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Fatal attraction: a critique of Carl Schmitt's international political and legal theory

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The ongoing Schmitt revival has extended Carl Schmitt's reach over the fields of international legal and political theory. Neo-Schmittians suggest that his international thought provides a new reading of the history of international law and order, which validates the explanatory power of his theoretical premises – the concept of the political, political decisionism, and concrete-order-thinking. Against this background, this article mounts a systematic reappraisal of Schmitt's international thought in a historical perspective. The argument is that his work requires re-contextualization as the intellectual product of an ultra-intense moment in Schmitt's friend/enemy distinction. It inscribed Hitler's 'spatial revolution' into a full-scale reinterpretation of Europe's geopolitical history, grounded in land appropriations, which legitimized Nazi Germany's wars of conquest. Consequently, Schmitt's elevation of the early modern *nomos* as the model for civilized warfare – the 'golden age' of international law – against which American legal universalism can be portrayed as degenerated, is conceptually and empirically flawed. Schmitt devised a politically motivated set of theoretical premises to provide a historical counter-narrative against liberal normativism, which generated defective history. The reconstruction of this history reveals the explanatory limits of his theoretical vocabulary – friend/enemy binary, sovereignty-as-exception, *nomos*/universalism – for past and present analytical purposes. Schmitt's defective analytics and problematic history compromise the standing of his work for purposes of international theory.

Keywords: Carl Schmitt; international political theory; history of international law; international historical sociology; genealogy of war and peace; European system of states

The neo-Schmittian revival in International Relation (IR) and beyond

The publication of Carl Schmitt's *The Nomos of the Earth* and his *Theory of the Partisan* (Schmitt 2003, 2004a) has provoked a second wave in the Anglo-American Schmitt reception and beyond. Whereas the first wave of

Schmittiana in the 1980s was largely an exploration of his critique of liberalism and parliamentary democracy – and thus confined to domestic political theory and legal studies – this second revival has extended Schmitt’s reach to international political and legal theory.¹ Unlike the more critical reception in the wider social sciences, however (Holmes 1993; Scheuerman 1994; 1999; Lilla 2001; Müller 2003),² Schmitt’s international thought has not been subjected to a comparable critical interrogation in the field of IR. On the contrary, Schmitt’s work on international relations has been largely dissociated from his political commitments and intellectual liabilities, and mobilized for providing an analytical vocabulary to simultaneously conceptualize and criticize, *inter alia*, the ongoing US-imperial turn and its ‘war on terror’ after 9/11. Paradoxically, Schmitt’s double attraction as a modern classic on the executive state and a significant figure against liberal universalism has led to a convergence – perhaps in a surprising *complexio oppositorum* – between the neo-Conservative Right and the post-Marxist Left. Schmitt has thus become both an intellectual influence on neo-conservative thought and United States foreign policy and a critical voice against liberal imperialism. This has positioned the neo-Schmittian literature simultaneously to the right and to the left of the predominant Kantian cosmopolitanism in the field of IR, outflanking the liberal mainstream in a pincer movement (Balakrishnan 2000; Müller 2003, 219–43).

In this perspective, *The Nomos* provided the missing substantive historical–juridical backbone, only alluded to in his much better known *The Concept of the Political* (Schmitt 1996), for a full-scale rehabilitation of Schmitt’s international political and legal theory. Schmitt’s history of international law and order is held to present a historical extension and contextualization of his interwar critique of the Anglo-American transformation of international law. For, according to some theorists, the misguided invocation of ‘just war’ concepts and ‘humanity’ in

¹ For statements in the IR literature, see Odysseos and Petito (2007), Hooker (2009), and Slomp (2009). The journal *Telos* introduced Schmitt’s work into the Anglo-American world from the late 1980s onwards and published excerpts from *The Nomos* during the early 1990s. Several journals dedicated special issues to its English translation, see *Constellations* (2004), *South Atlantic Quarterly* (2005), and the *Leiden Journal of International Law* (Odysseos and Petito, 2006). Koskeniemi (2001, 413–509) and Scheuerman (2008) trace Schmitt’s influence via a range of German *émigrés* – most notably Hans Morgenthau – on the bifurcation of international studies in post-World War II (WWII) United States academia. This generated a distinct field of IR revolving around power politics, and a separate field of international law, revolving around jurisprudential ‘formalism’. For Schmitt’s influence in International Law see Grewe’s (2000) ultra-realist update of *The Nomos*, and Koskeniemi’s (2002) critical review.

² For the wider Schmitt revival see Mouffe (1999, 2005), Žižek (1999), Dyzenhaus (1999), Hardt and Negri (2000), Balakrishnan (2000), Zolo (2002), Rasch (2004), Agamben (2005), Stirk (2005), Ojakangas (2006), Axtmann (2007), and Shapiro (2008).

21st Century United States foreign policy marks a dramatic departure from the norms of international law and forms of conflict and cooperation that Schmitt located in the age of absolutism – the ‘golden age’ of the classical interstate system. This was a departure whose origins Schmitt had already diagnosed and lamented in the transition from the *ius publicum europaeum* to a universalizing Anglo-American international law during the interwar period. *The Nomos*, in short, furnished the historical legitimation and accumulated intellectual resources for a sustained neo-Schmittian critique of a revitalized just war tradition, the re-moralization and juridification of international politics, and cosmopolitan humanitarian intervention (Zolo 2002; Rasch 2004; Slomp 2006; Brown 2007), total war and liberal world-ordering, and the end of interstate politics and political geography threatened by the ‘spaceless universalism’ of an Anglo-American imperialism (Žižek 1999; Stirk 2005; Shapiro 2008; Prozorov 2009; Slomp 2009). In addition, it also enabled a new reading of the return to the politics of the exception (Agamben 1998, 2005; Hardt and Negri 2000, 16–18; de Benoist 2007) and a reappraisal of the figure of the partisan, the terrorist, and new modes of irregular warfare (Behnke 2004; Mouffe 2005; Werner 2010). Finally, *The Nomos* set out an alternative vision of future world order in terms of a pluriverse of regions, revolving around the category of the *Großraum* (pan-region). This category acknowledged the end of the classical interstate system, while refusing to accept a de-territorialized model of world unity (Mouffe 2005; Petito 2007; Zolo 2007).³ In this context, the Schmittian vocabulary – decisionist sovereignty, state of exception, friend/enemy binary, pan-interventionism, discriminatory concept of war, re-politicization of constitutional and international law, greater regions – presents not only a rediscovery and addition to the mainstream IR academic lexicon, but has also become a significant idiom for the social sciences in the 21st century at large.

The Nomos, furthermore, did not simply provide additional historical *gravitas*, but seemed to demonstrate that Schmitt's interwar critique of liberal internationalism could not be dismissed as a series of disconnected and *ad hoc* polemical tirades of an embattled Nazi intellectual. Rather, it was grounded in a systematic reconstruction of the entire history of European politics and international law from the Discoveries to the Cold War, exceptional in scope and ambition. This original project revolved around the central category of the *nomos*, conceived as a unity of law

³ Even Habermas, who once opined that ‘Carl Schmitt will [not] have a similar power of contagion in the Anglo-Saxon world’ [as Nietzsche and Heidegger] (1989, 135), now renders his reflections on world politics in terms of an elementary opposition between the Kantian project and Schmitt's ultra-realism (Habermas, 2006, 188–93).

and space. Its attraction resides in its apparent ability to function as a fundamental world-ordering device, enabling a macro-periodization and interpretation of world history in terms of a succession of distinct *nomoi* – from the *Conquista* and the absolutist interstate order, via Britain’s sea-appropriation and the US-designed post-Versailles transformation of international law, to Hitler’s *Großraumpolitik* and beyond. Each new *nomos* was initiated by, and grounded in, comprehensive world-order constitutive acts of land-appropriation, referred to as ‘spatial revolutions’. In each case, ‘spatial revolutions’ reconfigured the relations between the spatial structure of world politics and the changing role of international law in mediating inter-spatial relations.

Against this background, some writers mount the even more ambitious thesis that Schmitt’s wider international thought transcends the politicized and temporally circumscribed remit of his insights into the nature of interwar geopolitics. The argument is that *The Nomos* ‘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’ and ‘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 IR’ (Odysseos and Petito 2007, 1). Moreover, *The Nomos*, it is claimed, not only proposes a superior narrative to the conventional IR story of ‘Westphalia’, but also articulates a distinct theoretical framework: an amalgamation of Schmitt’s concrete-order-thinking and his concept of the political. This paradigmatic innovation carries the prospects for a new method to conceptualize world-order formation. Accordingly, the conjunction of both moments – a theoretically anchored and critical new conceptual vocabulary ready to be deployed in the contemporary geopolitical conjuncture, secured by and extracted from a reinterpretation of the trajectory of the European interstate civilization – establishes Schmitt not only as a radical voice against American liberalism, but as a hitherto underrated classic in the field to be incorporated into the canon of IR’s most influential critical figures (Odysseos and Petito 2007, 2009; Hooker 2009, 3).

The limits of Schmitt’s international theory

This article provides a critical reappraisal of Schmitt’s international theory, developed from the angle of its specific political context and ideological purpose. It suggests that a re-contextualization of Schmitt’s thought in the interwar period discloses a distinct view on the construction, objectives, and limits of his theoretical premises: a combination of

political decisionism (politics of the exception), the concept of the political (friend/enemy distinction), and concrete-order-thinking (land-appropriations as determinants of changes in international law and order). This point of departure – the historically specific conditions of knowledge production – affords a better understanding of how these premises translate into a particular, though specious and defective, reinterpretation of the history of international law and order. This operation of contextualization provides a privileged view on the anatomy and limits of Schmitt's international political and legal theory.

The article also suggests that the neo-Schmittian turn in IR pays insufficient attention to Schmitt's political context and his politics of concept-formation, which governed the construction of his history of international law and order. Its followers tend to take Schmitt's theoretical premises and his historical narrative for granted in order to project his interwar critique of American imperialism onto the 21st century. This compromises their attempts to use his thought for purposes of international theorizing. To demonstrate these claims, the article performs four analytical moves. First, it sets out the context-dependent conception of Schmitt's triple axiomatic premises (decisionism, concept of the political, and concrete-order-thinking). Second, it provides an exposition and critique of the explanatory limits of this theoretical architecture. Third, it shows by means of a reconstruction and critical examination of Schmitt's account of the rise and fall of the *ius publicum europaeum* across the four 'spatial revolutions' that defined his intellectual terrain of engagement – from the Discoveries to Hitler's *Großraumpolitik* – how the defects of his theoretical assumptions expressed themselves in a problematic history of the European interstate system. The argument is that the discrepancy between Schmitt's *explanans* – concrete-order-thinking – and his *explanandum* – transformations in the structure of political authority, international law, territorial order, and war and peace – reveals fundamental deficiencies in the explanatory power of Schmitt's theoretical approach. Given these defects, the article finally questions IR theorists' reliance on Schmitt's history and theory for the purposes of formulating a *general, plausible, and coherent international theory* (given its context-dependent purpose). It concludes by drawing out how Schmitt's problematic history and the limits of his theory manifest themselves in their interpretation of 20th and 21st Century international relations and, in particular, the War on Terror.

To bring Schmitt's distinct approach into sharper relief, the article contrasts his international political and legal theory throughout the text with the alternative paradigm of International Historical Sociology. As Schmitt's intellectual preoccupations moved from constitutional to international law during the mid-1930s, he realized that political decisionism

was insufficient to capture the geopolitics of land-appropriations and spatial revolutions, which he now privileged as foundational world order-constituting acts in order to re-conceive his history of international law and order as an anti-liberal and anti-normative tract. This shift from decisionism to concrete-order-thinking as a sociologically enhanced new type of juristic thought was meant to remedy this explanatory vacuum. Yet, Schmitt's rendition of the sociological that drove geopolitical expansion never incorporated the social sources and social processes that caused geopolitical conflict, spatial revolutions, and world-order projects. This resulted in a gap between the objectives of his theoretical premises and his de-sociologized and de-subjectified historiography that regressed into the power-political reifications of geopolitics as such. This suppression and elimination of social relations was already prefigured in his concept of the political – an ontologized friend/enemy distinction – that now informed his concept of the geopolitical. Both detached the (geo-)political from the social – in fact, prioritized and valorized the (geo-)political over and against the social.

Accordingly, Schmitt's work is engaged not solely in terms of international political theory – a mode of theorizing that all too often remains unchecked by its confrontation with its empirical referent – but is set in dialogue with international history and, ultimately, international historical sociology. For it is this absence of an international historical sociology in Schmitt's work – an explanation of the differential relations between historically varying forms of authority relations, geopolitics, law, and spatiality in their articulation with changing social relations – that ultimately renders it defective.

Given these liabilities, the article raises the question as to how neo-Schmittians, given the anti-sociological cast of Schmitt's theoretical tools, can counter and diffuse the restrictions and limits of his premises. It also suggests that any de-contextualization of Schmittian insights from their contextual purpose and detachment from their theoretical presuppositions threatens to imperil the theoretical standing of attempts to apply his categories to an altered contemporary geopolitical configuration. For those IR theorists who endorse Schmitt's theoretically informed history *in toto*, any salvaging of the Schmittian research programme seems problematic; for those authors who draw on discrete Schmittian concepts and insights in a more eclectic and syncretistic manner, the challenge arises how to re-anchor, secure, and integrate these disparate insights theoretically in line with the normal protocols of social science to satisfy the requirements of theorizing. Even if particular Schmittian claims may illuminate aspects of international relations, both groups of authors need to address the question as to whether decisionism, the concept of the political and concrete-order-thinking, combined or each on its own, can

generate a plausible international theory, rather than advancing localized commentary. For without an attempt to secure empirical propositions theoretically, the mode of analysis tends to become *ad hoc* and descriptive, rather than general and explanatory. While few authors who draw on Schmitt selectively would call themselves neo-Schmittian without multiple qualifications, even a partial appropriation becomes problematic if discrete insights are not realigned with and tested against the theoretical premises of his work. Failing that, a dissociation of these categories from their abandoned premises threatens to compromise their standing as coherent international theory.

Re-reading Schmitt contextually: the politics of concept-formation

This article draws on a contextualized close reading of Schmitt's writings on international politics, law, and history between 1934 and 1950, notably, in descending order, on his four major publications – *The Nomos*, *The Order of Greater Spaces in International Law* (Schmitt 1995c), *Land and Sea* (Schmitt 1997), and *On the Three Types of Juristic Thought* (Schmitt 2004b) – supplemented by his wider articles and interventions from that period.⁴ This re-reading of pre-war and wartime texts is, where necessary, informed by his wider Weimar writings on constitutional theory, state theory, and the history of political ideas.

