

Introducing the International Theory of Carl Schmitt: International Law, International Relations, and the Present Global Predicament(s)

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Abstract

In this piece we introduce and contextualize the contributions to the special focus on the international theory of Carl Schmitt, and argue that Carl Schmitt's much neglected international thought can provide scholars of both international relations and international law with a new common multidisciplinary research platform pivotal in thinking about the present international predicaments of crisis in international order and legitimacy, of contested liberal hegemony, and of the issue of unipolarity and the emergence of new forms of warfare, such as terrorism and the 'global war on terror'.

Key words

Carl Schmitt; global war on terror; international law; international relations theory

The pages of the *Leiden Journal of International Law* have already featured articles on the thought of Carl Schmitt and its impact on international law.¹ Indeed, these have been among the few engagements with what one might call 'the international theory of Carl Schmitt', an aspect of his thought which is only now receiving the attention it deserves.² In fact, while Carl Schmitt's legal and political writings during the twilight years of the Weimar Republic have had a significant and growing impact on contemporary legal and political theory in the English-speaking world, Schmitt's international thought, often referred to in continental Europe as the masterpiece of his intellectual production, has been largely overlooked. This is partly explained by the fact that Carl Schmitt's seminal work with an international focus, *Der Nomos der Erde*, has only recently been made available in English;³ moreover, the reluctance of the disciplines of both international relations and international law to engage

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1. See, e.g., A. Carty, 'Carl Schmitt's Critique of Liberal International Legal Order between 1933 and 1945', (2001) 14 LJIL 25, and A. Gattini, 'Sense and Quasi-sense of Schmitt's Grossraum Theory in International Law – A Rejoinder to Carty's "Carl Schmitt's Critique of Liberal International Legal Order"', (2002) 15 LJIL 53.
2. See the recent special issue on Schmitt's *Nomos of the Earth* in (2005) 104 (2) *South Atlantic Quarterly*, and also the articles on his international thought in (2004) 11 (4) *Constellations: An International Journal of Critical & Democratic Theory*.
3. C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (2003 [1950]).

with Schmitt's thought is often the justified result of his own engagement with the National Socialists in the 1930s. But also, and perhaps more interestingly, the originality of Schmitt's international thought – which lies at the intersection of international relations, international law, and international history, while drawing at the same time on philosophy and political and legal theory – and the related difficulties in categorizing it in terms of academic disciplines have arguably played, and continue to play, a role in this unfortunate neglect. To some extent, however, this lack of attention is also unsurprising if one recalls how little, despite a strong rhetoric on the need for inter- and cross-disciplinary approaches, theories of international relations and international law have historically interacted. Hence this special issue is first of all a reminder of the need to promote a more sustained dialogue between international relations and international law, a dialogue that both disciplines have difficulty in fostering, despite their constant proclamations and agreement as to its necessity.

What is at stake, however, in the increasing calls to redress this lack of attention to the international dimension of Schmitt's thought is not only the admittedly important problem of how its exegesis could contribute to a reconsideration of Schmitt as a thinker who, it is said, even by some of his most fierce recent critics, belongs 'among the ranks of twentieth-century Europe's most influential political and legal theorists . . . who has [also] exerted a subterranean influence on postwar American political thought'.⁴ What is *really* at stake is the need for a deeper understanding of the present international condition of crisis and epoch-making change in the structures of international society.⁵ For us Schmitt is a thinker of great relevance to this crisis in international order. Arguably, this is the rationale for this special focus on Schmitt: that his insights can provide scholars of both international relations and international law with a new common multidisciplinary research platform that helps the thinking on the present international predicament of crisis in international order and legitimacy, of contested liberal hegemony, and of the issue of unipolarity and the emergence of new forms of warfare, such as terrorism and the 'global war on terror'.

With precisely this situation in mind, and in response to the seminal publication in English of *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, a section was convened at the Fifth Pan-European International Relations Conference in September 2004.⁶ The conference was organized by the Standing Group of International Relations, part of the European Consortium for Political Research (ECPR), on the theme of 'Constructing World Orders', a fitting location for exploring Schmitt's geopolitical writings on world order, the spatiality of international law, and the emergence of the liberal international order, which we are arguably still trying to understand today. The section, entitled 'The International

4. W. E. Scheuerman, *Carl Schmitt: The End of Law* (1999), 1.

5. For examples of the application of Schmitt's insights to the analysis of current world politics see P. Stirr, *Carl Schmitt, Crown Jurist of the Third Reich: On Preemptive War, Military Occupation, and World Empire* (2005); C. Mouffe, 'Schmitt's Vision of a Multipolar World Order', (2005) 104 *South Atlantic Quarterly* 245; and W. Rasch, 'Human Rights as Geopolitics: Carl Schmitt and the Legal Form of American Supremacy', (2003) 54 *Cultural Critique* 120.

6. The section was convened by Louiza Odysseos and Fabio Petito under the heading 'The International Political Thought of Carl Schmitt', details at <http://www.sgir.org/archive/index.htm>, s. 11.

