the earth becoming a hell (cf. Palaver 1995). Ab integro nascitur ordo, out of integrity order is born, Schmitt used to say, and he ended the foreword to his masterpiece by recalling that ‘the earth has been promised to the peacemakers. The idea of a new nomos of the earth belongs only to them’ (2003: 39).

Notes
1 Schmitt always maintained that the historical exemplification of his idea of Großraum was the Western hemisphere as conceptualized by the Monroe Doctrine (2003a: 251–253). For a discussion of the notion of Großraum and for full bibliographic references to all Schmitt’s texts on the topic see Luoma-aho (1999). Ola Tunander has effectively defined the Schmittian notion of Großraum as follows: ‘a cluster of states
with industrial and economic interdependence and with a central power or Reich that creates order, radiates its political idea and excludes alien military intervention into a greater space’ (1997: 23). For an interesting discussion of Großraum theory in the context of the dilemmas of Nazi occupation policy see Stirk (1999).

2 For a similar interpretation, which uses the comparison with Brzezinski’s articulation of American power, see Rasch (2003). For Schmitt, however, the true reality of power cannot be reduced to any of these social analyses, rather it can only find an appropriate response in the theoretical articulation of the notion of nomos, based on the three processes of appropriation, distribution and production (Schmitt 2003b, 2003c).

3 Ulmen observes that Schmitt saw the proclamation of the Truman doctrine (that the industrial development of the earth was America’s goal) as the original document in this prospective new nomos of the earth (2003: 30).

4 For an attempt to reformulate a new theory of imperialism see Hardt and Negri (2000). For a discussion of this attempt in an IR context see Barkawi and Laffey (2002) and the replies by Alex Callinicos, Martin Shaw and R. B. J. Walker in the next issue of Millennium (2002, 32, no. 2). For a discussion of the contemporary use of the notion of ‘empire’ with reference to Schmitt’s thought see Chapter 9 by Danilo Zolo in this volume.

5 For two opposite views from the perspective of the contemporary debate on US grand strategy see Kagan (2003) and Kupchan (2002).

6 For a critical overview of the problem of definition of globalization as well as an analysis of the implications for international relations, see Scholte (2000).

7 There exists a burgeoning literature known as ‘critical geopolitics’, which has, in my view, some points of convergence with Schmitt’s reflections. See in particular Ó Tuathail (1996). For a similar Schmittian-inspired analysis of globalization from the perspective of political philosophy see Galli (2001).

8 Exemplifications of this trend in International Relations and Political Theory are Fukuyama (1992), Held (1995), Habermas (2001), Linklater (1998), Beck (2006). To prove this point it is significant that even an author such as Amitai Etzioni, who is strongly associated with communitarian positions, when applying his communitarian approach to international affairs in his last book ends up arguing in favour of a global government (2004). For a Schmittian-inspired critique of the cosmopolitan project see Rasch (2000) and in a more indirect way the work of Zolo (1997, 2002a, 2002b).

9 ‘Teleological explanations explain by reference to an end or purpose toward which a system is directed’ (Wendt 1999: 496).

10 In the original Spanish version of this essay ‘La Unidad del Mundo’ Schmitt argues briefly for the contemporary possibility of a Christian conception of history in terms of the ‘great historical parallel’ and the doctrine of Katechon. Cf. also Dufferová (2004).

11 For the centrality of the apocalyptic dimension in the thought of Schmitt see Taubes (2003).

12 Palaver suggests that this thought was not completely alien to Schmitt:

   Religion will also play an important role in the new and pluralistic nomos of the earth. When in 1962 Schmitt lectured on the future of world order, he claimed that in view of the dominance of modern technology all Großräume would be a function of the spiritual substance of those people who help create this new order. Beside culture, race, language and national heritage it is religion that will contribute to this spiritual substance.

   (1995: 113)
Bibliography


11 The evolution of European Union law and Carl Schmitt’s theory of the nomos of Europe\textsuperscript{1}

\textit{J. Peter Burgess}

**Territory, sovereignty and jurisprudence**

In style and approach, Carl Schmitt’s \textit{The Nomos of the Earth} represents a departure from his earlier Weimar and inter-war works (2003). Written between 1942 and 1945, the book widens the scope of the juridical pessimism already established as one of the main themes of his career – sovereignty and legitimacy on the German national level – to questions surrounding the status of international law. In line with his claims about the historical withdrawal of jurisprudence in the national framework, \textit{The Nomos of the Earth} develops an extended historical analysis of what Schmitt sees as the decline of the Eurocentric order of international law, beginning with Hellenism and reaching its nadir in the post-war institutions of international law. The book advances an idiosyncratic analysis of the universe of international jurisprudence surrounding the League of Nations, whose roots extend all the way back to the post-Napoleonic Monroe Doctrine (1823).

What is innovative about Schmitt’s historical demonstration of the decline of European jurisprudence is its correlation with the decline of a certain European spatial order. According to Schmitt, the nature of the evolution in the relation between humans and the earth has been decisive for the nature of traditional legal order. In his view, the historical links to European international jurisprudence, \textit{jus publicum Europaeum}, have decayed with the old world order that supported them. Territoriality, once the foundation of the nation-state, has evolved, causing a parallel change in the nation-state paradigm of sovereignty and the fabric of international law, which has its basis in that paradigm.\textsuperscript{2}

The process of European integration has advanced further than any of the historical European utopians had dreamed. Despite the political setback posed by the failed referenda in France and the Netherlands in May and April 2005, the draft Constitutional Treaty for the European Union, together with the most recent enlargement begun on 1 May 2004 (to be completed with the accession of Romania and Bulgaria in 2007), remains a strong expression of a unified and coherent set of principles of institutional unity. Interpretations are sharply divided as to why the French and Dutch voted to reject the treaty (de Boisgrollier 2005; Moravcsik 2005), though most centre on domestic issues, such as
scepticism related to the rapid enlargement process (Hooghe and Marks 2006; Whitman 2005). Against this background, the question of the nature and aim of a European legal system becomes more pressing. What does it mean for any given institutional set-up to be European? Just how European is the European Union legal system (Niess 2001: 9–10; Burgess 2002: 469–470)? The question of the fundamental sense of Europe and what kind of institutional set-up it calls for is far from resolved (Pageden 2002; Passerini 2002). European unity remains something other than the unity of Europeans. Nor is it constituted by the unity of its political institutions, government, legislatures or courts. It is something more, though clearly something less as well.

If Schmitt was correct in his prognoses in the mid-1940s about the end of a global era and the rise of a new, yet uncharted, world order, then the evolving character of European jurisprudence would likewise be structured by the particular sui generis relation between European territoriality and traditional national and international categories of law. The architects of the nascent European Coal and Steel Community, the forerunner of today’s European Union, would have faced the same historical conditions, carrying out their intellectual work with the same cultural, social and juridical raw materials, against the backdrop of the same concrete historical experience as Schmitt. The fundamental insight of the era, for observers as different as Schmitt and the signatories of the Treaty of Paris, was that the essential concepts, categories and values, as well as the legal concepts and assumptions, are trans-national and extra-territorial, and that they defy, for structural reasons or by historical contingency, the political and legal institutions of our time.3 The particularity of the European present lies in the unique way of organizing the relation between law and space.

Schmitt’s stand-or-fall criterion for the validity of an international organization is precisely that it not be international, but rather inter-national. From a juridical perspective it must reattach the wayward fellows jus inter gentes and jus gentium, while at the same time recognizing the pragmatic, post-Hegelian impossibility of cultural, political and legal universality in any institution, be it local, national or supra-national.

As we will see, European Union law occupies a strange and complex position in this conceptual landscape, situated uniquely between an international law model and a federal model. It belongs to the project of European construction to develop a kind of jurisprudence which communicates with national legal traditions in the tradition of common law, based on culturally determined norms and customs, and which also appeals to universal principles and the formalism of international civil code. The recurring challenge for the European Court of Justice (ECJ), founded in 1952 through the treaty of the European Coal and Steel Community, and reinvigorated through successive treaties, has been to navigate this terrain between the general scope of international law, law established between member states, law established between member states and non-member states, and the growing corpus of law established sui generis between the EU and member states.

This chapter explores the correlation between Schmitt’s historical analysis of
the *jus publicum Europaeum* and the grand geopolitical and civilizational project of European construction from 1950 to 2006 as it is expressed in the evolution of European Union law, exploring the applicability of the concept of *nomos* for the nature of EU evolution and interpreting general elements of the European legal system in terms of this concept. It suggests that European law, as it has evolved through the process of European construction, cannot, therefore, replace the *jus publicum Europaeum* as a new global *nomos*. However, our survey of European legal construction since the 1950s confirms Schmitt’s diagnosis but not his pessimism, suggesting that the evolving European legal system might well offer one answer to the problem posed by Schmitt: a new *nomos* is emerging to respond to the challenges he perceived. Yet this *nomos* is characterized by a dialectical mix of ‘limited’ universality and local particularity, espousing a multi-cultural flux of values, which have a systematically blurry connection to territory, which function in the global economy and which are, moreover, protected by a security agenda that reaches beyond the ‘traditional’ inter-national space of Europe.

**Schmitt’s notion of the *nomos* of the earth**

Carl Schmitt’s concern in *The Nomos of the Earth* and a number of other post-war writings is to underscore and draw the consequences of the historical specificity of international law, to map its historical determinations and the parameters of its validity in the course of world history. It is an attempt to historically link fundamental changes in the nature of international jurisprudence with changes in the cultural, social, political and spatial order of the world.

The provocative and innovative historical analysis of the *Nomos* book would be impossible without the equally ground-breaking conceptual tools it deploys. In particular, Schmitt’s analysis of the evolution of international law and the European legal order grows out of his singular interpretation and application of the concept of *nomos*. In ancient Greek, *nomos* can be defined as ‘that which is in habitual practice, use or possession’. It is thus variously translated as ‘law’ in general as well as ‘ordinance’, ‘custom’, derived from customary behaviour, from the law of God, from the authority of established deities, or simple public ordinance (Liddel and Schott 1940). *Nomos* is also ‘law’ understood in the sense of rationality, the ‘reigning’ order of things, or what we would today call ‘dis-course’. Finally, it derives from the verb *neimô*, which means ‘to deal out’, ‘to distribute’ or ‘to dispense’. It is thus also the distribution of rationality, both physical and metaphysical, the logical organization of things in space and time. It is the spatialization of rational order. *Nomos* implicitly includes an aspect of power, which can, as Schmitt himself underscores, lead to confusion about the dimension of power. It can designate the subject of power, the holder and exerciser of power, but should not be limited to this sense (Schmitt 2003: 338).

*Nomos* refers to both territory and the rationality or discursivity of the order that organizes it. It designates the order established through an appropriation of land, a land seizure (*Nahme*), which orders the earth and the relationship
between subjectivity and power, ownership and action on and around it. It also designates the act of establishing order, of logic or rational discourse through the original partitioning of land (ibid.: 341). Yet more importantly, *nomos* is not fixed, but, rather, it constitutes the reality of territorial order. The partitioning or dividing or spatial organization of land is never simply a moment of crystallization of territory and the administrative laws that organize it, but rather it is a productive shaping of the dynamics in and above and all around the territory. Indeed, Schmitt’s development of the concept of *nomos* is meant as a polemical alternative to the positivistic understanding of legal order that he sees as bureaucratically encroaching on European jurisprudence in his own time. ‘The *situation établie* of those constituted dominates all customs, as well as all thought and speech’, reiterates Schmitt in the *Nomos* book. ‘Normativism and positivism then become the most plausible and self-evident matters in the world, especially where there is no longer any horizon other than the *status quo*’ (ibid.). *Nomos* must therefore not be understood as an instrumental prescription of law, which precedes its application and somehow exists prior to the territory over which it has jurisdiction. On the contrary, the fundamental meaning of territory, of inhabited or uninhabited space, that is, the *territoriality* of the territory, arises with its *nomos*. This is what Schmitt understands when he calls *nomos* constitutive: it constitutes the very territoriality of territory through its organization of it. It is indeed an ordering of reality, but one which orders reality by constructing it. The geographical reality constituted by land acquisition in turn plays a role in determining the shape and form of international law.

**The *jus publicum Europaeum* and the new European *nomos***

In the essay ‘The Plight of European Jurisprudence’ from 1943 (Schmitt 1957), written at approximately the same time as *The Nomos of the Earth*, Schmitt evaluates what he sees as the state of the art of European jurisprudence and, in doing so, comments on the nature of European community in terms of an actual and possible legal framework.

For Schmitt, it is the burgeoning legal positivism that has shaped and determined the evolution of the informal European legal community. According to this model, which Schmitt sees as spreading and developing throughout Europe, the formal validity of law lies exclusively in its propositions, combined with a state that is willing to enforce them. According to the positivist position, laws are, by and large, instrumental: their validity is identical to the force of their implementation. For Europe, politically torn and tattered after two world wars, no substantive foundation for law seems available. Here Schmitt is referring to individual European nation-states and the aspects of a shared legal order they manifest. The prospect of a common European legal system in the sense we see it today in the institutionalization of EU law is distant since, as he explains, there is precisely no common political will to enforce a European law if there were one. This is of course true for the state of European solidarity in 1943.

Schmitt then unites his critique of the state of jurisprudence in Europe with a
parallel attack (in the Nomos book and elsewhere) on the destitute tradition of jus publicum Europaeum, the European law of nations (Schmitt 1957: 386). From the perspective of legal positivism, state law and international law have fallen completely apart from one another. They have, according to Schmitt, two quite distinct sources of law and procedural principles. The internal and the external are thus alienated from each other and a kind of political realism has become the abiding theory of politics (cf. Koskenniemi 2000: 22–24). The domestic and international belong to two utterly different spheres and have no conceptual or even practical communication with each other. Contracts and agreements made between European states have, for the positivist, formally speaking, nothing at all distinct in comparison with contracts and agreements made with non-European states. The fact that two European states might enjoy an international agreement, as opposed to having one with a non-European state, is strictly a matter of coincidence (Schmitt 1957: 388; cf. Slaughter 1995, 1997).

Since the 17th to 19th centuries the European spirit has developed a specific international law, now at the turn of the 19th and 20th centuries, international law has dissolved into countless indistinguishable inter-state relations of 50 to 60 states around the whole world, in other words into a frameless universality.

(Schmitt 1957: 388)

The assumption upon which Schmitt bases his lament over the absence of a coherent (non-positivist) legal order is precisely the same assumption he criticizes elsewhere in his assessment of the international legal order (League of Nations and United Nations), namely, that it is an amalgam instead of an interconnected, organic legal system. The strange reality, however, as Schmitt himself underscores, is that European states share legal systems similar enough to form the basis of a common legal community. In theory, Europe has reached the situation Schmitt is searching for, the basis for a common jurisprudence based on a particular historical and, not least, geopolitical path. Yet shouldn’t the common ethical, political and cultural foundations of the national legal systems in Europe satisfy Schmitt’s criteria, thus rendering a further jus publicum Europaeum unnecessary or uninteresting? And if not, if the European legal system falls short of a Schmittian jus publicum Europaeum, what indeed distinguishes one from the other?

The new European nomos will not be a legal order in which all European nation-states adopt one and the same parallel legal system, thus sharing a single tradition that is unaffected by national particularity. Nor will it resemble a re-transmission of Roman law as a ‘spiritual and intellectual Common Law of Europe’ (ibid.: 392–393). Such a re-transmission would be the opposite of the ‘atomization’ of the nation-states which Schmitt so vehemently attacks in his evaluation of the League of Nations and the UN. A true jus publicum Europaeum will need to be both more and less than a shared tradition, passively adopted. It will need to repose upon both shared traditions and national,
individual and case-based particularity. As it happens, something like a trans-sectoral legal order has indeed begun to emerge, and continues to develop, in Europe.

**Universality and particularity of the European nomos**

The new geopolitical configuration that emerged from the Treaty of Westphalia (1648) was based on a concern for security. Even though the political landscape was considered a thing apart, European culture has been at pains to see itself in terms of geopolitical particularity, as one meeting point, among many possible, between territory, culture and history. Indeed, the European cultural self-understanding is anything but particular; it is the very invention of universal pretension. Typical of this pretension is the inevitable evolution of European jurisprudential thought. The newly humiliated European Constitution, like its treaty-based predecessors, sets out a conceptualization of the European, which, like the logic of value itself, defies the territorial confines of the European continent. As the Preamble to the draft Constitution states:

> Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, democracy, equality, freedom and the rule of law; Believing that Europe, recruited after bitter experiences, intends to continue along the path of civilization, progress and prosperity, for the good of all its inhabitants, including the weakest, most deprived, that it wishes to remain a continent open to culture, learning and social progress, and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity through the world; Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions and, united ever more closely, to forge a common destiny, . . .

(European Commission 2004: 12)

Europe’s past is conceived of as the foundation for the values of its present and its future. There is, according to the Preamble, inspiration to be found in the past, inspiration which also contributed to developing the inviolable and inalienable ‘universal values’ of our present. Those values, though universal, must be posited again as the basis of the Europe of today, in order both to overcome the divisions of the past and to forge together the common ‘destiny’, which, even though it is the destiny of Europe, appears to be sufficiently threatened to require inspiration from the past in order to safeguard it. An insistent, though fundamentally unstable, notion of universality inhabits these opening aspirations. On the one hand, the cultural inheritance of Europe’s past is the origin of the universal values of the present, the basic political principles that guide the European construction of our time. On the other hand, that past is one of division and clashes, division which must be overcome in order to deploy the
values, which nonetheless were valued before, towards the uniting of our present, which finds itself under the inspiration of the past. Thus, the strange logic of universal value: universalism of the past is fissured and must be transcended in order to achieve universalism.

This is the tension between a transcendental notion of universality, a notion whose origin and destiny are doomed to remain invisible like Schmitt’s mystical origin of international law, and a kind of normative universalism, a universalism-to-be, a universalism understood as in some sense already here, but nonetheless necessary to effectuate and operationalize in, and through, European construction. A dialectical opposition between universality and particularity in jurisprudence would represent a situation in which the particular application of law would be everywhere and always the same, and in this sense universal. According to the principles of European law the particular authority and competency in national and local settings does not call for universal application in the same way. Yet European law is not simply opposed to universality; it, rather, deploys a kind of limited universality.

The geography of values

The universalism of European cultural history thus obeys a conceptual topology that we are at pains to map onto its physical geography. This is so for two reasons: first, because geography is never purely physical geography; it is always made conceivable, understandable, and communicable by a network of ideas about place, space, emptiness, etc., which do not collapse onto it. Second, conceptual topology of any kind contains an implicit reference to the materiality of things in space and in time. One does not precede the other; both render transcendence strictu sensu meaningless. In the eyes of the Constitutional convention, Europe is both a place and a transcendental, extra-spatial entity, a set of ideas and values, which by their very nature are trans-national and international.

Thus the themes of ‘territoriality’ and ‘territorial cohesion’ recur again and again in the Constitution’s provisions. Though the European Union remains a geopolitical entity whose physical boundaries are beyond dispute, the cohesion of its territoriality is explicitly posited as an object to be reinforced. Among the EU’s objectives, formulated in Title 1, is the promotion of ‘economic, social and territorial cohesion’ (European Commission 2004: 16). At the same time, the Union will seek to maintain and respect the ‘territorial integrity’ of the member states, ‘maintaining law and order and safeguarding national security’ (ibid.: 17). EU citizenship confers the right to work and reside freely within the territory of member states (ibid.: 19), to enjoy rights of EU citizens in the ‘territory’ of third states. It becomes evident that, on the one hand, the classical notions of nation-state self-constitution and relation to others are clearly valid and in vigour; on the other hand, the repeated reaffirmation of the notion of territoriality reads nearly like a throwback to an age when the notion had far less anchorage in time and tradition. The notion of territoriality is reiterated precisely
because the draft EU Constitution comes to the fore in a moment when territori-
ality has never been so precarious, never so distant from its own self-evidence.