The article adopts a threefold interpretative strategy. It situates Schmitt's intellectual production within his politics and his explicit and ideologically super-charged view of concept-formation as political combat.⁵ Simultaneously, it proceeds by way of immanent critique – testing the intellectual coherence and explanatory power of his substantive account against his underlying method. Can concrete-order-thinking generate a plausible international theory? In addition, it enjoins a standard of external critique, adducing the findings of the contemporary state of the art in the more specialized sub-literatures in the historiography, political sociology, and political geography of the early modern and interwar periods to interrogate Schmitt's empirical-historical conclusions.

For the neo-Schmittian reading of Schmitt relies on two interconnected moves. Author and text form the primary object of enquiry in abstraction

⁴ *The Nomos* was published in 1950, but written between 1942 and 1945. *The Order of Greater Spaces* was published in 1939; fourth edition 1941. An English translation is still missing. *Land and Sea* was published in 1942 and *The Three Types* in 1934. Most of Schmitt's articles and shorter interventions from that period are collected in Schmitt (1988a, 1995d, 2005a).

⁵ For the nexus between Schmitt's politics between 1933 and 1936/45 and his work, see Rütters (1988, 1990), Haggemacher (2001), and Mehring (2009).

from the specific sociopolitical context, concrete referent problematique, and authorial intent that informed intellectual production. This operation of de-contextualization generates a regrouped and consolidated set of categories and methodological principles that metamorphoses into a formalized approach ready to be re-deployed across the terrain of historical enquiry – the making of a timeless classic. This process of abstraction leads to conceptual reification as the authorial definition of concepts forms the given *a priori* for ‘application’. In a second step, contemporary real-world phenomena – the ‘war on terror’, emergency powers, wars for humanity, conditional sovereignty – are then analysed through this conceptual prism with a view to validate or ‘prove’ the categorical apparatus. Schmittian concepts are lifted from their original context of formation and application and grafted onto radically different sociopolitical contexts.

This article restores the relation of text to world (applying Schmittian categories to the present) into a relation of world to text (recovering Schmitt’s present for understanding the formation of his categories). What particular questions and what power-relations drove the construction of concepts in relation to which they were articulated as solutions? This retrieval of the context of concept-formation leads to an enquiry into Schmitt’s politics of concept-formation – a political sociology of concept-formation and, ultimately, an ideology-critique. Schmitt’s considerations on concept-formation warrant this procedure as his work is littered with sharp and apodictic assertions, encapsulated exemplarily in his axiomatic statement that ‘all political concepts, images and terms have a polemical meaning (in the literal meaning of Greek *polemos*, i.e. war). They are focused on a specific conflict and are bound to a concrete situation’ (Schmitt 1996, 30). Elsewhere, Schmitt avers that intellectual labour invariably involves ‘the forging and re-forging of scientific concepts as political concepts in a wider ongoing struggle over existential autonomy, individually and collectively’. Similarly, in a passage on the legal innovations and conceptual neologisms that accompany modern American imperialism, Schmitt notes that ‘he who has real power is also capable of determining concepts and words; *Caesar dominus est supra grammaticam*: Caesar is also the lord of grammar’ (Schmitt 1988c, 202). For Schmitt, political science and jurisprudence are themselves subject to and in the service of the highest and most intense differentiation – the friend/enemy distinction that demands an existential act of decision. Consequently, a German legal–political counter-vocabulary was required to regain spiritual and existential autonomy in a geopolitical struggle for survival. The deconstruction of Schmitt’s thought requires therefore an auto-application of his guidelines for concept-formation to his reformulated history of international law and politics. For the neo-Schmittian

tendency to provide a de-contextualized and de-politicized account of Schmitt's recasting of international thought, dissociated from his concrete intellectual project, contradicts and remains unaligned to Schmitt's own method of concept-formation.

What constituted the polemical object of Schmitt's interventions? During the Weimar period, Schmitt formulated his definition of sovereignty in terms of political decisionism as an ultra-authoritarian solution to the intractable crisis of the Weimar Republic, destabilized by *coup d'États*, strikes, civil unrest, and revolutions. The option for defining sovereignty in terms of the exception was not the result of a dispassionate and scholarly observation on the ultimate locus of sovereignty, but a politicized and normative intervention into the jurisprudential debates on the interpretation of Article 48 of the Weimar Constitution – the scope of presidential emergency powers and executive government by decree for the restoration of social order. Similarly, the attempt to define the political in terms of an existentialist, ontological, and agonal friend/enemy grouping served the purpose to unify a fragmented industrial and mass-democratic society as a homogeneous community against outside threats and to redeem Weimar Germany's lost right to conduct war.

Equally, Schmitt's reinterpretation of the history of international law during the 1930s and 1940s is bound to the concrete situation of the intellectual and political crisis of legitimacy generated by Hitler's spatial revolution, for which Schmitt offered the most incisive and comprehensive politico-jurisprudential justification, grounded in concrete-order-thinking. This prepared the formulation of an alternative geopolitical order, predicated on 'land-appropriation', conceptualized in *Großraum*. Consequently, Schmitt's research-organizing *Leitmotiv* revolves around the central axis of the pre-juridical and legitimacy-constituting act of 'land-appropriation' that establishes a radical title to land and, by extension, a new *nomos* of the earth. *The Nomos*, written between 1942 and 1945, and *Land and Sea*, published in 1942, were conceived as long historico-legal detours to accumulate the intellectual resources and arguments to legitimize Hitler's *Raumrevolution* – a rewriting of history by one of the leading intellectuals of the ascendant axis-power. Schmitt pursues the dual strategy of developing a conceptual counter-vocabulary to rewrite international history geopolitically as a series of 'spatial revolutions', inserting Hitler's *Großraumpolitik* into a transhistoricized continuum of 'land-appropriations'; and, inversely, mobilizing this reconstructed history to ascribe historical legitimacy and direction to Nazi-Germany's wars of conquest. The conjunction of both strategic moves generates a perfect argumentative circularity. History is rewritten in the light of Schmitt's (geo-)politics and Schmitt's historical revisionism justifies German imperialism. Although the recovery of the ideological purpose

that motivated the conception of Schmitt's political and international analytics does not *per se* invalidate his account in an aprioristic manner, it demands nevertheless a careful re-examination of its implications for his theoretically informed history.

Against the background of this working hypothesis, the article starts with a survey summary of the neo-Schmittian argument, followed by an exposition of Schmitt's theoretical premises – political decisionism, concept of the political, and concrete-order-thinking. In the three substantive historical sections, the article deconstructs Schmitt's account of the Discoveries, the age of absolutism and the *ius publicum*, and the specificity of England. This is followed by a critique of his interpretation of early modern international law and warfare. The third historical section interrogates Schmitt's interpretation of Versailles, the League of Nations, the Monroe-Doctrine and his concept of the *Großraum* – notably against the background of his shift from concrete-order-thinking towards an international political economy (IPE) of capitalism. The penultimate section returns to the critique of Schmitt's theoretical premises, whereas the conclusion draws out some implications of the deficiencies in Schmitt's thought for the neo-Schmittian revival in IR.

The (neo-)Schmittian history and theory of international law and order

What is the secret behind Schmitt's contemporaneity? The essential line taken by neo-Schmittians (Kervégan 1999; Rasch 2004; Mouffe 2005, 2007; Odysseos and Petit 2007) relies on a broad endorsement of Schmitt's interpretation of the age of the *ius publicum* – the body of maxims and praxes of early modern international law that prevailed, roughly, throughout the period from 1492/1648 to WWI – as a functioning system of legal norms, regulating the excesses of interstate anarchy in a geopolitical pluriverse without erasing the essence of sovereign statehood: the public decision to conduct war. This unity of space and law – termed by Schmitt as *nomos* in contradistinction to the universal medieval and liberal-capitalist cosmos – revolved around the core categories of the state as the only legitimate subject of war and peace, secularized and absolute state sovereignty, the executive as the final arbiter over the state of exception, the idea of *iustus hostis* (just enemy) and the associated concept of 'non-discriminatory war'. According to Schmitt, the monopolization of warfare by states (*ius belli ac pacis*) removed violent conflict from the ideological struggles of 'civil society' and re-concentrated on organized violence at the level of the state. This arrogation of the monopoly of violence by plural absolutist states formalized a double distinction – between public and private, de-legitimizing and de-militarizing private actors (lords, cities, estates, pirates, military orders) while elevating the public state to the only subject of international

law and politics, and between inside and outside, separating a domestically neutralized and pacified 'civil society' from an international sphere of interstate war and peace. This dualism fortified the distinction between public international law and private criminal law.

Although war remained an indispensable and irreducible manifestation of concrete political communities – indeed, the essence of 'the political' – it was the crowning achievement of early modern public law to have channelled collective violence among a variety of actors – an ongoing European civil war – into a 'war in form'. This move towards a 'non-discriminatory concept of war' entailed, according to Schmitt, the 'bracketing of war' – including its civilization, rationalization, and humanization – and a clear distinction between belligerents and neutrals, combatants and non-combatants, states of war and states of peace. 'War in form', that is, modern interstate warfare, came to be conducted among equals according to certain inter-subjectively agreed and commonly binding legal conventions – a combination of *ius ad bellum* and *ius in bello* – that also implied the positive making of peace. The *ius ad bellum* came to be divorced from 'just cause' considerations (*iusta causa*), which were declared immaterial for determining the legitimacy of war. This gave rise to the notion of a 'non-discriminatory concept of war', which superseded medieval just war doctrines. Thus, juridically externalized, the reasons for war-declarations were placed outside any legal, moral, or political judgment, implying the retention of the status of the enemy, even during and after war, as a just enemy, rather than its demotion to a foe, criminal, or barbarian. Morality, in that sense, came to be divorced from politics proper. A destructive moral universalism, as expressed in the 15th and 16th century wars of religion, was replaced by a salutary moral relativism in interstate relations. Accordingly, the *ius publicum* implied a decisive rupture with medieval just war theories, grounded in the moral universalism of the *respublica christiana*. This new concept of war – at once: public, that is, restricted to interstate war, bracketed, that is, circumscribed by rational rules of conduct, and non-discriminatory, that is, morally neutral – sealed the shift from the medieval *ius gentium* to the *ius inter gentes*. It established a historically unprecedented and exemplary *nomos*, capable of combining untrammelled state sovereignty with the anarchy-mitigating effects of international law.

This line of reasoning was powerfully invoked by Schmitt against the post-World War I (WWI) criminalization of the German *Reich* as an 'outlaw nation', whose distinctly political status as a sovereign state was revoked by the 'Versailles *Diktat*'. As Germany was not admitted to the peace negotiations, and as 'war guilt' and 'war crime' were not juridical concepts in interstate relations (*nullum crimen, nulla poena sine lege*), their formulation and intrusion into international law after 1919 transformed

public interstate law into an incipient world domestic law, starting to re-moralize and juridify the inter-political by introducing a new ‘discriminatory concept of war’. This re-inserted just war considerations into the definition of the legality of warfare. This move castrated, according to Schmitt, the essence of the political – the sovereign decision to go to war against an enemy. Versailles thereby abrogated the cornerstone of the classical *ius publicum*, undermined war’s status as the autonomous, purest, and highest form of interstate relations, transformed war into a policing exercise, and thus re-domesticated warfare. Worse, the Wilsonian invocation of the concept of humanity reconnected post-Versailles conceptions of international law to medieval just war doctrines that contained a tendency towards the total negation of the formerly ‘just enemy’ and its degradation to an enemy of mankind – a non-human. Correlatively, it generated a new and distinct liberal way of war – more total in its war aims than the bracketed and limited wars of pre-1914 Europe – as it aimed, next to the killing of non-humans, at the direct transformation of politics, society, and subjectivities: the making of liberal subjects.

Neo-Schmittians detect in the United States hubris of the neo-conservative imperial moment – and its morally recharged discourse of good vs. evil, humanity against terrorists, and the impossibility of neutrality – a replay, if in intensified form, of the spectre of Versailles. This is embedded in a much broader and essentially continuous proclivity in United States foreign policy since WWI and its redefinition of international law. In this, the invocation of humanity leads, paradoxically but logically, to the de-politicization of former ‘just enemies’, their criminalization as outlaws, even their de-humanization as foes, and the radicalization and bestialization of warfare through its transformation into an annihilatory exercise of unqualified killing, the return of torture as a legitimate means against what are by definition non-combatants, and the structural impossibility of concluding peace in the absence of a legal enemy – a war without end. Its temporal ending is equivalent to either the murder of the last terrorist, his incarceration without trial, or the creation of liberal subjects. The ‘war against terror’ is also regarded as another incarnation of Wilson’s ‘war to end all wars’, being paradoxically total in purpose and unending in space and time. The totalizing character of the ‘liberal way of war’, then, is manifested in its war-aims, informed by a re-moralization of international law and politics. This invariably includes the liberal transformation of targeted states, societies, and subjectivities, structurally incapable of leaving an enemy state and its society intact after defeat and of re-admitting a defeated state into the ‘international society’ or ‘international community’ – a historical practice ideal-typically exercised with post-Napoleonic France’s readmission into the ‘Concert of Europe’, agreed at the Vienna Congress – without its constitutional

and social alignment with liberal norms. Strictly speaking, the 'liberal way of war' deserves no longer the appellation 'war' – hence the commotion around the ill-chosen term 'war on terror' – but is transformed into a series of policing actions, including the bio-politicization of populations, otherwise known as humanitarian intervention. Furthermore, the 'war against terror' after 9/11 does not constitute a departure from more law-based cosmopolitan forms of international politics, but represents an intensification of the logic of liberal world-ordering – the 'neo-conservative turn' in the United States Administration notwithstanding. In the end, the argument is that the contemporary period presents a return to the civil wars of the pre-Westphalian period, even though American 'world unity' has immeasurably expanded the efficacy of universal law in a global age, defined as a 'spaceless universalism' driven by the ideology of 'pan-interventionism'.

All of this, according to neo-Schmittians, is inscribed in the long-term logic of the world-historical departure from Schmitt's golden age of limited interstate wars, which then appears in retrospect as – and is accordingly elevated to the status of – the highest achievement of European civilization: the genius of European jurisprudence. Beyond this deployment of Schmitt, some neo-Schmittians re-mobilize, normatively, Schmitt's idea of *Großraum* – a greater territorial space or a pan-region – as the elementary building block for an anti-cosmopolitan, anti-universal organization of international order, based on a plurality of coexisting *Großräume*, each one under the leadership of an imperial nation. Against the imminent threat of a 'spaceless universalism', pan-regions are meant to provide guarantees against the homogenization of the world into a liberal flatland – essential for the maintenance of difference and pluralism – indeed essential for the very possibility of the political, the friend/enemy distinction, encased in mutually exclusive regional blocs. Viewed synthetically, this account presents a powerful counter-narrative and conceptual apparatus to the reigning discourse of liberal cosmopolitanism and requires a careful re-examination.

