

Sovereign Right and the Global Left

Susan Buck-Morss

I

A conceptual distinction can be made between normal enemies—those who act as enemies are expected to act, positioning themselves within the mental landscape of the existing political imaginary—and the absolute enemy whose attack threatens the imaginary landscape itself.¹ The enemy action by nineteen young men within the United States on September 11, 2001 was an attack on this second, meta-level. It did not play by the rules. It put the rules out of play. Its damage was profound not only physically but also conceptually, striking at the collective imagination as a whole. The globally transmitted spectacle signaled that US super-power status is far from invulnerable and its self-nomination to world hegemony is not an immutable fact.

It is a Hobbesian prejudice to presume that self-preservation is the motive and loss of life the issue where war is concerned. The United States is sending to their death in Iraq a number of soldier-citizens that is almost equal to, and will likely surpass the 2,986 persons who died on September 11 (as of August 16, 2006, the number of soldiers killed was

2,595).² They will die not defending America, which was in no way under military threat from the tyranny of Saddam Hussein, but as a sacrifice to the idea of American sovereignty and the rightness of its power.

I am not suggesting that Bush's foreign policy was driven purely by mental representations. Imperial interests, oil interests—power on all of its cynical levels was and remains in play. But I am saying that what has enabled him to get away with this policy, and what still enables him to garner the patriotic support of tens of millions of Americans, is not imperial or oil interests, but his interpolation of the collective on this meta-level where its own self-understanding is under siege. Moreover, the threat to the imaginary that he addresses rhetorically is itself not imaginary, but real.

On June 11, exactly three months before the attack on the twin towers and the pentagon, Timothy McVeigh was



Left: Timothy McVeigh (1968-2001); right: Mohammed Atta (1968-2001).

put to death in a Federal Penitentiary in Terre Haute, Indiana. Capital punishment was the retribution for his crime against the federal government, the deliberate bombing on April 19, 1995, of the Oklahoma federal building, that killed 168 persons. McVeigh, a decorated soldier in Operation Desert Storm, claimed his deed was politically motivated as a protest against two specific cases of US state violence—one domestic: the use of deadly force in Waco, Texas, when Federal troops stormed the ranch of the Dravidian apocalyptic sect, killing 80 men, women and children on April 19, 1993; the other foreign: what he called US hypocrisy in the (first) war in Iraq, including the massacre of surrendered and retreating prisoners. He referred with brutal irony to the babies and toddlers he killed in the Oklahoma federal building attack as “collateral damage.”

McVeigh’s last statement was a hand-written copy of the poem *Invictus* by the British Victorian poet and racial imperialist William Henley, Rudyard Kipling’s contemporary. It ends: “I am the master of my fate; I am the captain of my soul.” McVeigh showed no signs of remorse. He saw himself as an isolated hero, even though he did not act totally alone and his political critique, which applied to both Republican and Democratic administrations, was shared among members of Aryan and Christian-Apocalyptic groups to which he had connections. Nonetheless, he was a normal enemy, whose crime and punishment fell under federal law. With the event of his execution, national sovereignty was vindicated. McVeigh “met the fate he chose for

himself six years ago.” President George W. Bush declared at the time. “Under the laws of our country, the matter is concluded.”³

Mohammed Atta, a leader of the September 11 attack, was born in 1968, the same year as Timothy McVeigh. Like McVeigh, his politicization occurred in response to the US government actions in the first Iraq War. McVeigh identified with the victims at Waco, Atta with those in Palestine. McVeigh was trained to kill at Fort Riley, Kansas, Atta at an Al-Qaida camp in Afghanistan. Both died at age 33, McVeigh as a consequence of his crime and Atta during it. Atta’s last will clearly indicates that, while part of a collective mission involving international collaboration, he acted with free will and apparent clarity of conscience.

I juxtapose these two individuals not for any moral comparison. Rather, it is to demonstrate that on the basis of facts alone, the differences that matter cannot be explicated. If the political logic of both acts was similarly perverse, their effect on the US political imaginary was worlds apart. McVeigh’s crime left private families with an irreparable loss, but the state was fully vindicated. Atta, whose immolation prevented retribution, turned a self-understood democracy inside out, launching two wars of aggression abroad and a xenophobic witch-hunt at home that initiated secret surveillance against citizen and foreigner alike, and produced at Guantánamo Bay an extra-constitutional juridical space, a black hole in the legal order where none of the rights of defendants is protected.



*Honolulu Newspaper Headline,
September 13, 2001 (source:
Wikipedia).*

Representing no nation, hence no juridically identifiable enemy, Atta and his co-conspirators committed an act of terror that could not be treated as an act of war because it denied the possibility of normal engagement. Government officials immediately compared the September 11 attack with Pearl Harbor. The analogy to World War II evoked Kamikaze airplane bombers that echo in American memory as barbaric. But the box-cutters brought aboard by Atta's group

were not military weapons, the world trade center was not a military target, and soldiers in uniform were not the main victims of the attack.⁴ Their violence defied the *idea of national sovereignty as the locus of exclusive rights to terror*, and precisely this defiance could not be tolerated.

In the modern world order imposed historically by the West, nation-states claim a monopoly as the expression of collective, political will and, hence, of the legitimate use of violence. In the landscape of the collective imagination, "only nation-states have sovereignty and only national citizens have rights (...). Within the territorial system of nation-states, all politics is *geopolitics*. The enemy is situated within a geographical landscape. The dividing line between

friend and foe is the national frontier. Transgressing that frontier is the *causus belli*,” overpowering military force determines the victor, and peace “brings about a redistribution of territorial sovereignty.”⁵ Only within this context is the US a military superpower, so that the real threat is an enemy who refuses to engage on its terrain.

Benedict Anderson has asked just how new the September 11 attack really was. He is absolutely correct in pointing out that the methods of Islamic extremists can be placed within the time-honored tradition of anarchist militancy. There is, indeed, much to be gained from comparing Al-Qaida to the anarchists of anti-imperialist movements since the late nineteenth century, when, Anderson tells us, globally-minded assassins, some of whom could well be described as early suicide-bombers, understood themselves as acting for a world audience of news agencies.⁶ But method and goal are not the same thing, as Partha Chatterjee has observed.⁷ The ideological commitment of the decentralized Al-Qaida movement is not to anarchism; nor is it simply to oppose US superpower. Rather, its violence evokes an alternative world order that calls on God himself for justification, an understanding of sovereign force that is transcendent rather than territorial, disorienting rather reorienting, challenging the present geopolitical landscape without clearly specifying a new one.

The theorist who has dealt most insightfully with sovereign force as the principle of world order is the twentieth century German professor of jurisprudence, Carl Schmitt, no-

torious for his compromised intellectual role in Weimar and Nazi Germany. Schmitt's published texts contain deplorably anti-Semitic arguments; he openly endorsed Hitler in the 1930s, and never recanted his cooperation with the Nazi regime. At the same time, his historical knowledge of European international law was impressive, and his ability to name what ruling ideologies refused even to acknowledge was recognized among Leftist intellectuals in the 1920s including, controversially, the young Walter Benjamin.



Left: Walter Benjamin (1892-1940); right: Carl Schmitt (1888-1985).