In this sense, it is also remarkable that a new figure of spatiality emerges
from the draft Constitution, equally marking the new *nomos* of the EU. The
value abstractions announced and confirmed in the draft Constitution are repeat-
edly associated with an *area*. Thus, ‘the Union shall offer its citizens an area of
freedom, security and justice without internal frontiers’ (ibid.: 15, 48). In terms
of its neighbouring states the European Union shall ‘also promote an amorphous
space of influence’, ‘an area of prosperity and good neighbourliness, founded on
the values of the Union and characterised by close and peaceful relations based
on cooperation’ (ibid.: 58). It shall also ‘constitute an area of freedom, security
and justice with respect for fundamental rights and the different legal traditions
and systems of the Member States’ (ibid.: 187). The values of the European
Union are not positively and indistinguishably attached to singular individuals or
institutions, not even to particular determinations of space such as borders and
walls. The European values to be institutionalized in the Constitution of the EU
comprise semi-amorphous areas, zones of value, non-linear and non-discrete.
Though the Constitution by nature unites Europe under the aegis of one set of
principles, these principles can only be understood and observed in terms of
local, regional and, not least, institutional variation. To the degree that the
concept of *nomos* assumes a homogeneous value-landscape it is at tension with
the European reality.

The Charter of Fundamental Rights, contained within the Constitution, lays out
an unsurprising set of traditional European values, based on the Universal Declara-
tion of Human Rights (UDHR) tradition of humanist principles, supplemented by
global capitalist notions of free movement of goods and market liberalism. *Values*,
moreover, provide a central theme throughout the text. Most significant for our
purposes is that the distinct European tradition, geographically discrete and territo-
rially sovereign, nonetheless constitutes an amorphous ‘zone’ of values and rights
(ibid.: 15–17). The values which form Europe exceed it as well. By the very logic
of value, the European topology of value is not identical to the European geo-
graphy. This ‘area of freedom, security and justice, without internal frontiers, and
an internal market where competition is free and undistorted’ does not map onto
the political geography of Europe, rather it draws its own value-topology in a Hei-
deggerian fashion (Heidegger 1986). Simultaneously the draft Constitution insists
on one of the primary inter-national values, namely the maintenance of ‘territorial
cohesion and solidarity’ among member states.

This is only one form of the great paradox of our time, reduced to the term
‘glocalization’: globalization opens the horizon to a shared global experience of
ideas, in particular unprecedented knowledge of the local. By virtue of being
global we have never been so local. This is the truly Hegelian moment of global
society: the universality of universal precepts is overturned by the universally
valid experience of their specific application and applicability in particular set-
tings. Market liberalism, to take the most prominent example and a central tenet
in European construction, is only universal to the extent that it can be applied in
the individual global settings that were completely unforeseen by those who first formulated the principle. In terms of the Preamble, the European values will be spread to all Europeans, all who fall under the same umbrella of European-ness will be respected for their difference, precisely because they are different, weak, deprived.

By the same token, national individuality is not opposed to European identity. The national schisms that caused the European wars of the past are not in some sense exceptions of history. Nor are they inferior moments in the construction of a higher order of civilization. The dialectical experience of conflict-in-unity is the very essence of European thought, both on the political level and in the domain of jurisprudence. Without the geographically based cultural heterogeneity of this otherwise homogeneous peninsula, the notion of a European unity would be unthinkable.

This set of ideas stands in contrast to what Schmitt rejects in the League of Nations model of international organization: namely, that it homogenizes the member states, reducing their political subjectivity and legal personality to mere straw men; that they become mere political and juridical atoms, with no internal politics or interpretative jurisprudence. The far more dialectical self-understanding of the draft EU Constitution conceives of the political subject and legal personality of member states, and the EU as a whole, as permeable.

**Spatiality of the new European nomos**

The same can be said of the European legal order. Indeed the space of international law – its organizing nomos – has always been severed and incised, cut and engraved. The fundamental mutation that Carl Schmitt sees after the Second World War can also be characterized as a lateral cut along the geographical East–West line. This cut does not, however, hinder further cuts and divisions on different levels, traversing different planes, zones and spheres. These cleavages exist in both space and time. International law, during the Cold War, is simultaneously universal, bipolar and heterogeneous. In Europe, in particular, there is a clear ‘north–south’ distinction separating Greece, Portugal, Spain, southern Italy and Ireland from the rest of Europe. The European system of norms is also torn in two across the trans-Atlantic axis. After 1990 the abiding bifurcation dissolves, the fall of the Berlin wall brings with it the end of communism, the unification of Germany, the collapse of East–West European multilateralism, and fresh Eastern European aspirations to join the economic development of the rest of Europe (Gautron 1999: 6–7).

Moreover, the 1990s introduced a new landscape of both states and inter- and non-governmental organizations. The former Soviet Union had broken into a number of states, while ex-Yugoslavia and Czechoslovakia also brought new states onto the scene, all of which make transitions to both market rules and legal norms at differing speeds. The juridical questions related to borders, monetary zones, trade and taxes, armaments, security, and rights of individuals and citizens become geometrically more complex.
Simultaneously, a new juridical cosmos of inter- and non-governmental organizations has become more and more dominant, supplanting, in some settings, the legal and economic society at large. To this can be added the expansion of the Council of Europe and the Organization for Security and Cooperation in Europe, a still unfinished revamping of both NATO and the Western European Union, the Organization for Economic Cooperation and Development, and lastly, of course, the various enlargements of the European Union. Each of these institutional changes has its own set of political, economic and juridical consequences in each of the European states. These political and institutional changes in European ‘architecture’ signal a shift in the nomos of European jurisprudence: they reorient the way in which the European institutions, which assume or are given the task of operationalizing the (universal) principles of European construction, actually map onto or relate to a heterogeneous European reality.

**Anthropology of the new European nomos**

Though debate among political scientists surrounding the question of what kind of political entity the European Union actually is has not abated, there is consenssus among legal experts that it constitutes a sui generis phenomenon of jurisprudence. EU jurisprudence distinguishes itself from both classical international law and all types of federal jurisprudence. As the Court of Justice of the European Communities stated in the oft-cited 1963 judgments by ECJ Van Gend and Loos:

> The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community.

(European Court of Justice 1963)

Even before the Treaty of European Union (TEU), in which the notion of Europe as a community of shared values first arises, the Court of Justice was struggling to draw the consequences of a system of legal ties without precedent. Also in the well-travelled Costa vs. ENEL case, the judgment makes visible the way in which social and political systems of legitimacy struggle to find their anchoring point in the legal system:

By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the treaty, became an
integral part of the legal systems of the member states and which their courts are bound to apply.

(European Court of Justice 1964)

Yet instead of one axis of comparison in the political sphere – an assembly of nation-state-like structures – the question of the status of the EU system is inevitably one which moves between the norms of national law and the categories of international law.

The multiple genealogies of European law

European law flows from a number of different sources, on different layers, international, European and national. It is an amalgamation of ‘sources’, but also a synthesis of kinds of sources of varying hierarchization (Hunnings 1996; Winter 1996; Cairns 1997; Chalmers and Szyszczak 1998; Evans 1998).

Writ large, the ‘sources’ of EU law consist of three levels of authority and legitimacy and are ordered in a hierarchical manner. The two primary sources of European Union law are: (1) primary law, the treaties creating the EU; and (2) the treaties entered into by the European Community with third states. The Treaty of the European Community, Article 249, then identifies the formally recognized ‘secondary sources’ or ‘secondary legislation’ of community law: (1) regulations; (2) directives; and (3) decisions. Finally, a set of tertiary sources of European law are associated with the practices of jurisprudence of the European Court. Such sources are decision-based and fill out the areas not directly covered by the secondary and primary sources. These are: (1) Acts adopted by representatives of member state governments; (2) the case law of the European Court of Justice (ECJ); (3) member state national law; (4) general legal principles; and (5) principles of public international law (MacLean 2000: 91–92).

These three layers of source material for EU law, differentiated into two, three and five sublevels, form the substantial sources. The treaties represent the most general or universal level of legal sources. They dialogue with the grand principles and philosophical traditions, questions of design and destiny of the European project. Here, the scope of legal interpretation is broadest and its politicization the most salient. The secondary sources integrate the technical and technocratic elements to be covered in any regulatory construction. The third level sources provide space for politics on all levels, though predominantly they open the way for inter- and intra-national politics. Member state national governments express political identity by asserting the legal validity of governmental acts. The case law of the European Court of Justice particularizes the palette of legal sources by bringing non-state groups, corporations, classes and individuals to the corpus of law. To these are added conventional principles of national law and international public law, as well as the general philosophical principles of legislation. The ‘mystical’ sources of law, proclaimed by Schmitt at the outset of *The Nomos of the Earth*, might very well be the general precondition of law itself (Derrida 1994; Schmitt 2003).
The topography of the new European nomos I: competence, meta-competence, para-competence

These dilemmas and conundrums between general principles and the complexity of their application gave birth eventually to the theory of competences, itself particular to the EU and designed to navigate the treacherous waters between the bare Schmittian universalism of international law, and the federal law of the hitherto close approximations of legal community. Competence is not an extra-legal attribute, but rather the fundamental attribution of law. Competence designates the foundation of jurisdiction, the basis of authority and legitimacy for any given field of legal issues. Yet, like legitimacy and authority, competence is necessarily the object of attribution. Competence can only be attributed through competent authority. Thus, a meta-competence becomes the precondition of competence itself. The EU does not idly wait for competence to evolve naturally through national court procedures. Rather, it possesses the right of attribution of competence (also known as ‘transfer of sovereign rights’).

Like other aspects of the inter-national EU project, the theory of competences finds unavoidable the division of legal thought into internal and external. Yet, across the EU external border and through its internal borders, there runs a complex of extra-territorial flows of cultural meaning, legitimacy and competence. However, instead of aligning itself with the model of federal law, whereby competence is attributed according to substance, the attribution of Community or Union competence follows the lines of the aim of the treaties, doing so with ‘variable intensity’. The EU thus possesses a mechanism for the distribution of legal power which has a géométrie variable. As a function of this intensity one can distinguish situations in which the Community has at its disposition competences which are substituted for those of states, and situations in which the Community has at its disposition a coordinating competence, itself susceptible to varying degrees of coordination (Gautron 1999: 113).

The topography of the new European nomos II: supremacy, direct effect, subsidiarity

Three other recurring principles have marked the singularity of the European legal order: direct effect, supremacy and subsidiarity. Direct effect can be defined in broad terms as the mechanism whereby a European citizen can rely upon a provision of EU law before his or her national courts. The national courts are required to acknowledge, protect and enforce the rights conferred by the provision (Cairns 1997: 84). The notion of direct effect thus sets EU law aside from other international institutions in the sense that it relates directly to the individual. Whereas international law and international organizations confer rights and obligations on nation-states, EU law has the ability to exercise jurisprudence in an individual capacity. Individuals have a set of transnational European rights, which at the same time are protected by the jurisdiction of the national courts. Supremacy assures the precedence of EU law in cases where it comes into conflict with national law.
These structural principles are not formally assured in EU treaties. On the contrary, they have grown informally through the corpus of case material that has developed throughout the construction of the European legal system. The principles of supremacy and direct effect have a clear impetus: they move the centre of gravity of European jurisprudence away from the nation-state level, and towards the EU level. From this emerged the concept of subsidiarity, both in legal cases and in the political discourse surrounding the Delors presidency in the European Commission. The principle was first codified in EU law through Single European Act (1986) and later codified in the TEU (Art. 5, European Commission 1992) in terms of competence, specifying that in areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

The triple mechanisms of direct effect, supremacy and subsidiarity thus put into place a regulation of the porosity of nation-state sovereignty. They support an international legal order in which the currents of universality are both supplemented and supplanted by those of particular rights and obligations. They realign the notion of authority in terms of the level of institutional competence instead of formal jurisdiction. The validity of any legal principle varies according to the national setting in which it is to be applied. On one level this legal-conceptual framework thus suppresses the very notion of abstract legal universality, replacing it with a system of ‘local’ legitimacy and authority; on another level the uniformity of application of the criteria constitutes an enriched universality, unifying European law as a standardized set of rules of application. These principles thus transcend the classical ‘monist’–‘dualist’ dilemma which Schmitt bemoans in the ‘Plight’ essay of 1943 (1957). That controversy pits those who, like Kelsen, see national legal orders as ‘creatures’ of international law (monists) against those who, like Triepel and Anzilotti (see de Witte 1999: 178) argue that national legal orders were separate legal orders which resisted the penetration of international norms. The European legal system, if only by default, resists both poles of the debate.

Conclusion

In light of Schmitt’s account of the *jus publicum Europaeum* and his concept of *nomos*, this chapter examined the general elements of the European legal system and the project of European construction from 1950 to 2006 more generally, expressed in the evolution of European Union law. To the extent that the evolving European legal system is not at present, and does not aspire to be, a global legal system, a new global *nomos*, in the sense of a world order based on the appropriation, dis-appropriation and distribution of the earth, it cannot fill the
void left by the collapse of the *jus publicum Europaeum* bemoaned by Schmitt. This impossibility lies in the far more modest aspirations of European construction, in the nature of the concept of *nomos*, in the finitude of the history of global expansion and in our experience of the finitude of our planet. This assessment, on the basis of our analysis above, leads to four partial conclusions.

First, the blurring processes that Schmitt observed early in the twentieth century have continued. The basic oppositions that Schmitt diagnoses in a number of his writings (inside/outside, war/peace, enemy/criminal) hold true, more so in our day than ever before. Second, there will never again be a global legal order. This is the consequence of the concept of universality itself. Both experience and the logic of universality teach us that a universal system is only universal in opposition to another. As Schmitt admonishes in *The Nomos of the Earth*, until outer space becomes a true space for conquest and appropriation on a grand scale, the global state will remain a fiction. Third, on formal legal grounds, the European legal system, with its dialectical mix of ‘limited’ universality and local particularity, the variety of its sources from different levels of European life, is in some sense one answer to the problem posed by Schmitt. The European legal sciences have already survived their own fissuring into legitimacy and legality. Moreover, the breakdown of international law into international politics is not a menace to European civilization, as Schmitt might see it, but rather inherent in the system of European law. Finally, the extension of Schmitt’s analysis beyond the 1950s into the era of European construction confirms Schmitt’s diagnosis, while at the same time suggesting that he was too pessimistic in his characterization of the European legal order. A kind of new *nomos* is emerging to respond to the challenges he perceived. Yet this is a *nomos* that is characterized by a multi-cultural flux of values, which have a systematically blurry connection to territory, which function in the global economy and which are, moreover, protected by a security agenda that reaches beyond the ‘traditional’ inter-national space of Europe. This is the new European *nomos*: a new spatial order, based not on space ordaining law, but building upon a new ordering of peoples, culture and value in space.

Notes

1 Many thanks to Sonja Kittelsen for assistance in the preparation of this chapter.
2 Schmitt’s understanding of the European conceptual makeup evolved throughout his career. Following John P. McCormick (2003), we can roughly situate it in four categories: the fundamentally Christian project of the 1920s exemplified by *Political Romanticism* (Schmitt 1925), the Central European emphasis of the late 1920s most directly expressed in the essay ‘The Problem of the Domestic Neutrality of the State’ (Schmitt 1930a), the National Socialist *Grossraum* theory (Schmitt 1939), and the post-war analysis of the *Nomos* book.
3 Remarkably, the Treaty of Paris, which founded the European Coal and Steel Community, was signed by the founding members of the European Union – France, Germany, Luxembourg, Italy, Belgium, Netherlands – only a year after the publication of Schmitt’s *Nomos* book. The Treaty, with its core philosophy of peace, sought to ensure the reciprocal integration of the European coal and steel industries which was
seen as the first and most obvious step towards a fusion of national interests. European peace would thus be assured not by diplomacy between nation-states, but by dismantling the political-economic sovereignty of nation-states, albeit gradually and only in selected areas. The Treaty was envisaged as the first step in a long and continuing process of building down sovereign national borders, based on the notion that the values of the European nation-states no longer map onto those nation-states, but rather exceed and precede them. Jean Monnet said:

The Schuman proposals are revolutionary or they are nothing. The indispensable first principle of these proposals is the abnegation of sovereignty in a limited but decisive field. A plan which is not based on this principle can make no useful contribution to the solution of the major problems which undermine our existence. Cooperation between nations, while essential, cannot alone meet our problem. What must be sought is a fusion of the interests of the European peoples and not merely another effort to maintain the equilibrium of those interests.

(Cited in Fontaine 2004: 17)

4 Of the Kantian variety most notably envisaged by Höffe (1999).

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Part IV

Critical rereadings of Carl Schmitt’s international thought
A terrifying world without an exterior
Carl Schmitt and the metaphysics of international (dis)order

Mika Ojakangas

Every functional, centralized organization is not perforce, simply because it is ‘unitary’, an ideal organization of human relations. The kingdom of Satan is also a unity.

(Carl Schmitt, ‘Die Einheit der Welt’)

Introduction

Carl Schmitt’s hostility towards universalism in politics is well known. According to him, universalism excludes politics because politics presupposes pluralism, that is, plurality of incommensurable perspectives: ‘The political world is a pluriverse, not a universe’ (Schmitt 1996a: 53). However, universalism is capable of excluding politics only in principle. Whenever universalistic concepts – such as humanity – are brought into practice their nature necessarily changes, the reason being that human practice and action always take place in a determinate time and place. Thereby, universalistic concepts too, which first were mere abstractions located in a void, become rooted in a determinate time and place, meaning that, they lose their universalistic character. According to Schmitt, they become weapons in the hands of particular peoples and social groups. In the sphere of political action, universalism becomes deception – even murderous deception. Universalism becomes a means of ‘a most awful expansion and a murderous imperialism’ (Schmitt 1999: 205).

In other words, universalistic concepts can be put to intensive political use. In the case of humanity, which is ‘no less abused than the name of God’ (ibid.), the consequences of political utilization of a non-political term are, according to Schmitt, particularly dangerous. The enemy is expropriated of his human quality. He is declared an outlaw of humanity: ‘The concept of humanity only superficially neutralizes differences between people. In reality, it carries with it a murderous counter-concept with the most terrible potential for destruction: the inhuman’ (Schmitt 2002: 114). Of course, a war against this kind of inhuman enemy – against an ‘absolute enemy’, as Schmitt calls him – is also unusually intense and inhuman. It is not possible to treat an inhuman enemy humanely. It is not sufficient that he be defeated: he must be ‘utterly destroyed’ (Schmitt 1996a: 36).
This, in a nutshell, is Schmitt’s criticism of universalism. Universal concepts in politics obliterate the possibility of a symmetrical relationship between enemies, transforming the political enemy, who ‘is on the same level as I am’ (Schmitt 2004: 71), into a morally despised foe. However, Schmitt’s hostility towards universalism in politics does not explain his hostility towards globalization, understood in the sense of the unification of the world. Contrary to universalism, globalization is a concrete process, and like all concrete actions, it takes place in a determinate time and place. Globalization is by no means located in a void. It is thoroughly ‘earth-bound’, to use Schmitt’s words. Therefore, there is no deception in globalization. Universalistic concepts, if utilized in politics, may become weapons in the hands of particular peoples and social groups, but there is no such utilization of globalization, especially because globalization is a category of action rather than a category of thought. Nevertheless, for Schmitt even a struggle between pluralistic powers in the framework of a political unity is more desirable than a worldwide unity: ‘Anarchistic chaos is better than nihilist centralization’ (Schmitt 1988: 165). It is understandable that Schmitt opposes universalism, since universalism paves the way for insoluble paradoxes in politics, but why is he so afraid of globalization and the unity of the world – a world without an exterior? What is wrong with globalization?