Schmitt's method: from political decisionism to concrete-order-thinking

Any critique of this Schmittian argument will have to start from Schmitt's context-bound method and his shifting position during the mid-30s from political decisionism to concrete-order-thinking. Schmitt famously redefined sovereignty from the angle of the emergency situation, captured by Schmitt's decisionism, forged during the early Weimar period in his critique of Kelsen's legal normativism (Kelsen 1967). 'Sovereign is he who decides on the emergency situation' (Schmitt 1985b). As legal norms could only function in normal situations, legal normativism was liable to

a de-personalized, apolitical, and ahistorical blindness. Sovereignty, according to Schmitt, is not invested in the state as an impersonal and objective legal subject (an aggregate of rules and statutes), but intermittently crystallizes if and when political crises and social disorder – liminal situations – escape constitutional norms. Such constitutional crises require an extra-legal and eminently political executive decision by a single authority for the reassertion of order, grounded in the state's right of self-preservation. Moments of indeterminacy and indecision in the objective legal order require rapid and firm, essentially discretionary if not arbitrary, fact-setting acts of subjective decision. Decisionism captures the idea that sovereignty resides ultimately in that power that can declare and enforce the state of exception, suspending the constitution in an emergency, whose declaration cannot be derived from extant legal norms and standard procedures of decision making. *Auctoritas, non veritas facit legem*. The sovereign decision is a self-referential and unmediated act of authority – singular, absolute, and final. Jurisprudentially, it appears *ex nihilo*. This discretionary element of 'political surplus-value' re-established the primacy of politics over the rule of law. Legality does not exhaust legitimacy.

Decisionism was complemented by Schmitt's concept of the political. It was formally defined in terms of an intensification of antagonisms that escalated towards the friend/enemy distinction (Schmitt 1996), which demanded at some unspecifiable point a political decision on the identification of the internal and external enemy to forge a decisive political unit and to maintain existential autonomy. The decision activated the differentiation between the inside and the outside and, within the inside, that which had to be externalized. This precipitated a redefinition of the meaning of democracy. For Schmitt, 'democracy requires therefore, first homogeneity and second – if the need arises – elimination or eradication of heterogeneity' (Schmitt 1985a, 9), rather than the 'perennial discussions' of parliamentary democracy grounded in liberal pluralism. This instantiated the consolidation of an otherwise intensely fragmented industrial and mass-democratic society into a socially homogeneous political community – an ethnically defined *demos* – through the joint first principles of autonomous executive sovereignty: external war and internal repression. By appealing to the *prima ratio* of self-preservation, the overriding threats to security and national independence demote and flatten all domestic differences and generate the required unity and unanimity. Democracy, according to Schmitt, is thus redefined in identitarian terms as the direct representation of a unified people (*Volk*) by the political leadership, possibly weakly mediated by irregular acts of spontaneous acclamation and plebiscitary elements that intermittently renew the bond between the leader and the led – the national myth of direct democracy.

Although Schmitt criticized through decisionism legal normativism 'from above', his growing interest in international law and geopolitics precipitated a move after 1933 towards an alternative method – concrete-order-thinking – which attacked normativism and decisionism 'from below' (Schmitt 2004b). This revealed another weakness in normativism as it declared the original formation of statehood and interstate order a non-jurisprudential problem. Neither normativism nor decisionism had an answer to the question what foundational ur-act of legitimacy precedes acts of international legality. What constitutes territorial order and international law? But any answer to this question had to revise constitutional law in the direction of a sociologically and politically expanded notion of jurisprudence as a new type of juristic thought – differentiated from normativism and decisionism – which Schmitt referred to as concrete-order-thinking. In this, the term *nomos* was designed to fill this deficiency in conventional jurisprudence. For 'nomos is precisely the full immediacy of a legal power not mediated by laws; it is a constitutive historical event – an act of legitimacy, whereby the legality of a mere law is first made meaningful' (Schmitt 2003, 73).

What is concrete-order-thinking as a sociologically enhanced jurisprudence in international law?⁶ Schmitt exemplified his paradigmatic turn most clearly in *The Nomos*. It is premised on a single thesis, stating that all legal orders are concrete, territorial orders, founded by an original, constitutive act of land-capture. This establishes a primary and radical title to land. Acts of land-appropriation and distribution, their partition and classification, form the material matrix that constitutes a *nomos*. Schmitt derives the term *nomos* – in contradistinction to law as statute (*Gesetz*) – from the Greek verb *nemein*, meaning the tripartite act of appropriating, dividing, and pasturing. 'Nomos is the immediate form in which the political and social order of a people becomes spatially visible – the initial measure and division of pastureland, that is, the land-appropriation as well as the concrete order contained in it and following from it' (Schmitt 2003, 70). Concrete-order-thinking grounds legal order in a prior act of soil appropriation, creating a unity of space and law. Against the prevailing aspatial, ahistorical, and de-politicized legal positivism in European jurisprudence that conceived of law as an abstract web of norms, tied together in a seamless hierarchy, ultimately derived from the *Grundnorm* of the constitution to which even the state is subjected, Schmitt explicitly opts for this brute act of seizure and occupation to argue the case for the meta-legal origins of any international order, grounding its law in a material–terrestrial reality. The great land-appropriating powers are

⁶ For a rich, but ultimately un-critical, exposition of concrete-order-thinking, see Ojakangas (2006, 149–72).

the historical carriers of international law projects. Legal concepts have spatial origins. Might generates right.

The rise of the early modern interstate *nomos*

This conception of a law-antecedent act of legitimacy came to inform Schmitt's interpretation of the history of international law – from the Discoveries to the *Großraum* – for it put the question of the *origins* of international spatial and legal order centre stage. For Schmitt, the early modern interstate order, grounded in the new spatial–political configuration of a territorial pluriverse of sovereign absolutist jurisdictions, tied together and regulated by the rise of the *ius publicum europaeum*, constitutes a world-historical achievement *par excellence*. For the *nomos* of the age of Westphalia combined a multiplicity of domestically autonomous and internationally sovereign states with an international-order facilitating code of international public law, circumscribing external sovereignty without abrogating it.

How does Schmitt's concrete-order-thinking explain and periodize the formation of this interstate order? And how plausible is his account of the Discoveries, the absolutist state, early modern public law and international relations and, in particular, his notion of non-discriminatory warfare? Schmitt vacillates between three poles of explanation – the Discoveries (1492), the rise of the absolutist state (1648), and English balancing (1713). In the end, he fails to clarify their interrelation and causal hierarchy. This explanatory vagueness is compounded by an unsure periodicity and an untenable idealization of the form and substance of early modern international relations. The next section clarifies his argument by reconstructing, in turn, his discussion of the Discoveries, the new post-Conquest global lines, the rise of the continental absolutist interstate order, and the specificity of England. This provides a far more complex, inconclusive and, ultimately, unsatisfactory composite picture than the neo-Schmittian literature allows. But none of these fragmented causes, even combined, can explain the *nomos*-constituting act of the Discoveries – Schmitt's *ur-cause* – and link it to the rise of the Westphalian interstate system. The problem of causality extends to the very core object of Schmitt's analysis – the European *nomos*.

The discoveries: geopolitics without social process

For Schmitt, the Discoveries mark the crucial historical moment that founds the European *nomos*, for this original act of land-appropriation,

grounds law in two directions: internally and externally. Internally, the first order of all ownership and property relations is created by the initial

division and distribution of land (...) externally, the land-appropriating group is confronted with other land-owning groups and powers. In this case, land-appropriation represents a legal title in international law (Schmitt 2003, 45).

If this sounds like the tautological identification of power with legitimacy that generates legality, Schmitt charges legal positivists of being 'content to reject as "unjuridical" the question of what processes established this order' (Schmitt 2003, 82), raising the expectation of an extra-jurisprudential explanation of the Conquest. Does concrete-order-thinking capture the nexus between the sources and dynamics of the conquest and the spatial ordering of the new *nomos*? If Schmitt's institutional historicism immunizes against the timeless verities of realist provenance, it embraces simultaneously an asociological and non-geopolitical stance that fails to decipher the encounter between the land-appropriating and land-owning group: the nature of 16th Century Spanish absolutism, the relations between the *Conquistadores* and the Spanish Crown, the spatio-temporally differentiated inter-imperial relations between the expanding European overseas empires remain unexamined. Schmitt's non-sociological account of the Discoveries is compounded by the absence of an enquiry into the 'inter-national' nature of the encounter. The native Amerindians remain missing from his account of the regionally differentiated resolutions of land and property conflicts in the Americas. They are not even acknowledged as passive bearers and victims of the incoming Spaniards and Portuguese. They are nullified and written out of history, as Schmitt conceived of the Americas as a de-subjectified vacuum. The concrete processes of land-appropriation, distribution, and property-relations in the Americas – the geopolitical encounter with the natives as historical subjects – remain not only off-screen, but by definition outside any purely (geo-)political notion of conquest-as-concretion (Anderson 1974, 60–84; Wolf 1982; Cocker 1998). In this sense, concrete-order-thinking remains blunt, as the concepts for specifying the dynamics of social property and authority relations that drive overseas expansion are nowhere developed or deployed.

Schmitt's concrete-order-thinking does not provide an international historical sociology of clashing property relations and subsequent geopolitical world-ordering, but a rudimentary and failed attempt to develop a conceptualization of international law and geopolitics that ultimately regresses into a eurocentric historico-legal theory of geopolitical occupation.⁷ A void opens up at the centre of Schmitt's concrete-order-thinking – the absence of a

⁷ Even sympathetic commentators criticize that Schmitt's 'own ideas on concrete orders were the least detailed and developed parts of his work. (...) We are left not only with a sense of incompleteness, but with a general vagueness' (Bendersky 2004, 30).

sociology of property and power. In the end, Schmitt provides no answer to his own question: What processes established this order?

This gap between theoretical ambition and substantive result leads to another contradiction. Schmitt's discussion of the rationalization – jurisprudentially and materially – of the colonization process by the Christian powers of Spain and Portugal reveal, quite paradoxically, that the Conquests did not precipitate the 'spatial revolution' and the subsequent rise of the new European interstate nomos that he generically associated with the enclosure processes overseas. This is most clearly expressed in his differentiation between the *rayas* and the amity-lines. The first repartition of the oceans after the Discoveries in form of the *rayas* (divisional lines) meant the territorialization of the seas and the newly discovered lands. America, the Atlantic (and the Pacific) remained firmly within the reach of the late medieval pre-global law-governed cosmos of the *res publica Christiana*, including the papal missionary mandate and the just war doctrine over and against non-Christians (Schmitt 2003, 80). At least formally, the Vatican remained the central supra-territorial source of adjudication in catholic Europe.⁸

The initial post-Conquest partition of the world between the Catholic powers along the *rayas* was only challenged by the Spanish–French Treaty of Cateau-Cambrésis (1559) and the subsequent Anglo–French and Anglo–Spanish 17th Century treaties that fixed the amity-lines, dividing the world into a civilized – law-governed – zone within these lines and an anarchic zone, a state of nature, 'beyond the line'. This designated not only the land, but also the sea 'beyond the line' as 'free' and lawless. *Res nullius* is also *res omnius* – up for grabs by the strongest taker. Schmitt therefore locates the decisive break from the medieval-Christian *ius gentium* to the *ius inter gentes* not in the fact of the Discoveries *per se*, but in the transition from the Spanish–Portuguese *rayas*-system to the Anglo-centric amity-lines. This initiated America's redefinition from an integrated appendix of the euro-centric 'Old World' to a distinct 'New World' to be re-appropriated and divided in a morally neutered agonal contest according to the law of the stronger.⁹

Absolutism: public state or dynastic sovereignty?

Having delinked the Discoveries from the rise of the European nomos, the decisive passage from the *ius gentium* to the *ius publicum europaeum* is now precipitated by the rise of the state. 'The conceptual elaboration of

⁸ This practice of conditional territorialization was in line with prevailing feudal social property relations (Teschke 1998).

⁹ There is no evidence, according to Jörg Fisch (1984), that the European legal profession distinguished at the time between a law-bound sphere 'within the line' and a lawless sphere 'beyond the line'.

international law in this epoch had only one axis: the sovereign territorial state' (Schmitt 2003, 127). Schmitt equates the generic term 'state' with the absolutist state. It is defined as a concrete phenomenon, characterized by absolute and secularized sovereignty, legal-administrative centralization and rationalization, the monopolization of the means of violence, and bounded territoriality – a unitary state. The *ius inter gentes* is predicated on this spatial structure of mutually exclusive jurisdictions as an interstate law, supplanting the supra-territorial *ius gentium*. Schmitt grounds its genesis not in the Discoveries, but in the emergence of a new form of sovereignty that transcended and pacified the religious wars, generating a de-theologized and secular concept of *ultima potestas* – absolutism (Schmitt 1995a).

Absolutism referred to a state strong enough to de-politicize and neutralize civil wars domestically. For it was, according to Schmitt, its historical achievement to have carried through and institutionalized the separation between the private – the world of clashing ultimate validity-claims – and the public, the sphere of a morally neutered sphere of *raison d'État*, whose overriding interest resides in the security of the state itself (the governance of the *ius belli ac pacis*). And as the absolutist state was pre-representational or pre-parliamentarian, as it conceived of itself as *legibus absoluta*, it provided the ideal-type for Schmitt's theory of the 'modern state', encapsulated in its decisionist nature, that is, the power to decide by dint of authority and not debate or legal normativity – 'absolved from law'. Correlatively, as the domestic sphere was rationalized, its inter-national flip side was the rationalization of interstate conflict by means of a non-discriminatory and bracketed concept of war.

But if Schmitt's account of the rise of the absolutist interstate system is substantively causally unrelated to the Discoveries – occasional verbal counter-assertions notwithstanding (Schmitt 2003, 140, 183) – his analysis proceeds at the level of a de-contextualized interpretation of a selection of political theorists, eclectically mobilized to construct an ideal-type of absolutism and the attendant *ius publicum*.¹⁰ The corollary is an idealized, de-sociologized and historiographically discredited politician account of absolutism, supplemented by an *à la lettre* acceptance of the legal normativism in international law, which Schmitt condemned so unequivocally in relation to the Weimar public law, weakly codified in *le droit public de l'Europe* (Koskenniemi 2004, 497). For how could he reconcile his full and literal embrace of the *ius publicum* as an adequate representation of the praxis of early modern international relations with

¹⁰ De-contextualized in the sense of reading Bodin and Hobbes as thinkers of a generic theory of absolutism, rather than as formulating arguments that responded to and intervened into spatio-temporally specific socio-political contexts (Wood 1983).

his general rejection of Weimar legal positivism? And how could Schmitt's insistence on absolutism as the historical model for a decisionist polity that gave free rein to the will of rulers in the imposition of domestic law and order be squared with their purportedly law-abiding disposition in foreign affairs and the rationalization of military conduct, formalized in the *ius publicum*? This pretence to legality by the Great Powers is characteristically un-Schmittian. Logically speaking, the legal groundlessness of the subjective decision should have operated in external relations as much as in internal relations – a conclusion that Schmitt failed to draw.