Political Thought of Carl Schmitt', was motivated by a number of concerns, all of which are represented in the articles contained within this special focus on Schmitt. Both the conference section and this special issue on Schmitt suggest that this crisis need not be understood in the singular, but as a core set of issues, of *crises*, confronting both international relations and international law, crises which are the expression, we say with Schmitt, of the deeper and more fundamental collapse of the modern system of international political and legal order, the *jus publicum Europaeum*.

First, the conference section wished to introduce the international works of Schmitt to international studies, and in particular to the discipline of international relations, which had thus far treated Schmitt at best with indifference, at worst with disdain. International relations had failed to recognize that Schmitt's post-Second World War writings offered what one might call an alternative history and theorization of the Westphalian system of states, which is the founding mythology of the discipline itself.⁷ The section suggested that Schmitt's writings on the genesis of the first European order with a global geopolitical character (the *jus publicum Europaeum*), which had structured the world by 'rationalizing and humanizing' war until its demise in the final decades of the nineteenth century, should be accorded the same significance and centrality in the discipline of international relations as the writings of realists such as E. H. Carr, Hans Morgenthau, Raymond Aron, and Martin Wight, and of liberals such as Leonard Woolf and Harold Laski.⁸ In other words, the project aimed at giving further impetus to, and expanding, the nascent debate on the significance of Carl Schmitt's legal and political thought for international politics and at instigating a movement towards a reconsideration of his whole oeuvre, not as marginal to international relations, but as central to its key concerns. Specifically, it was our intention that *The Nomos of the Earth* be granted its proper place, alongside other major classics, as a founding text of international relations, corrective of the ahistoricity of the discipline and its blindness to the ways in which spatiality, law, and politics constitute world order.

Second, as mentioned above, the section wanted to analyse the current international political environment of the 'global war on terror' in these times of crisis of international legality and legitimacy, of US 'imperial' hegemony, and of the prevalence of a globalist liberalism. This seemed even more appropriate at a moment when we witness the apparently paradoxical convergence in world politics of unilateralist-militarist and liberal-humanitarian themes that too easily remind us of Schmitt's remarks on the two-sided political nature of the concept of humanity and of his powerful indictment that 'whoever invokes humanity wants to cheat'.⁹ Of course, Schmitt wrote at a time when he believed that the spatial, political, and legal

⁷ See for instance B. Teschke, *The Myth of 1648* (2003) and 'Theorizing the Westphalian System of States: International Relations from Absolutism to Capitalism', (2002) 8 EJIL 5; see also S. Krasner, *Sovereignty: Organised Hypocrisy* (1999), and 'Westphalia and All That', in J. Goldstein and R. Keohane (eds.), *Ideas and Foreign Policy* (1993), 253.

⁸ For an overview of the contribution of these thinkers to the discipline of international relations see M. Cox (ed.), *E. H. Carr: A Critical Appraisal* (2000); P. Wilson, *The International Theory of Leonard Woolf: A Study in Twentieth Century Idealism* (2002); S. Guzzini, *Realism in International Relations and International Political Economy* (1998); and T. Dunne, *Inventing International Society: A History of the English School* (1998).

⁹ C. Schmitt, *The Concept of the Political* (1996 [1932]), at 54. For the discussion of the concept of humanity see Schmitt, *The Nomos of the Earth*, 103-4.

order – the *nomos* of the earth – had collapsed, a momentous yet largely ignored process which he dates to the beginning of the Great War. But in its stead, out of the death of the European centrality and the hegemonic rise of the United States, Schmitt foresaw many dangers arising from the degeneration of the isolationist idea of the western hemisphere into a universalist-humanitarian global interventionism; the effects of de-concretization and universalization of international law (that is, of ‘order’ without explicit spatial grounding); and the diminishing pluralism in the international system, as well as the evolution towards total warfare and the rise of partisan warfare and terrorism. It is only now, when some of the effects of these processes are becoming alarmingly apparent in the international sphere, that scholars are beginning both to engage with Schmitt’s later international geopolitical thought and also to consider this to be a useful, some might say necessary, engagement.

The articles contained in this special issue were selected from a total of 32 papers presented during the conference proceedings and are, in more than one sense, representative of the variety of concerns that were addressed during the conference.¹⁰ The main common element, that partly explains their inclusion in this special issue, is that they perform, in their own different ways, a fruitful demolition of the still strong academic barriers between the disciplines of international relations and international law. Consequently they are an expression of that interdisciplinary scholarship necessary to navigate both the depth of Schmitt’s writings, which were concerned with the interstices of politics and law, and the intricacies of the present world (dis-)orderings. We could, however, divide the contributions to this special section into two groups.

The first two articles, by Christoph Burchard and Thalin Zarmanian – respectively entitled ‘Interlinking the Domestic with the International: Carl Schmitt on Democracy and International Relations’ and ‘Carl Schmitt and the Problem of Legal Order: From Domestic to International’ – present primarily original exegeses of Schmitt’s fascinating intellectual journey, and wish to locate Schmitt’s ‘international’ works within his oeuvre and his contemporary intellectual environment. But, at the same time, in their conclusions they start sketching, on the premise of the need for a dialogue between international relations and international law, the theoretical contours of the idea of a new *nomos* of the earth, one built on the ashes of the traditional Eurocentric order of international law, the end of which is still visible today in the current crisis of the supporting structures of international society.