In this chapter, I examine two possible explanations for Schmitt’s hostility. First, I examine Heinrich Meier’s view that Schmitt’s hostility towards globalization is the result of his belief in the theological dogma of divine Revelation. Second, and in contrast to the theological interpretation, I propose a ‘metaphysical’ interpretation. According to this interpretation, Schmitt’s hostility towards globalization stems from his conviction that free historical action, that is, political action that keeps history going, presupposes a free space, a space of the outside: ‘There is no movement without an empty space’ (ibid.: 37). For Schmitt, an empty space for action is essential for man, because his existence is deprived of dignity and honour without such a space – and without dignity and honour human life is senseless. For this reason, this space is not only the space of freedom but also a constitutive space. It is the origin of every meaningful order and the source of all human orientation. According to Schmitt, however, such a space is not a natural given. The space of the outside must be created, and it is precisely free political action, the event (Ereignis) of the political, that creates this space. It is here, I think, that we disclose the metaphysical foundation of Schmitt’s thought as well as the reason he opposes globalization when understood as the unification of the world. In Schmitt’s view, globalization is a threat to the event of the political – and without the event, nihilism prevails.\(^1\)

**Heinrich Meier’s theological interpretation**

Let us start with Heinrich Meier’s interpretation. According to Meier, understanding Schmitt presupposes that his political thought has to be reduced to the theological dogma of divine Revelation. Meier sees divine Revelation as consti-
tuting the ‘ultimate authority’ and the ‘absolute foundation’ of Schmitt’s thought: ‘There can be no doubt of the fundamental precedence of the theological for Schmitt’ (Meier 1998: 16). If Schmitt is an anti-immanent thinker, as Meier correctly observes, it is because of his ultimate belief in divine Revelation. All metaphysics of immanence – like Hegel’s, for whom the other never enters from the outside into the immanence of development – would entail the denial of God’s sovereignty, that is, the transcendent commandment of God coming from the absolute outside. In the same manner, the denial of the figure of the enemy, says Meier, assumes that one must forget the fundamental theological dogma of the sinfulness of the world and of man (ibid.: 78). Evil and enmity enter the world along with original sin – and the belief that a human being could independently destroy all evil and create a paradise-like world by means of his natural reason and his own judgement is nothing but anti-Christian hubris. Enmity is the state of things in the world as ordained by God in the beginning: ‘I will put enmity . . . between your seed and her seed’ (Genesis 3:15).\(^2\) To deny this ordinance would mean that one sets oneself against Him and on the side of the Antichrist.

According to Meier, however, of primary importance for Schmitt is the Second Letter to the Thessalonians, which Schmitt frequently quotes. In his view, Schmitt’s entire spiritual existence can be understood in the light of this letter, which also explains his hostility towards the unification of the world. In the light of the letter, human history can be seen as consisting of the eschatological struggle against the anomalos, ‘the man of lawlessness’ (2 Thessalonians 2:3). In Meier’s view, in order to understand this struggle, three suppositions concerning history have to be taken into consideration: Resurrection, historical interim, and the Day of Judgement. Because the Day of Judgement, that is, the final triumph of anomalos and the second parousia of Christ, is not yet at hand, mankind lives in the era of the interim, and more precisely in the era of a battle between so-called katechon and anomalos (Meier 1998: 161). KATECHON is also a figure of 2 Thessalonians (2:6–7), and its function is to restrain (katheon) the ‘lawless one’ before the second coming of Christ. At that time, anomalos will appear in its final form, and the Lord will extinguish it by the manifestation of his coming. Until that happens, however, anomalos, whose coming is the ‘activity of Satan’ (2 Thessalonians 2:9), performs deceitful wonders that lead people from the truth. Nevertheless, all this is part of God’s great plan: ‘God sends upon them a strong delusion, to make them believe what is false’ (2 Thessalonians 2:11). The purpose of the plan is to try people’s belief and to separate the wheat from the chaff in order to judge the latter.

For Schmitt, argues Meier, the greatest swindle of anomalos and thereby also the greatest test of God is that history would have already ended and the world united. From now on, all battles against anomalos – and therefore all battles – would be useless and superfluous. This cannot be true, however, because the second coming of Christ would also mean the end of the world, but the end of the world is not yet at hand. KATECHON must exist and it becomes ‘conceivable in him who does not stand for the unity of the world’ (Schmitt 1988: 165).
Schmitt’s view, for instance, the Holy Roman Empire as well as Emperor Rudolph II and Emperor Franz Joseph have been ‘restrainers’, but even today ‘restrainers’ must exist, because ‘otherwise we would no longer exist’, as Schmitt writes in his diary (Schmitt 1988: 80, quoted in Meier 1998: 161). It is the faith in *katechon*, says Meier, that helps Schmitt to preserve his faith in the truth of the Revelation and remain in harmony with himself (Meier 1998: 162). *Katechon* not only offers an answer to the question of why there is still history – a delay of *parousia* – but it also protects the meaningfulness of historical action inasmuch as the interim is simultaneously the era of a great test. In this test the real believer is distinguished from those who have chosen unrighteousness – and doubtless Schmitt wanted to be counted among the righteous.

**The founding rupture**

Although Meier’s interpretation is convincing in many ways, especially as regards Schmitt’s attitude towards the metaphysics of immanence, it is still possible to understand all of Schmitt’s central concepts without any reference to a transcendent commandment of God coming from the absolute outside. Meier states repeatedly that only ‘one thing is important’ for Schmitt, but it was precisely Schmitt who, like Alberico Gentile, frequently asserted: *Silete theologi in munere alieno!* In Meier’s view, Schmitt’s political thought has a theological foundation, yet Meier does not take into account that Schmitt’s theology is profoundly political. In other words, we do not find a theological interpretation of politics in Schmitt; on the contrary, we find a political interpretation of theology – an attempt to pinpoint the implications of theological dogmas within the sphere of politics. This is not to say, however, that Schmitt has no need of transcendence. As a matter of fact, in Schmitt’s thought the political signifies precisely transcendence, not in the sense of the absolute outside, but in the sense of the outside within the inside. There is transcendence in Schmitt’s philosophy, but this transcendence is nothing but a rupture within immanence – a void in the closure of order immanent to itself.

In order to understand the nature of this rupture, we must take a look at Schmitt’s conception of immanence. According to him, immanence signifies that everything is at least potentially under the control of human reason, of its ‘rationalist schemes’ (Schmitt 1985: 14). In other words, everything is potentially available for technological manipulation which, in the final analysis, signifies that by means of reason and technology a human being is capable of creating a perfectly ordered world that excludes the possibility of conflicts and resistance – at least any meaningful resistance. In Schmitt’s view, however, such a world is itself devoid of meaning, because it has become an automaton, a ‘self-propelling machine’ (Schmitt 1996b: 27). In the world that has a meaning, there must be something that transcends this self-propelling machine. In Schmitt’s view, this precise something is free political action, the event of the political. It brings about a rupture within immanence, endowing man with dignity and existence with meaning.

This viewpoint also explains why Schmitt rejects Hegel’s philosophy. In
Meier’s view, Schmitt rejects Hegel’s philosophy because it does not recognize the ‘commandment that is given him from outside’, that is, by God (Meier 1998: 16). To my mind, Schmitt rejects Hegel, because the unending process of the Hegelian world spirit absorbs all interruptions into itself as immanent negations. In Schmitt’s view, such absorption makes all interruptions counterfeit. In Hegel’s philosophy, there is no genuine interruption, and therefore, no space for the event of the political, which also means no space for freedom of action: ‘The essential point is that an exception’ signifying the event of the political ‘never comes from outside into the immanence of development’ (Schmitt 1994: 56). However, Schmitt’s primary target in his critique of immanence is not Hegel, but the epoch of late modernity as a whole. According to Schmitt, an outstanding characteristic of late modernity is precisely the dominance of the metaphysics of immanence: ‘Everything is increasingly governed by conceptions of immanence’ (Schmitt 1985: 49). In Schmitt’s view, this tendency began with Baruch Spinoza and found its culmination in Hegel, but the concrete deployment of the metaphysics of immanence did not take place until the triumph of natural-scientific dogma during the nineteenth century. With the triumph of this dogma, Spinoza’s and Hegel’s philosophies of immanence were secularized, materialized and diffused, which in Schmitt’s view paved the way to the possibility of absolute rationalization and neutralization of human existence. With this triumph, society – even the world as a whole – became increasingly conceived as an ethically neutral and absolutely rational self-enclosed system in which everything ‘functions automatically’ and things ‘administer themselves’ (Schmitt 1996a: 57). With the triumph of this dogma, man could be conceptualized as a bee and society as a totally managed beehive.

According to Schmitt, however, man is not – at least not yet – a bee. In human life, there is something that transcends the condition of an animal, which is subordinated to the immanence of its life-world. Only an animal is ‘entirely programmed’, but not man:

Man can choose, and at certain moments in his history, he may even go so far, through a gesture peculiar to him, as to change himself into a new form of his historical existence, in virtue of which he readjusts and reorganizes himself.

(Schmitt 1997: 5)

In other words, man has the capacity to transcend his condition and thereby to reach the level of meaning in life. Traditionally, such transcendent moments and simultaneously substantial foundations of meaningful order of human life have been such things as God, Nature, Reason or Tradition. According to Renato Cristi, Schmitt too sought such substantial foundations, calling his philosophy a ‘metaphysics of substance’ (Cristi 1998: 144–145). To my mind, however, Schmitt fully realized that the epoch of late modernity is marked by a fundamental loss of such substantial foundations. Late modernity is characterized by the absence of gods, meaning that we are living in an epoch in which all
transcendent foundations of meaning and order, from theistic Revelation to deistic Nature and from Enlightenment Reason to romantic Tradition, have fallen apart. Hence, although in the 1960s Schmitt defined his concept of the political, the famous antithesis of friend and enemy, in terms of an openness of order towards transcendence (Schmitt 1963: 121–123), the transcendence in question, as Carlo Galli has also pointed out (Galli 2000: 1607), is not to be understood as a substantial foundation of order. It should be understood as the very openness itself, as the very event that introduces a rupture in the closure of order immanent to itself. All of Schmitt’s central political concepts – including the sovereign decision, the constituent act of a people, and so on – denote this transcendence, transcendence not beyond but within immanence. These concepts denote an event of resistance as regards the absolute closure of immanence.

The event of the political, however, is not only a figure of resistance. It is simultaneously a foundation. The event of the political is the constitutive event of meaning and order. This is why Schmitt’s central concepts are not only counter-concepts (Gegenbegriff), signifying the intrusion of pure contingency, but simultaneously fundamental concepts (Grundbegriff). A good example of the double function of Schmitt’s central political concepts is the sovereign decision. From the perspective of domestic legal order, the sovereign decision ‘emanates from nothingness’ (Schmitt 1985: 31–32). It brings about a rupture – ‘new and alien’ (ibid.: 31) – in the immanence of the system of norms and eventually in the legal order itself. According to Schmitt, however, the sovereign decision is also the foundation of legal order: ‘It is the decision that grounds both the norm and the order’ (Schmitt 1993a: 23). The sovereign decision is the ‘absolute beginning’ and the ‘ultimate origin’ of order (ibid.). In other words, the sovereign decision is not only a rupture in the immanence of order, but it is also the event that founds the order. It is simultaneously both, that is, a founding rupture. In Political Theology, Schmitt expressed this double meaning in one concept: Grenzbegriff, the borderline concept.

This also explains why Schmitt continuously emphasizes exceptions and extreme cases. The extreme case ‘exposes the core of the matter’ (Schmitt 1996a: 35). The exception – that which is taken out (excipio) – transcends the closure of immanence, because it is something that ‘cannot be anticipated’ (Schmitt 1985: 6), something absolutely new and alien. The exception is a rupture within a system. However, the exception also founds the system. Every system is built on the ultimate origin of exception, which is not, from the most human perspective, an exception at all, but a rule, the rule of meaningful existence:

A philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree. The exception can be more important to it than the rule, not because of a romantic irony for the paradox, but because the seriousness of an insight goes deeper than the clear generalizations inferred from what ordinarily repeats itself. The exception is more interesting than the rule. The rule proves nothing; the
exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception.

(ibid.: 15)

The unity of the world

Keeping in mind Schmitt’s idea of ‘founding rupture’ as the constitutive event of order and meaning, we can now return to the issue of globalization understood as the unification of the world. Meier believes that the unity of the world is a nightmare to Schmitt because thereby the insurmountable difference between Christ and the Antichrist in history disappears. The unity of the world necessarily signifies that the Antichrist has won, given that the second *parousia* does not take place until the end of the world. In my estimation, however, the issue is about the possibility of a free space for political action. According to Schmitt, there exist two conditions in which the unity of the world becomes possible: either humankind regresses into absolute passivity, or it is subordinated to overwhelming control by the world police. Schmitt never believed in the former option. For him, man is and remains a ‘“dangerous” and dynamic being’ (Schmitt 1996a: 61), that is, a being who is essentially ‘undetermined and unfathomable’ (ibid.: 60). As regards the latter alternative, overwhelming control by the world police, he was less sure. Therefore it became one of the focal points for Schmitt’s critique when, at the end of the 1920s, he turned from issues of constitutional law and foundations of state order towards the topics of international law and world politics, although these subjects did not start to dominate his writings until ten years later when Hitler’s ideology of *Lebensraum* was transformed from an ideology into Nazi Germany’s concrete politics of expansion.

The enemy

Schmitt’s first theoretical weapon against the unity of the world was the figure of the enemy, already outlined in *The Concept of the Political*, initially published as an article (1927) but afterwards as a book (1932). In theoretical terms, the enemy functions just like the sovereign in regard to domestic legal order. It is a guarantee that something ‘new and alien’ will appear in the machine that has ‘become torpid by repetition’ (Schmitt 1985: 13), that is, a guarantee that globalization, the worldwide enclosure of absolute immanence, will not reach its ultimate aim, the ‘Babylonian unity’ of the world (Schmitt 1990a: 70). As long as there is a real possibility of enmity, humankind has not regressed into absolute passivity nor has control by the world police reached the level of irresistibility. For Schmitt, in other words, the real possibility of enmity indicates the openness of international order. The enemy is the ‘other and strange’ (Schmitt 1996a: 27), calling into question the status quo of international order. The enemy introduces a moment of transcendence, and thereby a moment of openness and freedom, into the immanence of world order.

Hence, although Schmitt sometimes seems to affirm Hegel’s concept of the
enemy (‘the enemy is a negated otherness’ (ibid.: 63)) and to define enmity in Hegelian terms (‘in the reciprocal recognition of recognition [Anerkennung der Anerkennung] lies the greatness of the concept’ (Schmitt 1950: 89)), the core of the concept is nevertheless absolutely anti-Hegelian. This is because, for Hegel, what remains outside the concept – outside objective knowledge – is identical to nothing. In other words, what does not make a difference in terms of objective knowledge makes no difference at all (cf. Hegel 1977: 58–66). For Schmitt, the enemy is precisely something that remains outside the concept and outside objective knowledge. Certainly, for Schmitt too, the enemy is something objective, but this objectivity is not the objectivity of concept but that of power (Macht): ‘The enemy is an objective power’ (Schmitt 1950: 89), not a ‘metaphor or symbol’ (Schmitt 1996a: 27). As an objective power, the enemy ceases to be a mere concept and therefore a passing stage of negation, becoming a genuine interruption – not only of a dialectical development of history but also of objective knowledge. Certainly, this power can, and in Schmitt’s view must, become an object of knowledge and reflection because the self is the result of such reflection – the enemy is a ‘measure of myself’ (Schmitt 2004: 72) – but this can occur only after the event, namely the appearance of the enemy, has taken place. Even then the intellect is not capable of exhausting the enemy completely, because the event is not prior to knowledge and reflection merely in a temporal sense, but also, and above all, ontologically. The enemy is the other and no amount of reflection can reduce its otherness into an immanence of the same.

However, like all Schmitt’s central concepts, the enemy is also a constitutive concept. The existence of the enemy is the concrete precondition of the collective identity of friends. It is the enemy who brings about the ‘existential affinity’ of those ‘who just happen to live together’ (Schmitt 1993b: 210). In other words, the enemy is not only a counter-concept to immanence but also a transcendent fundamental concept. Yet the enemy is not a substantial foundation of order, because the enemy has no substance but only a form, an empty form: ‘An enemy is whoever calls me into question’ (Schmitt 1988: 217). This is the reason why I cannot agree with those who argue that Schmitt’s concept of the enemy is essentialist. The enemy is not a natural given in Schmitt’s theory. The enemy, ‘the most extreme intensification of otherness’ (Schmitt 1992: 38), is thoroughly contingent. The enemy may be another race, speak another language, profess another religion or represent another culture. Nevertheless, there exists no a priori criterion either for the enemy or for the friend in Schmitt’s theory. The enemy is anyone who is concretely disclosed as a real threat, as the one who calls me into question. Moreover, the enemy calls me into question only at the moment ‘in which the enemy is, in concrete clarity, recognized as the enemy’ (Schmitt 1996a: 67). The enemy is, in other words, an event – a double event of appearing and recognition. It is this event that founds an order. However, this order is completely different from the totally administered Babylonian unity of the world. It is an order based not on worldwide control of humanity but on the tension between separate political entities. It is a political order – and where there is the political, there is openness.
Appropriation

Without going into details of Schmitt’s different concepts of enemy – in *Theory of the Partisan* (1963) he makes a distinction among as many as three kinds of enemies – let us turn to his post-war magnum opus, *The Nomos of the Earth* (2003a [1950]). It is said that a radical rupture occurred in Schmitt’s thinking when he turned from decisionism to ‘concrete order’ thinking at the beginning of the 1930s. In a sense, this must be true, especially because Schmitt himself so forcefully emphasized the turn in his book *Über die Drei Arten des rechtswissenschaftlichen Denkens* (1934). However, we must remember that Schmitt had attempted to think about concrete order from the very beginning of his career. Already in *Political Theology* (1921), he had called his decisionist approach a ‘philosophy of concrete life’ (Schmitt 1985: 15). In 1934 he merely reached the conclusion that reflection which overemphasizes the act of decision does not fulfil the precondition of concreteness in the philosophy of concrete life, but on the contrary, floats like the positivist norm, ‘freely in the air’ (Schmitt 1993a: 23). Therefore, he replaced both of these approaches with a supra-personal perspective. Its point of departure is neither the personal decision nor the impersonal and objective norm, but the concrete institutional order and its historical development (cf. ibid.: 12).

In other words, previously Schmitt had thought that only a decision can imbue a legal order based on a lifeless and abstract norm with concrete meaning, but he came to believe that both can be replaced with the concept of the institution. Unlike decisionism, which stresses the momentary strike of a concrete political act – the decision on the exception – at the foundation of legal and political order, the institutional reflection emphasizes the historical continuity of this order. Order is not imposed by decisions, at least not by the decisions of decisionism. In decisionism, the decision that creates law (*Recht*) is independent of a ‘pre-existing order’ (ibid.: 23). In institutionalism, by contrast, law (*Recht*) is identified with such a pre-existing order, arising from ‘unintentional developments’ (Schmitt 1990a: 56). At the beginning of *The Nomos of the Earth*, Schmitt describes this unintentionally or even naturally evolved law, tracing it back to its mythical origins in mother earth. In Schmitt’s view, the earth is the threefold root of law and justice. First, the earth contains law within herself as a reward of labour. Second, the earth manifests law upon herself in fixed boundaries. And third, the earth sustains law above herself as a public sign of order:

The solid ground of the earth is delineated by fences, enclosures, boundaries, walls, houses, and other constructs. Then, the orders [*Ordnungen*] and orientations [*Ortungen*] of human social life become apparent. Then, obviously, families, clans, tribes, estates, forms of ownership and human proximity, also forms of power and domination, become visible. (Schmitt 2003a: 42)

According to Schmitt, in other words, law and justice are intimately connected with the earth and land: ‘Law is bound to the earth and related to the
earth’ (ibid.: 42). Law derives from land: ‘Every ontonomous and ontologically just judgement derives from land’ (ibid.: 45). To this land-bound law Schmitt gives the ancient Greek name nomos. For the Greeks, nomos signified written law, but also custom and usage. Like Aristotle, however, Schmitt associates nomos with the entire order (taxis) of the polis. For Schmitt, nomos is a ‘total concept’, consisting of ‘concrete order and the concrete organization of a community’ (Schmitt 1993a: 55). Unlike the decision, nomos is not therefore an exception. It is a rule, but not a rule imposed on an order. Rather it is the immediate expression of an order: ‘Nomos is the immediate form in which the political and social order of a people becomes spatially visible’ (Schmitt 2003a: 70). It is the unity of a spatial order (Ordnung) and the orientation (Ortung) of a particular community.