For absolutist sovereignty, as the revisionist literature in early modern historiography (Parker 1996; Ertman 1997; Bonney 1999; Potter 2003; Beik 2005; Gerstenberger 2007; Miller 2008) has demonstrated time and again, was never de-personalized, politically autonomous, absolute, or 'over and above society'.¹¹ Sovereignty did not belong to the state as a de-personalized and autonomous sphere of the political, but was a property of the Crown or the ruling dynastic family – it was personalized. Sovereignty could never be exercised over and above 'societal interests'; rather, absolutism relied on 'social collaboration' (Beik 2005) with an increasingly amorphous ruling class, most notably the regional and court nobility of both aristocratic and bourgeois origin, including the financiers, tax-farmers, jurists, and the venal office nobility. This rendered the exercise of absolute sovereignty dependent on social coalitions and interests: indeed, re-privatizing its absolutist pretences, as the bombastic court society of Versailles – clientelism, venality, nepotism, patrimonialism all inclusive – represented a deeply socialized and non-rationalized picture of the seat of French sovereignty and state administration. The distinction between the state as an abstract entity and dynastic sovereignty, which implied divine kingship and the Crown as the ultimate holder of all land (proprietary kingship), was not carried through in absolutist France. The deeper preconditions for this form of sovereignty are anchored in the absence of the rise of capitalist private property relations in the country-side.¹²

¹¹ For the following confer Teschke (2002, 2003, 2006).

¹² Koskenniemi's reading of French absolutism follows too closely Perry Anderson's (1974). 'Schmitt was putting his finger on the fact that European statehood did not emerge alone but as the political form specific to capitalist social relations that presumed a constitutive distinction between public power, exercised through claims of sovereign jurisdiction (*imperium*), and private power, exercised by private law ownership (property, *dominium*), paradigmatically through the market' (Koskenniemi 2004, 498). If that was the case, then the *droit public de l'Europe*, rather than codifying an inter-territorial order of exclusive jurisdictions, would have already contained the tendency towards a concrete-order-transcending liberal 'spaceless universalism' that Schmitt did not associate with the continental interstate civilization, but with 19th Century liberal England.

The dynasty remained in personal union, the physical carrier of sovereignty, and the centre of the political economy of venal fiscal officialdom, mediated by the construction of a non-bureaucratic tax/office state, erected against the background of pre-capitalist social property relations: *L'État, c'est moi!*

Absolutism was not de-theologized, secularized, and neutralized either. Rather, early modern polities were confessionalized dynastic-composite states claiming a sacralized form of sovereignty (Gorski 2000). Although the age of absolutism did break with the trans-territorial theological absolutism of the Vatican, it simultaneously fragmented the unitary confessional papal claims and reassembled them across the spectrum of a pluriverse of creedal mini-absolutisms post-1555 and post-1648. *Cuius regio, eius religio* – contrary to mainstream IR thinking – did not endorse religious toleration at the level of private subjects, but sanctioned the right of regional rulers to determine and enforce, if in internationally agreed form, the faith of the land. In the French case, the nascent absolutist state did not simply guard over the de-politicized and neutral character of domestic politics and religion, but actively established during the Reformation and the Wars of Religion (1562–98) its catholic absolutism in a violent, directly politicized century-long campaign, leading to the repression and expulsion of the Huguenots with the Revocation of the Edict of Nantes (1685). Absolutism did not rise above the warring civil parties, but repressed one of them.

Yet, even within Schmitt's own analysis, there is ample evidence that absolutism failed to generate the distinction between the private and the public, *dominium* and *imperium*. Schmitt was acutely aware of his problematic ascription of public sovereignty to the absolutist state, conceding that

princely “houses”, such as the Hapsburg and the Bourbon, i.e. the great dynastic families, aggregated various crowns under one power, such as the Bohemian and the Hungarian, as well as lands, rights of succession, and other legal titles. They became and remained, into the 18th century, the true agents of European politics and, thus, also the subjects of international law. Most European wars were waged as wars of succession and had their *justa causa* in the divine right of kings. But all of this was only preliminary (Schmitt 2003, 129).

This preliminariness, by Schmitt's own reckoning, is not a transient anomaly, but expresses the very essence of the *droit public de l'Europe*.

These sovereign persons created and sustained the *ius publicum europaeum*, thereby maintaining their mutual relations with one another as human individuals, clearly not as small men, such as private individuals dominated by the state, but as “great men” and *personae publicae* (Schmitt 2003, 146).

These *magni homines* were not simply at the metaphorical centre of what Schmitt calls an ‘international personal analogy’. They did not just represent their respective states, they *realiter* embodied a personalized form of sovereignty, ultimately grounded in their status as owners of their diverse domains – a fusion (or rather: non-differentiation) between the political and the economic, power and property (Schroeder 1994, 8). Absolutist polities were conceptualized in anthropomorphic, but not in anthropocentric ways. Early modern ‘international’ relations and their *ius inter gentes* expressed interpersonal, primarily inter-dynastic, relations.

English balancing: transition from feudalism to capitalism or ‘sea-appropriation’?

Next to the Conquest and absolutism, Schmitt adduces a third spatial phenomenon to account for the rise of the *ius publicum*: English balancing. The Discoveries – at least, after the *rayas* were displaced by the amity-lines – had transformed the European terrestrial order by introducing the antithesis between firm land and free sea, opening up two distinct spatial orders. They were characterized by regulated interstate wars on *terra firma* and anarchy ‘beyond the line’. England’s turn towards the sea extends across two distinct periods, pre- and a post-1713.

Sea-roamers of all kinds, pirates, privateers, sea trade adventurers, together with the whale hunters and the sailors, formed the vanguard of that elemental surge toward the sea (...) their heroic period lasted approximately a century and a half, from 1550 to 1713, or said differently, from the beginning of the struggle carried on by the Protestant powers against the world power of Catholic Spain, and until the Peace of Utrecht (Schmitt 1997, 19–20).

While this initial period undermined Spanish maritime supremacy and hardened a tough-minded amphibious national character, England only fully embraced this ‘maritime existence’, based on its ‘sea-appropriation’, at Utrecht.

England alone took the step from a medieval feudal and terrestrial existence to a purely maritime existence that balanced the whole terrestrial world. (...) England thereby became the representative of the universal maritime sphere of a Eurocentric global order, the guardian of the other side of the *ius publicum europaeum*, the sovereign of the balance of land and sea – of an equilibrium comprising the spatially ordered thinking of international law (Schmitt, 2003, 173).

From 1713 onwards, the *ius publicum* came to be externally regulated by British balancing, conjoining the two spatial orders – land and sea. Which extra-juridical processes, in line with Schmitt’s demand for

concrete-order-thinking, drove Britain's 'spatial revolution'? What accounts for the specificity of England's re-definition of overseas space in the 17th century and its rise and centrality at Utrecht? Absent a discussion of the transformation of English social property relations, British sovereignty and foreign policy after the Glorious Revolution – Britain's transition from a late feudal divine monarchy to a capitalist-parliamentarian constitutional monarchy – Schmitt relapses into a geo-mythological register, revolving around Britain's 'maritime existence' (Schmitt 2003, 178, 183–84).¹³ Geo-elemental categories start to naturalize and mystify specific property and authority relations that informed state interests that diverged significantly from continental patterns, as the neo-Weberian and the neo-Marxist literature has established (Brenner 1985, 1993; Brewer 1988, 1994; Wood 1991; O'Brien and Hunt 1999; O'Brien 2002; Prados de la Escosura 2004; Gerstenberger 2007). Schmitt's intuitive understanding of Britain's exceptionality leads him ultimately to mobilize his generic land/sea dichotomy, a move that drives a wedge into the Westphalian Order, without developing a conceptual vocabulary that articulates how and why Britain was unique, what it was in the nature of British sovereignty that informed Britain's position at Utrecht as the balancer, and how this difference was co-articulated with European developments.

Schmitt concludes with a broad analogy: 'There is a historical and structural relation between such spatial concepts of free sea, free trade, and world economy, and the idea of free space in which to pursue free competition and free exploitation' (Schmitt 2003, 99). Yet, this allusion to worldwide capitalist competition is precocious and obscures the fundamental distinction between 'free' and 'open' seas. The notion of 'free sea' (*mare liberum*) simply referred to its non-law-governed status and implied permanent military conflict over the control of trading and shipping routes, as states tried unilaterally to territorialize the seas, rather than declaring them multilaterally 'open'. In this sense, the new 'beyond the line' only extended prevailing practices of militarized trading routes – armed merchant-men and convoy-sailing tactics – characteristic of the age of mercantilism. This did not imply free economic competition, governed by competitiveness and market-pricing, but free politico-military competition, creating a morally and legally unencumbered state of nature 'beyond the line'. Free trade across open seas had to wait until the 19th century.

¹³ The prevalence of 'geo-mythology' – the grounding of geopolitics in the elemental opposition of land vs. sea (Behemoth against Leviathan) – over and against property and authority relations is particularly acute in *Land and Sea*. Its core thesis is that 'world history is the history of the wars waged by maritime powers against land or continental powers and by land powers against sea or maritime powers' (Schmitt 1997, 5).

But if capitalist free trade was not the inner secret of England's 17th Century 'spatial revolution', the island was, according to Schmitt, decisive in dissolving the terrestrial-Christian order and in altering and co-determining, from 1713 onwards, the *ius publicum* – a rupture that opens up an explanatory vacuum amply filled with geo-elemental reifications and mythological allusions. 'So it came that England became the heiress, the universal heiress of that great change in the existence of the European nations. How was that possible' (Schmitt 1997, 27)? England 'turned her collective existence seawards and centred it on the sea element' (Schmitt 1997, 28), turning into a big fish – a leviathan.¹⁴

Schmitt, as an interim result, provides ample evidence – *rayas*, scholasticism, *res publica Christiana* – that the Discoveries, rather than dissolving the old medieval cosmos, were jurisprudentially assimilated to prevailing discourses of Christian expansion and aligned to late medieval practices of conditional territorialization. Furthermore, the rise of the *ius publicum* was internal to European politics, resting on a double narrative of spatio-temporally diverging Anglo-French developmental trajectories, geopolitically articulated and synchronized from 1713 onwards. British balancing conjoined a land-based interstate order, which had overcome confessional wars, with England's own 'spatial revolution' premised on its 'sea-appropriation', grounded in a geo-elementary account of its maritime existence.

During the course of *The Nomos*, the starting assumption of the *ius publicum* covering an undifferentiated unity of European states, the 'Westphalian System', is progressively dissolved. Their assimilation is challenged by a surprising absence of *any* analysis of 1648 in *The Nomos*, while the Westphalian Peace Treaties are mentioned only once, and then in passing (Schmitt 2003, 145).¹⁵ The European interstate civilization did not originate in 1492, assembled its geographically specific defining features between 1555 and 1648, remained premised on dynastic sovereignty, and was decisively altered and co-articulated by British balancing after 1713. Henceforth, it was outflanked and progressively dismantled by a British sea-based semi-universalism operative in its confetti-empire that finally culminated in the hegemonic transition from the British Empire to an US-dominated 'spaceless universalism' first codified at Versailles. Schmitt's periodization of the rise and fall of the *ius publicum*

¹⁴ Elsewhere, Schmitt notes that 'a turnabout was implicit in the transformation of a nation of sheep-breeders in the sixteenth century into a nation of sea-children. It was the fundamental transformation of the political and historical essence of the island itself' (Schmitt 1997, 50).

¹⁵ The Westphalian Peace Treaties are rarely referred to in Schmitt's entire *opus*. Two passing references can be found in Schmitt (1995b, 241 and 1995c, 311).

presents less a succession of distinct orders than a cumulative accretion of distinct moments, from 1492, via 1555/1648, to 1713 and beyond – each contributing to and redefining the *ius publicum*.¹⁶

The *ius publicum* and early modern warfare

If the central plank of Schmitt's golden age of the *ius publicum* – the absolutist state – was unable to generate an absolute, de-personalized, rationalized, and secular form of sovereignty, what are its implications for Schmitt's thesis that *ancien régime* warfare became limited, rationalized, and humanized? For Schmitt

post-medieval European international law from the 16th to the 20th century sought to repress the *justa causa*. The formal reference point for determining just war no longer was the church's authority in international law, but rather the *equal sovereignty of states*. Instead of *justa causa*, international law among states was based on *iustus hostis*. Any war between states, between equal sovereigns, was legitimate. Given this juridical formalization, a rationalization and humanization – a bracketing – of war was achieved for 200 years (Schmitt 2003, 120–21).

This thesis was encapsulated in his notion of a non-discriminatory concept of war among *iusti hostes* – a claim that ties the rise of 'total war' to the liberal universalism of the French Revolution and, more decisively, to the Anglo-American age of liberal international law (Schmitt 2003, 140–51). What was the nature of early modern warfare?

Although the demise of medieval feuding through the arrogation of sovereignty and the *ius belli ac pacis* by multiple dynasties had decisively transformed the subjects and nature of warfare, it simultaneously augmented its magnitude, frequency, duration, intensity, and costs. In addition, absolutist sovereignty gave military conflict an unlimited, irrational, and de-humanized character that could not be controlled by the amorphous collection of texts (treaties, diplomatic protocols, juridical treatises) that constituted the *ius publicum* (Gross 1948, 38). These developments have prompted scholars of early modern Europe to characterize the age of absolutism as the age of the 'military revolution', the 'permanent-war state' and the 'fiscal-military state' – an age organized for warfare (Tilly 1975; Brewer 1988; Parker 1988; Downing 1992; Bonney 1995, 1999;

¹⁶ Schmitt, throughout the course of the book, progressively shortens the duration of the *ius publicum* lasting 'for 400 years', for '300 years', and finally 'for more than two centuries' (Schmitt 2003, 49, 140, and 181).

Contamine, 2000a, 2000b).¹⁷ But in contradistinction to what the neo-Weberian literature tends to argue – war made states and states made wars – the mismatch between public resources and military expenses changed in the *longue durée* the sociopolitical complexion of *anciens régimes* and ultimately destroyed the very financial-fiscal foundations of the absolutist interstate system. Its dynamics did not lead to a self-reinforcing dialectic between war and modern state-making, but to a destructive downward spiral driven by military overstretch, financial bankruptcies, and social revolt – the unmaking of the absolutist state (Teschke 2003). This was linked to the superior military-fiscal and economic capacities of the capitalist constitutional monarchy of balancing Britain. It finally prepared, in conjunction with the Britain-monitored and balanced ‘Concert of Europe’, the 19th Century Hundred Years’ Peace – an empirical result un-noted by Schmitt, which also counters his thesis that this century belongs to the liberal era of ‘total war’.