In the past few years, Schmitt's ideas have influenced critical analyses of the Bush administration, specifically those policies that destroy democracy in order to save it. A significant body of literature has evolved regarding this macabre dialectics of democratic sovereignty, but this debate is for my purposes not the most relevant.⁸ I will speak, rather,

of Schmitt's concept of the *nomos*, the legitimating world order, which he developed after World War II in writings concerned with international rather than domestic politics, including US foreign policy specifically. These texts bring to the contemporary critical discussion—to Foucauldian cultural analyses of bio-power and Marxian preoccupations with the global economy—an otherwise absent dimension, the specifically *political* nature of global power—political in the old-fashioned, institutional sense of the word, meaning sovereignty, legitimacy, violence, and war.

These traditional categories of international relations have been striking muted, even missing from where one would most expect to find them, the social sciences in general and Political Science (my home department) in particular. The latter discipline has tended to abandon political history for the attractions of economics, with its computer models and apparent relevance to those in power. A new subfield has developed in recent years, International Political Economy (IPE), deemed necessary to handle political issues that have arisen because of global economic realities. Its discourse is symptomatic, revolving around one central question: Given new developments in the global economy and the supra-national institutions created to control them (IMF, World Bank, G-7, GATT), what will be the fate of the nation-state? Are we heading toward a post-national, global economic order, and if so, is this tendency to be celebrated or resisted?

What is not new in this discussion is precisely the conceptual landscape in which these terms are deployed. The

relative importance of the economy versus the state has been debated for several centuries, arguably since the emergence of “political economy” as a category of analysis in the writings of the Scottish Enlightenment.⁹ During the nineteenth century, this debate became intensely politicized under conditions of the industrial revolution. The leading theorists, who were to have enormous practical influence, were Friedrich List and Karl Marx.¹⁰ In order to spare ourselves the pitfalls of historical amnesia, it will be helpful to review their positions on this central issue of the relationship between economy and state.



Left: Friedrich List (1789-1846); right: Karl Marx (1818-1883).

List, the earlier and today lesser-known figure, was highly influential in his time (Marx felt it necessary to attack his ideas explicitly). In advocating, as a means of nation building, government-protected industrialization (import

substitution policies and public investment in infrastructures), List asserted the essential compatibility of the economy and state. The policies he proposed were adopted by both Germany and the United States in the nineteenth century, and by countries in the twentieth century as politically diverse as Chile, Turkey, South Korea, and, ironically, the Soviet Union.¹¹

Against List, Marx claimed that economic, hence class interests were determining “in the last instance” (see the introduction to the *Grundrisse*), hence political attempts to control economic development at the level of state policy were necessarily limited in their effects. The state had at best only “relative autonomy” (Althusser) in curbing the minority interests of the dominating, capitalist class. The state might compensate in part through legal interventions for class distortions of social and economic equality, but it could never be truly democratic, never adequately embody the interests of the working majority, that were structurally antithetical to those of the capitalist class. The Marxist challenge to politics in both theory and practice was that the state is essentially an epiphenomenon. There can be no political solution to the class war short of destroying the class structure of society along with all of its institutional apparatuses including, centrally, the bourgeois-democratic, i.e., capitalist, nation state.¹² Since the fall of the Soviet Union and China’s participation in global markets, Marxist political organizing has become a marginal endeavor. But the century-old debate still resonates in the academy, although

its power and even its will to effect real politics have been severely curtailed.

What has endured is the tendency to dismiss sovereignty as a determining factor in political life. States have territories, nations have interests, and rulers connive to stay in power, but sovereignty itself is rarely discussed, except to declare its waning significance.¹³ To give an example from the new field of International Political Economy, the influential founding theorist, Susan Strange, who represents its most critical branch, can be called Marxian only in the realist sense of positivist social science, when she acknowledges the overwhelming power of the global economy to shape and limit the political agency of nation states.¹⁴ Her position echoes the insight of Trotsky earlier in the century that the state has become too narrow for the economy, which will not be administered for the interest of one ethnic group. Trotsky's conclusion is that anti-colonial struggles cannot be content with national liberation but must insist on international solidarity to enact "permanent revolution" that does not stop short of global transformation. Strange, while sharing his skepticism regarding political agency on the national level, does not identify, much less champion an alternative global movement of resistance—and as a consequence, her analysis shares common conceptual ground with those who celebrate global market-dominance and the "minimalist state" as the happy outcome of the end of history.

Those of us in the academy for whom theory is understood as unavoidably, and rightly connected to political practice will find in her form of analysis little inspiration.

The traditionally Marxist account in David Harvey's recent book, *Imperialism*, does open up a space for progressive politics in the contradictions he delineates between the logic of global capital and the logic of US imperialism. But with the lack of an international working-class movement, and with capitalist firms' control of global media, it is not clear, from a Marxist perspective, what forces are best positioned take advantage of the contradiction. Organizations like the World Social Forum, Amnesty International, Independent Media, and movements for peace, women's rights, and social justice have produced a global counter-culture that, while a minority voice within countries, is democratically inclusive across and among them. But just how these movements are to be articulated into an effective political force remains problematic. As cultural expressions of protest, they find it extremely difficult to navigate within a global situation in which cultures are very much at odds, and national differences are easily exploited by domestic politicians.¹⁵ Nation-state political structures often frustrate the global consciousness upon which the success of the new social movements depends. Timothy Brennan's new book, *Wars of Position*, marshals Gramsci in support of a strategy of national political action, arguing that, given the benefits to global capital from a weakened state, domestic politics aimed at capturing the state is still the necessary, perhaps the only viable Left alternative. Brennan's point is well taken, but his strategy abandons global ground too quickly.

I will focus on the nation state as well, but in order to inform a global political perspective that shifts the debate

away from economy v. state. Whereas IPE generally and Susan Strange specifically debate the ways the global economy transcends the nation-state, whereas Marxist political critiques deny the effective power of the state, and Timothy Brennan reaffirms it's necessity instrumentally, as an organizing tool in order to resist global capital, I will deal with the nature of sovereign power that all of these approaches fail to acknowledge: the state is not only a means of wielding power in connection with socio-economic forces. It *is* power. The state not only makes laws, it embodies the Law (capital "L") that makes laws legal. It is not just a legislating or administrating state, but a *sovereign* state. And no modern theorist has emphasized the distinction more relentlessly, or with more historical astuteness than Carl Schmitt.