At first glance, this turn towards the philosophy of nomos would seem to signify that Schmitt is abandoning the idea of the openness of order towards transcendence and moving instead in the direction of a more or even completely immanent approach. On the other hand, it should be remembered that although institutionalism based on a philosophy of nomos emphasizes the historical continuity of concrete institutions, Schmitt does not abandon the search for origins. All continuity presupposes an origin – and in the case of nomos this origin is the primeval act (Ur-Akt) of land appropriation (Landnahme). Thus, the order closing upon itself finds a new opening in appropriation, which interrupts the process of the closing up of immanence. Appropriation becomes a new decisionist moment, that is, simultaneously a rupture in the previous order and the constitutive event of a new spatial order (Raumordnungsakt): ‘The great primeval acts of law’ (Ur-Akte des Rechts) are ‘terrestrial localizations’ (erdgebundene Ortungen), that is, the appropriations of land and the founding of cities and colonies (ibid.: 44).

According to Schmitt, land appropriation is thus the ‘primeval act in founding law’ (ibid.: 45). It is the reproductive root for the meaningfulness of history – the reproductive root of all orders and orientations. Land appropriation is found at the beginning of the history of every settled people and every commonwealth:

The constitutive event [Vorgang] of land-appropriation is found at the beginning of the history of every settled people, every commonwealth, every empire. This is true as well for the beginning of every historical epoch. Not only logically, but also historically, land-appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law.

(ibid.: 48)

Hence, land appropriation is the first measure (Ur-Maß) from which all subsequent measures derive. It is the primeval legal type (Ur-Typus), which founds and legitimates all subsequent law: ‘All subsequent law and everything promulgated and enacted thereafter as degrees and commands are nourished, to use
Heraclitus’ word, by this source’ (ibid.: 48). According to Schmitt, the very possibility of juridical relations is dependent upon this original event and determined by this original measure. Therefore, land appropriation precedes all fundamental distinctions of law, such as the distinction between public and private law and even the distinction between public power (imperium) and private property (dominium). But land appropriation does not create the historical condition of possibility of law only within the community. In Schmitt’s view, it establishes the law beyond communal borders as well, that is, with respect to other peoples. It establishes the historical condition of possibility for the law of nations. It is a ‘constitutive event [grundlegende Ereignis] of international law’ (ibid.: 80).

On the level of international order, the real possibility of appropriation is, in the same sense as the concept of enemy, a guarantee that globalization will not reach the worldwide enclosure of absolute immanence, the Babylonian unity of the world. To be sure, Schmitt admits that the stakes today do not consist primarily of land appropriation, given the fact that it is rarely land which is appropriated. As a matter of fact, the sea replaced land as the principal target of appropriation as early as the sixteenth century. And although the sea has also ceased to be an object of appropriations, appropriation continue to exist today: there are industry appropriations, even air and space appropriations (cf. Schmitt 2003b: 347). Of importance here, however, is that the real possibility of appropriation exists, which means that universal history is not concluded and the world united, as Schmitt’s friend Alexandre Kojève had proposed (cf. Kojève 1980: 158–159), but remains ‘open and fluid’. Conditions are not yet ‘fixed and ossified’, which means that human beings and peoples have ‘not only a past but also a future’ (Schmitt 2003a: 78). Admittedly, Schmitt, like Kojève, thought that the end of history was a real possibility but, unlike Kojève, he did not perceive this end in the satisfaction of the human desire for recognition. He perceived it in the real possibility of humanity to commit suicide by means of developed techniques of total annihilation: ‘This death would be the culmination of universal history, a collective reality analogous to the Stoic conception according to which the suicide of an individual represents the culmination of his liberty’ (Schmitt 1990b: 246). For Schmitt, liberty signifies something completely different from the liberty to commit suicide. Liberty signifies a state of affairs in which things are not yet set in stone. It signifies a free space of action: ‘Freedom is freedom of movement, nothing else. What would be terrifying is a world in which there no longer existed an exterior [Ausland] but only a homeland [Inland], no longer space [Spielraum] for measuring and testing one’s strength freely’ (Schmitt 1988: 37).

In The Nomos of the Earth, the concept of appropriation represents this freedom, freedom of movement. Appropriation is a new decisionist moment, that is, a rupture in the old international order, but it is simultaneously the constitutive act of a new spatial order. It is the counter-concept to the unity of the world, but it is also the fundamental concept. Appropriation designates the exceptional event on the grounds of which a concrete international order is
established, an order that is based on the tension between political entities, not on a global ‘centralized organization’ (Schmitt 1995: 2).

**Metaphysics of freedom**

Is it, however, totally misleading to claim that Schmitt defends the freedom of man? Throughout his career Schmitt ridiculed the liberal pathos: ‘All liberal pathos turns against repression and lack of freedom. Every encroachment, every threat to individual freedom and private property and free competition is called repression and is *eo ipso* something evil’ (Schmitt 1996a: 71).

Schmitt was certainly no defender of such individual freedom. What then is the meaning of freedom, if there is any, for Schmitt? In contrast to a liberal concept of freedom, Schmitt’s freedom does not signify the freedom of an individual, but the freedom of man as a species. Also in contrast to a liberal concept of freedom to do whatever one pleases without causing trouble for someone else, Schmitt’s freedom signifies *freedom to cause trouble* if the situation requires it. In a word, Schmitt’s freedom signifies heroic freedom, the option of using force and violence (*Gewalt*). For Schmitt, as has been said, freedom is the freedom to measure and test one’s strength without restraint. This is not to say that Schmitt considers war, for instance, ‘something ideal’ (cf. Schmitt 1996a: 33). Unlike his friend Ernst Jünger, for whom war was an aesthetic spectacle to be enjoyed for its own sake and thereby an end in itself (cf. Ojakangas 2006: 98–99), Schmitt believed that war is always a means of attaining security and order. Nevertheless, in Schmitt’s view, every order is based on force and violence – be it decision or appropriation – and therefore, thinking that dismisses this fact also dismisses the order of human things. Also more profoundly, because such thinking dismisses the violent foundation of order, it legitimates this order for the wrong reasons. The order is legitimate – which is also to say meaningful – only if the violence at the origin of order is acknowledged and conceived as legitimate.13 Otherwise, the order is illegitimate and there exists no reason to tolerate it. In this situation, a new beginning is needed, a new decision or a new appropriation, which founds new law and new order.

However, if the world is already united, either because humankind has regressed into absolute passivity, or because humans have been subordinated to overwhelming control by the world police, there exists no free space for such a beginning. There exists no space for testing and measuring one’s strength freely. This is why Schmitt opposes the unity of the world, and not because the unity of the world would signify the end of the battle between Christ and the Antichrist, as Meier believes. Admittedly, the possibility of battle (*polemos*) is of great concern to Schmitt, but battle not between Christ and the Antichrist, but between men. For all ‘righteous measures’ and ‘meaningful relations’ are formed on the grounds of this battle – the battle between ‘the new and the old forces’ (Schmitt 1997: 59). For Schmitt, the battle reveals that man, this dangerous and dynamic being, is still a man and not a bee. The battle reveals that man, as a species, is still undetermined, unfathomable and free. This is the reason, I believe, why
Schmitt, this radically conservative thinker who admired Mussolini, even accepted communist guerrillas as examples of the power of resistance against ‘a world organized down to the smallest details along technological lines’ (Schmitt 2004: 65).

**Sacred orientation – after all?**

As a final question, we should perhaps ask: why such enthusiasm for the great events of the political? Moreover, why did Schmitt identify freedom and meaning with such events – with the events that suspend and transgress the ordinary framework of life? To be sure, if a society is conceived of as a self-propelling machine and as a beehive, it obviously lacks space for anything new to emerge. However, why should we identify the ordinary with such a machine? What if the ordinary itself is already an exception, that is, a founding rupture of existence? What if human existence as such is continuously transgressing itself? Then the exception would become the rule – and human existence as such, the mere being in the world, would be disclosed as the constitutive event, as the event of freedom and meaning. But this view is one that Schmitt would not have accepted. To him, only an extraordinary, heroic moment of the political, a violent exception, could be the event that creates meaning. In the final analysis, this is, I think, the basic reason for his Nazism, which he saw as offering a chance for the reappearance of lost heroism. In Nazism, he conceived of a counterforce not only to the natural-scientific rationalist schemes but also to the liberal order and its bourgeois individualism, which had deprived life of its seriousness. There is nothing great and nothing serious in bourgeois individualism, which culminates, according to Schmitt, in the concepts of game and entertainment (Schmitt 1996a: 53).

In fact, a possible common denominator behind Schmitt’s complaints concerning late modernity – its rationalistic as well as its nihilistic tendencies – is the profanity of the epoch. In an absolutely profane world, everything is freely available for manipulation, because everything is neutral by definition. Nothing is sacred. Indeed, it is not impossible to see a certain fascination for the sacred in Schmitt’s critique of late modernity, especially in his critique of the ‘relativistic bourgeoisie’ (Schmitt 1996a: 68), for the sacred is always something that cannot be relativized, something ungraspable: ‘No mortal can invent it, no genius can compose it’ (ibid.: 143). I am not referring here to Meier’s commandments of God, for Schmitt was never very enthusiastic about the absolute transcendence characteristic of the Judaeo-Christian, especially the Judaeo-Protestant, God. If he was looking for God, this God should manifest Himself in institutions on earth, such as the Catholic Church. But Schmitt was not very optimistic about Catholicism either, especially after his excommunication in 1926 and even less so after his turn to concrete order thinking at the beginning of the 1930s. In *The Nomos of the Earth*, Heracles becomes his hero instead of Christ. This does not signify, however, that fascination with the sacred would not be present in this book. On the contrary, Schmitt identifies legitimacy with sacredness more
eagerly than ever. According to him, every nomos is ‘based on sacred orientations’ (Schmitt 2003a: 70). What has disappeared is the belief that the sacred in the world can be restored by restoring the grandeur of Christ and especially by reawakening the memory of His sacrificial death, the event of the sacred for Christians. In other words, what has disappeared is his belief that revitalizing the memory of the death of Christ would be enough in the age of absolute profanity. To be sure, Schmitt, like a good Christian, seemed to believe that the sacred can only be an event. Only an event, a great event within the immanence of history, can elevate existence beyond the senselessness of absolute immanence and bestow order and orientation upon man. But his longing was for a new event, a new, violent beginning, that is, a new sacred – for only violence, as Schmitt well knew, can re-establish the difference between the sacred and the profane. This is, at least, a perspective that we cannot completely dismiss when we read Schmitt who, only four years after the most atrocious war ever experienced in world history, was able to write: ‘When culture comes, heroes come to an end, says Hegel. For us, this culture has become dull. This peace is getting foul for me. Therefore, we call for heroes. And they will come!’ (Schmitt 1988: 249).

This is not to say that the theological takes fundamental precedence for Schmitt, as Meier claims. Rather the fundamental precedence is an order in which the theological is not an autonomous sphere, as in Christianity, but pervades the whole society. In other words, as has been pointed out, we do not find a theological interpretation of politics in Schmitt, but, on the contrary, a political interpretation of theology. We find an attempt to reintegrate religion into politics, the two having been separated first by the Jews and subsequently by the Protestants. Late modern secularized society is a result of this separation, which is therefore also the origin of contemporary nihilism: ‘Our situation is completely rotten [zersetzt],’ Schmitt writes in The Nomos of the Earth (2003a: 71) – and it is rotten because the ‘original and natural unity of politics and religion’ (Schmitt 1996c: 10) was destroyed far too long ago, the unity which alone could endow men with meaningful order and genuine orientation. According to Schmitt, of course, such a unity should not be a worldwide unity. In fact, it could not be worldwide, because meaning and orientation are always a matter of borderlines. Only if the solid ground of the earth is delineated by enclosures and boundaries, will the orders and orientations of human life become apparent: ‘True and authentic fundamental order is based, at its essential core, on certain partitioning up of the earth’ (Schmitt 1997: 37). The unity of politics and religion can only take place in a pluralistic world, because in a worldwide unity, there is no room for politics, the constitutive borderline of which is, after all, the borderline between friends and enemies. This is why the question of the enemy always remained Schmitt’s own.14
Notes

2 All Biblical quotations are taken from the New Revised Standard Version.
3 ‘Theologians should remain silent within foreign walls’; that is, theologians should mind their own business.
4 For Schmitt, Spinoza is the forerunner in philosophy advocating the metaphysics of immanence, first and foremost, because he developed an idea of God as the immanent cause of all things (Deus sive Natura). In Spinoza, in other words, Schmitt conceives the metaphysician who first paved the way for the rationalization and especially the neutralization of human existence, and not completely without reason: ‘If men were born free they would form no conception of good and bad as long as they were free’ (Spinoza 1989: 186). On the ‘horrible dictum’ Deus sive Natura, cf. Schmitt (1988: 84–85, 275).
6 In this sense, Galli’s remark that Schmitt ‘tries to think the unthinkable’ is correct (Galli 2000: 1611).
7 Cf., for instance, Mouffe (1999: 50). According to Mouffe, Schmitt’s ‘distinction between us and them is not really politically constructed; it is merely a recognition of already-existing borders’.
8 In The Concept of the Political (1996a [1932]), Schmitt had distinguished between two enemies, the political enemy and the enemy who surpasses the framework of the political (absolute enemy). In Theory of the Partisan (2004 [1963]), he makes a distinction among as many as three kinds of enemies. First, there exists a conventional enemy who belongs to the epoch of cabinet wars between princes and their mercenaries. For these wars Schmitt uses the term war game (Kriegsspiel). In contrast to war games, there appears the real enemy of a serious war (‘the Spanish partisan re-established the seriousness of war’), which signifies warfare between peoples and their citizen-armies: ‘The enemy became once again a real enemy, and war became a real war’ (Schmitt 2004: 74). The absolute enemy – a world revolutionary – surpasses even this framework but at the cost of becoming abstract beyond all recognition.
9 In fact, the first expression of the transformation of Schmitt’s thought towards the thinking of concrete order was not Über die Drei Arten but a book published a year before, in 1933, namely State, Movement, People (2001). This book is Schmitt’s attempt to outline a juridical theory of the Third Reich, which implies that the roots of his thinking of concrete order lie in National-Socialism, if not ideologically then at least contextually. In the book, however, Schmitt’s thought has not yet found its firm grounding in the concept of nomos, but operates with such concepts as ‘kin’ and ‘ethnic identity’ (cf. Ojakangas 2006: 78–81).
10 In Political Romanticism (1986 [1919]) Schmitt’s attitude towards conservatism was still ironic, insofar as it revered tradition and durability as its ‘household god’ (Schmitt 1986). Now the essence and the value of the law lie precisely in its ‘stability and durability’ (Schmitt 1990a: 57).
11 According to Aristotle, the law (nomos) is the order (taxis) of the city-state (polis) (Aristotle 1990: 1253a39).
12 Schmitt refers here to Heraclitus’ fragment 44 according to which ‘all human laws are nourished by a single divine law’.
13 Every ‘invasion or temporary occupation’, for instance, ‘is not an appropriation that founds an order’. Appropriation is the origin of order but in order to become effective, it has to be conceived as legitimate (Schmitt 2003a: 80).
14 ‘The question of the enemy is our own’ (Schmitt 1988: 243).
Bibliography


The ethos of insecure life

Reading Carl Schmitt’s existential decisionism as a Foucauldian ethics

Sergei Prozorov

Introduction

As the contemporary discourse on ethics is ever more suffused with answers to the question of what makes a decision or an action ethical, it appears timely to engage with the ethical thought of a philosopher who infamously affirmed the autonomy of the decision from any ‘ethical criteria’. In contrast to numerous contemporary studies that take Carl Schmitt’s political realism as the object of criticism in the name of a variably construed ‘political ethics’, in this chapter we shall venture to recast the most controversial or even scandalous aspects of Schmitt’s thought as ethical in their own right.¹ Our contention is that rather than serving as an easy target of deconstructionist or genealogical criticism, a Schmittian political ontology functions as an irreducible limit of this criticism, serving as the ‘undeconstructible’ remainder of political realism. The argument of this chapter is that this remainder also marks a locus for an ethical discourse that is both commensurable with the ethical drive of current poststructuralist criticism and able to transcend its limitations.

More specifically, the chapter seeks to explore the affinities between the work of Schmitt and Michel Foucault. In his studies of Carl Schmitt’s philosophy in the context of the political thought of late modernity, Mika Ojakangas (2001, 2004) has argued that the approach of the two thinkers is marked by the same conceptual logic that locates the foundation of order in the founding rupture of the exception, a logic that we have elsewhere termed ‘ontological extremism’ (Prozorov 2004b). Nonetheless, there are also crucial divergences between Schmitt and Foucault, most notably regarding their relation to the principle of sovereignty. In contrast to Schmitt’s valorisation of sovereignty, Foucault has famously dismissed the very problematic of sovereignty in contemporary political theory with his call to ‘cut off the head of the king’ and his argument for the decentred and immanent character of power (Foucault 1977b, 1990a). However, as we have argued elsewhere, it is both possible and fruitful to reintroduce the question of sovereignty, in its Schmittian ‘quasi-transcendental’ sense of the constitutive decision on exception, into the Foucauldian genealogical problematic.² Moreover, as we shall suggest below, Schmitt’s political ontology strongly resonates with the work of Foucault, particularly his writings on freedom, transgression and the aesthetics of existence.³
It is from this perspective that this chapter attempts a reading of Schmitt’s concept of the political as an *ethics* in the Foucauldian sense, that is, as a mode of self-constitution as a subject in the absence of or in opposition to a substantive moral code. Proceeding from the reading of the concept of the political as independent of and ontologically prior to moral or any other positive criteria, we shall first relocate the Schmittian problematic to the level of the individual subject and, second, approach Schmitt’s existential decisionism as a mode of Foucauldian transgression which constitutes the subject through a dissociative practice of ‘making enemies’. Reading Schmitt’s decisionism through the four dimensions of Foucault’s conception of ethics, we shall attempt to reformulate ethics as a question of the *act*, rather than the substance, of the decision.

**The point of the political: ontological extremism and concrete life**

A distinctive feature of Schmitt’s political philosophy that may account for its continuing appeal and controversial nature is its abandonment of any a priori identification of the political with the state or any other positive structure of authority. In contrast to conventional definitions of the political as something derived from the state and defined negatively against the presumably non-political background of ‘economy’ or ‘society’, Schmitt famously argues that it is the ‘concept of the state [that] presupposes the concept of the political’ (Schmitt 1976: 19), not the other way round. The level on which Schmitt’s political philosophy operates *precedes* the very distinction between state and society and rather encompasses the conditions of existence of the very form of order within which this distinction is delineated. In his famous argument, these conditions consist in the friend–enemy distinction. Yet, in contrast to other ‘constitutive distinctions’ within the social realm, the friend–enemy distinction is not grounded in any substantive criterion that would allow a functional differentiation of social spheres. In Schmitt’s claim, the political concerns itself with relations of an ‘utmost degree of intensity of a union or separation, of an association or dissociation. It can exist theoretically and practically, without having simultaneously to draw upon all those moral, aesthetic, economic or other distinctions’ (ibid.: 26). This statement carries two important consequences.