The scale of fighting units grew rapidly in the transition from the age of feudal hosts to the age of standing armies and navies. Whereas late-medieval armies fielded rarely more than a few thousand combatants, the size of early modern armies and navies escalated, if in non-linear ways and with important regional variations, from the mid-16th to the late 18th century (Lindegren 2000, 131). Inflation in numbers, in conjunction with innovations in weapons technology, translated into a new quality of military intensity. While it may be otiose to compare absolute casualty-figures to the age of ‘total warfare’ in WWI and WWII, a relative measure provides a better understanding of post-1648 lethal warfare. For example, at the end of the Seven Years’ War, casualty figures in the Prussian Army stood at 180,000 soldiers, which was the equivalent of two-thirds of the Prussian army, and one-ninth of the Prussian population (Anderson 1988, 180).

Scale and intensity, in turn, were radicalized by the frequency of war. Quincy Wright noted an uninterrupted rise in the incidence of major battles during this period, before we see a significant reduction in the 19th century (Wright 1964, 641–44). This was compounded by their prolonged duration. If post-1648 wars were no longer ‘perennial’, like the Eighty Years War of Dutch Independence or the Thirty Years War (these wars were, of course, composite conflicts that consisted of a series of separate, but interconnected smaller wars), the Nine Years War (1689–97), the War of the Spanish Succession (1701–14), the Great Northern War (1700–21), the War

¹⁷ Scheurman’s suggestion that ‘much of what Schmitt claims for this period has been corroborated by historians of international relations who by no means share Schmitt’s profound hostility to modern universalism’ cannot be supported (Scheurman 2004, 538).

of the Polish Succession (1733–38), the War of the Austrian Succession (1740–48), and the Seven Years War (1756–63) – all of which were multi-lateral, if not European-wide wars – were long-drawn-out affairs.

If these observations do not *per se* falsify Schmitt's thesis of a 'war-in-form', they are thrown into sharp relief when read in conjunction with the 'rationality' of war-declarations, aims, and endings and the actual conduct of war. Given that military conflicts were essentially inter-dynastic conflicts between *magni homines*, the predominant contemporary form of conflict was, next to naval trade wars, the war of succession. This appellation indicates that the *casus belli* were rarely, if ever, motivated by a rational calculus of costs and benefits – a self-limiting Clausewitzian move that calibrated the war-effort as a rational exercise to a clearly defined political interest. The proximate causes of these wars of succession resided in the 'irrational' biological accidents of dynastic vacancies and inheritance disputes among the European fraternity of princes (Kunisch 1987). War-declarations, aims, and endings were decisively shaped by these inter-dynastic conflicts that were, at a deeper sociological level, property disputes. As sovereignty was a personal adjunct of dynastic houses, every death of a reigning monarch led to succession crises that turned immediately into multilateral affairs, as most royal houses were connected through elaborate marital strategies in which states married states to aggrandize their territory-as-property. Correlatively, the logic of trade wars, notably the sequence of Anglo–Dutch naval wars, was grounded in the mercantilist imperatives for the militarized control of exclusive trading routes.

In this context, war aims were not 'limited', but assumed an imperial, totalizing character, as Europe was regarded by dynastic rulers as a kind of property-map. As control over 'land and people' constituted the main source of income for rulers in pre-capitalist Europe, even though it was in finite supply as a natural monopoly, geopolitical accumulation – the horizontal need to accumulate territories – led to intense re-distributional conflicts among the personalized owners of sovereignty in zero-sum conflicts over limited European territory. The divisions of Poland exemplify this totalizing logic. It was this, given Schmitt's lack of any causal account of war, which drove the intense military rivalries at the time.

Wars were not ended by rational design, but by mutual exhaustion and financial-military attrition, leading to unsustainable public debts and, repeatedly, to public bankruptcies. These deepened the concessions that rulers had to make to their nobilities, tax-farmers, and financiers. But as absolute sovereignty was essentially a contested institution – relying on an unstable compromise between dynasties and their nobilities – war-endings also blended quickly over into prolonged civil wars, as evidenced by the

French Fronde, a noble rebellion against the cutting of their privileges after the Peace Treaty of Westphalia.

The conduct of war was not humanized, either in terms of *ius in bello*, or in terms of a clear distinction between combatants and non-combatants. The effects of war on civilian populations were devastating. As war-logistics were not properly developed and soldiers lacked permanent provisioning, early modern armies lived ‘off the land’, either from looting and pillaging on foreign soil, or by way of sequestration and ransom. Armies tended to ransack civilian areas in an effort to feed themselves, causing plunder, rape, famines, and population displacement. *Bellum se ipse alet* (war feeds off itself) captures this predicament. The absence of a clear set of rules and powers of enforcement concerning the treatment of prisoners and non-combatants implied their ransom for money or other prisoners, if they were not killed outright.¹⁸ Forced conscription of civilians was a common practice. Any sociology of contemporary armies shows that in spite of all the (Weberian and Foucauldian) emphasis on the increasingly rationalized, professionalized, and disciplined character of the new standing armies, soldiers were generally not salaried bureaucrats, but ‘in pay’ of noble officers who had usually themselves bought their military commissions. Armies were not public armies, but precisely ‘the king’s armies’; yet, essentially beyond their disciplinary control (Kroener 2000, 205).¹⁹

War was not, as Schmitt suggests, an intermittent, temporally limited, and formalized affair of a polity’s outward relations, neatly divorced from the inner constitution of pre-existing entities, but the central preoccupation of early modern polities that directly penetrated their internal constitution and their very *raison d’être*. War was the central axis of early modern geopolitics and money its engine (*pecunia nervus rerum*) – and the ultimate arbiter over defeat and victory. Across Europe, public finances were dominated by war expenditures and associated debt-servicing.²⁰ War was the state’s *prima* and *ultima ratio*. As wars grew ever costlier, taxation-rates increased, social discontent mounted, public debts multiplied, and royal bankruptcies proliferated, until revolution and reform reconfigured property and authority relations, tax systems and public finance – and

¹⁸ For the slow and uneven growth of state control in relation to these practices, see Contamine (2000b).

¹⁹ Nor did a ‘non-discriminatory concept of war’ imply that moral-legal war legitimations were no longer required by the *ius publicum*, or provided by warring parties (Reppen 1985).

²⁰ ‘The great scourge of public expenditure was the growing proportion devoted to war (...) – 40 per cent of the total in the fifteenth century, 27 per cent in the sixteenth, 46 per cent in the seventeenth and 54 per cent in the eighteenth’ (Körner 1995, 416; cf. Bonney 1999).

sovereignty. Schmitt's metaphorical depiction of early modern warfare as a gentlemanly 'duel' – a civilized affair – is a mystification. It is grounded in an abstract-literal reading of the *ius publicum*, ultimately rooted in a wider strategic-rhetorical move to elevate the pre-revolutionary age to the paragon of civilized warfare – an interpretative foil licensing the fabrication of a degenerated and inflated 'total war' ascribed to Anglo-American liberal universalism.

Schmitt's account of the *ius publicum europaeum* – from the Discoveries to Versailles – is pervaded by contradictions, omissions, and empirical misjudgements, grounded in an oscillation between unlicensed abstraction and empty concretion. At the centre stands a vacillation between a literal adherence to the minimal positivism of an abstractly accepted *ius publicum* – an idealization of absolutist statehood, an un-examined account of early modern geopolitics and a full embrace of the juristic notion of non-discriminatory warfare – and a sociologically disembodied and inter-nationally evacuated notion of concretion, formalized in spatial concrete-order-thinking. This false notion of concretion – land appropriation, land division, sea partition – carefully dissociated from processes of contested social property relations, authority relations, and geopolitical encounters, re-emerges consequentially as another mega-abstraction: spatial order. In the end, Schmitt maps the positivistic abstraction of the *ius publicum* on to the territorial abstraction of the spatial constitution – combining to form the *nomos*. This play of abstractions was to undergo another round in Schmitt's interpretation of Versailles and after.

Versailles, the League of Nations and after: from concrete-order-thinking to the IPE of American grand strategy

The dissolution of the classical *ius publicum*, grounded in the Euro-centric spatial order, and its transformation into a universal international law occurred during a transitional period, marked by the Congo Conference of 1885 and the Versailles Peace Treaties (Schmitt 2003, 2005a, 2005b). This interim generated according to Schmitt a general disorientation in jurisprudence, unable to conceptualize and navigate the tension between a mere extension of the *ius publicum* to rising extra-European powers, like Japan or the Ottoman Empire, the potential pluralization of international law by the recognition of a series of coexisting regional legal orders (African, Asian or American inter-regional law), and the full onset of a single universal international law. This period reached for Schmitt its zenith in the 'Versailles Diktat' that proscribed an unsustainable half-way house between a legal-normative universalism, master-minded by the

Anglo-American powers and institutionalized in the League of Nations, and a series of Anglo-American ‘opt-outs’ and provisos, most notably through the externalization of the US-American ‘Western hemisphere’, derived from the 1823 Monroe-Doctrine, from the League’s geographical field of application. This lopsided construction not only undermined and incapacitated the legal coherence of the new interwar legal order, it fundamentally failed to resolve the pivotal question of the nature of the new spatial order, suspended between monopoly and polypoly – the global monopoly of a single power and a pluralism of coexisting *Großräume*.

Schmitt turned his attention to the legal arguments for intervention by ‘space-alien’ Anglo-American powers within Europe, who simultaneously ruled out the reverse. The Monroe-Doctrine, prohibiting European intervention in the Western hemisphere, exemplified this ‘spatial chaos’ paradigmatically. Although the United States finally refused to ratify the Versailles Treaty and failed to become a League Member, Article 21 explicitly recognized the validity of the Monroe-Doctrine within the League system. This implied an external internality of United States presence in Europe, as it implied the official acceptance of legal non-reciprocity between the American and European hemispheres. For the inclusion of the Monroe-Doctrine into the Covenant did not only exclude the Western Hemisphere from the League’s jurisdiction, the League also lacked authority to deal with relations between states within the Western Hemisphere who were also League members (Cuba, Haiti, Santo Domingo, Panama, Nicaragua) and with relations between them and European states. These contradictions were radicalized by the absence of the Americans and the Soviets, the presence of two European powers with conflicting spatial-legal traditions (Britain’s elastic sea-based universalism vs. France’s static terrestrial continentalism), and the exclusion of Germany and Austria-Hungary from the peace negotiations. For Schmitt, the spatial disorder of the new *nomos* had crippled the idea of a universal international law, bisected into a European sphere of regional application, supervised by the United States, and an Anglo-American sphere outside its strictures. The new *nomos* of the earth was split right through the middle.

But the legalistic dissection and effective deconstruction of Versailles and Geneva was ultimately shifted onto a much deeper sociological terrain that gave Schmitt a privileged insight into the structural transformations of international law and order at the start of the 20th century. These revolved around the developing dualisms between international public law and transnational private law, a territorial interstate order and a sub-territorial world economy, a public pluriverse and a private universalism, grounded in the separation between the political and the economic

across the member states of the international system.²¹ Schmitt, in a series of extraordinary passages, lays bare the structural correspondence between a trans-nationalizing capitalism and American postwar grand strategy:

Over, under, and beside the state-political borders of what appeared to be a purely political international law between states spread a free, i.e. non-state sphere of economy permeating everything: a *global* economy. In the idea of a free global economy lay not only the overcoming of state-political borders, but also, as an essential precondition, a standard for the internal constitutions of individual member states of this order of international law; it presupposed that every member state would establish a minimum of *constitutional* order. This minimum standard consisted of the freedom – the separation – of the state-public sphere from the private sphere, above all, from the non-state sphere of property, trade, and economy' (Schmitt 2003, 235, italics in the original).

These structural complementarities inform Schmitt's analysis of the American vacillation between isolationism and internationalism, encapsulated in the dialectic between political absence and economic presence, ethical pathos and economic calculation – informal empire. 'The separation between politics and economics constituted an indirect method of exerting political influence. The most important characteristic of this influence was that it was based on free trade, i.e. on trade free of the state, on an equally free market as the constitutional standard of international law, and on ignoring political territorial borders by utilizing such devices as the "open door" and "most favored nation". Thus, in the sense of the separation of politics and economics, official absence meant only *political* absence, while unofficial presence meant an extraordinarily effective – economic – presence and, if need be, also political control' (Schmitt 2003, 255). The United States, after Versailles, was politically absent in Europe, both as a League member and as an occupying power, yet economically present by its inscription of free trade and its political precondition: the generalization of liberal constitutionalism, private property relations, the rights-bearing and free individual, and the rule of law, into the League's Covenant.

This strategy, according to Neil Smith, presented a political project of global domination – the rationalization of global space driven by a non-territorial capitalist imperialism for American 'economic *Lebensraum*' (Smith 2004).²² This rested on the central insight that economic expansion

²¹ Schmitt derived the argument about the separation between the economic and the political and its international extension, the separation between a geopolitical interstate system and a transnational capitalist world market, from Karl Marx (Schmitt 2003, 293–94).

²² Smith's study provides a detailed empirical analysis, rather than just a theoretical derivation, of the formation of a political awareness among US-American policy planners how the

could be de-coupled from territorial aggrandizement, divorcing political geography from international accumulation. In this way, the flattening of differentially organized political territories and their submission to common legal principles sanctioned a constitutive dualism between the proliferation of liberal-constitutional states and the expansion of a borderless private world-market.

But if Schmitt's argument demonstrated the structural preconditions for global American domination, it simultaneously imperilled and transformed three core assumptions of his theoretical-historical axiomatic: an unwitting erasure of his account of the classical *ius publicum*; a retraction from concrete-order-thinking; and a turn towards a transnational economism, selectively applied to the United States and bracketed for Germany. For if the separation between the public interstate and the private sub-state became recognized in international law in the course of the 19th century and politically operationalized by the United States post-1919, then this overturned his generic thesis of the status of the *ius publicum* as genuinely public interstate law.

Secondly, Schmitt's theoretical excursion into the field of IPE forced him to change theoretical register – a *volte face* not licensed by his method of concrete-order-thinking. Where Schmitt excavates the roots of the new universal order, he is pressed into an analysis of the IPE of American world order – falsifying his axiomatic statement that every international legal order is grounded in an original act of land-appropriation. The recognition of the border-cancelling implications of transnational capitalism directly negates his generic thesis that every international legal order is premised on an underlying spatial land-grab – an argument that now seems suspended by the trans-territorial nature of cross-border capitalist penetration. Capitalism's border-cancelling tendency also cancels Schmitt's core method and core thesis. As the novelty and distinctiveness of United States world order is not rooted in a logic of territorialization – but in an attempt to promote informal empire – this negates and transcends Schmitt's now curiously anachronistic notion of concrete-order-thinking and his politico-normative counter-project: a German *Großraum*.²³

Thirdly, Schmitt had pressed the argument about the geopolitics-dissolving effects of capitalist expansion too far. For the period between 1880 and

insight into the separation of the economic from the political under capitalism translated into policy-formation for a new postwar grand American strategy. See also Gowan (2004).