II

The Law that makes laws legal is established by a prior exercise of sovereign power. Schmitt describes it as "a constitutive historical event—an act of *legitimacy*, whereby the legality of a mere law first is made meaningful."¹⁶ The Law is not itself the written Constitution, but the unwritten imperative that precedes it as an orientation, a sovereign positioning in space that is documented by the Constitution as a *fait accompli*. Sovereign power exists before and beside the state, and can never be subsumed within it. As such, it can be considered transcendent power. Carl Schmitt calls it *nomos*, the ancient Greek word for Law. And whereas laws

(*nomoi*) are multiple and changing, they appeal to the Law for their legitimation. Schmitt reserves the term *nomos* for Law in this second sense, as constituting power that bestows upon the laws their sovereign legitimacy.¹⁷

The term *nomos* is productive, because in distinguishing between sovereign power and mere state power, it allows us to see something that otherwise remains hidden. It is this aspect of Schmitt's thought that I find useful, fully aware that my use may not be what he intended. The point, after all, is not to put Schmitt on trial, but to put on trial those elements of his ideas that will allow us to judge with clarity the present political crisis. When, as is common, given the legal positivism that underlies liberal approaches to political science and democratic theory, "sovereignty" is equated with "autonomy," the distinction disappears.¹⁸ Autonomy—auto-*nomos*—seems to deny the existence of any problem that needs to be addressed, reducing sovereign power to a tautology: States are said to be self-governing because they make their own laws (*nomoi*). Their sovereignty is the power to render their legal system legitimate by enforcing domestic obedience.¹⁹ The nation-state system would then be simply an aggregate of independent units, each one autochthonous, immanent to itself. What, however, is the aggregating force that holds them together as a system at all? By what sovereign power is the *international* space constituted, the global world order in which state actions are deployed? It is a sheer fiction to posit that pre-existing autonomous nations come together and decide

freely to yield their separate sovereign powers and submit to a world order of their own making. On the contrary, nations are allowed into the world order if, and only if, they obey the ordering principle of that world, and this ordering principle is precisely what the word *nomos* allows us to capture.²⁰

We can understand Schmitt's distinction as an empirical reality, by considering specific examples from our own era. Cuba today is a nation state that makes its own laws. But according to the US-dominated order, its laws are not legitimate. Hence, Cuba, while clearly autonomous, and while claiming that is sovereign, is not, insofar as its sovereign status is determined by a power external to its own borders, that which the Bush regime euphemistically calls the "world community," that is, the US hegemonic Order that recognizes order, the sovereign force of Law that legitimates laws.

It is protested by liberal theorists that because Cuba is not a multi-party democracy, it lacks the internal legitimacy that would require other nations to recognize its sovereignty.²¹ While violating liberalism's own myth of the autonomy of nations (which does not specify the form of the law-making body), this argument does not even have merit on moral grounds. Translated into policy, it attempts to ostracize Cuba from the community of nations and initiate a trade boycott that punishes Cuba's civilian populations, precisely the people whose democratic rights it purports to defend.²² A more recent case: Hamas was elected in a highly participatory, democratic and fair process as the new gov-

ernment of Palestine, and *nonetheless*, the recognition of its sovereignty is presumed by the Western powers to be theirs to bestow or withhold—by diplomacy or by force, even if, rather than military occupation, the means of force is economic strangulation.²³

Schmitt's demystifications were every bit as keen as those of Karl Marx, whose critical powers he admired.²⁴ They led him, however, to cynical realism combined with a spiritual conservatism that allowed him to make his peace with Germany's fascist regime. We need not follow him here. Moral norms are not merely tools of existing power, and the founding of a new *nomos* is not based solely on brute force. Today's international norms (democracy, human rights, freedom, equality) remain as the ideal residues of the founding act of revolutionary assemblies, while positive laws are their inadequate, merely actual condition. Norms are valuable politically, because the deficiencies of the merely given state of things can be exposed in their name.²⁵ This is immanent criticism, a tool of political practice that was brilliantly deployed by figures like Mahatma Gandhi, Martin Luther King, and Sayyid Qutb in the twentieth century, and could not have been effective without the transnational regimes of norms to which they appealed.

The present-day political crisis is different, however, from the post-World War II context of their acts. Our state of emergency is caused not simply by a gap between the "is" and the "ought," but by the crumbling of the "ought," the historical transitoriness of the world order itself. The *nomos* that legitimates this system prevails not only over history,

monopolizing the meaning of historical time, but also *in* history, hence subject to temporal disintegration. Its decay leads us to consider the philosophy of history, as well as the history of philosophy. We shall see that in this double movement an escape from Schmitt's cynical realism becomes possible.

III

Is the order established by the dominant powers simply the means whereby their particular interests are equated with the general or universal interest? Is *nomos* just a fancy Greek term for imperial hegemony? Not quite, and this is where Schmitt adds an important supplement to the Marxist analysis. If *nomos* is equated with hegemony, avoiding the whole issue of sovereign power, the political struggle moves to the socio-cultural level, where critical theory is reduced to exposing the constructedness of subjects and their self-understandings²⁶ Causality, severed from historical concreteness, floats in a mythic space, where forms of thought and cultural practice are seen as hegemonic *because* they guarantee imperial control, and either this outcome is attributed to conscious intentions of all-knowing political and economic actors (reductionist Marxism), or it is presumed that such forms have intentional effects in themselves (Hegelian idealism), even if, by some cunning of class reason, the imperialists remain unconscious of this fact and truly believe the culture they promote does represent the interests of

all of humanity.²⁷ There is another, related issue. If power is a question of cultural hegemony, the implication is that a counter-culture will be the legitimating glue of what might be called a counter-*nomos*, or better, *anti-nomial* movement that can defeat it. But the anti-*nomos*, dependent on *the nomos* for meaning, still ultimately faces the question of a new order, with unsatisfactory alternatives of a counter-state, leaving the door open for revolutionary dictatorship, or, if the state is supposed to wither away, then an anarchist utopia, a minimal, merely administrative state, not easily distinguished from neo-liberalism's global governance of, and by the economy. Either way, the problem of sovereign power remains unexamined and unresolved.

The explanatory model of culture is shared by an unlikely bedfellow, Samuel Huntington in his description of the clash of civilizations. For him, the term civilization is a "cultural" rather than a political entity, one that implies "shared norms," but he takes a step toward Schmitt when he recognizes that a specific civilization is shared among nations and groups who may be in violent conflict among themselves: "[T]he world may be in chaos, but it is not totally without order," he writes, and Schmitt would agree. World order, as sovereign order, is totally compatible with war.²⁸ But Huntington's thesis needs to be turned on its head before it will be useful as critical theory. Cultures—always borrowing, always being borrowed—belong exclusively to no civilization, and therefore cannot define "civilization" or produce a clash between them. Rather, a political clash on

the level of the *nomos*, in the name of conflicting civilizations, produces the sense of cultural difference that is then mistaken as its source and manipulated for power-political goals. Huntington's "civilizations" are hypostasized, taken as given and to a certain extent immutable. Connected vaguely to world religion, vaguely to political empires, vaguely even to genetic lines of descent, they presume what needs to be explained.²⁹

The West may be the "dominant civilization," but what orders the West's order? By what historical process, by what sovereign power, did it come to be constituted in the first place? There is a standard answer to this question. Ask any educated Westerner what the founding moment was, and you will hear that the modern world order of nation states began with the treaty of Westphalia of 1648. Schmitt is surprisingly uninterested in Westphalia.³⁰ He places the origins several centuries earlier. And his move backward in time, rather than making his theories more remote, gives to them strikingly contemporary actuality.