First, the political is *anterior* to the other constitutive distinctions (e.g. good/evil, profitable/unprofitable, beautiful/ugly, etc.) and serves as the condition of their possibility by establishing the overall order, which is subsequently functionally differentiated. In this sense, the Schmittian ‘political’ corresponds to Claude Lefort’s notion of *le politique*, which refers to the instance of the foundation of order that stands in a relation of constitutive exteriority with it and may never be subsumed under the already constituted domain of politics (*la politique*) (Lefort 1988: 11–12). The friend–enemy distinction is the founding event of a political community that subsequently recedes to its borderline as both exterior to its existence and indispensable for its formation. This conceptual logic, which strongly resonates with the principle of supplementarity in the early
work of Jacques Derrida (1998), is a distinctive characteristic of Schmitt’s ‘philosophy of concrete life’ that operates with ‘borderline concepts’ which restore transcendance and exteriority into the legal-political sphere, dominated by the immanencism of legal positivism (Schmitt 1985a: 5, 20; Muller 1999; Rasch 2000; Ojakangas 2000, 2004). ‘The political’, ‘sovereignty’, ‘exception’ are all instances of the concrete that pertain to ‘the outermost sphere’ (Schmitt 1985a: 5), the extremity of any order, and form the irreducible excess of order that is nonetheless indispensable for its emergence as its unfounded foundation: ‘[t]he concrete is that kind of instance or act which belongs to order, but can’t be included in it’ (Ojakangas 2000: 67). The consequence of this logic is the rejection of any claim to the ‘self-immanence’ of the social order, of any possibility of a wholly self-sufficient system without an outside. Any order is contaminated at its foundation by something heterogeneous to it yet essential to its emergence and continuing existence.

Second, the political is argued to be independent of ethical, economic and aesthetic content. If the enemy is ultimately not the bad, the ugly or the economic competitor and if the friend does not stand for the good, the beautiful and the economically useful, the distinction appears to lack any substance at all and is therefore ironically as formal as the legal positivism that Schmitt criticized (see Žižek 1999a). ‘The political can derive its energy from the most varied human endeavours, from the religious, economic, moral and other antitheses. It does not describe its own substance, but only the intensity of an association or dissociation of human beings’ (Schmitt 1976: 38). Once a certain level of intensity is reached, the moral, the economic or the religious acquire a political dimension: ‘the point of the political may be reached from the economic as well as from any other domain’ (ibid.: 78). Schmitt takes care to note that no such level of intensity may be theoretically prescribed and may only be decided by actual participants in a concrete situation: the enemy is

the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible. These can neither be decided by a previously determined general norm nor by the judgement of a disinterested and therefore neutral third party.

(ibid.: 27)

Deprived of normative substance, the political becomes elusive by definition, its entire definition contained in its undefinability. The political act cannot be defined, simply because it is itself that which defines the positivity of order while eluding subsumption under its definition. The friend–enemy distinction is an act of existential decision, a constitutive practice that is not grounded epistemically or normatively but is rather made possible by this very ungroundedness: ‘[t]he decision frees itself from all normative ties and becomes in the true sense absolute’ (Schmitt 1985a: 12). The political decision does not make any reference to the pre-existing, but rather brings into existence. The Schmittian
enemy, ‘existentially different and alien’, is neither different from nor alien to a pre-existing self, nor antecedent to that self in its existential strangeness in the manner of the Other in a Levinasian ethics. Both the friend and the enemy, the self and the other, owe their existence to the decisionist act of distinction that brings them into being simultaneously. The concept of the political therefore consists entirely in a constitutive decision, or, more precisely, in the decision that is always constitutive: ‘[t]here can never be absolutely declaratory decisions’ (ibid.: 31). Divorced from substantive content, the political is to be isolated in the acts that possess an intense force of constitution, acts that are ontogenetic (Megill 1985: 20–25) in relation to the social order, acts that give it form by escaping from it: ‘The constitutive, specific element of the decision is from the perspective of the content of the norm new and alien’ (Schmitt 1985a: 31). The ontological status of the political is thus not substantive but existential: the political isn’t anything in a strict sense, it simply is. The political decision lacks all identitarian predicates and rather manifests itself in the singularity of an event that intervenes in the positive order of being as, from any perspective immanent to this order, an instance of pure negativity. Ironically, despite the title of Schmitt’s foundational work (1976), it is not at all clear if the political possesses any recognisable attributes of a concept.

This reading of Schmitt is the target of Leo Strauss’s famous critical commentary. Strauss’s criticism of Schmitt’s ‘liberalism preceded by a minus sign’ (Strauss 1976: 102) concerns precisely the autonomy of the political from the moral, its ungroundedness in any substantive notion of the good. In Strauss’s view, Schmitt’s valorisation of ‘decision of whatsoever character’ (ibid.: 103) is marked by the same spirit of neutrality and tolerance that Schmitt derides in liberalism. Strauss considers this ‘abstract’ affirmation of the political to be a mere preliminary step towards a ‘decisive battle between “the spirit of technology” . . . and the opposite spirit and faith which, it seems, does not yet have a name’, a battle that is fought on unequivocally moral grounds (ibid.: 104). Strauss’s attempt to recouple the political and the moral in the name of the ‘conservative revolutionary’ struggle against liberalism serves to diminish the significance of Schmitt’s account of the political by reducing what is arguably a quasi-transcendental condition of all politics to one side of the historically contingent liberal/conservative friend–enemy grouping. It also seems to run contrary to Schmitt’s explicit insistence on the separation of politics and morality, an insistence that, as Strauss (ibid.: 101) concedes, ‘pervades’ the whole essay on the concept of the political. Thus, instead of rushing to efface the dimension of negativity, which Schmitt’s account of the political restores to the existence of politics, it appears worthwhile to tarry with the ‘minus sign’ and probe the ethical implications of this radical negation of the moral foundations of politics.

It is the contention of this chapter that the a-moralism of Schmitt’s political ontology is an indispensable component of its ethical dimension. We shall venture to recast Schmitt’s understanding of the political as an ethical relationship to the self by applying Foucault’s concept of ethics, developed in his later writings by way of distinction from the notion of morality. It should be
emphasised that what is at stake in this recasting is not all an attempt to recover, in a hermeneutic reading, something that may be called ‘Schmitt’s ethics’, but rather to explore the possibilities opened by the reconstruction of the logic of the political in terms of its functioning as an ethical practice. Rather than try to restore an ethical dimension to Schmitt’s political theory, the attempt is to develop one on its basis, proceeding ironically from Schmitt’s own belief in the uncontrollable demonic force that concepts may exercise against their creator (see Muller 1999). In Foucault’s terms, the purpose of this reading is not to try to retain fidelity to the author’s thought in the course of interpretation but ‘to deform it, make it groan and protest’ (Foucault 1980: 64). The following section proceeds in this unfaithful interpretation by two steps: first, relocating the concept of the political to the level of the individual as a deciding subject, and, second, juxtaposing Schmitt’s decisionism with Foucault’s thought on the transgressive practices of the self.

Decision as a transgressive practice: lightness and weight in Schmitt and Foucault

The ethical reading of Schmitt’s concept of the political entails an important shift of focus away from the political community towards the individual as an ethical subject. At first glance, Schmitt’s theory does not appear to warrant this move because in a conventional reading the political enemy is exemplified by a collectivity, whose hostility concerns another collectivity: ‘[t]he enemy is solely the public enemy’ (Schmitt 1976: 28). The reduction of the concept of the political to the collectivity, which in European modernity takes the form of the state, would appear to confirm a conventional ‘political realist’ reading of Schmitt in the context of International Relations. Nonetheless, such a reading would not do justice to Schmitt’s insight that it is the concept of the state which presupposes the concept of the political, and not the other way round, and would thus mistake, for the umpteenth time, Schmitt’s affirmation of the political as the valorisation of statism. It would also ignore what is arguably most original, disturbing and haunting about the Schmittian concept of the political: its actively nihilistic existential decisionism (see Wolin 1992; Žižek 1999a; Hirst 1999), which, in affirming the constitutive decision that inaugurates the state, simultaneously subverts all claims to self-immanence that the state may have (see Prozorov 2004b).

To fully appreciate this subversive force, it is necessary to recognise in the ‘solely public’ enemy the effect of subjective decision, an ontogenetic act of ‘principally unlimited authority’ that is not derived from anything but rather constitutes the basis of all derivation, a decision ex nihilo (Schmitt 1985a: 12). The friend–enemy distinction is a sovereign decision par excellence – an act that ‘emanates from nothingness’ (ibid.: 32) – and, as something ‘that can not be subsumed’ (ibid.: 13) under the universal and the general, can only come as an exception to any pre-existing norm. Even if one remains confined to the level of the state, one ought not to forget that Schmitt explicitly rejected legalist, abstract
and impersonal conceptions of the state, claiming that ‘the sovereignty of law means only the sovereignty of the men who draw up and administer this law’ (Schmitt 1976: 67). It is thus neither coincidental nor bizarre that, particularly in his early work, Schmitt chose as ‘the model of political activity’ none other than Don Quixote, an individual, the content of whose quest may well have been delirious, but who was nonetheless ‘capable of making a decision in favour of what seemed right to him’ (McCormick 1997: 53).

Our next step is to begin to problematise the figure of the deciding subject by juxtaposing Schmitt’s existential decisionism to Michel Foucault’s thought on transgression and the aesthetics of existence and bringing up the relationship the two thinkers establish between individual and collective dimensions of existence. Using Alan Megill’s (1985) term, both Schmitt and Foucault may be referred to as ‘prophets of extremity’ who establish an aestheticist relationship to reality, which is admittedly less obvious in the style and subject matter of the former thinker. For our present purposes, an important affinity between the two thinkers concerns the curious ambivalence that their philosophical strategies establish in relation to subjectivity. In the case of Foucault, this ambivalence was summarised by Jon Simons (1995) in Kundera-esque terminology as an oscillation between unbearable gravity and lightness, the weight of discourses and strategies of power and the force of anti-gravitation offered by transgressive experiences of the limit. On the one hand, Foucault’s idea of autonomous orders of discourse in his ‘archaeological’ writings and the conception of productive power in his ‘genealogical’ phase point to a conception of subjectivity as an effect of discursive or political practices, whose non-subjective rationality is dispersed throughout the social realm that appears to be thoroughly suffused with rationalities of power and knowledge. On the level of human collectivities, Foucault’s conception of decentred and constitutive power serves to destabilise all positive projects of liberation and demonstrates the full array of practices of exclusion, confinement, normalisation and subjection that pervade the discourses of modern humanism. It is on this level that Foucault’s work exhibits a sense of unbearable gravity, arising from a suspicion of any emancipatory project in the social realm. It is here that, in the words of Charles Taylor (1986: 69), ‘Foucault disconcerts’.

Yet, rather than withdraw into passive resignation in the face of the unbearable gravity of social life, Foucault’s thought and practice proceeded from a ‘pessimistic activism’ (Foucault 1984a: 343) that questions all discourses of aggressive normativity: ‘[t]here is always something ludicrous in the philosophical discourse when it tries, from the outside, to dictate to others, to tell them where their truth is and how to find it’ (Foucault 1990b: 9). This stance is what Foucault, echoing Schmitt’s insistence on the existential rather than normative character of the friend–enemy distinction, refers to as the ‘indignity of speaking for others’ (Foucault 1996b: 76). Instead, Foucault explicitly suggests that political activity is a matter of personal decision:

It is absolutely true that when I write a book I refuse to take a prophetic stance; that is, the one of saying to people: here is what you must do, and
This quotation provides a good illustration of the dimension of lightness in ethico-political practice, when the latter is conceived on the level of the individual subject. The radically contingent and undecidable nature of all regimes of truth and correlate forms of subjectification, demonstrated in Foucault’s genealogy, itself provides a possibility for a transgression of the limits within which our subjectivity is inscribed. It is the very gravity of the social space, sutured by myriad strategies of power, that enables what Foucault referred to as ‘concrete freedom’ [7] that, rather than being positively identified with any form of order, consists in crossing its constitutive boundary and dispensing with the very notion of identity, rather than merely adopting an alternative mode of subjectification: ‘[t]ransgression has its entire space in the line that it crosses’ (Foucault 1977b: 34).

In the absence of secure epistemico-moral foundations, the sole remaining ‘criterion’ for political action is the foundational yet unfounded force of the subject’s decision. Like Schmitt’s, Foucault’s political ethics is marked by an existential decisionism, an affirmation of one’s stance combined with the recognition of the absence of any foundation for the decision. It is important to note that Foucault’s affirmation of the deciding subject is by no means a return to an essentialist conception of the subject with its familiar themes of self-discovery and self-fulfilment.

Modern man, for Baudelaire, is not the man who goes off to discover himself, his secrets and his hidden truth; he is the man who tries to invent himself. This modernity does not liberate the man in his own being; it compels him to face the task of producing himself. (Foucault 1984b: 42)

We may therefore conclude that while the social aspect of existence is in Foucault’s work endowed with a dimension of gravity, the transgressive element of lightness is contained within those practices of the self by which a subject (re)invents her own existence and thereby verifies her subjectivity. [8]

The next section will attempt to demonstrate that a similar distinction between lightness and weight is at work in Schmitt’s political thought. On the level of the collectivity, Schmitt’s concept of the political presents us with a gloomy (and arguably irrefutable) vision of an ever present ‘extreme possibility’ of war, delivered in a concise and solemn style which parodies the force of theological revelation that in Schmitt’s political theology is a metaphysical counter-
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part to decisionism. Yet the images of recurrent doom that this reading evokes are dissolved in Schmitt’s own insistence on the ungrounded and ontogenetic character of the decision, the intensely personal nature of the political act of the ‘friend–enemy distinction’. The restoration in the ‘philosophy of concrete life’ of the exception as the immanent-transcendental condition of possibility of order has a destabilising effect, similar to that of Foucault’s historical ontology, that makes ‘the intelligible appear against the background of emptiness and den[ies] its necessity’ (Foucault 1996a: 312). Probably against their own pragmatics, Schmitt’s texts demonstrate the ever present possibility of things being otherwise and, in what seems to be a timely contrast to the resigned cynicism prevalent in our own ‘age of neutralisations and depoliticisations’ (Schmitt 1993), the political significance of willing things to be otherwise. In the following section we shall discuss the Schmittian ethics of decisionism in terms of the four-fold scheme offered by Foucault.

The art of making enemies: towards a non-positive affirmation of life

We have argued that the work of both Schmitt and Foucault is marked by a consistent a-moralism and anti-normativism, which, however, is indispensable to the constitution of a distinct ethos of political practice. The distinction of morality and ethics on which we rely originates in Foucault’s late work on the ‘ethical’ axis of ‘historical ontology’. Foucault introduces a distinction between three aspects of morality: moral behaviour, the moral code (with which behaviour may be consonant or dissonant) and, most originally, the ‘kind of relationship you ought to have with yourself, rapport à soi, which I call ethics, and which determines how the individual is supposed to constitute himself as a moral subject of his own actions’ (Foucault 1984a: 352; see also Foucault 1990b: 25–32). In his studies of Graeco-Roman culture Foucault brings up a particular form of the latter aspect of morality, a type of ethics which is simultaneously an aesthetic relationship, an ‘art of existence’, which does not venture to recover the underlying truth of one’s subjectivity in a ‘hermeneutics of the self’, but rather focuses on active self-fashioning, ‘those intentional and voluntary actions by which men . . . seek to transform themselves, to change themselves in their singular being, and to make their life into an oeuvre that carries certain aesthetic values and meets certain stylistic criteria’ (Foucault 1990b: 10).

For Foucault, these practices do not ‘have any place in society itself, or in the body politic. They can only be produced in another, a different place which Baudelaire calls art’ (Foucault 1984b: 42). Yet, contrary to the criticism of Foucault’s ‘aestheticism’ as elitist and narcissistic (see, for example, Wolin 1994), we must note that for Foucault ‘art’ does not denote a functional sector contrasted with other domains of experience; in an interesting parallel to Schmitt’s concept of the political it is rather a source of all experience. Just as any practice acquires a political character, when it carries an intense ontogenetic force, any
material, including one’s everyday existence, can become enveloped in an aesthetic project of creating oneself as a ‘work of art’. Far from being a vacuous valorisation of ‘creativity’ and ‘self-expression’, characteristic of contemporary neoliberal individualism, Foucault’s ‘work of art’ primarily refers to the ceaseless work of confronting any prescribed regime of ethics that promises the individual access to the truth of his being and a pathway to self-fulfilment. Foucault’s ethics is ‘the philosophy for a practice, in which what one is capable of being is not rooted in a prior knowledge of who one is. Its principle is freedom, but a freedom which does not follow from any postulation of our nature or essence’ (Rajchman 1994: 192). In the absence of any knowledge about who one is, freedom takes concrete shape in the cultivation of a style of existence, a sensibility that is aesthetic rather than epistemic. Posing the question of Schmittian ethics in these terms requires a reconstruction in the existential decisionism of Schmittian political theory of the four aspects of ethics that Foucault distinguishes: ethical substance, mode of subjection, ethical work and the telos of the ethical subject.

**Ethical substance: proximity to the void**

Trying to identify an ethical substance in Schmitt’s political theory may appear paradoxical in light of the preceding discussion of the thoroughgoing negativity that characterises his concepts of the political, sovereignty and the exception. Yet the notion of ethical substance in Foucault’s usage refers to the aspect of existence that is problematised, the object of ethical practice rather than its content (Foucault 1990a: 26). We may venture that the ethical substance of a Schmittian political realism is contained in the notion of ‘real life’, the access to which is provided by the exception:

> The rule proves nothing; the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition.

(Schmitt 1985a: 15)

This attention to the practice of fostering ‘real’, unmediated life arises from Schmitt’s ontological extremism that derives a political theory of normal order from a moment of exceptional decision, an act of unlimited authority that emanates from nothingness and has no content other than the intensity of its ontogenetic force.

Thus, in the absence of a positive ethical substance, Schmittian political realism offers a notion of ‘life’ which is as holistic and all-encompassing as it is restricted to the absolute minimum, its entire ‘reality’ contained in the exceptional, critical, boundary or limit experiences. These experiences both serve as conditions of possibility of ‘ordered life’ and affirm its ultimate impossibility, relegating it to the order of ‘mechanism’, done away with by taking exception to
it. Such a limitation of life to the situation of the limit is not reducible to the ‘conservative revolutionary’ aesthetics of horror, frequently deemed synonymous with the exaltation of the virtues of war (see Huysmans 1998; Wolin 1992), but rather concerns any experience that is transgressive in the Foucauldian sense: an awareness of the limits of our constitution that is simultaneously a step beyond them, a step that, it should be recalled, has its entire space in the line of the limit. The ethical substance of Schmittian ethics is thus that narrow segment at the extremity of one’s existence, the traversing of which via the decision returns the subject to the void, to which he owes his subjectivity. What is affirmed in decisionist ethics is not the certainty of presence of the grounds of the good, it is rather the proximity to the void, that space of nothingness from which the decision emanates and which provides access to ‘real life’. This vitalist understanding of ethics carries an affinity with Gilles Deleuze’s reading of Foucault’s notion of resistance:

Life becomes resistance to power when power takes life as its object. . . . When power becomes bio-power, resistance becomes the power of life, a vital power that cannot be contained within . . . the paths of a particular diagram. Is not the force that comes from outside a certain idea of Life, a certain vitalism, in which Foucault’s thought culminates? Is not life the capacity to resist force? . . . There is no telling what man might achieve ‘as a living being’, as a set of forces that resist.