²³ Schmitt was preoccupied with the idea of *Großraum* from the late-1930s onwards (Schmitt 1988b, 1995b, 1995c, 2003, 281–94). For the wider literature on *Großraum*, cf. Gruchmann, (1962), Schmoeckel (1994), Kervégan (1999), Stirk (1999), Balakrishnan (2000, 235–45), Diner (2000b), Joerges (2003), and Koskenniemi (2004, 420–24).

Versailles and beyond did not simply constitute a passage, however chaotic and disorderly, from the *ius publicum* to a universal international law or, alternatively, from interstate geopolitics to a space-cancelling economic universalism, auto-generated by the subterranean march of capitalism. It rather experienced first the intense geopolitical rivalries among the capitalist European empires and their associated re-territorializations of the world (Schmitt remains silent on *belle époque* inter-imperial conflict), before the settlement of WWI launched a supremely power-political project of the American state. This involved the territorial, military, political, and constitutional re-configuration of Europe as an ongoing grand strategy of American power-projection. The result was not a depoliticized 'spaceless universalism', but an attempt to reconstitute and align European political geography with American economic *and* security concerns.

This American grand strategy aimed to tie the postwar promotion of liberal-constitutional *Kleinstaaten* (small states) on the European Continent – Europe's Balkanization – and beyond to their capitalist penetration by private economic forces and integration into the world-market. This implied a twofold strategic calculation – territorial-geopolitical and constitutional-economic. On the one hand, the new principle of national self-determination was the wedge that dismembered the empires of the axis-powers – the German, Austro-Hungarian, and Ottoman Empires. This led to a strategically manageable proliferation of mini-states on the Continent and, in Central-Eastern Europe, to a buffer security zone (*le cordon sanitaire*) against the key remaining out-law state, the Soviet Union. On the other hand, their simultaneous constitutional transformation into liberal law-states, as a precondition for their incorporation into the League of Nations, aligned them with Anglo-American constitutional and economic norms. This enabled their full incorporation into the system of liberal capitalism. Both moves, as Schmitt rightly observed, obliterated their political essence – the right to define an enemy and to wage war.

But although liberal international institutionalism and a capitalist world market were clearly designed to restructure the Continent, this did not and could not precipitate a turn towards a non-political 'spaceless universalism' as it did not erase the European interstate system. Schmitt overlooked the qualitative difference between an America-centric universal empire and an America-supervised European interstate system. Although borders became more permeable and porous and territorial sovereignty geographically trimmed and more conditional, the combination of United States 'political absence' and 'economic presence' was never powerful enough to fully absorb plural territorial sovereignties into a universal empire. In fact, Mussolini's turn towards a *mare nostrum*

conception and Nazi Germany's progressive construction of an autarchic economic *Lebensraum* and security zone are the clearest examples of the limits of the apolitical 'spaceless universalism' ascribed to the American project. Although the abstraction of capitalism had dispensed with a spatial-order constituting act of American 'land-appropriation', the capitalist powers of Italy and Germany could re-embark on a strategy of concrete-space-ordering – a re-territorialization within an alleged spatial vacuum of interwar global capitalism.

How was that possible? As Weimar Germany was already fully integrated into the world economy when *Großraum*-thinking started to preoccupy Schmitt in the 1930s, he was forced into yet another theoretical *volte-face*. He turned away from IPE and re-embraced a spatial-legalistic register that capitalist imperialism, by Schmitt's own reasoning, had either long dissolved or – but this could not feature in Schmitt's theory – regenerated through the general capitalist crisis of the 1929 Great Depression, sweeping fascism to power. But as the precepts of IPE were reserved by Schmitt to Anglo-American imperialism and never applied to German imperialism, his normatively highly charged legal-political argument about the desirability of a universalism-blocking concept of German *Großraum* remained strictly beyond the confines of IPE. Although Schmitt gestured inconclusively towards the transcendence of the classical concept of the territorial state driven by the economic imperatives of a *Großraumwirtschaft* (economic greater space) as a sphere of economic performance (*Leistungsraum*) (Schmitt 1995c, 271), he was theoretically unable to ground the turn towards German continental autarchy in a series of successive German strategic policy choices within the wider context of the post-1929 crisis of the world economy.²⁴ Consequently, the legal concept of the *Großraum* had to be de-economized and anchored in a reassertion of 'the political' in the abstract, the friend/enemy distinction, arising like a *deus ex machina* from an identitarian notion of *völkisch* democracy.²⁵

What Schmitt, contrary to his own diagnosis, was witnessing in the interwar years was the making of an inter-spatial European regionalism, territorially re-configured at Versailles, transnationally better integrated, constitutionally assimilated and internationally codified in the League,

²⁴ For the economic calculations behind successive German strategic policy decisions, see Tooze (2006, 385–425). For the wide circulation of the notion *Großraum* in pre-WWII German industrial and policy circles, see Opitz (1977, parts III and IV).

²⁵ Cf. Schmitt's cryptic statement: 'The United States believed it could turn the political into an external façade of territorial borders, that it could transcend territorial borders with the essential content of the economic. But, in a decisive moment, it was unable to prevent the political grouping of friend and enemy from becoming critical' (Schmitt 2003, 258).

supervised from afar by a politically absent isolationist US and, closer to home, by the weakly committed powers of France and Britain. No spaceless universalism was on the historical agenda. Schmitt had to wait until after WWII, when the combination of US-American political and economic presence on German soil – military occupation plus Marshall Plan plus Truman Doctrine – moved Europe a step closer to the spacelessness that he had already envisaged for the interwar period. But even this did not generate a state-cancelling universal empire.

Salvaging Schmitt for contemporary IR theory? Theoretical reprise

Schmitt's history of international law and order is deeply problematic due to the limits of its theoretical assumptions and the explicit ideological purpose of its context-bound geopolitical revisionism. It fails to function as a plausible international theory for the historical period (1492–1919/45) it was designed for. But can we dissociate Schmitt's theory from his defective history, extricate insights from Schmitt's super-politicized project, and salvage his theoretical premises – decisionism, concept of the political, concrete-order-thinking – as generic analytics for IR theory?

Analytically, Schmitt's notion of the extra-legal decision that instantiates the politics of the exception is little more than a *passe-partout* that can be 'applied' to an indiscriminate range of polities under duress that turn to emergency powers. The application of Schmittian concepts to the exception can only descriptively confirm *a posteriori* an already instituted state of affairs as a *fait accompli*, whose explanation is outside their remit and whose critique cannot be formulated from within the Schmittian vocabulary. Why is that the case? As Schmitt's method is bereft of any sociology of power, decisionism lacks the analytics to identify what balance of sociopolitical forces activates in what kind of situation the politics of the exception and fear. For the state of exception is never a non-relational creation *ex nihilo* – a unique and self-referential event equivalent to the miracle in theology – as it remains bound to the social by an indispensable act of calculation preceding its declaration with regard to its chances of implementation, public compliance or resistance by those upon whom it bears – the social relations of sovereignty. The exception remains quintessentially inserted in a relation of power whose reference point remains the social. Of the two sides of the exception – the power that invokes it and the power that is being excepted from the normal rule of law – Schmitt only theorizes the first. Yet, the decision alone is never decisive.

Schmitt's concept of sovereignty remains not only de-socialized, but curiously de-politicized, as he seeks to identify an Archimedean point not

only outside society, but equally outside politics conventionally understood, super-insulated from any sociopolitical contestation, in order to govern not only against society, but to neuter domestic politics altogether – ultra-sovereignty. This extra-political vantage point is deliberately chosen – and here political theology and hyper-authoritarianism converge – to pinpoint that chimerical location that re-stabilizes social processes from nowhere – *ex nihilo* – yet with overwhelming force. But this ‘place beyond’ really belongs to the sphere of theology proper. Here, at the latest, political theology – the conception of sovereignty modelled on absolutism and the papal *plenitudo potestatis* – risks not only collapsing into unrestrained and arbitrary state-terror, but being removed from any rational intelligibility whatsoever – the apotheosis of the state. Sovereignty defined in terms of the exception constitutes a legal–political category and cannot explain what provokes and comprises concrete states of emergency as real historical phenomena. Schmitt’s conception of sovereignty constitutes a normative prescription, designed specifically for a hyper-authoritarian solution to the intractable crisis of the Weimar state, and cannot function as a generic analytic for ubiquitous invocations of emergency powers. It is singularly unable to gauge the different constellations and transformations between political authority and social relations, geopolitics and international law, and, ultimately, spatial world-ordering.

But this was the task set by *The Nomos* and the turn towards concrete-order-thinking in the mid-30s, generating a reinterpretation of history as a succession of spatial–legal nomoi that tied Schmitt’s present to a seemingly remote and recondite past. Yet, concrete-order-jurisprudence fails to provide guidance as to what processes drive the politics of land-appropriation, enemy-declarations, and world-ordering, leading to an asociological and curiously non-geopolitical – in the sense of geopolitics as an inter-subjective encounter between polities – stance. Schmitt’s law-antecedent act of land-appropriation, which generated the meta-judicial legitimacy upon which international legality is erected, is itself divorced from any further theoretical determinations. The ‘concrete’ is largely the factual. The descending journey from the concrete to its manifold inner determinations and the ascending return journey to the concrete as a ‘concrete in thought’, captured in its rich inner determinations, is never undertaken (Marx 1973, 100).²⁶ The concrete – facticity – turns into an

²⁶ The notion of the ‘concrete’ – alongside ‘organic’, ‘soil-bound’, ‘telluric’, and ‘chthonic’ – enjoyed a steep career in Nazi ideology as part of a wider idiomatic promotion of the ‘ideas of 1914’ against the ‘ideas of 1789’. It was not so much a neo-Hegelian *Wunderwaffe*, but part of the fascist jargon whose explicit purpose was to counter the ‘abstract’, ‘rationalised’, and ‘uprooted’ nature of social relations inherent in the community-dissolving character of ‘Jewish’

abstraction in Schmitt's work. Throughout Schmitt's work, concrete-order-thinking remains strictly extra-sociological as the lateral dynamics of geopolitics and 'land-appropriations' are abstracted from and non-articulated with the vertical dynamics of social property relations. In fact, it is self-consciously anti-sociological in line with Schmitt's generic *Weltanschauung* as a counter-revolutionary étatist thinker. And if the nomos-constitutive acts of conquests are socially disembowelled, the relevance of land-appropriations was already historically overtaken by the largely non-territorial and concrete-order-transcending nature of the US-American form of capitalist hegemony, which rendered Schmitt's concrete-order-jurisprudence anachronistic already at the time of his writing.

The Nomos, in spite of Schmitt's insistence on the concrete, remains largely written in the register of a history of ideas, more akin to the contemporary practice of 'semantic history', interspersed with etymological derivations, geo-mythology and legal history, conceptually antithetical to any international historical sociology. While Schmitt's critique of legal normativism and his partial retraction from decisionism during the mid-30s predisposes his new programme of concrete-order-jurisprudence towards sociology – domestic and international – his definition and handling of the sociological writes 'the social' out of the construction and dynamics of spatial (dis-)orders and replaces it with the reification of the geopolitical. This suppression and elimination of social relations was, of course, already prefigured in his concept of the political (Huysmans 2008) that now informed his concept of the geopolitical. Both insulated the (geo-)political from the social – in fact, privileged the (geo-)political over and against the social. And as Schmitt's definition of the political referred to the intensification of unspecified antagonisms only – as it refers to the quality of antagonisms and not to a specific political process or substances (economic, cultural, ethnic, constitutional, etc.) – it lacks any indication as to which dynamics activate and intensify latent geopolitical differences to the point of open friend/enemy distinctions – or, indeed: forms of international accommodation and cooperation. Which sociopolitical interests and conflicts around the control of the state and the direction of public policy – beyond an elementary and ontologized notion of existential national autonomy – politicize, de-politicize, and re-politicize geopolitical differences as liminal situations that call for emergency powers and the declaration of states of war? Schmitt's thought contains

capitalism. The concretely ordered *Raum* of German provenance had to be defended and restored against the geometric notion of territory as an empty and abstract expanse due to capitalism's de-territorializing nature (Diner 2000a, 2000b).

no categories to capture the sociopolitical (civil war, revolutions, *coup d'États*) and geopolitical crises (war, terrorism, irregular warfare) against which he developed his vocabulary of law and order 'from above'. Schmitt's restrictive conceptualization of the political from the angle of the extreme situation provides no pointers as to what processes lead to the extremization of politics – the social construction of states of exception and war-declarations. Ultimately, Schmitt is taking politics and geopolitics out of his concept of the political. The content of the analysis lies outside his notion of the political. This renders the jargon of the exception, the political, and the concrete abstract, formalistic and explanatorily empty. Schmittian theorems can be applied to geopolitical and legal configurations from without, but cannot be set to work to 'get behind' changes in international law and geopolitics – from Columbus to the Bush Doctrine – from within.

Conclusion: neo-Schmittian impasses

This article has argued that attention to Schmitt's political context and politics of concept-formation provides a privileged vantage-point for disclosing the purpose and limits of Schmitt's theoretical premises, which generated a determinate, but defective, reinterpretation of the history of international law and order. The theoretical and historical critique of Schmitt's triple theoretical axiomatic revealed their one-dimensional (geo)political cast, which precludes the incorporation of social relations into Schmitt's definition of his research premises. These dual deficiencies – theoretical and historical – suggest a shift to the alternative paradigm of international historical sociology.

Inversely, the article has suggested that the Schmitt-inspired IR literature tends to dissociate Schmitt's thought – history and theory – from his specific political project. This generates a depoliticized and de-contextualized acceptance of his conceptual narrative of international law and order, which translates into an underproblematized projection of Schmittian categories unto an altered contemporary geopolitical configuration. As a result, the neo-Schmittian endorsement of Schmitt's history and theory as international theory stands on fragile ground.