The *nomos* as a "constitutive act of spatial ordering (...) turns a part of the earth's surface into the forcefield of a particular order."³¹ The political, social and religious order of a people "becomes visible in the appropriation of land."³² The right (*Recht, droit, derecho*) to order the world in a certain way is the claim of sovereign power that embodies and *enacts* legitimacy, preceding and "nourishing" the laws that follow it.³³ This is the *nomos*, and it has a sacred character: "In the beginning was the fence," writes Schmitt, citing

Hans Niedermeyer and other scholars of Aristotle's use of the word *nomos*: "The enclosure gave birth to the shrine by removing it from the ordinary, placing it under its own laws, and entrusting it to the divine."³⁴

Schmitt locates the origins of the first global, hence modern *nomos* in a one-time historical event: the "discovery" in the late 15th century of an entire hemisphere, the so-called "New World." Struggles over land and sea appropriations of this world "began immediately," as the European powers made claims to its surface.³⁵ But what gave legitimacy to their claims was the sovereign authority of God. Sanctioned by the Roman Catholic Church as sovereign over the *universum Europaeum* and its legal order, the appropriation of the newly discovered territory was a process of legitimate (i.e., sovereign) violence. Schmitt considers decisive the line drawn by Pope Alexander VI, May 4, 1494, along a meridian from the North Pole to the South, granting Spain the right to "newly discovered lands" west of the line and Portugal the right to such lands to the east.³⁶ The Pope's enactment of the first planetary appropriation established the modern *nomos* as a Christian project, and a Christianizing one.

What is so interesting in Schmitt's historical account is that he sees this act of founding the modern *nomos* in terms, not of sovereign legitimacy *within* European countries, but of imperial legitimacy *without*. In describing Europe's claim of sovereign authority to engage in a massive project of land grabbing on the level of global space, Schmitt is an

early and uncompromising commentator on the founding of the Eurocentric world order:

From the 16th to the 20th century, European international law considered Christian nations to be the creators and representatives of an order applicable to the whole earth. The term “European” meant the normal status that set the standard for the non-European part of the earth. Civilization was synonymous with European civilization.³⁷

Moreover, Schmitt is brutally honest regarding the fact that the protection and mutual recognition afforded within the new order—including, centrally, the legitimacy of land appropriation—applied only to Europeans, not the new world’s original inhabitants, whose rights and, indeed, whose very existence were not recognized by the law. “Most essential and decisive for the following centuries,” he observes, “was the fact that the emerging new world did not appear as a new enemy, but as *free space*, as an area open to European occupation and expansion” that existed “beyond the line” where legal, moral and political values were recognized³⁸—as if empty of the people who, he notes wryly, never ask to be discovered.³⁹ Schmitt, himself a believer in European civilizational superiority, does not tarry on this point, but we can.

Global domination by the European powers had its historical roots in their shared experience of Christian law that provided a common geopolitical orientation, binding despite rivalries and war. Their sense of entitlement, their right to determine right became a part of the European patrimony. The patri-*nomos*, the global order bequeathed by the fathers,

took on an ontological aura. To future generations who moved in changing patterns within it in, it *was* order itself, presumed as legitimate long after the papacy lost sovereign power over its participants. In this sense Westphalia can be understood as the first forgetting of nomic origins, and consequently the first ontologizing of the Eurocentric order. On the one hand, the principles of the Treaty of Westphalia did create a totally new order, in that the European powers pulled free of Roman imperial and Roman papal control, establishing their sovereign independence in matters both secular and religious. Schmitt writes that the “detheologization” of relations *within* Europe allowed for “real progress” in limiting warfare and humanizing its execution by bracketing “creedal disputes that had justified the worst atrocities.”⁴⁰ On the other hand, however, and it is the aspect that concerns us most deeply, post-Westphalian Europe continued its *global* exercise of power without abrogating the self-understood, divinely ordained, still vaguely Christian Right to determine right, and without applying the bracketed, humanizing practice of violence to its non-European dominions. As for the original inhabitants of the “free spaces” to be occupied, treatment of them was worse, not better, as a consequence of “detheologization.”

In keeping with our interest in the *global* implications of the post-Westphalian order, we read Schmitt’s works with a different emphasis. Intriguing are his comments, in a small book on Hobbes’ *Leviathan* (first published in 1651, just a



Hobbes, *Leviathan* (1651),
frontispiece.

few years after the Westphalia Treaty), on the famous title-page image, which Schmitt interprets in reference to the medieval Christian *nomos*. With “typical British humor,” Schmitt writes, Hobbes chooses Leviathan as the name for the new, state-political sovereign power—“not just any kind of beast,” but the monster from the *sea* that evokes the Biblical image of the Anti-Christ.⁴¹ This anti-nominal variant of Christian sover-

eignty, a humanly constructed artifice, embarks the British sovereign on a sea-appropriation that will enable the global spread of British Empire.

Schmitt fails to comment on the fact that the pseudo-scientific credo of race surpassed religion in 19th century Europe as the justification for global domination.⁴² But his critical insight is invaluable when, de-emphasizing the significance of internal revolutions—the English Puritans and, a century later, the French Jacobins—he focuses instead on the comprehensive spatial order that Europe sustains.⁴³ These revolutions, so central to contemporary democratic theories of sovereignty, are for Schmitt an unfortunate return to the excesses of morally-based politics, a secularized form of the wars of religion that pit the forces of good against evil in a struggle limitless in scope, absolute in defi-

nition, and universal in its sovereign claims—moral excesses that he sees as returning again in the foreign policy of twentieth-century America.

Before considering Schmitt's bitter critique of the United States, however, we need to look at one more meaning of Law that emerges in the nineteenth century relevant to the issue of global sovereignty, the economy, or *oikonomos*. In response to those today who optimistically envision a post-sovereign global order held in check by a world economy that is self-regulating through market laws, Schmitt's discussion of the sovereign force of *nomos* provides a corrective (although he himself did not elaborate this point). Markets have no "constitution," no capacity to orient space; their so-called laws fail to recognize the prior act of positing. They are assumed, like natural laws, to have no origin but only causal effects. *Nomos* can never mean law in this quasi-natural, quasi-scientific sense. Rather, it is the consequence of a historical process.⁴⁴ The market considers the contractual alienation of property, not its appropriation, exchange rather than original distribution. It thereby presumes the inequality of possession that precedes exchange. Sovereign power sanctions precisely the original alienation of property that is not the consequence of contract, so that subsequent law can guarantee the right of property, what Kant called "the distributive law of mine and thine,"⁴⁵ however unjustly it was originally acquired—just as revolutionary America did in its founding act, recorded in a Constitution that affirmed the right of (male property-holding) citizens to appropriate the labor of their hu-

man property, African slaves; and just as the US Supreme Court of the late nineteenth century did in extending to corporations the same constitutional protections as persons with rights.⁴⁶ The legitimating force of the *nomos* not only guarantees present ownership of property, but anticipates new appropriations of land, labor, and every value produced by nature and by culture. Schmitt observes (affirmatively) that in the course of the nineteenth century, private property rights were recognized within Europe as transcending those of state sovereignty.⁴⁷ It meant that, as a consequence of war, your land or factory might end up being German instead of French, or French instead of German, but it would still be *yours*.