(Deleuze 1988: 92–93)

Although this notion of life as an ontological precondition of subjectivity appears to betray a residual naturalism, it is necessary to note the nuances in this conception of ethical substance. The ‘ethical subject’ for both Schmitt and Foucault is not an anterior vital force that resists but that which emerges in the act of resistance to all externally instituted identities. Freedom, therefore, does not consist in letting the primal forces of life be but in their confrontation with that which permanently threatens to enclose them within the limits of a positive order. Transgressive resistance is not protective, but constitutive of, free subjectivity as, in Nietzsche’s words, ‘something one has and does not have, something one wants, something one conquers’ (Nietzsche 1977: 271).

Mode of subjection: existential decisionism

The second component of the Foucauldian reconstruction of Schmittian ethics concerns the mode of subjection, ‘the way in which people are invited or incited to recognise their moral obligations’ (Foucault 1984a: 353). While a subject may be (self-) subjected to a certain practice via its claim to rationality, its conformity to a divine, natural or positive law, its accordance with the epistemico-political standard of ‘normality’, Schmitt’s active nihilism leaves no possibility of linking ethical practice to truth, either of divine or human origin. Since the decision ‘emanates from nothingness’, it is by definition deprived of a ground
such as the truth of divine law, rationality or even pragmatic utility. The only mode of subjection that Schmitt’s ontology permits is what we have referred to above as existential decisionism, a commitment to a position in spite of the impossibility of its grounding. This stance can be described in Paul Veyne’s terms as a fulfilment of nihilism. Veyne approaches nihilism as ‘a name we give to periods of history when thinkers feel that truths are without foundation’ (1992: 242). In this understanding nihilism is constituted by, first, a recognition of the absence of foundations of truth, morality and politics and, second, the desire to have such foundations. The properly nihilistic response to this existential condition may consist either in the hypocritical attempts to invent new foundations for judgement (‘incomplete nihilism’ in Nietzsche’s terms) or in the passive-nihilist abandonment of all judgement due to its necessary contingency.

In contrast to such critics as Michael Walzer (1986) and Nancy Fraser (1995), Veyne interprets Foucault’s work as the ‘fulfilment of nihilism’ that accepts the first assumption of nihilism but rejects the second, claiming instead that it is the very impossibility of founding norms that makes possible ethical action. Similarly, Veyne suggests that the absence of secure foundations does not disable judgement, but merely disables giving one’s judgement the force of truth or moral law. ‘What remains is to live and to want what one wants without justifying oneself and saying that one is right’ (Veyne 1992: 243).

It is important to distinguish this affirmation of decisionism from the deconstructionist understanding of the ‘impossibility’ of decision, highlighted in the ‘ethical’ writings of the later Derrida (1992, 1996). Like Schmitt’s insistence on the decision emanating from nothingness, deconstructionist ethics affirms undecidability as the condition of possibility of every decision. In Derrida’s supplementary deconstruction of Schmitt’s approach, any decisionism necessarily contains the ‘aporia of decision’, the passage through the ‘ordeal undecidable’, the experience of the ‘perhaps’ that is both traversed and effaced (but not annulled) in the act of decision (Derrida 1996: 67). It is this effacement that deconstruction seeks to restore to the decisions already taken in order to reassert their radically undecidable nature, irreducible to the procedure of derivation. As we have seen, Schmitt may be considered a devout Derridean in this aspect, given his insistence on the impossibility of grounding a genuine decision. It is rather in assessing the consequences of this originary undecidability that Schmitt and Derrida part ways. In contrast to Schmitt, Derrida is characteristically hesitant to affirm the necessary effacement of undecidability in the very act of making the decision. Instead, his deconstructed decisionism appears to be locked in a self-imposed suspension over the abyss of undecidability in the desire to refrain from the closure that every decision inaugurates, which makes it, in Derridean ethics, always inadequate and irresponsible.

The deconstructionist ethics of (in)decision therefore remains suspended in irresolution and impotence, a deadlock which can only be broken via its supplementation with a Schmittian decisionism, of which it is allegedly itself a supplement. The insistence on the need to decide despite the a priori ‘ethical inadequacy’ of every decision is necessary for deconstruction not to appear, in
Dominic Moran’s words, ‘either as substanceless cant or a new moral absolutism’ (2002: 129). Simply put, radical undecidability must be suspended for anything to happen at all, for any event to take place. This imperative problematises every attempt at an ‘ethics of deconstruction’ that could discriminate between ethical and unethical decisions: since any decision passes through the ordeal of undecidability, all decisions are ethical in Derridean terms. Yet, since all decisions effect a closure of this radical openness, they are all equally ‘irresponsible’ and hence unethical. (Un)ethicality is therefore always already structurally inherent in the decision of ‘whatsoever character’, precisely because it is entirely autonomous from the character of the decision but, rather, concerns the event of its appearance and occultation. In contrast to the impasse of deconstructionist ethics, a Schmittian approach focuses not on the impossible attempt to establish the fact of ethicality of decision, but on affirming the decision itself as an ethical act, whose authenticity is conditioned by ‘going through’ both the abyss of undecidability and its violent effacement. Recalling a Lacanian ‘ethics of psychoanalysis’ (Lacan 1992; Žižek 2004a: 200–205), existential decisionism urges one not to ‘give ground relative to one’s desire’ because of the impossibility of its grounding.

**Ethical work: making enemies**

The third step in the elaboration of a Schmittian ethics concerns ethical work, those practices in which the subject engages in order to constitute herself and which Foucault unites under the name ‘askesis’ (Foucault 1984a: 355). For our purposes, the ethical work prescribed by Schmitt’s existential decisionism consists in the friend–enemy distinction as a practice, the ‘art of making enemies’ as a means to actively fashion the self. The antagonistic relationship with the Other is contained in the very definition of ethics as a technique of the self. The significance of ethics as a transgressive practice lies in the possibility of ‘self-formation in the face of all the other forces that fashion us’ (Simons 1995: 76). The art of making enemies thus consists in actively pluralising differences, nurturing an antagonistic field, which alone verifies the reality of one’s subjectivity. Difference and, more precisely, making differences rather than resolving them, become both the condition and the content of the existence of the Schmittian subject. One is reminded at this stage of the very specific function that Schmitt’s political ontology assigns to the figure of the enemy: the political relationship of enmity proceeds from the strictly equal (in)validity of opponents’ claims, in which neither the Self nor the Other may legitimately resort to the language of epistemic and moral certitude (Schmitt 1976, 2003). In this setting of antagonistic symmetry that resembles a well-regulated duel, the Schmittian enemy loses all ethical privileges of the Levinasian Other but is also spared the unfortunate destiny of the a priori denigrated enemy of liberalism, reduced to the status of a despicable monster to be humiliated and annihilated, rather than merely defeated (see Schmitt 1976: 27–29, 53–54).

Nonetheless, one should not exaggerate the ‘friendliness’ of the relationship
with the enemy. While both presupposing and effecting a fundamental onto-axiological symmetry between the adversaries, the friend–enemy distinction utterly devalues a principle central to the liberal ethos in Schmitt’s interpretation: the principle of discussion. To fully appreciate the irrelevance of discussion to the decisionist ethics we need to specify its relationship with alterity. As opposed to the well-known critiques of realist practices of security as stabilising the identity of the self via its authoritative demarcation from the other, the friend–enemy distinction, in our reading, operates in two steps and with two notions of alterity. Simultaneously with any exclusion or authoritative nomination of a positive other (the enemy as something existentially alien to the self), the decision on the friend–enemy distinction traverses a space of negative alterity, the void of undecidability, where neither the self nor the other yet exists (cf. Žižek 1999a: 19–20). It is this radical alterity that is indeed ontologically prior to the self, but it must logically also be prior to any positive figure of the other. That which precedes and exceeds the identities of both self and the other is quite literally the void, the ‘background of emptiness’, whose only characteristic is its radical difference from any positivity.

This assumption of negative alterity that must be traversed in a friend–enemy distinction reconfigures the relationship with any positive other into that of existential equality. The existence of the self is no longer owing to the existence of the positive other, since both emerge simultaneously as the twin offspring of the friend–enemy distinction. Yet this mutual constitution of oneself and one’s enemy also marks an irreducible caesura between them that functions as the very opposite of the ‘radical interdependence’ emphasised by Levinasian-Derridean ethics. While certainly interdependent in the ontological sense, the self and the other only emerge as subjects through the resolution of this interdependence through the act of distinction. In a Schmittian ethics, the Levinasian openness to the advent of alterity is concretised in terms of a vigilant receptivity, which calls for the perpetual activity of differentiating between friends and enemies that defines the social field in terms of intensities of association and dissociation. In this logic, an antagonistic relation with a positive other is a marker that verifies one’s subjectivity that must not be erased in a search for reconciliation or consensus.

Thus, the ethos of discussion appears wholly irrelevant to a Schmittian ethics since it replaces the ontogenetic situation of self-creation with an ontological reflection on the questions of truth or morality, presupposing either a teleology of rational consensus or a neutralised conception of truth as an emergent equilibrium (see Schmitt 1985b: 35–51). Schmitt’s criticism of the Enlightenment ideal of the ‘discussing public’, coupled with a Foucauldian reintroduction of the political into the domain of the epistemic, entails an obvious consequence: nothing is to be gained in discussion. If all that precedes the difference between the self and the other is the brute ‘being-there’ of the indifferent void, then there is little point in attempting to efface this difference to arrive at a more fundamental identity of the Same. If we are verified as subjects not through identification but through dissociation, then any discussion that seeks to resolve
differences does little more than subsume one’s existential singularity under its own teleological or procedural normativity. If truth is a thing of this world, then any consensus that emerges in discussion will be always already permeated by power relations; that is, it will always emerge as a result of an unfounded decision, however much the event of the latter is disavowed:

[...]

Very consensus, even a ‘free’ one, is somehow motivated and brought into existence. Power produces consensus and often, to be sure, a rational and ethically justified consensus. Conversely, consensus produces power, and then often an irrational and – despite the consensus – an ethically repugnant one.

(Schmitt 1999: 202)

Aware of the eradication of difference inherent in the drive for consensus, a decisionist ethics values difference without a liberal ‘safety mechanism’ of postulating the underlying identity of ‘humanity’, which in Schmitt’s astute observation merely serves to deny the enemy the existential status of being human, reducing him to a ‘total non-value’ (Freund 1995: 19), and has ‘incalculable effects [since] a war can thereby be driven to the most extreme inhumanity’ (Schmitt 1976: 54). Just as Schmitt’s political realism on the level of interstate relations affirms pluralism in the domain of the international, while privileging a minimal degree of domestic homogeneity, a decisionist ethics emphasises the maintenance of difference in intersubjective relations while simultaneously privileging a resolution of interdependence with the positive other via a clear act of self-distinction and self-delimitation. In this manner, a decisionist ethics posits a telos of sovereign subjectivity.

Telos: sovereign to oneself

The telos of sovereignty is the final component of Schmittian ethics. The ultimate goal of the art of making enemies that nurtures the ethical substance of real life by permanently returning to the originary void of the decision is ultimately to emerge from a state of unbearable gravity of epistemic-moral subjection into the condition of lightness, in which one assumes mastery over one’s own existence. This mastery marks a synthesis of Schmitt’s notion of sovereignty as the decision on exception and Foucault’s notion of transgression as an experience of the limit. As we have argued elsewhere, in Schmitt’s approach sovereignty is irreducible to the affirmation of supreme authority within a positive order, but is rather exhausted by a negative operation of transgression, the capacity to suspend the normal functioning of order (see Prozorov 2005). The sovereign is simultaneously inside positive order as the source of its foundational principles and outside it as something that ‘can not be subsumed’ under these principles, a supplement that is always unfathomable, monstrous and obscene in relation to every positivity. We may then redefine the sovereign as the transgressor in relation to the order of his own creation and the transgressor as sovereign over his
own existence. Any claim to the self-immanence of order is destabilised and disrupted by these two figures located on its extremity, be it the sovereign subject of its institution or the resisting subject instituted by it. Rather than posit a Foucauldian transgression as a practice of resistance to sovereign power, valorised by Schmitt, we rather suggest that both authors deploy an ethics of sovereign transgression that seeks mastery over one’s existence in the face of the self-immanentist stratagems of objectification and subjectification. In this manner, the proverbial ‘sovereign subject’ makes a comeback in the critical discourse that was originally preoccupied with his ‘decentring’. Cast out from the centre of political ontology by the combined efforts of Marxism, psychoanalysis and structuralism, the sovereign subject might eventually reassert itself at its limits as a constitutive borderline concept (cf. Žižek 1999b).

The affirmation of the self that this telos of sovereignty points to is markedly ‘non-positive’ (Foucault 1977b: 36): a Schmittian subject affirms itself through the art of making enemies, yet simultaneously destroys every possibility of making this subjectivity a transcendental ground by retaining proximity to the void that conditions his being. It affirms life in the absence of grounds, that is, it engages the void in its ethical practice rather than orient ethical practice to the erasure of the void in the authoritative postulation of the locus of truth at its bottom. It is this ‘non-positive affirmation’ that constitutes what we propose to call the ethos of insecure life. This ethos is indeed marked by a lightness, emanating from the dissolution of the epistemic and moral certitude of the collective regimes of truth which constitute us in our positive identity. Yet, the cost of this ethical practice of liberty is an ineradicable sense of insecurity that arises, by definition, from an antagonistic relationship to the world that forms the very substance of the decisionist ethics. While various strands of what David Campbell (1993: 4) refers to as ‘politics of principle’ proceed from the problematisation of this insecurity and attempt its effacement through postulating abstract universalist ideals of humanism and enacting them in peculiarly intense practices of violence, the ethos of insecure life precludes the possibility of familiar postures of missionaries and crusaders in its affirmation of ‘unprincipled’ existence. Paradoxically at first glance, this antagonistic ethos that is ‘nihilistic’, ‘decisionist’ and ‘irrational’ and that emphasises the constitutive intensity of a ‘whatever decision’ over a substantive conception of the good, appears to prescribe practices marked by a stronger sense of humility and responsibility than the moralist ethos of politics of principle, of whose many guises the current drive of global ‘anti-terrorism’ is the latest manifestation. Self-deprived of epistemic and moral certitude, a Schmittian subject reserves the capacity of judgement and decision, but, placing itself in these very acts in proximity to the void of undecidability, forfeits the capacity to ground and universalise its judgement. Both speaking for others and telling others where truth or morality resides becomes a manifest indignity for a Schmittian subject.
Conclusion

This ethical disposition is evidently easy to dismiss as empirically impossible, romantically naive or politically dangerous. Any thoroughgoing decisionism is arguably constituted by such a mix of naivety and dangerousness that quixotically affirms, against all odds, the possibility of the impossible. However, we are in agreement with Slavoj Žižek that it is precisely the dimension of impossibility, of the danger of assuming a position in proximity to the void, that is the condition of the authentic political act as, in Lacanian terms, an encounter with the Real: ‘[t]he point is not that the Real is impossible but rather that the impossible is Real. A trauma, or an act, is simply the point when the Real happens, and this is difficult to accept’ (Žižek 2004b: 70). The ethos of insecure life that we have elaborated connects with Žižek’s ‘ethics of the Real’, which is squarely Schmittian in its decisionist emphasis on the act as a radical rupture in the existing space of possibilities that takes the infinite risk of willing the impossible. Such an ethics of subjectivity clearly runs against today’s mainstream narratives of globalisation, in which the very subject, who is consecrated as the foundational figure of the ‘post-statist’ cosmopolitan order, simultaneously becomes epiphenomenal to global processes, flows and forces which are granted the status of objective reality, to which one must adapt one’s existence. In this regime of objective necessity, which arguably marks the final stage of the proverbial ‘decentring of the subject’, the success of existential decisionism is only thinkable in terms of a miracle, which of course is the theological correlate of a Schmittian decision. And yet, perhaps a certain belief in miracles is precisely what is lacking in today’s critical thought:

[t]he truly traumatic thing is that miracles – not in the religious sense but in the sense of free acts – do happen, but it’s very difficult to come to terms with them. [The] Real is not this kind of thing-in-itself that we cannot approach; the Real is, rather, freedom as a radical cut in the texture of reality.

(ibid.: 166)

Perhaps, then, the contemporary importance of Schmitt lies precisely in this affirmation of freedom as the infinite risk of decision that breaks out of the existing coordinates of the possible, with nothing but the void to guide one’s orientation to the future. Our argument has sought to demonstrate the possibility of reading Schmitt as an ethical thinker who sought to affirm life in the disenchanting condition of nihilism, rather than as a war-mongering ‘conservative revolutionary’, relying on the combination of violence and traditionalist mythology to challenge the bourgeois routinisation of life. Such a deconstructed Schmittian approach is arguably a productive intervention into the poststructuralist discourse, an approach that offers an alternative to the influential Derridean resolution of the question of a ‘postmodern ethics’, which also operates with the central concepts of decision and alterity. In contrast to the deconstructionist
insistence on undecidability and hence the impossibility of every decision, which leads it into an ethical impasse, our approach connects with Žižek’s recent reaffirmation of decisionism in conceiving of undecidability as the instance of radical negativity that is simultaneously the condition of possibility of every political act (see Žižek 2004a; cf. Prozorov 2005).

The reading of Schmitt espoused in this chapter, has admittedly privileged the disturbing and destabilising force of Schmitt’s existential decisionism rather than his well-known personal preference for the stability of any order, once it is formed in an act of exception. The possibly un-Schmittian effects that Schmitt’s conception of the political may induce in its ethical reconstruction testify to the demonic force of the borderline concepts of decision, exception and sovereignty that turn against their creator, for ever to haunt any valorisation of security and stability. Gilles Deleuze once wrote that his practice of philosophical reading consisted in ‘taking an author from behind and giving him a child that would be his own offspring, yet monstrous’ (Deleuze cited in Žižek 2004a: 46). In the case of Schmitt, for all the ‘groans and protests’, it is arguably his own mischievous offspring of ontological extremism that takes incestuous frivolities with the father of political realism.

Notes

4 See Levinas (1969). For an insightful reading of the parallels between Schmitt’s and Levinas’s constructions of self–other encounters, see Sims (2005). The simultaneity of the emergence of the self and the other in the act of their distinction logically entails the postulate of ontological and ethical equality between the two figures, which contradicts Levinas’s thesis on their originary asymmetry and the privileged ontological status of the Other. This postulate of asymmetry is the object of Derrida’s (1972) early critique of Levinas that renders this asymmetry conditioned by a more fundamental symmetry, inherent in the understanding of the Other as alter ego.
5 See e.g. Jünger (1993) for an exemplary statement of the conservative revolutionary position. See also Wolin (1992) and Huysmans (1998) for the argument that associates Schmitt’s thought with the discourse of conservative revolution and Ojakangas (2004) for a detailed criticism of such association.
6 See however Wolin (1992), Muller (1999) and McCormick (1997) for the discussion of Schmitt’s aestheticism.
8 This notion of ‘verification’ has been developed by Jacques Ranciere (1995) and highlights the unity of demonstration and proof in political struggle, whereby the very manifestation of an action serves as a vindication of the ‘truth’ that it affirms.
10 For a more detailed argument on the relation between Schmitt’s concept of sovereignty and Foucault’s understanding of freedom see Prozorov (2007).

Bibliography


For various important reasons considered throughout this book, the topic of world order is once again on the agenda. To make something a topic, however, is not to provide a concept of it. What we have is a surplus of discourse and a deficit of systematic thinking about the object of that discourse. I am hence tempted to quote Gaston Bachelard:

We are going to study a problem that no one has managed to approach objectively, one in which the initial charm of the object is so strong that it still has the power to warp the minds of the clearest thinkers and to keep bringing them back to the poetic fold in which dreams replace thought and poems conceal theorems.