Carl Schmitt formulated his international thought in the context of the interwar crisis – IR's 'Twenty Years' Crisis. This crisis of capitalist modernity had deeply affected the political and geopolitical landscape of all major powers, but found its most acute expression (next to Russia) in the crisis of the Weimar Republic, facing disorder from below – strikes, civil war, *coup d'États*, revolution – and a loss of sovereign autonomy from outside, codified in the Versailles Treaty. Schmitt's intellectual riposte

revolved around the political reassertion of domestic and international order. The former was encapsulated in the definition of sovereignty as an unmediated and subjective decision on the state of exception (and, later, the full embrace of the *Führer*-principle and the 'total state'), and in the concept of the political, which redefined democracy in identitarian-existentialist terms through the mediation of agonistic friend/enemy declarations by the state executive. The latter was captured in his defence of the sanctity of the legality of Imperial Germany's war against the Allies as the highest expression of the state's *ius belli ac pacis* of the *ius publicum europaeum* and, later, the idea of land-appropriations as the historical norm. This legitimized Nazi-Germany's war of conquests and the idea of coexisting imperial greater regions as the new *nomos* of the earth. Schmitt remorselessly dissected the crisis of the legal form, the relation between constitutionalism, democracy and emergency powers, and the pathologies of liberal international law in order to fend off the potential of a revolutionary German *pouvoir constituant* and to deconstruct the practice and ideology of the legal-political expansion of the liberal-capitalist 'zone of peace' – the incipient legalization and de-politicization of interstate relations. But rather than developing categories of analysis *for* the crisis, he provided normative legal-political categories against *the* crisis. Schmitt developed a legal-political-spatial counter-vocabulary – concepts for a New Order – to stem the tide of the advancing liberal-capitalist 'spaceless universalism' and the threat of socialist revolution.

The ideological purpose, theoretical limitations, and historical deficiencies of Schmitt's legal-political-spatial register do not *per se* invalidate all Schmittian insights. But they do cast doubt on the standing of his international thought as a plausible and coherent *international theory*, and raise a large question mark behind attempts to elevate him to a hitherto under-appreciated classic of IR, and *The Nomos* to the status of a founding text of the discipline (Odysseos and Petito 2007, 8). How can neo-Schmittians escape these liabilities? Furthermore, its undigested problems manifest themselves in a number of questions and challenges to contemporary attempts to mobilize Schmitt as a critic of the liberal project of modernity.

For at the centre of the heterodox – partly post-structuralist, partly realist – neo-Schmittian analysis stands the conclusion of *The Nomos*: the thesis of a structural and continuous relation between liberalism and violence (Mouffe 2005, 2007; Odysseos 2007). It suggests that, in sharp contrast to the liberal-cosmopolitan programme of 'perpetual peace', the geographical expansion of liberal modernity was accompanied by the intensification and de-formalization of war in the international construction of liberal-constitutional states of law and the production of liberal subjectivities as

rights-bearing individuals. Liberal world-ordering proceeds via the conduit of wars for humanity, leading to Schmitt's 'spaceless universalism'. In this perspective, a straight line is drawn from WWI to the War on Terror to verify Schmitt's long-term prognostic of the 20th century as the age of 'neutralizations and de-politicizations' (Schmitt 1993).

But this attempt to read the history of 20th century international relations in terms of a succession of confrontations between the carriers of liberal modernity and the criminalized foes at its outer margins seems unable to comprehend the complexities and specificities of 'liberal' world-ordering, then and now. For in the cases of Wilhelmine, Weimar and fascist Germany, the assumption that their conflicts with the Anglo-American liberal-capitalist heartland were grounded in an antagonism between liberal modernity and a recalcitrant Germany outside its geographical and conceptual lines runs counter to the historical evidence. For this reading presupposes that late-Wilhelmine Germany was not already substantially penetrated by capitalism and fully incorporated into the capitalist world economy, posing the question of whether the causes of WWI lay in the capitalist dynamics of inter-imperial rivalry (Blackbourn and Eley 1984), or in processes of belated and incomplete liberal-capitalist development, due to the survival of 're-feudalized' elites in the German state classes and the marriage between 'rye and iron' (Wehler 1997). It also assumes that the late-Weimar and early Nazi turn towards the construction of an autarchic German regionalism – *Mitteleuropa* or *Großraum* – was not deeply influenced by the international ramifications of the 1929 Great Depression, but premised on a purely political-existentialist assertion of German national identity. Against a reading of the early 20th century conflicts between 'the liberal West' and Germany as 'wars for humanity' between an expanding liberal modernity and its political exterior, there is more evidence to suggest that these confrontations were interstate conflicts *within* the crisis-ridden and nationally uneven capitalist project of modernity.

Similar objections and caveats to the binary opposition between the Western discourse of liberal humanity against non-liberal foes apply to the more recent period. For how can this optic explain that the 'liberal West' coexisted (and keeps coexisting) with a large number of pliant authoritarian client-regimes (Mubarak's Egypt, Suharto's Indonesia, Pahlavi's Iran, Fahd's Saudi-Arabia, even Gaddafi's pre-intervention Libya, to name but a few), which were and are actively managed and supported by the West as anti-liberal Schmittian states of emergency, with concerns for liberal subjectivities and Human Rights secondary to the strategic interests of political and geopolitical stability and economic access? Even in the more obvious cases of Afghanistan, Iraq, and, now, Libya, the idea that Western intervention has to

be conceived as an encounter between the liberal project and a series of foes outside its sphere seems to rely on a denial of their antecedent histories as geopolitically and socially contested state-building projects in pro-Western fashion, deeply co-determined by long histories of Western anti-liberal colonial and post-colonial legacies. If these states (or social forces within them) turn against their imperial masters, the conventional policy expression is 'blowback'. And as the Schmittian analytical vocabulary does not include a conception of human agency and social forces – only friend/enemy groupings and collective political entities governed by executive decision – it also lacks the categories of analysis to comprehend the social dynamics that drive the struggles around sovereign power and the eventual overcoming, for example, of Tunisian and Egyptian states of emergency without US-led wars for humanity. Similarly, it seems unlikely that the generic idea of liberal world-ordering and the production of liberal subjectivities can actually explain why Western intervention seems improbable in some cases (e.g. Bahrain, Qatar, Yemen or Syria) and more likely in others (e.g. Serbia, Afghanistan, Iraq, and Libya).

Liberal world-ordering consists of differential strategies of building, coordinating, and drawing liberal and anti-liberal states into the Western orbit, and overtly or covertly intervening and refashioning them once they step out of line. These are conflicts within a world, which seem to push the term liberalism beyond its original meaning. The generic Schmittian idea of a liberal 'spaceless universalism' sits uncomfortably with the realities of maintaining an America-supervised 'informal empire', which has to manage a persisting interstate system in diverse and case-specific ways. But it is this persistence of a worldwide system of states, which encase national particularities, which renders challenges to American supremacy possible in the first place.

This raises the final question of how the specificity of the War on Terror can be aligned with the generality of liberal world-ordering and international law since WWI? For Schmitt diagnosed the turn towards a multilateral, if US-directed, liberal institutionalization of world politics during the interwar years as the key mechanism for the realization of his age of neutralizations. However, 21st century United States unilateralism seems to negate this diagnosis frontally, activating Schmitt's politics of the exception. If Schmitt's original position was articulated as a critique of the Kantian–Kelsian project, neo-Schmittians now have to resolve the question of whether the War on Terror grafts a World-Leviathan onto the liberal project, superseding an incipient world state of law, or whether United States unilateralism can be squared with the Kantian project of liberal international law. For the suggestion that the War against Terror presents a fundamental continuity in American foreign policy, inscribed in

its generic liberal cosmopolitanism, is saddled with a number of paradoxes. It is unsurprising, therefore, that the literature is internally divided over whether the War on Terror presents a continuity (Mouffe 2005, 2007; Odysseos 2007) or a discontinuity (Zolo 2002, 2007) in American foreign policy and a sharp break with liberal international law.

The Bush Doctrine and its ideological underpinning, Neo-Conservatism and the ‘Project for a New American Century’, were articulated against a liberal Kelsenite legalization and institutionalization of interstate relations, embracing the distinctly Schmittian idea of the selective transcendence of the liberal rule of domestic and international law – states of exception (Drolet 2010). This was expressed in the abrupt decline of the post-Cold War notion of global governance and its re-politicization even prior to 9/11 in a neo-authoritarian direction, captured in the discourse of empire and imperialism – full-spectrum dominance. At the horizon of this vision – derided by left Schmittians as a political apocalypse and embraced by right Schmittians as the heroic self-assertion of an American or Western community of values – looms a world without a political exterior: a militarized *Pax Americana*. In the Neo-Conservative project, Schmitt and Kelsen combine to form a paradoxical (mis-)alliance, as the political use of Schmitt is reserved for the US state, supervising a Kelsenite international institutional arrangement for the lesser partners within the liberal zone of peace. Liberalism is, by definition, a broad concept, but it cannot be indefinitely expanded beyond breaking point without losing some sense of terminological coherence.

Whereas Schmitt articulated his concepts against capitalist crisis to defend German state autonomy domestically and internationally, the neo-Conservative ideology sought to defend the domestic autonomy and international primacy of the United States state in the context of its own capitalist crisis (Colas and Saull 2005). The basic concept of the political plus decisionism, which Schmitt constructed to defend Germany against American imperialism was mobilized by neo-Conservatives to cultivate an existentialist ethics for a post-welfare, patriotic, and heroic community of American values. But neo-Conservatism was not originally articulated as a response to international terror and foreign policy considerations. It was conceived in the 1970s as an alternative state strategy for the management of domestic disorder – analogous to the original function of Schmitt’s decisionism in Weimar Germany – as the long economic downturn in the United States, the fiscal crisis of the US state, and the rise of the post-welfare state precipitated the turn towards Schmittian prescriptions (Drolet 2010). This entailed the re-assertion of public order through the national identity-galvanizing effects of a community of values, sustained by binary friend/foe declarations and the re-validation of

executive government through the invocation of states of exception, domestically and internationally. Yet, neo-Conservatism reaches beyond a static friend/enemy dualism by adding an ideologically super-charged discourse of democracy and freedom promotion – redefined as polyarchy – that transcends the mere articulation of geopolitical differences to formulate a dynamic theory of American imperialism. It is neither ‘world-government’, nor a *Großraum*, nor a ‘spaceless universalism’, but a flexible front of the willing against the unwilling that feeds on the idea of the theatrical management and permanent mobilization of the state of exception – a war without end. The Schmittian net result during Bush's neo-conservative presidency, sketched in the Bush Doctrine and executed in the global War on Terror, includes, *inter alia*, the strengthening of executive prerogatives, the doctrine of pre-emptive war, the abrogation of basic civil liberties, secret renditions and indefinite detentions, the use of torture, war crimes, the refusal to apply the Geneva Convention to prisoners of war, and the disregard of basic human rights. These measures diverge from the normal liberal conception of the domestic and international rule of law and are more in line with decisionist prescriptions for their suspension and supercession – *legibus absoluta*. Significant differences in policy-formation and strategy disappear from view if Bush junior is equated with Woodrow Wilson.

Critical neo-Schmittians find themselves therefore in the ambiguous situation of having to reject the programme of legal liberal internationalism, revalidating pan-regions as bulwarks against a perceived ‘spaceless universalism’, while simultaneously seeing the idiom of exception usurped by neo-Conservatives. And as both the neo-Conservatives and the critics of the politics of the exception draw on Schmitt for policy-inspiration, to what resources of critique against the politics of fear can these neo-Schmittians turn without endangering their Schmittian credentials?

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References

- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press.
- 2005. *State of Exception*. Chicago: University of Chicago Press.
- Anderson, Perry. 1974. *Lineages of the Absolutist State*. London: Verso.
- Anderson, Matthew Smith. 1988. *War and Society in Europe of the Old Regime, 1618–1789*. Leicester: Leicester University Press.
- Axtmann, Roland. 2007. "Humanity or Enmity? Carl Schmitt on International Politics." *International Politics* 44:531–51.
- Balakrishnan, Gopal. 2000. *The Enemy: An Intellectual Portrait of Carl Schmitt*. London: Verso.
- Behnke, Andreas. 2004. "Terrorising the Political: 9/11 within the Context of the Globalisation of Violence." *Millennium: Journal of International Studies* 33(2):279–312.
- Beik, William. 2005. "The Absolutism of Louis XIV as Social Collaboration." *Past & Present* 188:195–224.
- Bendersky, Joseph. 2004. "Introduction: the Three Types of Juristic Thought in German Historical and Intellectual Context." In *On The Three Types of Juristic Thought*, edited by C. Schmitt, 1–39. Westport, CT: Praeger Publishers.
- Blackbourn, David and Geoff Eley. 1984. *The Peculiarities of German History: Bourgeois Society and Politics in Nineteenth-Century Germany*. Oxford: Oxford University Press.
- Bonney, Richard (ed.). 1995. *Economic Systems and State Finance*. Oxford: Clarendon Press.
- (ed.) 1999. *The Rise of the Fiscal State in Europe, c.1200–1815*. Oxford: Oxford University Press.
- Brenner, Robert. 1985. "The Agrarian Roots of European Capitalism." In *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe*, edited by T.H. Aston and C.H.E. Philpin, 213–327. Cambridge: Cambridge University Press.
- 1993. *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653*. Cambridge: Cambridge University Press.
- Brewer, John. 1988. *The Sinews of Power: War, Money and the English State, 1688–1783*. New York: Knopf.
- 1994. "The Eighteenth-Century British State: Contexts and Issues." In *An Imperial State at War: Britain from 1689–1815*, edited by L. Stone, 52–71. London: Routledge.
- Brown, Chris. 2007. "From Humanized War to Humanitarian Intervention: Carl Schmitt's Critique of the Just War Tradition." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 56–69. London: Routledge.