The violence of appropriation, invisible within market accounts of the global order, remains visible in Schmitt's historical account of the continuity, throughout five centuries, of the Western sense of entitlement to enact global ordering projects.⁴⁸ The content might change, and has in fundamental ways, varying from the outright imperialist projects of nineteenth century Europe to the United Nations and post-colonial vision of the twentieth. But the important thing is that even in the latter, arguably progressive case, it is the imperial powers themselves who gave up their colonies after World War II, hence remaining the self-appointed order-makers of the world, while in no way excluding rivalry, conflict, or war. And just this Right to determine right is claimed by the United States when it launches a war of aggression to accomplish "regime change" in Iraq.

IV

In the proliferation of debates that have surrounded Carl Schmitt in recent years, his positions have become stereotyped, and his critical acumen has been diluted.⁴⁹ Particularly problematic is the frequency with which Giorgio Agamben is taken as a substitute for Schmitt himself, as Agamben has been part of the stereotyping and diluting process. The same can be said for the figure of Leo Strauss who trained Paul Wolfowitz and his neo-conservative cohorts in what is claimed to be a diabolical Schmittian realism. The whole issue of the Weimar democracy's dissolution into fascism which dominates the most influential secondary accounts (Scheuerman, McCormick, Kennedy⁵⁰) pays too little attention to that part of Schmitt's critique that had little to do with the end of the Weimar Republic, and a great deal to do with our own political situation. Schmitt focused on the international terrain, and we will benefit if we do likewise—because however Schmitt may have changed his tune during the late years of Weimar or missed the real danger regarding German politics, and however indefensible his political loyalties may have been, he saw with consistent accuracy the dangers of the new and rising global power of the twentieth century, the United States.

Srinivas Aravamudan gets it right:

Written after 1950, *The Nomos of the Earth* is in part a coded animosity in response to the victory of the United States and its orchestration of the extrajudicial sovereignty of the Allied Powers as demonstrated by the Nuremberg trials. The text is prescient in its

anxious anticipation of the United States as the new global hyperpower.⁵¹

Schmitt's animosity to the United States was not new with the Nuremberg Trials, however (which threatened him personally with prosecution for several years). Throughout Schmitt's writing career, he was concerned with how the United States was changing the rules of the game in international politics. As a German, he was on the receiving end of Wilsonian idealism after World War I, that spearheaded the blame of Germany for the war, inscribed in the Versailles Peace Treaty an unprecedented clause of guilt, and punished Germany through the punitive requirements of economic reparations. Germany plunged into economic chaos during the 1920s. The inflation was astronomical, and this, rather than any ontology of the democratic state of exception, was a fundamental cause of the crisis of the Weimar Republic—a crisis that its so-called “safe” parliamentary liberal order was powerless to control, despite repeated attempts of its statesmen in the international political arena (from the 1922 Rapallo Treaty to the 1925 Locarno Treaty, and beyond). If the economic punishment that hobbled the Weimar regime was supposed to prevent Germany from starting another war, as history makes clear, it failed miserably to accomplish its policy goal.

Surely Schmitt was a conservative, even reactionary critic of US foreign policy, blaming it for the introduction of a moral, “spaceless” universalism that disoriented and upset the existing European *nomos* while failing, due to its isola-

tionism, to provide a new one. But in his perception of how American moral claims to legitimacy were the means of usurping hegemony within the European world order, that began with Wilsonian idealism and have continued, as we can see, with remarkable consistency in the rhetoric of George W. Bush today, Schmitt comes strikingly close to contemporary critics on the Left in tracing the historical origins of US imperialism. In fact, much of his description in *Nomos of the Earth* of Wilsonian internationalism and its later global repercussions is in full accord with the account given by the Marxist critical geographer Neil Smith in his new book, *The Endgame of Globalization*.⁵² Careful, critical scholarship on Schmitt makes this clear. Chantal Mouffe comments on an (untranslated) article Schmitt published in 1932:

Schmitt saw the Kellogg-Briand Pact of 1928 as representing a further step in the attempt by Washington to establish its global hegemony. After Woodrow Wilson forced the Society of Nations to recognize the Monroe Doctrine in its article 21—a recognition that amounted to acknowledging the superiority of American principles—the Americans managed through the (...) Pact to take away from the Society of Nations the power to make the crucial decisions about world peace.⁵³

John P. McCormick writes that during the Nazi era, Schmitt developed a conception of *Grossraum* for regional control of continental Europe dominated by the German *Reich*—failing to mention, however, that the term *Grossraum* is precisely the word Schmitt uses in *Nomos of the*

Earth to describe the US continental imperialist policy of Manifest Destiny, although Schmitt returns for moral justification to the trans-European universal humanism of the Catholic Church, rather than the nationalist moralism of the United States, the “chosen nation,” to justify that policy. The US nineteenth-century policy of Manifest Destiny may in fact have more in common with the *Lebensraum* that became Hitler’s policy of German expansion than we have previously acknowledged.⁵⁴

If a nationalistic sense of moral superiority was the means whereby, throughout the 20th century, the US made its bid for global power, the specific tactics in no way reflected the moral high-ground: political assassinations, secret torture, and the institutionalization of all kinds of extralegal procedures, not to mention the only use of atomic weapons on civilian cities the world has witnessed to date, resulting in close to a quarter of a million civilian fatalities. Alberto Moreiras is correct to see the contemporary relevance of Schmitt’s critique:

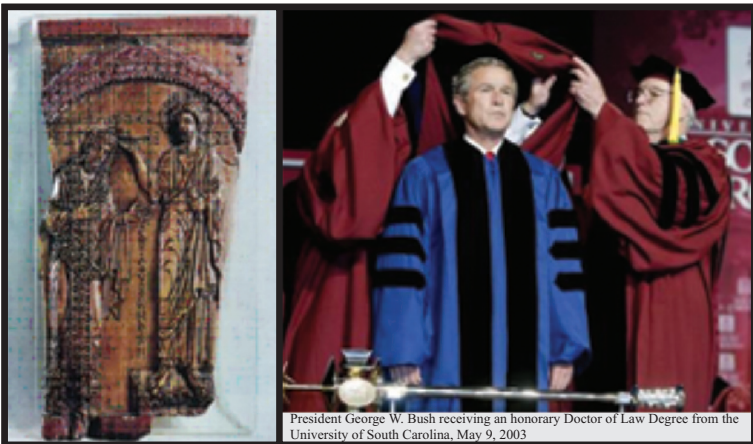
If the current *nomos* on the earth is an American *nomos*, it is because the United States has succeeded in making its own political rhetoric stand in for a kind of universal truth. But, as Schmitt teaches, a nomic order reaches universal validity not because of its moral universality, but rather in virtue of its historical concreteness. Schmitt dates the decline of the European nomic order shortly after the 1885 Congo Conference, when a sort of American propelled “general universalism” came to replace the until-then dominant *jus publicum Europeaeum* paradigm in international law.⁵⁵

Of course, the Congo Conference was an insult to African people, refusing to recognize the legitimacy of native participation. But one does not need to come to Schmitt's political conclusion to benefit from his non-ideological presentation of the facts. The standard of immanent criticism allows us to redeem both the (Catholic) legal-humanism for which Schmitt is so nostalgic and the US "general universalism" that came to replace it. The problem of the European *nomos* was not its legal humanism, but the exclusively European extent of its application, just as the problem today is not the general universalism of the US –dominated *nomos* but the fact that it comes into conflict with the particular interests of US national sovereignty. This brings me to my final point.