(1968: 2)

Germane to our purposes here, Bachelard was talking about one of the four elements, fire. For Carl Schmitt, world orders can be described in terms of the relation between such elements.

Indeed, I want to suggest that the study of the poetics and mythology of world order is central to the study of world order itself, but not as a study of the history of errors we must break with to constitute forms of true knowledge, but because they make the world thinkable and actionable in specific ways. In other words, poetics and mythology render possible certain kinds of global political action and decisive authority. Even Schmitt, the thinker who did the most to advance a philosophically consistent and ‘objective’ concept of world order, could not avoid mythology and poetry and indeed the philologist’s fascination with the derivation of words which, for Bachelard, ‘are made for singing and enchanting, [and] rarely make contact with thought’ (1968: 1).

I want to suggest that there are several ways we can approach the problem of world order with the requisite self-critical irony that Bachelard recommended. All of them are found in Schmitt. They are: from the perspective of words, that is, from conceptual history and philology; from the study of myths of the earth: of what could be called, ‘geo-mythography’ (Connery 2001); from that of the spatiality and materiality of power relations, that is, from a geo-politics; and from a historical jurisprudence of international law and consequent concepts of war and peace.
Carl Schmitt viewed *The Nomos of the Earth* (2003: 37–38) as a work with ‘essentially jurisprudential foundations . . . although much indebted to geographers’. Notwithstanding this, ‘the ties to mythological sources are much greater’. Indeed, the author of that book, the earlier *Land and Sea* (1997), *The Leviathan in the State Theory of Thomas Hobbes* (1996b), and the post-Second World War essays on *nomos* (2003: 324–355), reveals himself as philologist, mythologist, student of geo-politics and legal historian, as much as a legal theorist. These various guises raise fundamental questions about how we can read and appropriate Schmitt today given the political choices and moral decisions he made in the years before and during which these key works were written. While recognizing the importance of his historical jurisprudence of international law, the present chapter focuses on his mythology and philology.

The recovery of *nomos*

As in many conservatives, there is a sense of loss in Schmitt. *The Nomos of the Earth* could be read as an ode to the loss of a particular world order, that governed by European international law, the *jus publicum Europaeum*. The story of the term *nomos* is also presented as a loss. The other side of loss, however, is recovery. ‘I want to restore to the word *nomos* its energy and majesty’ (ibid.: 67).

According to Schmitt (ibid.: 325), *nomos* is usually translated by jurists and historians as law in the sense of tradition or custom. It is, however, more than that. Rather than a simple noun, the word is a *nomen actionis* which indicates an action as a process whose content is given in the verb. The action and process of *nomos* is given by the Greek verb *nemein* meaning ‘to take’, ‘to allot’ and ‘to assign’, which in turn is the root of the German words *nehmen* and *Nahme*. Schmitt himself uses the term *Landnahme* meaning ‘land-taking’ or ‘land-appropriation’ to capture this primary sense of the term:

The history of peoples with their migrations, colonizations, and conquests is the history of land-appropriation. Either this is an appropriation of free land, with no claim to ownership, or the conquest of alien land which has been appropriated under the legal title of foreign-political warfare or by domestic political means such as the proscription, deprivation and forfeiture of newly divided land.

(ibid.: 328)

However *nomos* has two other meanings given by other verbs. One is *teilen* (German) meaning ‘to divide’ or ‘to distribute’. For Hobbes, for instance, *nomos* is that act of the sovereign power that introduces and then distributes property: ‘And this they well knew of old, who called that *Nomos* (that is to say, *Distribution,*) which we call Law; and defined Justice, by *distributing* to every man *his own*’ (Hobbes 1996: 171, original emphasis, quoted by Schmitt 2003: 327). The distributional question is a social question and thus a question of justice. It
presupposes a community that has formed itself into an entity that has appropriated land and other resources to itself and now seeks to resolve the question of justice within that community. To those who might have been excluded from appropriation, this question of justice does not apply. As Schmitt acerbically put it:

Concretely speaking, *Nomos* is, for example, the chicken every peasant living under a good king has in his pot every Sunday; the piece of land he cultivates in front of his property; the car every worker in the US has parked in front of his house.

(2003: 327)

As the last example suggests, *nomos* in this sense is linked to the settled communal order and to a conception of economy still linked to the household, to *oikos*.

Finally, the content of *nomos* is given by the verb *weiden* (German) meaning ‘to pasture’, ‘to run a household’ or ‘to produce’. A part of the settled community and its law is the existence of households, agriculture and systems of production. A massive shift in *nomos* occurs in the movement of nomads to settled existence. In a footnote, Schmitt claims ‘nomad’ is derived from the Greek *nome*, meaning capturing or grazing or wandering in search of pasture (ibid.: 326). The nomadic search is then one of appropriation of land for pasture rather than, for example, a movement through and beyond a specific area in a cyclical sense. It is for Schmitt a movement of the *nomos* towards settled community, family and household, towards the *oikos*, which then becomes the primary site of production. Nomadism does not seem to figure in Schmitt’s mythology except as a prelude to territoriality. References to the ‘nomadic age’ are to neither historical nor anthropological sources but to a classical Greek conception of it and the age of the shepherd or *nomeus* (ibid.: 340). This provides us with a major indication of Schmitt’s own orientation, perspective and mentality.

For Schmitt a decadent use of the term sets in quite early.¹ He accuses the Sophists of a diminution of *nomos* from a fact of life to a prescribed ought when they opposed *nomos* and *physis* (Schmitt 2003: 67–69; Ulmen 1993: 43). Similarly, he charges Plato with reducing *nomos* to mere rule (*schedon*) and contrasts this with Aristotle’s distinction between various *nomoi* (laws) and the concrete order as a whole (*nomos*). The latter for Schmitt retains something of the original conception of *nomos* as spatial unity.

What does this recovery enable him to criticize in the present? He takes aim at positivist conceptions of law which reduce *nomos* to empty and formalistic legislation, and which reduce legitimacy to a mere legality. ‘The word *nomos* is useful for us’, says Schmitt, ‘because it shields perceptions of the current world situation from the confusion of legal positivism, in particular from the muddle of words and concepts characteristic of nineteenth century jurisprudence dealing with domestic matters of state’ (2003: 69). More broadly, he takes aim at conceptions of law which fail to understand the history of ‘land appropriations’ that are constitutive of law and what he calls ‘the concrete spatial character’ of a community that is fundamental to any social, economic and legal order.
If Michel Foucault is renowned for shifting attention away from ‘the who’ of power to ‘the how’ of power, Schmitt insists on ‘the where’ of power – or rather of law. As he puts it: ‘Prior to every legal, economic and social order, prior to every legal, economic or social theory, there is this simple question: Where and how was it appropriated? Where and how was it divided? Where and how was it produced?’ (Schmitt 2003: 327–328, original emphasis). Law is understood as geographically situated and situating. As the first corollary of nomos states, law is ‘the unity of order and orientation’ (ibid.: 42–49).

It does not take much imagination to conjure up a counter-position to Schmitt’s which points to the ever changing character of words and concepts, and their dependence on specific discursive and social-political formations, and which uses the contingent trajectories of discourse and concepts to criticize a search for the original meaning of terms. The temper of Michel Foucault’s genealogy, as an example of this position, would thus appear to be very much contrary to Schmitt’s philology. Yet if one considers the way in which the now discarded uses of terms gave Foucault analytical capacity in relation to current practices we find a similar process of recovery in order to clarify and illuminate. Thus, for example, Foucault’s discussion of the term ‘government’ as broader than its current reduction to a specific set of political institutions relies heavily on an appreciation of the way the term operates in various sixteenth- and seventeenth-century literatures (Foucault 1991; Dean 1999).

Given the influence of Foucault’s work on government and on power more broadly, it would seem important to situate Schmitt in relation to it. If we were to confront Foucault’s concern for the arts of government – or ‘governmentality’ – with the concept of nomos, we could say that he traces the active forgetting of nomos – or at least of the ‘appropriation’ which historically and logically precedes any social, political and legal order – in the history of European consciousness. Foucault’s genealogy of the arts of government traces the mutation from an early modern household rationality, in which oeconomy is still tied to the oikos, to a liberal mode in which governing occurs through individual self-government and the self-governing process of economy and civil society. Foucault’s analysis of governmentality hence encompasses rationalities which privilege in turn distribution and production but which do not really open up the presupposition of each in appropriation. Just as liberalism seeks to put limits to sovereignty, it relegates appropriation to its external condition or prior precondition, and renders human beings within a rootless and spaceless universalism.

Schmitt would certainly agree that liberalism (and, he would add, socialism) privileges the cycles of production and consumption over those of distribution and appropriation as a solution to social problems. But he adds to Foucault’s account by tracing the meaning of the word nomos from nomadic existence to the emergence of settled communities. It is for Schmitt a movement of the nomos towards settled community, family and household, towards the oikos, which then becomes the primary site of production. He thus agrees with Foucault that the discovery of production follows, rather than precedes, distribution. However, he adds that land appropriation is the condition of the settled
community which distributes land and resources. *Nomos* is, as he sharply puts it, a ‘fence-word’ (Schmitt 2003: 75). We might add that for Schmitt, as for Foucault, law, order and government have focused on what occurs within those fences as a central paradigm throughout the history of what might be regarded as Western thought. That paradigm was the household, or *oikos*, and the patriarchal governance of the house and the members of the household.

For Foucault, appropriation belongs not to questions of government, even in its broadest sense, but to the now displaced sphere of the largely repressive or ‘deductive’ power of sovereignty. Foucault in this sense retains appropriation but limits its analytical value. In this regard, Foucault’s analyses reproduce the genealogy he traces. If Schmitt’s *nomos* ties projects of ordering to appropriation, Foucault’s genealogy traces an uncoupling of the concepts of sovereignty and government and hence a liberal forgetting of appropriation. If we were to extend Foucault’s genealogy of liberal and neo-liberal rationalities of government to at least the 1990s, then I think we would find, from Schmitt’s perspective, two impossible figures. One would be ‘governance’: an orientation without order. The other would be the dream of an order without orientation: ‘globalization’.

Schmitt is above all a thinker concerned with humankind’s necessarily telluric or earth-bound character; the philology of *nomos* reveals not the primacy of appropriation but the concrete existence of human communities in their occupancy of the earth and orientation on it. He contests liberalism in its many guises but he attacks it through its base in the abstract, privatized individual who is not simply a deterritorialized being but an uprooted and disoriented one. On a broader scale, liberalism and socialism are a-topical formations whose ideal is found nowhere or, even more strongly, in a not-place, a Utopia. Today’s utopias are all speed, mobilities and networks, and wash humanity in the great oceanic universality of globalization.

The elemental *nomos*2

Mythology, I would suggest, shapes our attempts at understanding world order but rarely has it done so with such intensity as in Schmitt. In the first few pages of *The Nomos of the Earth*, Schmitt’s thought is at its most telluric. The earth is described as the ‘mother of law’. Within the ‘womb of her fecundity’ she contains an inner measure of justice every farmer knows. What we find is Mother Earth, the infinitely just earth, *justissima tellus*. Schmitt summarizes: ‘She contains law within herself, as a reward for labor; she manifests law upon herself, as fixed boundaries; and she sustains law above herself, as a public sign of order’ (2003: 42).

The mythology of the earth for Schmitt is that of a Lockean labourer who mixes his labour with the earth and gains just reward. The earth is thereby divided, lines are ‘engraved and embedded’, and finally delineated by ‘fences, enclosures, boundaries, walls, houses, and other constructs. Then, the orders and orientations of human social life become apparent’ (ibid.: 42). Schmitt is con-
cerned to describe this from the perspective of the earth, not from that of the human worker or human communities. The obvious charge is that he thereby universalizes a particular human order and orientation upon the earth by making that order and orientation constitutive of the earth itself (cf. Aravamudan 2005). *Nomos* and earth appear as mutually constitutive.

Schmitt (2003: 50–54) would have no doubt replied that there were plenty of other mythical images of the earth. He cites forms of ‘pre-global international law’ among the Ancient Egyptians, Jews, Greeks, Romans, Arabs and Mongols, within Byzantium, and lastly within the *respublica Christiana* of medieval Europe. However, he might have argued, the mythology described above is one that reflects the orders and orientations of Europeans during the only truly global system of international law, and the only ‘nomos of the earth’, that of the *jus publicum Europaeum*. This international or, to be more precise, interstate, law existed from the sixteenth to early twentieth centuries and had the discovery of the New World as its precondition. Schmitt felt that, in his time, it was in disarray. The orientation this mythology encapsulates is ultimately that of Europe’s coming to legal and political modernity itself.

*Terra firma*, however is counterposed to *mare liberum*, the free sea, both in modern European law and in Schmitt’s mythology. The element of space and law, orientation and order, finds its antithesis in a characterless (in the sense of ‘scratchless’) element. ‘On the open sea, there were no limits, no boundaries, no consecrated sites, no sacred orientations, no law and no property’, states Schmitt (ibid.: 43). It is a sphere of risk, of a hazardous wager in search of booty, and of the pirate, the word derived from *peiran* (Latin) meaning ‘to test’, ‘to try’, ‘to risk’. Only after the rise of maritime empires (Schmitt used the Greek-derived expression, *thalassocracies*), do sea-appropriations occur, are security and order established and is piracy made a crime against humanity. Yet Schmitt is sure that it is land which is primary and which is quite literally the foundation of law for ‘the great primeval acts of law remained terrestrial orientations: appropriating land, founding cities, and establishing colonies’ (ibid.: 44).

The sea is also a domain for mythology. In 1942, Schmitt published a book intended as a children’s tale for his young daughter Anna, *Land and Sea* (1997). In it he insists on the elemental character of human existence and the capacity of humankind to creatively define and redefine itself in relation to the four elements of earth, water, fire and air (Schmitt 1997: 3–5). The mysterious routes of the whales lured the heroic hunters further into the sea (ibid.: 13–17). The adventures of the whale-hunter, and the pirate, the privateer, sea-adventurers and sea-roamers of all kinds, figure in the ‘elemental surge toward the sea’ (ibid.: 19). Schmitt’s prose surrenders to the image of the whale in particular – an animal which is at least one form taken by the Leviathan, Hobbes’s symbol for the state.

The age of heroism is nowhere better illustrated than by the transformation of the English from a nation of sheep-breeders, tied to their insularity, regarding the surrounding waters as forming a moat, into a nation of sea-farers that would take the inheritance of all the former maritime powers and establish a world Empire:
She [England] truly turned her collective existence seaward and centred on the sea element. That enabled her to win not only countless wars and naval battles but also something else, and in fact, infinitely more – a revolution. A revolution of sweeping scope, that of planetary space.

(ibid.: 28)

In *Land and Sea*, such elemental mutations give rise to new forms of spatial consciousness. In *The Nomos of the Earth* this spatial consciousness becomes the basis of law. The *jus publicum Europaeum* covers both terrestrial law and the law of the sea in such a way that the antithesis of land and sea will become ‘an antithesis of diverse spatial orders’ (Schmitt 2003: 54). In it, the global consciousness of Europeans was based on a primary distinction between firm land and freedom of the sea and later – after the Peace of Utrecht of 1713 – a complex division of the soil statuses of firm land between state territory, colony, protectorate, exotic countries and free occupiable lands (ibid.: 184). The first global ‘*nomos* of the earth’ thus for Schmitt depended upon this elemental antithesis. The antithesis will also figure in the opposition between the continental territorial states and the British and later American sea-powers which will contribute to the downfall of this system of law.

In a recent extension of this notion of *nomos*, Giorgio Agamben (1998; 2000) has added ‘nativity’, with its etymological affinity with ‘nation’, as a third term in the modern *nomos* of nation-state: order, territory, birth. For Agamben, it is along the axis of birth, citizenship and life that the nation-state is today being thrown into crisis. The consequence, according to his thesis, is that ‘the camp’, as the site of the inclusive exclusion of naked life, is the ‘new biopolitical *nomos* of the planet’. While there is much more that can be said in relation to this provocative thesis, we can note two things: it is an example of the revival, extension and critique of *nomos* thinking in contemporary European thought, a welcome enough event; and it seeks to displace Schmitt’s elementalism onto the axis of life and death – the axis of *bios* and *thanatos*, or as Foucault put it, ‘biopolitics’.

In so doing, Agamben ignores the overall elemental framework in which the terrestrial character of *nomos* is located. Indeed, his more recent work (Agamben 2005) locates the spatial order of contemporary modernity in the manifestations of the ‘state of exception’ in ‘the camp’, currently exemplified by Guantánamo Bay. Agamben thus produces an account of *nomos* which focuses on the spatial manifestations of the disqualification of citizenship rights as a condition of a failing territorial national sovereignty. Agamben thus links the exception (*Ausnahme*) – etymologically, the taking outside (Latin, *excapere*) – with the territoriality of the taking of land, of land-appropriation (*Landnahme*). While this is a striking critical gesture, its cost is to so enclose the *nomos* in ‘the camp’ as to render the struggles over the rest of the planet and international law scarcely intelligible. Nonetheless, Agamben counters Schmitt’s sharpness with an equally crystalline image. The new *nomos* is to be found in the very spatial and extralegal structure of the concentration camp – the Nazi *Lager* – which for readers will haunt every word Schmitt writes no matter how illuminating.
The demonic nomos

In his book on Hobbes’s political symbol of the Leviathan (1996b) published in 1938, Schmitt reveals the multiple and symbolic character of the Leviathan image in Hobbes – at once ‘mortal god’, machine, monster and huge man. Drawing on the book of Job, Schmitt shows Leviathan to be a symbol in another kind of geo-mythography. Here Leviathan can be a sea monster, serpent, dragon or – as we already noted – a whale, which confronts and defeats the land monster, Behemoth. Mythical images, Schmitt notes, are subject to continuous metamorphosis, numerous transformations and interpretations. He follows the mutation of the myth of the Leviathan as reinterpreted in the Middle Ages by both Christian churchmen and Jewish cabalists. In the former, the devil is a Leviathan who is captured by the Cross as fish-hook. In the latter, the two monsters represent the heathens, the Leviathan land-powers and the Behemoth sea-powers. ‘The latter tries to tear the leviathan apart with his horns, while the leviathan covers the behemoth’s mouth and nostrils with his fins and kills him in that way’ (Schmitt 1996b: 9). This image, Schmitt observes, is a ‘fine depiction’ of a naval blockade. During this battle, according to esoteric thought, Schmitt tells us, ‘the Jews stand by and watch the people of the world kill one another’, and later ‘eat of the flesh of the slaughtered people and are sustained by it’ (ibid.: 9). Schmitt, more than most thinkers, knows the emotional charge that can electrify symbol and myth. He tells us that we are here confronted in cabalistic esoterica with ‘political myths of the most astonishing kind and by documents often fraught with downright magical intensity’ and that in them ‘the unique, totally abnormal condition and attitude of the Jewish people toward all other peoples became discernible’ (ibid.: 8). Schmitt is a powerful ‘geo-mythographer’, as his reflections on the land–sea dichotomy and its imagery attest. But he can use that facility, as here, for a set of multiple and fused purposes: to gain a perspective on Hobbes’s theory of the state; to bring the antithesis of land and sea into focus; and to propose an analysis which places the Jews outside the ‘normal’ order of European peoples. In fact, the question of his intellectual ethics is more egregious than this would seem. He both appropriates Jewish mythology and its illuminations and adds to what at times reads like a sophisticated kind of hate literature. The Jews become the paradigm of the exception: as Agamben might say, they can only be included by being placed or taken outside the normal frame of life, a structure the latter would find in ‘the camp’. There is a psychic economy of simultaneous attraction and repulsion.