- Cocker, Mark. 1998. *Rivers of Blood, Rivers of Gold: Europe's Conflict with Indigenous Peoples*. London: Jonathan Cape.
- Colas, Alejandro and Richard Saull (eds). 2005. *The War on Terrorism and the American 'Empire' After the Cold War*. London: Routledge.
- Constellations*. 2004. An International Journal of Critical and Democratic Theory, with contributions by Martti Koskenniemi, Hauke Brunkhorst, Peter Stirk and William E. Scheuerman, 11(4).
- Contamine, Philippe (ed.). 2000a. *War and Competition between States*. Oxford: Clarendon Press.
- (ed.) 2000b. "The Growth of State Control: Practices of War, 1300–1800: Ransom and Booty." In *War and Competition between States*, edited by P. Contamine, 163–93. Oxford: Clarendon Press.
- De Benoist, Alain. 2007. "Global Terrorism and the State of Permanent Exception: the Significance of Carl Schmitt's Thought Today." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 73–96. London: Routledge.
- Diner, Dan. 2000a [1984]. "Knowledge of Expansion: On the Geopolitics of Karl Haushofer." In *Beyond the Conceivable: Studies on Germany, Nazism and the Holocaust*, edited by D. Diner, 26–48. Berkeley: University of California Press.
- 2000b [1989]. "Norms for Domination: Nazi Legal Concepts for World Order." In *Beyond the Conceivable: Studies on Germany, Nazism and the Holocaust*, edited by D. Diner, 49–77. Berkeley: University of California Press.
- Downing, Brian M. 1992. *The Military Revolution and Political Change: Origins of Democracy and Autocracy in Early Modern Europe*. Princeton, NJ: Princeton University Press.
- Drolet, Jean-François. 2010. "A Liberalism Betrayed? American Neoconservatism and the Theory of International Relations." *Journal of Political Ideologies* 15(2):89–118.
- Dyzenhaus, David. 1999. *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Herman Heller in Weimar*. Oxford: Oxford University Press.
- Ertman, Thomas. 1997. *Birth of the Leviathan: Building States and Regimes in Medieval And Early Modern Europe*. Cambridge: Cambridge University Press.
- Fisch, Jörg. 1984. *Die europäische Expansion und das Völkerrecht: die Auseinandersetzungen um den Status der überseeischen Gebiete vom 15. Jahrhundert bis zur Gegenwart*. Wiesbaden: Franz Steiner.
- Gerstenberger, Heide. 2007 [1990]. *Impersonal Power: History and Theory of the Bourgeois State*. Leiden and Boston: Brill.
- Gorski, Philip. 2000. "Historicizing the Secularization Debate: Church, State, and Society in Late Medieval and Early Modern Europe, ca. 1300 to 1700." *American Sociological Review* 65(1):138–67.
- Gowan, Peter. 2004. "American Lebensraum." *New Left Review* II(30):155–64.
- Grewe, Wilhelm. 2000. *The Epochs of International Law*. New York: Walter de Gruyter.
- Gross, Leo. 1948. "The Peace of Westphalia, 1648–1948." *The American Journal of International Law* 42:20–41.
- Gruchmann, Lothar. 1962. *Nationalsozialistische Großraumordnung: Die Konstruktion einer "Deutschen Monroe-Doktrin"*. Stuttgart: DVA.
- Habermas, Juergen. 1989. "The Horrors of Autonomy: Carl Schmitt in English." In *The New Conservatism: Cultural Criticisms and the Historians' Debate*, edited by J. Habermas, 128–39. Cambridge: Polity Press.
- 2006. *The Divided West*. Cambridge: Polity Press.

- Haggenmacher, Peter. 2001. "Présentation." In *Le Nomos de la Terre dans le Droit des Gens du Jus Publicum Europaeum*, C. Schmitt, 1–43. Paris: Presses Universitaires de France.
- Hardt, Michael and Antonio Negri. 2000. *Empire*. Cambridge, MA: Harvard University Press.
- Holmes, Stephen. 1993. *The Anatomy of Antiliberalism*. Cambridge, MA: Harvard University Press.
- Hooker, William. 2009. *Carl Schmitt's International Thought: Order and Orientation*. Cambridge: Cambridge University Press.
- Huysmans, Jeff. 2008. "The Jargon of Exception – on Schmitt, Agamben and the Absence of Political Society." *International Political Sociology* 2:165–83.
- Joerges, Christian. 2003. "Europe – a *Großraum*? Shifting Conceptualisations of the Integration Project." In *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions*, edited by C. Joerges and N. Singh Ghaleigh, 167–91. Oxford: Hart Publishing.
- Kelsen, Hans. 1967 [1934]. *Pure Theory of Law*. Berkeley: University of California Press.
- Kervégan, Jean-Francois. 1999. "Carl Schmitt and 'World Unity'." In *The Challenge of Carl Schmitt*, edited by C. Mouffe, 54–74. London: Verso.
- Körner, Martin. 1995. "Expenditure." In *Economic Systems and State Finance*, edited by R. Bonney, 393–422. Oxford: Clarendon Press.
- Koskenniemi, Martti. 2001. *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960*. Cambridge: Cambridge University Press.
- . 2002. "Review of Grewe's *The Epochs of International Law*." *International and Comparative Law Quarterly* 51:746–51.
- . 2004. "International Law as Political Theology: How to Read *Nomos der Erde*?" *Constellations* 11(4):492–511.
- Kroener, Bernhard. 2000. "The Modern State and Military Society in the Eighteenth Century." In *War and Competition between States*, edited by P. Contamine, 195–220. Oxford: Clarendon Press.
- Kunisch, Johannes. 1987. "La guerre – c'est moi! Zum Problem der Staatenkonflikte im Zeitalter des Absolutismus." *Zeitschrift für Historische Forschung* 14(1/4):407–38.
- Lindgren, Jan. 2000. "Men, Money and Means." In *War and Competition between States*, edited by P. Contamine, 129–62. Oxford: Clarendon Press.
- Lilla, Mark. 2001. *The Reckless Mind: Intellectuals in Politics*. New York: New York Review Books.
- Marx, Karl. 1973 [1939]. *Grundrisse: Foundations of the Critique of Political Economy*. London: Penguin.
- Mehring, Reinhard. 2009. *Carl Schmitt: Aufstieg und Fall – Eine Biographie*. Munich: Beck.
- Miller, Stephen. 2008. *State and Society in Eighteenth-Century France: A Study of Political Power and Social Revolution in Languedoc*. Washington, DC: The Catholic University of America Press.
- Mouffe, Chantal (ed.). 1999. *The Challenge of Carl Schmitt*. London: Verso.
- (ed.) 2005. *On the Political*. London: Routledge.
- (ed.) 2007. "Carl Schmitt's Warning on the Dangers of a Unipolar World." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 147–53. London: Routledge.
- Müller, Jan-Werner. 2003. *A Dangerous Mind: Carl Schmitt in Post-war European Thought*. New Haven, CT: Yale University Press.
- O'Brien, Patrick. 2002. "Fiscal Exceptionalism: Great Britain and its European Rivals from Civil War to Triumph at Trafalgar and Waterloo." In *The Political Economy of British Historical Experience: 1688–1914*, edited by D. Winch and P. O'Brien, 245–65. Oxford: Oxford University Press.

- O'Brien, Patrick and Philip A. Hunt. 1999. "England, 1485–1815." In *The Rise of the Fiscal State in Europe, c.1200–1815*, edited by R. Bonney, 53–100. Oxford: Oxford University Press.
- Odysseos, Louiza. 2007. "Crossing the Line? Carl Schmitt on the Spaceless Universalism of Cosmopolitanism and the War on Terror." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 124–43. London: Routledge.
- Odysseos, Louiza and Fabio Petito (eds). 2006. The International Theory of Carl Schmitt, Special Section." *Leiden Journal of International Law* 19(1): 1–7.
- (eds) 2007. "Introduction: the International Political Thought of Carl Schmitt." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 1–17. London: Routledge.
- 2009. "Carl Schmitt." In *Critical Theorists and International Relations*, edited by J. Edkins and N. Vaughan-Williams, 305–16. London: Routledge.
- Ojakangas, Mika. 2006. *A Philosophy of Concrete Life: Carl Schmitt and the Political Thought of Late Modernity*. Bern: Peter Lang.
- Opitz, Reinhard. (ed.) 1977. *Europastrategien des Deutschen Kapitals: 1900–1945*. Cologne: Pahl-Rugenstein.
- Parker, Geoffrey. 1988. *The Military Revolution: Military Innovation and the Rise of the West, 1500–1800*. Cambridge: Cambridge University Press.
- Parker, David. 1996. *Class and State in Ancien Régime France: The Road to Modernity?* London: Routledge.
- Petito, Fabio. 2007. "Against World-Unity: Carl Schmitt and the Western-Centric and Liberal Global Order." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 166–84. London: Routledge.
- Potter, Mark. 2003. "War Finance and Absolutist State Development in Early Modern Europe: an Examination of French Venality in the Seventeenth Century." *Journal of Early Modern History* 7(1–2):120–47.
- Prados de la Escosura, Leandro (ed.) 2004. *Exceptionalism and Industrialisation: Britain and Its European Rivals, 1688–1815*. Cambridge: Cambridge University Press.
- Prozorov, Sergei. 2009. "Generic Universalism in World Politics: Beyond International Anarchy and the World State." *International Theory* 1(2):215–47.
- Rasch, William. 2004. *Sovereignty and its Discontents: On the Primacy of Conflict and the Structure of the Political*. London: Birkbeck Law Press.
- Reppen, Konrad. 1985. "Kriegslegitimationen in Alteuropa: Entwurf einer historischen Typologie." *Historische Zeitschrift* 242:27–49.
- Rüthers, Bernd. 1988. *Entartetes Recht: Rechtslehren und Kronjuristen im Dritten Reich*. Munich: C.H. Beck.
- 1990. *Carl Schmitt im Dritten Reich: Wissenschaft als Zeitgeist-Verstärkung?* 2d ed., München: C.H. Beck.
- Scheuerman, William. 1994. *Between the Norm and the Exception: The Frankfurt School and the Rule of Law*. Cambridge, MA: MIT Press.
- 1999. *Carl Schmitt: The End of Law*. Lanham: Rowman & Littlefield.
- 2004. "International Law as Historical Myth." *Constellations* 11(4):537–50.
- 2008. "Carl Schmitt and Hans Morgenthau: Realism and Beyond." In *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations*, edited by M.C. Williams, 62–91. Oxford: Oxford University Press.
- Schmitt, Carl. 1985a [1923]. *The Crisis of Parliamentary Democracy*. Cambridge, MA: MIT Press.

- 1985b [1922]. *Political Theology: Four Chapters on the Concept of Sovereignty*. Cambridge, MA: MIT Press.
- 1988a [1940]. *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923–1939*, 2d ed., Berlin: Duncker & Humblot.
- 1988b [1939]. “Großraum gegen Universalismus.” In *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923–1939*, edited by C. Schmitt, 335–43. Berlin: Duncker & Humblot.
- 1988c [1932]. “Völkerrechtliche Formen des modernen Imperialismus.” In *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923–1939*, edited by C. Schmitt, 184–203. Berlin: Duncker & Humblot.
- 1993 [1929]. “The Age of Neutralizations and Depoliticizations.” *Telos* 96:130–142.
- 1995a [1926]. “Absolutismus.” In Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, edited by G. Maschke, 95–101. Berlin: Duncker & Humblot.
- 1995b [1940]. “Raum und Großraum im Völkerrecht.” In *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, edited by G. Maschke, 234–68. Berlin: Duncker & Humblot.
- 1995c [1939/1941, 4th ed.]. “Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte.” In Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, edited by G. Maschke, 269–371. Berlin: Duncker & Humblot.
- 1995d. *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, edited by G. Maschke, Berlin: Duncker & Humblot.
- 1996 [1932]. *The Concept of the Political*. Chicago: The University of Chicago Press.
- 1997 [1954/1942]. *Land and Sea*. Washington, DC: Plutarch Press.
- 2003 [1950]. *The Nomos of the Earth in the Ius Publicum Europaeum*. New York: Telos Press.
- 2004a [1963]. “Theory of the Partisan: Intermediate Commentary on the Concept of the Political.” *Telos* 127:11–78.
- 2004b [1934]. *On the Three Types of Juristic Thought*. New York: Praeger Publishers.
- 2005a. *Frieden oder Pazifismus: Arbeiten zum Völkerrecht und zur Internationalen Politik, 1924–1978*, edited by G. Maschke. Berlin: Duncker & Humblot.
- 2005b [1926]. “Die Kernfrage des Völkerbundes.” In C. Schmitt, *Frieden oder Pazifismus: Arbeiten zum Völkerrecht und zur Internationalen Politik, 1924–1978*, edited by G. Maschke, 1–25. Berlin: Duncker & Humblot.
- Schmoeckel, Mathias. 1994. *Die Großraumtheorie: Ein Beitrag zur Geschichte des Völkerrechtes im Dritten Reich, insbesondere der Kriegszeit*. Berlin: Duncker & Humblot.
- Schroeder, Paul W. 1994. *The Transformation of European Politics, 1763–1848*. Oxford: Oxford University Press.
- Shapiro, Kam. 2008. *Carl Schmitt and the Intensification of Politics*. Lanham: Rowman & Littlefield Publishers.
- Slomp, Gabriella. 2006. “Carl Schmitt’s Five Arguments Against the Idea of Just War.” *Cambridge Review of International Affairs* 19(3):435–47.
- 2009. *Carl Schmitt and the Politics of Hostility, Violence and Terror*. London: Palgrave.
- Smith, Neil. 2004. *American Empire: Roosevelt’s Geographer and the Prelude to Globalization*. Berkeley: University of California Press.
- South Atlantic Quarterly. 2005. World Orders: Confronting Carl Schmitt’s *The Nomos of the Earth*, edited by William Rasch 104(2):177–388.
- Stirk, Peter. 1999. “Carl Schmitt’s Völkerrechtliche Großraumordnung.” *History of Political Thought* 20:357–74.
- 2005. *Carl Schmitt, Crown Jurist of the Third Reich: On Pre-emptive War, Military Occupation and World Empire*. Lampeter: Edwin Mellen Press.

- Teschke, Benno. 1998. "Geopolitical Relations in the European Middle Ages: History and Theory." *International Organization* 52(2):325–58.
- 2002. "Theorising the Westphalian System of States: International Relations from Absolutism to Capitalism." *European Journal of International Relations* 8(1):5–48.
- 2003. *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations*. London: Verso.
- 2006. "Debating "The Myth of 1648": State-Formation, the Inter-State System and the Rise of Capitalism – a Rejoinder." *International Politics* 43(5):531–73.
- Tilly, Charles (ed.). 1975. *The Formation of National States in Western Europe*. Princeton: University of Princeton Press.
- Tooze, Adam. 2006. *The Wages of Destruction: The Making and Breaking of the Nazi Economy*. London: Penguin.
- Wehler, Hans-Ulrich. 1997. *The German Empire, 1871–1918*. Oxford: Berg Press.
- Werner, Wouter. 2010. "The Changing Face of Enmity: Carl Schmitt's International Theory and the Evolution of the Legal Concept of War." *International Theory* 2(3):351–80.
- Wood, Ellen. 1983. "The State and Popular Sovereignty in French Political Thought: a Genealogy of Rousseau's 'General Will'." *History of Political Thought* 4(2):281–315.
- 1991. *The Pristine Culture of Capitalism: A Historical Essay on Old Regimes And Modern States*. London: Verso.
- Wolf, Eric. 1982. *Europe and the People without History*. Berkeley, CA: University of California Press.
- Wright, Quincy. 1964. *A Study of War*. Chicago: University of Chicago Press.
- Žižek, Slavoj. 1999. "Carl Schmitt in the Age of Post-Politics." In *The Challenge of Carl Schmitt*, edited by C. Mouffe, 18–37. London: Verso.
- Zolo, Danilo. 2002. *Invoking Humanity: War, Law and Global Order*. London: Continuum.
- 2007. "The Re-emerging Notion of Empire and the Influence of Carl Schmitt's Thought'." In *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*, edited by L. Odysseos and F. Petito, 154–65. London: Routledge.