With US global dominance at the end of the Cold War, the scene was set for the perfect storm, a doubling of the state of exception, as nomic and national sovereignties converged in the same geographic space. When it becomes a matter of US national interest to preserve its own global hegemony—hegemony that was solidified by a one-time, contingent historical event—that is, the implosion of the Soviet Union that left the US by default as the sole global superpower—then both the globe and the nation are caught in a double-bind: We are told that the general universalism of US moral principles needs to be suspended to meet the threat to this country's particular, national-democratic sovereignty, while at the same time, the law and constitutional guarantees specific to the United States need to be sus-

pended domestically to “spread democracy” abroad. This is the self-contradictory and self-defeating situation in which we have been placed by the US government today.

The problem was brought to a head by the terrorist attacks of Al-Qaida, and in my closing comments I will attempt to sketch out the implications. Al-Qaida is engaged in post-national politics, which makes it immune from the historically specific, Western logic of national sovereignty based on territorial states. But it is pre-global politics, because of the exclusiveness of its sense of community. Like the medieval European *nomos*, it is based on the idea of religious legitimation: Its founding principle is the sovereignty of God. Like the US *nomos*, its bid for global hegemony appeals to the general universalism of moral right. The limitations of both these conceptions of global order have been



Left: Byzantine Emperor crowned by Christ; right: Bush Crowned by Law.

demonstrated historically, and radical Islam has not (yet) indicated its capacity, or its will to overcome them.

But is the alternative the universalization of the principle of national sovereignty as advocated by the United States, and does it justify continued US global hegemony in order to achieve this? If the United States, having been accidentally granted by history a time of global hegemony, had reversed its imperial past and insisted on practicing its own universal principles rather than suspending them, if it had not argued that on the basis of national interests it could not ratify the Kyoto agreements, could not join the International Criminal Court, could not assent to UN control of the disarmament process in Iraq—if, in short, the United States, as the means for spreading democracy, had actually practiced democracy on a global scale, the answer might be yes. But precisely such a practice of democracy has been seen as inimical to the national interests of the United States. US democratic legitimacy as a sovereign nation is on a collision course with US hegemonic legitimacy as a nomic sovereign. This collision has the force to break the old *nomos*—without, however, when it crumbles, being capable of guaranteeing a new order to replace it.

The double indemnity that the world faces when these two sovereign principles collide, seen from the seat of power, leads the sovereign himself into a double-bind. And this has important implications for political praxis—important, because the problem is not exclusively that of the Republican administration. It is no accident that the Democratic Party finds very little *in principle* that it would change

in US foreign policy, were it to win the Presidency, as the protection of US hegemonic status within a US-instigated global world order is not (yet) considered by any mainstream candidate to be negotiable.

Building on Walter Benjamin's *Trauerspiel* book,⁵⁶ we can understand the crumbling of the *nomos* from the perspective of the philosophy of history: sovereign action does not cause history, nor does it merely reflect historical forces; rather, as Benjamin says, it *expresses* history, and at certain historical moments, it is precisely the incapacity to act that needs to be read as significant. In the German tragic dramas, the sovereign was Catholic and the historical moment was the Counter-Reformation. His inability to decide, and hence to determine history's outcome, expressed the crumbling of the Catholic religious order. Today it is the national sovereign, personified by George W. Bush, who enacts "history" daily, televised live and globally transmitted. Bush has shown us repeatedly that he can decide—indeed, with dictatorial bluntness—but his decisions do not hold. No matter how he pushes against it, history does not budge, because at this moment, meaningful history is not his to enact—a situation that parallels that expressed by the Baroque tragic dramas, in which the historical plot is replaced by plotting, and the court intriguer plays a central role.⁵⁷ Enter, stage right, that master plotter and intriguer, Carl Rove. Rove writes the script for Bush, whose role is to act the sovereign part with "resoluteness" and stick with uncompromising stubbornness to the decision he has taken, even though this decision

has decided nothing regarding the outcome of history—not in Afghanistan or Iraq, not to speak of the War on Terror.

The war of positions today must envision nothing less than the constitution of a democratic global order, a new *no-mos*, the legitimacy of which can be recognized as truly universal because it subjects the original, European-global appropriation of land, wealth and resources to new principles of social justice, drawing from the work of global social movements already taking place. The strategic war in which we are engaged is centrally concerned with sovereignty, law, legitimacy, and the Right to establish right. In the United States that war needs to be waged on two fronts: against suspending national justice to combat terrorists around the world, and against suspending global justice to defend national sovereignty at home. Mohammed Atta and Timothy McVeigh were equally wrong in their strategy of resistance. We who are part of a global Left today need, on both fronts, to get it equally right.

Notes

1. See Chapter 1, Susan Buck-Morss, *Dreamworld and Catastrophe: The Passing of Mass Utopia in East and West*, Cambridge, Mass., The MIT Press, 2000. My definition differs from Carl Schmitt, who in *The Concept of the Political* famously distinguished between the public enemy (*hostis*) and the private enemy (*inimicus*), but failed to consider the category of the enemy on a meta-level, one who threatens the conceptual frame itself (as opposed to the enemy who conforms to existing norms of enemy behavior). This concept is in line with Hegel's definition of the enemy as "absolute negativity"

- to which Schmit with a less absolute meaning refers (see *ibid.*, p. 53), although his explicit connection of Hegel with Lukács in fact points in the direction of the absolute enemy as developed here.
2. This is the official figure (reported in the *New York Times* on August 16, 2006) of American service members who have died since fighting began.
 3. <http://archives.cnn.com/2001/LAW/06/11/mcveigh.02/>.
 4. The fact that the Pentagon attack was more plausibly a military target, despite the use of a civilian airplane, perhaps explains its less traumatic impact on the US collective psyche.
 5. Buck-Morss, *Dreamworld and Catastrophe*, p. 23.
 6. Benedict Anderson, *Under Three Flags: Anarchism and the Anti-Colonial Imagination*, London, Verso, 2005, p. 4; also the "Postscript" that considers anarchism in the age of the Internet. Anderson's turn to anarchism is a fitting complement to his landmark study on nationalism, *Imagined Communities*, London, Verso, 1991.
 7. Chatterjee's commentary on a presentation by Anderson took place in New York City at Columbia University's Society for the Humanities in fall 2004.
 8. See particularly the mediated reception of Schmitt via Giorgio Agamben's book, *State of Exception*, trans. Kevin Attell, Chicago, University of Chicago Press, 2005.
 9. Tellman traces to Malthus the conceptual split of the economy from the political, arguing that this division was itself political philosophy, of great consequence for subsequent thinkers. See Ute Astrid Tellman, "The Economy and the Formation of the Modern Body Politic: Malthus, Keynes, and the Genealogy of Economic Objectivity" (Ph.D. Dissertation, Cornell University, September, 2006); also my article "Envisioning Capital: Political Economy on Display," *Critical Inquiry*, v. 21, n. 2, Winter 1995, p. 434-74.
 10. On List and Marx, see Roman Szporluk, *Communism and Nationalism Karl Marx versus Friedrich List*, Oxford: Oxford University Press, 1988.