Passages such as the one I have just covered present an enormous problem for those who might be engaged in the critical history of liberalism and who would regard The Nomos of the Earth as a major contribution to that project in the sphere of international law. Whatever positive views one might have about Schmitt’s character and his personal and intellectual biography, and whether one regards his stance in this book as intrinsically racist or not, there is no doubt that at the very least the act and timing of such a discourse constitute an egregious and inexcusable moral lapse of the first order even if we allow for the fear of the
SS which followed his 1936 denunciation (Schwab 1996). In the book on Hobbes, for example, it is not simply liberalism but ‘Jewish-liberalism’ that exploits Hobbes’s crack between outer confession and inner faith in the writings of Spinoza and Moses Mendelssohn and above all Friedrich Julius Stahl (whom he calls Stahl-Jolson, to recall his pre-Protestant Jewish status). Moreover, for whatever purposes he might have imagined, Schmitt juxtaposes ‘Jewish’ to ‘German’ throughout the text. For example, Stahl’s wife is described as of ‘German descent’; and Robert Mohl is among ‘the German liberals’ (Schmitt 1996b: 75, 69). While Schmitt broadens his attack to also include the Roman Catholic Church, ‘power-thirsty Presbyterian churches or sects’, Goethe, Kant, and ‘secret societies and secret orders, Rosicrucians, freemasons, illuminates, mystics, and pietists, all kinds of sectarians, the many “silent ones in the land”’, he still concludes with ‘above all here once again the shifting spirit of the Jew’ (ibid.: 60; cf. Turner 1998). This does nothing to diminish the impression of a thinker who would (unsuccessfully as it turned out) seek to obscure his own deepening antipathy to Nazism by references which appeared to confirm the latter’s anti-Semitic propaganda. Indeed, it is these intermediate groups – above all the Jews – who exploit the crack left open by Hobbes’s political agnosticism regarding private faith. They have slaughtered and feasted on the Leviathan in the manner of the cabbalists: ‘That happened when the organizations of individual freedom were used like knives by anti-individualistic forces to cut up the leviathan and divide his flesh among themselves’ (Schmitt 1996b: 74).

Schmitt separates himself from us not by his critique of liberalism, whether anti-liberal or not (Stephen Holmes 1993 and Leo Strauss 1996 have had, of course, diametrically opposed views of the latter). It is his identification of the core target of his attack with a particular social group which was contemporaneously being savaged by Nazi propaganda, and then subjected to what Schmitt in an apparent mea culpa would later call the ‘scelus infandum’ of Nazi extermination techniques.3 Schmitt (1996b: 26) cites Hobbes’s view of himself as revealing his thoughts only in part, observing that he acted like someone who opens a window for a moment and then closes it for fear of a storm. Schmitt’s own Leviathan and his mythology are such a ‘window’. What we glimpse makes it harder for us to appreciate the contribution of works like The Nomos of the Earth or even his Leviathan, however necessary that might be today. Through those windows we glimpse the storm that is no longer outside. We glimpse what is perhaps a demonic possession by the image of Leviathan.

The figure of the Leviathan not only fuses Schmitt’s fears about domestic order with his concerns for a world order dominated by British and American sea- and air-powers and their ideologies and views of war. The critique of Jewish liberalism of the 1930s would be connected with that of Anglo-Saxon liberalism of the postwar period in that if the former struck the first cut into the Leviathan from below, the latter will lance it from above.

From an international perspective, the system of Leviathans was undermined around 1890 after the great imperial land grab of Africa and the Congo Confer-
ence of 1885. Later the Hague Peace Conferences of 1899 and 1907 manifested the movement from a Eurocentric world order to one grounded in the ‘spacelessness of a general universalism’ (Schmitt 2003: 230–232). This movement was consolidated in the League of Nations and effected a transformation of the meaning of war first at Versailles and then in the Kellogg–Briand Pact of 1928. Now there would be a criminalization of aggressive war by the outlawing of war for national purposes and its replacement with a new kind of just war for international purposes (ibid.: 279–280). The bearers and beneficiaries of this liberal universalism and new approach to war would be, moreover, the great sea-powers of the nineteenth and twentieth centuries, first Britain and then the United States.

For Schmitt, then, the Leviathan/Behemoth myth thus links the individualist critique and hence weakening of the state with the universalist dismantling of European international law. In this sense it might appear significant that an English political thinker – Hobbes – would seek to describe a settled land-based geography of the state by the symbol of a sea monster just when Britain was about to establish the most extensive Empire on earth by means of its maritime superiority. For Schmitt, however, it is no accident that the sea mammal becomes the symbol of a peacemaking order and that the English would view this order as linked to an image of their maritime destiny.

From the Odyssey to the discovery of the New World and the voyages of Columbus and company, from Hugo Grotius’s doctrine of the *mare liberum* and the law of the seas to the desire for ‘oceanic consciousness’ of idealist philosophy and mysticism, from twentieth-century Atlanticism and the North Atlantic Treaty Organization to the deployment of American military power in the Persian Gulf, land and sea, and often the domination of the latter over the former, have been powerful ways of imagining the earth (cf. Connery 2001). Indeed, for Schmitt, the Cold War could be characterized as a dialectical opposition between a continental and a maritime power, a power at the heart of the earth’s greatest landmass and the decisive force on the world’s oceans (Ulmen 1987: 44).

Today, the relation of sea and land is still fundamental to thinking international concerns. Perversely, contrary to Schmitt, the ‘theory of offensive realism’ of Mearsheimer (2001) views the ‘stopping power of water’ as presenting a limitation to the hegemonic ambitions of states in the case of insular powers such as Great Britain and the United States. Moreover, this relationship of sea and land also helps constitute the ways in which we think of ‘regions’ and their associations such as the Mediterranean, the Baltic States, Oceania, Asia-Pacific Economic Cooperation (APEC). The struggle of refugees to arrive by boat to Australia (largely successfully extinguished by draconian measures and an upstream ‘people smuggling disruption unit’ run from the Prime Minister’s office) or to cross the Mediterranean from North Africa – whether viewed as heroic or criminal – entails far more potent narrative imagery than that of those many more who arrive through the airport on a temporary visa and abscond later. The world is no longer waiting to be discovered and settled in the heroic
manner of the forefathers of the New World and punishment and prevention await those who try such acts of discovery (whatever one might make of the trajectory linking penal colony and detention camp in Australia). Even with the addition of birth, our account of nomos would be seriously incomplete without a consideration of the open sea and of territorial waters, the role of the coastguards and navy patrols, and its relation to the ‘bare life’, as Agamben puts it, and the plight of the refugee.

There is a stronger sense in which the domination of the sea element obtains today and Schmitt is prescient in his characterization of the smooth, scratchless surface of the free seas. The two great periods of globalization, those of the nineteenth century until the First World War and of the last half-century, are periods of the hegemony of maritime powers, the Pax Britannica and the Pax Americana. In the most recent period, particularly since the end of the Cold War, the world is imagined as a smooth surface of free global flows of trade, investment, capital, information and culture, and hence a kind of great ocean. And when defenders of the freedom of virtual space or cyberspace look for a principle on which to ground that freedom it is to Hugo Grotius’s doctrine of the freedom of the seas that they turn (Connery 2001: 178, 13n.). Note too that cyber-crime is described as ‘piracy’.

Schmitt also envisages that in his time the relation of land and sea is being changed by the possibility of domination of a new element – air. Already in Land and Sea he notes that the British maritime existence was being transformed by the mutation occasioned by the industrial revolution within the island itself. This in turn maintained and extended British maritime domination during the nineteenth century but led to its meeting new rivals by the end of that century in Germany and the US. Schmitt cites the American admiral Alfred Thayer Mahan (1984), the author of The Influence of Sea Power upon History, who argued for an Anglo-American reunion for the purposes of maintaining Anglo-Saxon domination of the seas. Mahan imagines that the United States is destined to realize itself as a maritime power, and as the ‘larger island’ bound by two great oceans, is in the peculiar position of being able to secure the trade routes on which Britain, now grown too small, would have to depend to maintain its empire. But Schmitt depicts Mahan as a conservative who feels, but cannot understand, the ‘energy of the elemental irruption’ of his times and who seeks geo-political security in hauling the old island towards the new, bigger island ‘as by a gigantic trawler’ (1997: 56). Yet Schmitt himself remains unclear about this irruption. He is unsure whether humankind has turned away from the opposition of land and sea to air with the invention of the airplane, or whether it had established a new elemental relation with fire in the form of the combustion engine. Thus, on the one hand he suggests that to ‘the two mythical creatures, leviathan and behemoth, a third would be added, quite likely in the shape of a big bird’. On the other, ‘if one thinks of the technology necessary for human prowess to manifest itself in the air space . . . it seems that the new element of human activity is fire’ (ibid.: 58).

In 1955 he appears to adopt a vision in which fire has dropped out of the
picture. Schmitt surveys three possibilities of the new *nomos* of the earth in an essay of the same name (2003: 351–355). The first is a unipolar world in which the victor of the Cold War would be sole sovereign. ‘He would appropriate the whole earth – land, sea and air’ (ibid.: 354). The second one retains the balance structure of the old *nomos* in which the United States administers and guarantees the balance of the rest of the world by ‘a joint domination of sea and air’ (ibid.: 355). In other words, America becomes the larger island, following in England’s footsteps in Mahan’s sense. The third is one of a balance between several *Grossräume* or regional blocs (literally, large spaces). What is interesting about this survey is that Schmitt is still toying with the idea that air-power has displaced the earlier opposition of land and sea. There are clearly limits to geo-mythographical thinking generally and to Schmitt’s playing with the four classical elements in particular.

Schmitt tends to hedge his bets about the elemental irruption he notes and about the new *nomos* of the earth. However, he is clear that the airplane has changed the nature of war and military strategy by challenging traditional spatial concepts of war, especially the idea of a ‘theatre of war’ and ‘the front’, and even the distinction between a land-war and a sea-war and the rules governing them (ibid.: 316–320). Because it is a purely destructive operation, with no relation between military personnel in the air and those on the earth, as well as no positive relation to the inhabitants, it is not associated with the attempt to bring order to territories which depends on the relation between soldiers and civilians within an occupied territory.

The onset of air-war is connected to the end of the moral ‘bracketing’ of war and the non-discriminatory concept of the enemy that Schmitt would consider key features of the *jus publicum Europaeum*: ‘The discriminatory concept of the enemy as a criminal and the attendant implication of *justa causa* run parallel to the intensification of the means of destruction and the disorientation of the theatres of war’ (ibid.: 321). This leads Schmitt to another kind of mythology. He characterizes the allied domination of the air during the latter stage of the Second World War and its dreadful effects on German civilian populations as a police action:

Bombing pilots use their weapons against the population of an enemy country as vertically as St. George used his lance against the dragon. Given the fact that war has been transformed into a police action against troublemakers, criminals, and pests, justification of the methods of this ‘police-bombing’ must be intensified.

(ibid.)

In doing so, Schmitt has added another twist to his story of Leviathan who, as we know, can be a monster, a machine, a mortal god, a whale, a huge fish, the devil, a serpent or, as here, a dragon.

This kind of use of the term ‘police’ in the international sphere is echoed in contemporary Italian post-Marxist characterizations of *nomos*. Agamben
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(2000: 102) has used the term ‘sovereign police’, with a clear Schmittian resonance, to discuss the first Gulf War and the treatment of internees within concentration camps. Michael Hardt and Antonio Negri’s book Empire (2000: 17) discusses the new, imperial form of sovereign right as a combination of the ‘juridical power to rule over the state of exception’ and ‘the capacity to deploy police force’. Both would maintain that in the new global dispensation, military interventions today take the form of police action in the sense that Schmitt meant it in the above passage. Although we cannot unpack these uses of the term ‘police’ here, the notion of ‘an international police power’ has a longer history in international relations dating back at least to Theodore Roosevelt’s description of the role of the United States in the Western Hemisphere in his extension of the Monroe Doctrine as ‘the exercise of an international police power’ (quoted by Ferguson 2004: 52–53).

Yet this is an example where Schmitt seems to lack the conceptual history necessary to understand the nuance of the term ‘police’ and its mutations. The beginnings of such a genealogy of ‘police’ can be found in Foucault’s work (e.g. 2001) or in German conceptual history (e.g. Knemeyer 1980; Oestreich 1982) and in discussions of the German cameralists’ Polizeiwissenschaft or science of police (e.g. Small 1909). However, it is not necessary to go that far to find a very different meaning of police. In his own Leviathan, Schmitt uses the term in a manner consistent with the early modern discourses analysed in these literatures. When citing a brief defence published by Hobbes against Bramhall, Schmitt (1996b: 21–22) uses ‘police’ to refer to the ‘peace-enforcing function of the state’. For Schmitt: ‘The absolutism of the state is, accordingly, the oppressor of irrepressible chaos inherent in man, or as Carlyle said in his drastic manner, anarchy plus police’. Police here is the civil, stately condition in which all citizens are secure and in which reigns peace, security and order (ibid.: 31).

In one text, then, police is the condition sought by the Leviathan in its fight against the anarchic and rebellious forces of the state of nature or of religious and civil war (Behemoth). Here, the creation of Leviathan is a condition of police. In the other, the Leviathan (as dragon) is being lanced by the new air-powers which introduce anarchy into the rules and spatial theatres of war. But there is no fundamental inconsistency: Schmitt’s view is that police is a legitimate action of the sovereign to secure domestic order which needs to be carefully distinguished from war, which is something that occurs between sovereigns. The attempt to view international military intervention as police action is thus linked to a fundamental remoralization of war and the emergence of a new discriminatory kind of total war.

The strength of this view, which is repeated by Schmitt’s Left followers, is that it notes the elision of the once domestic police function with that of war and military action. Its weakness is that the solution it nostalgically imposes is to reinstate the classical spheres of domestic police and external, properly conducted war (Dean, forthcoming). In our own time, we might wish to distinguish between not only military intervention and police action but also between differ-
ent kinds of police action. There would seem to be a *prima facie* case for distinguishing between, say, the role of United Nations police and peacekeeping troops in post-independence East Timor and the kind of police exemplified by the actions of the US military police in Abu Ghraib. Moreover, we might want to analyse and even measure the relative police capabilities, defined as the capacity to bring and sustain civil order within a given territory, of different agencies in specific contexts. It is the lack of analytical discrimination and historical sensibility which makes the Left appropriation of Schmitt’s image of liberal Anglo-Saxon air-power putting an end to the security offered by the continental Westphalian territorial state, this time in the guise of the Third Reich, so simply muddleheaded.

Schmitt’s image of the aerial bombardment, presumably of German cities, is that of St. George lancing the dragon, the Leviathan. In most Renaissance paintings (such as those of Bellini, Raphael, Tintoretto) of this famous scene there is a third figure, the Princess Sabra, who was about to be sacrificed to the voracious beast. Often the dragon is surrounded by the skulls and bones of its previous victims as in the graphically violent image by Vittore Carpaccio. In some versions of the story, St George does not kill the dragon but tames it and puts it on a leash. Here at the very least we have another kind of image of police: the use of carefully calibrated force and minimum violence to protect suffering (if feminized) humanity so that it might begin to build a civil society. Whatever the not insubstantial problems with many police operations in the international domain, we should at least contemplate through this image the possibility of the use of police as carefully calibrated force and minimum violence to protect humanity and build a civil order.

**Conclusion**

Marti Koskenniemi (2004: 493) has recently argued that, whatever they think of Schmitt’s political choices, readers of *The Nomos of the Earth* ‘have been struck by the expressive force of [its] critiques’. These critiques reveal the war on terror to be a fully moralized, or even theologized, new form of just war conducted as a police action against a criminalized enemy beyond the reach of humanity. They apparently demonstrate that the conditions and interrogation practices of camps like Guantánamo Bay and Abu Ghraib are within a state of normless exception where torture becomes a matter of juridical interpretation. And they allow their readers to conclude that universalist appeals to freedom and democracy justify an unfettered right to decide to engage in military adventures irrespective of the provisions of international law and the wishes of the international community. Such critiques, adopted by today’s anti-globalization militants, are rooted in a very specific mythology.

It would be worth studying the multiple resentments and fears which are condensed into Schmitt’s mythology. While we might find his critique of liberalism, particularly in the international sphere, compelling, we might not wish to partake of an ethnic or national alternative to its universalism. It is this move
which means that Schmitt’s imagery delivers a certain and highly dubious emotional charge. For all the no doubt magical intensity transferred to his book on Hobbes from its mythological analysis of the Hebrew bible, Schmitt cannot keep his interpretation of the failure of the political symbolism of the Leviathan free from bile directed towards all those clearly identified as the Leviathan’s inner enemies whom he perversely holds responsible for his own predicament in Nazi Germany, especially the Jews. And when St George lances the European territorial state as dragon, it becomes a story of the liberal Anglo-Saxon air- (and sea-) powers conducting a pest-extermination of the German people.

The Nomos of the Earth – as indeed all Schmitt’s major works – is an important twentieth-century contribution to the critical history of liberal political and juridical reason. Among other things it continues the project of demonstrating the relation between reason and domination constitutive of the Enlightenment. In Schmitt’s view the state is one of the highest achievements of the Enlightenment because it puts an end to civil war. The system of states of the *jus publicum Europaeum* is an even higher achievement in that it puts an end to the medieval notions of just war and restricts war to formally conducted war between states conceived as equal sovereign persons. It is thus an essential civilized project. He could thus be read as an instance of the kind of project the Frankfurt School, Norbert Elias and Foucault take up in their different ways. However, we need a critical apparatus with which to read Schmitt to gain the full benefit of his intellectual work and to recognize and combat the diabolical forces that possessed him – forces, it might be added, which were as much of his times as of the man.

As Tracy B. Strong (1996: xxvii) suggested a decade ago, the reception of Schmitt today poses the question of our responsibility of how to manage the intellectual terrain we are opening up. This is probably true for any political mythology of world order. The key question is not whether we are going to be morally and politically contaminated by a thinker who was also a Nazi but that of the hubris of world-order thinking. Perhaps we need to approach such political imaginings and poetics with a particular ethos which seeks intelligibility as it professes and enacts a certain modesty and self-awareness. This, it would seem, is the only way we could both mobilize the facilitating role of myth and philology in rendering very complex processes of world order thinkable and politically actionable, while also being aware of the dangers and the diabolical forces which can be unleashed when we project a mythopoetics upon the earth.

Such an ethos might lead us to ask how a critical history of liberal international reason can appropriate Schmitt’s insights without simultaneously expelling him from the order of legitimate European thinkers. It might lead us to ask how we can act towards Schmitt in a manner that does not reproduce his relation to those he accused of slaying and feasting on the great Leviathan from either within or without. If we cannot answer these questions by our own intellectual practice, then we have forfeited a major basis on which to interrogate the discussion of new world orders or disorders.
Notes

1 This and the following four paragraphs of exposition follow those in Dean (2006).
2 This section also follows Dean (2006).
3 Literally, unspeakable or abominable crimes such as murder or high treason. In a legal opinion on war crimes after the Second World War, he speaks of this category of crimes:

   The brutality and bestiality of these monstrous crimes exceed the normal human power of comprehension. They are components and manifestations of a frightful ‘sceius infamantium’ in the fullest sense of this term. They are beyond the scope of all traditional and customary measures of international and criminal law. Such crimes set the perpetrators outside the law and make them outlaws in the fullest sense. The order of a superior authority cannot justify or excuse such monstrous crimes; it can at best, in a particular situation, raise the question of whether the perpetrator found himself in a critical situation and whether this distress excuses him. In no case should the abnormality of the crime be made the object of discussion, thereby deflecting the monstrousness of these transgressions and diminishing the awareness of their abnormality.

   (quoted in Ulmen 1996: 108)

4 The painting St George and the Dragon by Vittore Carpaccio (1455–1526), dating from 1502–1508, is housed at the Scuola di San Giorgio degli Schiavoni, Venice. A gallery of images of the story of St George can be found at: www.ucc.ie/ milmart/ grgwstart.html (accessed 15 June 2006).

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