11. Under Stalin's policy of "socialism in one country," the proletarian revolution was transformed into a nationalist project of economic modernization and the United States was the model to be emulated (*Dreamworld and Catastrophe* makes that argument at length).
12. This Marxist hypothesis was repeatedly evoked, tested, and debated in the twentieth century, not only by the official, Soviet-led Third International, but also among working-class movements within industrialized countries and national liberation movements without. Results could only be inconclusive, as neither variable acts in isolation: the class struggle is never free from international power influences (e.g., the case of the Spanish Civil War), and the international Marxist movement is never free from domestic political pressures (e.g., the German Socialist vote for war credits in 1914).
13. See the work of Krasner, who defined sovereignty famously as "organized hypocrisy" (Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton, Princeton University Press, 1999).
14. See Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy*, Cambridge, Cambridge University Press, 1996. Strange diagnosed the shift from territorial-based empires, the earlier European model, to today's imperial competition for market shares, evident in Japan-Europe-US global competition in the 1980s. Her structural approach identified the authority of non-state actors (the World Bank, IMF, NGOs) as more effective agents in what she calls "governance" of the global economy. See, in contrast (as a continuation of the state v. economy debate), the work of Charles Kindleberger, who argued that the global economy needed a national "hegemon" to ensure its functioning (Charles P. Kindleberger, *The World in Depression, 1919-1939*, Berkeley, University of California Press, second edition 1986; *idem*, *Manias, Panics and Crashes*, New York, Basic Books, 1978).
15. Zillah Eisenstein shows rare skill in making this navigation. See her book, *Against Empire: Feminisms, Racism, and the West*, New York, Zed Books, 2004.

16. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. and annotated by G.L. Ulmen, New York, Telos Press, Ltd., 2003, p. 73.
17. Schmitt's early writings have been interpreted as justifying dictatorial sovereign power as the cure for parliamentary indecision, and in fact, his insistence on the extra-legal power of the sovereign in a state of emergency or exception makes this conclusion plausible, because in these texts he gives no other location of sovereignty but the domestic state. Implied is voluntarism: the domestic leader appears personally to be the source of extra-legal power in the constituting act. But Schmitt's post-war concept of the *nomos* positions sovereignty historically and structurally rather than in the personality of the leader. Sovereignty is not only outside of domestic legality, but also inside of another juridical space, that of international law, in a way that changes the parameters of the problem significantly.
18. The paradigm of the autonomous state is exemplified by the work of Kenneth Waltz in the 1980s. The recent "new sovereignty" debates in the field of International Relations have criticized this model, elaborating the necessarily relational nature of sovereignty, which may be compromised when national interest warrants it.
19. "[T]he word *nomos* is useful for us," he writes, "because it shields perceptions of the current world situation from the confusion of legal positivism, in particular (...) dealing with domestic matters of state" (Schmitt, *Nomos*, p. 69).
20. John Bolton's comments, e.g., that the UN's existence can be justified *only* insofar as this organization furthers US national interests, are disturbing because they admit the truth of power without the fictional façade. The whole conception of "rogue states" presumes the extra-national source of sovereign legitimacy. See the excellent article in *Z Magazine* by Noam Chomsky: "Rogue States," <http://www.zmag.org/chomsky/articles/z9804-rogue>.
21. This argument was extended to justify the invasion of Iraq in 2003.
22. Cuba joined the Non-Aligned Movement in 1959 as a challenge to the hegemonic order; it supported the PLO and African national li-

beration movements, and today continues to seek to improve trade and diplomatic relations with the Middle East. Moreover, Cuba has important trading partners in Europe, and it can be noted that the more these traditional allies of the US act against hegemonic definitions, the shakier the whole Order must become. If Venezuela and Cuba today are most vociferous in challenging US hegemony as a matter of national policy, their counter-nomic actions simply underscore the point that nation-state legitimacy is not simply a matter of domestic concern.

23. The same means is now threatened against Iran, while Israel's invasion of Lebanon in July 2006 that destroyed much of the economic infrastructure is another example of economic punishment as a political weapon. Similarly, the World Bank and IMF use economic tools for "disciplining" states through structural readjustment policies that have clear political effects. Criticizing the hypocrisy of liberal theory, Schmitt describes as "astonishingly systematic and consistent" the implicit "polarity of ethics and economics" within the twentieth-century world order (Schmitt, *The Concept of the Political*, p. 9)—as if these poles could ever be held apart in the real world. As for what scholars of international relations today call regimes of norms, he would consider them political alliances that function to preserve the international status quo (see *ibid*, p. 56; his example of a regime of norms is the League of Nations).
24. Schmitt not only influenced theorists on the left; he read their work and was influenced by it, not only Marx but Benjamin, Lenin, and Lukács.
25. This task is not considered to be scientifically relevant, or even legitimate by theorists of international norms who, like legal positivists, accept the given world, rather than tracing it to its source. In his recent book, Katzenstein describes the American world order: "*Imperium* is a concept I use for analytical rather than historical reasons (...). This is how I use the concept here: the conjoining of power that has both territorial and non-territorial dimensions" (Peter J. Katzenstein, *A World of Regions: Asia and Europe in the American Imperium*, Ithaca, Cornell University Press, 2005, p. 2).

26. Brennan is particularly good here in distinguishing between the culturalist politics of Foucauldian and Althusserian inheritors of Gramsci, and Gramsci's original understanding of hegemony: "a revolution is a genuine revolution and not just empty, swollen rhetorical demagoguery, only when it is embodied in some type of State, only when it becomes an organized system of power. Society can only exist in the form of a State, which is the source and the end of all rights and duties" (Timothy Brennan, *Wars of Position: The Cultural Politics of Left and Right*, New York, Columbia University Press, 2006, p. 252).
27. Harvey presumes such a cunning of class reason when he suggests the possibility of a smooth hegemonic interlock between US national interests and those of the global capitalist class: "while we know enough about decision-making in the foreign policy establishment (...) to conclude that the US always put its own interests first, sufficient benefits flowed to the propertied classes in enough countries to make US claims to be acting in the universal (read 'propertied') interest credible and to keep subaltern groups (and client states) gratefully in line" (David Harvey, *The New Imperialism*, New York, Oxford University Press, 2003, p. 40).
28. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, New York, Simon and Schuster, 1996, p. 52.
29. Huntington, *The Clash of Civilizations*, p. 40-48. When Huntington refers to "the West and the rest" (p. 33), he comes to the political point. The globe is not divided among discrete civilizations, but, rather, dominated by one.
30. Westphalia is significant for Schmitt, but only as a later stage, after Europe's positing of a "comprehensive" global order. The principles of Westphalia apply exclusively within Europe (discussed below).
31. Schmitt, *Nomos*, p. 70-1.
32. Schmitt, *Nomos*, p. 70. *Nomos* is "the Greek word for the first measure of all subsequent measures, for the first land-appropriation understood as the first partition and classification of space, for the primeval division and distribution, is *nomos*" (*ibid.*, p. 67). The ac-

tive aspect of the act of land appropriation connects *nomos* linguistically to “nomad.”

33. The ordering power of the *nomos* is captured in the German word *Gesetz*, which, Schmitt notes, is the distinction of divinely given law from human laws in the Lutheran Bible (*ibid.*, p. 70n and 81). The anthropomorphic equation of *nomos* with the sovereign as a person (“king, ruler, despot, and tyrant”) is in this late text by Schmitt one *possible* meaning of sovereignty, which can also be understood as a “singular act” a “constitutive distribution,” also: house, fence and enclosure (*ibid.*, p. 72-4). Note that the language of the “state of exception” is absent from his discussion.
34. Schmitt, *Nomos*, p. 74. Hans Niedermeyer’s article of 1939 may well have been a justification of Hitler’s policy of annexing German-populated lands, the notorious *Lebensraum*. Interesting is Schmitt’s description, later in the text, to 19th-century American continental expansion, Manifest Destiny, as a policy of *Grossraum*. This point is discussed below.
35. Schmitt, *Nomos*, p. 86. “Lines were drawn to divide and distribute the whole earth (...) during the first stage of the new planetary consciousness of space (...) in terms of surface areas” (*ibid.*); “the traditional Eurocentric order (...) arose from a legendary and unforeseen discovery of a new world, from an unrepeatably historical event. Only in fantastic parallels can one imagine a modern recurrence, such as men on their way to the moon discovering a new and hitherto unknown planet” (*ibid.*, p. 39).
36. Schmitt, *Nomos*, p. 88. Papal authority, binding on the entire community of Christendom, did not prevent subsequent wars of colonial rivalry; it legitimated their consequences.
37. *Ibid*, p. 86.
38. Schmitt, *Nomos*, p. 87 and 94.
39. “From the standpoint of the discovered, discovery as such was never legal. Neither Columbus nor any other discoverer appeared with an entry visa issued by the discovered princes. Discoveries were made without prior permission of the discovered. Thus, legal title to discoveries lay in a higher legitimacy. They could be made

only by peoples intellectually and historically advanced enough to apprehend the discovered by superior knowledge and consciousness" (Schmitt, *Nomos*, p. 132). Proof of cultural superiority was the science that made discovery possible ("Indians lacked the scientific power of Christian-European rationality," *ibid.*) and this idea, that outlasted the Enlightenment's critique of papal authority, led ultimately to the biological racism that characterized Western imperialism in the nineteenth and twentieth centuries. Hence, the cultural rationalizations for sovereign legitimacy might change (i.e., the hegemonic discourses), but the European right (*nomos*) to appropriate land remained constant. Schmitt's approach here avoids the tendency of Foucaudian approaches to slide into the history of ideas.

40. *Ibid.*, p. 140-1. Detheologization established "states" as sovereign, rather than Crowns, or the Emperor, or Pope. Jean Bodin was the leading theorist of this transformation (p. 126-7).
41. Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes* (first published 1938), ed. and trans. by George Schwab and Erna Hilfstein, Westport, Conn., Greenwood Press, 1996, p. 6-7.
42. See above, note 40. In his self-defense at his Nuremberg interrogation, Schmitt explicitly stated that his own spatial concept of expansion (*Grossraum*) was incompatible with a racial one (see "Schmitt at Nuremberg," *Telos*, n. 72, Summer 1987, p. 111 and 115).
43. Schmitt, *Nomos*, p. 188.
44. Schmitt is insistent on this: "We must take heed that the word not lose sight of its connection to a historical process—to a constitutive act of spatial ordering" (*Nomos*, p. 71). In that sense to argue that Schmitt is describing the essence, or urform, or ontological first principle of sovereignty is, I believe, incorrect (although this error can easily be deduced from reading Schmitt through Agamben).
45. Schmitt cites Kant in *Nomos*, p. 70.
46. The principle of corporate personhood was established incrementally by Supreme Court decisions throughout the first half of the twentieth century. In 1886, in the case of *Santa Clara County v.*

Southern Pacific Railroad, the 14th amendment was applied to corporations; in 1947 they received the protections of first amendment freedoms extended by the Taft-Hartley Act. Every time civil rights are won, corporations win them too. See www.greens.org.

47. Schmitt, *Nomos*, p. 196-7: "All civilized states subscribed to the distinction between public and private law." For a critical interpretation of Schmitt on this point, see Buck-Morss, "Separation Between the Economic and Political," *Dreamworld and Catastrophe*, p. 15-7.
48. Within Europe, the monopolization of sovereign power by the territorial state that detheologized European conflicts after the 17th century, hence limiting their destructiveness and binding them by international law, was "nothing short of a miracle (...) a marvelous product of human reason," creating a "completely different type of spatial order" (Schmitt, *Nomos*, p. 151 and 127). But this process of secularization did surprisingly little to change the global order that legitimated the appropriation and possession of non-European land. The terms used in international law did change as the papal awards to Spain and Portugal were superceded, and the historically grounded idea of "discovery" as the source of legitimacy was replaced by the spatial concept of "occupied territory," but this signaled little more than an "unfortunate" forgetting of the pan-European origins of the global expansionary project (*ibid.*, p. 126-33).
49. His most relevant texts are not easily available in English: *Nomos of the Earth* is inordinately expensive, *Leviathan* cannot presently be bought in English at any price, and many of his essays remain untranslated.
50. Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (2004); John P. McCormick, *Carl Schmitt's Critique of Liberalism*, Cambridge, 1997; William E. Scheuermann, *Between the Norm and the Exception: Frankfurt School and the Rule of Law*, MIT, 1994.
51. Srinivas Aravamudan, "Carl Schmitt's *The Nomos of the Earth*: Four Corollaries," *South Atlantic Quarterly*, v. 104, n. 2, Spring 2005, p. 234.

52. Neil Smith, *The Endgame of Globalization*, New York, Routledge, 2005.
53. Mouffe is correct, in my opinion, to insist (against Bruno Bosteels' article in the same journal) that for Schmitt, the dominance of Europe over the rest of the world is "justified exclusively by the *de facto* result of domination itself—it is essential for Schmitt's argument that there be no deeper criterion of legality than that of the act of successful appropriation"—"extralegal" in the sense of being historically prior to the law (Chantal Mouffe, "Schmitt's Vision of a Multipolar World Order," *South Atlantic Quarterly*, v. 104, n. 2, Spring 2005, p. 245).
54. See John P. McCormick, "Carl Schmitt's Europe: Cultural, Imperial and Spatial Proposals for European Integration, 1923-1955," www.gongafa.com/shimiteMcCormick.pdf.
55. Alberto Moreiras, "Against Cultural-Political Closure," *South Atlantic Quarterly*, v. 104, n. 2, Spring 2005, p. 228.
56. We rely here on Samuel Weber's article, "Taking Exception to Decision: Walter Benjamin and Carl Schmitt," in Peter Osborn, ed., *Walter Benjamin: Critical Evaluations in Cultural Theory*, 3 vols. Vol 1: *Philosophy*, New York, Routledge, 2005, p. 433-50. Weber interprets brilliantly Walter Benjamin's literary critique of this Baroque genre as an expression of political philosophy, in the form of a philosophy of history.
57. Sam Weber, "Taking Exception to Decision," p. 445-7.