The contributions by Jörg Friedrichs and Robert Howse – respectively entitled ‘Defining the International Public Enemy: The Political Struggle behind the Legal Debate on International Terrorism’ and ‘Europe and the New World Order: Lessons from Alexandre Kojève’s Engagement with Schmitt’s *Nomos der Erde*’ – move from specific Schmittian insights to develop interesting readings of two of the hottest and most discussed topics on the post-9/11 international agenda, the issues of international terrorism and of transatlantic tensions; as such they implicitly prove the topicality of Schmitt’s international thought.

¹⁰. See the full section index at <http://www.sgir.org/archive/index.htm>, s. 11.

Zarmanian's and Burchard's articles both attempt to further our understanding of the domestic/international and Weimar/post-Second World War interconnections in Schmitt's work. They attempt to make a theoretical contribution to Schmittian scholarship by providing alternative readings of *The Nomos of the Earth*. Burchard reads it as continuing, not refuting or moving away from, the earlier political and legal concerns which Schmitt had explored in writings during and about the Weimar Republic. Rather than assuming, as is often the case, that *Nomos* and other post-Second World War writings signify a break in Schmitt's work, Burchard argues that they are but 'a continuation of Weimar themes' and that, as such, they have a special significance for the current 'renaissance' in Schmittian scholarship. For Burchard the Weimar legal writings are central in 'unlock[ing] various idiosyncratic concepts that constitute the later piece of work'. And, vice versa, *Nomos* leads back to Weimar themes and 'helps to shed some light on the ambiguities and uncertainties that characterize centrepieces of Schmitt's Weimar writings, namely his constitutional law treatise and his famous *Concept of the Political*.

Zarmanian illustrates the centrality of the issue of legal order in Schmitt's whole oeuvre, from his early juridical writings to *The Nomos of the Earth*, and presents us with a sophisticated discussion of how Schmitt, while acknowledging the 'tragedy of modernity', searched for a response to it that led away from the prevailing legal positivism. He turned first to decisionism and then to a theory of concrete-order thinking, in which he finally merged the geopolitical element of space in his conception of law as a 'restraining force' (*Kat'echon*), a mechanism able to channel the lack of restraint of the political in juridical form. To Zarmanian, *The Nomos of the Earth*, read as Schmitt's 'obituary to modernity', opens up a new understanding of the ways in which 'European legal science' enabled the creation of a concrete and spatial order, which lent itself to act as *Kat'echon* after the collapse of *res publica Christiana* by solving the problem of legal order, that is the problem of equilibrium between *universe* and *pluriverse*, between a perfect order and chaos. The disciplines of international law and international relations today face the same challenge which inspired Schmitt's work – the search for (international) legal order – and Schmitt's approach can be a source of inspiration for positive and progressive research in both international relations and international law, filling the gap between these two disciplines. In Zarmanian's account, *Nomos* is of significance to both fields of research, not because of its original historiographic contribution, but because of its reading of international politics and law as the core defining problems of political modernity.

If the first two contributions work as grounding discussions re-examining Carl Schmitt's international legal and political thought, Friedrichs's and Howse's articles bring us to the very core of contemporary global politics, and could be thought of as discussions where Schmitt's insights are applied to more concrete and contemporary issues. Friedrichs's contribution attempts to look at one of the core issues surrounding hegemony in the current order, that of the power to define the international terrorist and, in so doing, spatially restructure the international sphere. Friedrichs uses Schmitt's insights to explore both the historical and recent debates on defining terrorism and specifically the impasse during the 2000s caused by the US desire

to define terrorism on a case-by-case basis as opposed to the European (French and German) wish to do so according to a legal, commonly agreed definition. As far as the actual political struggle behind the legal debate is concerned, Friedrichs's argument is informative and engaging and, to our knowledge, this analysis fills a void in the specialized literature. Legally defining terrorism and the terrorist would impose a limit on the discretionary power of the hegemon to decide who is the current international public enemy (who is with or against them) and help concretize the current order. This analysis shows the fruitfulness of engaging with Carl Schmitt's thought in considering key international issues such as terrorism, and the same could be said for a variety of aspects of contemporary international politics, such as the crisis of international law and the war convention, armed 'humanitarian' intervention, and others.

Howse's article explores the intricacies of Schmitt's international thought with special reference to the status of the transatlantic relationship, witnessed by the recent 'rift' between 'Europe' and 'America'. This 'rift' has been simultaneously lamented, but for different reasons, by prominent Washington and European intellectuals, such as Robert Kagan on the one hand and Jürgen Habermas and the late Jacques Derrida on the other. Howse locates the current debate about the new world order and the United States' rise within it in the exchanges between Carl Schmitt and his contemporary Alexandre Kojève, who sought to provide an account of world integration that would overcome the political as defined by Schmitt. Kojève offered his 'conception of a world state based on a "peaceful, democratic" modification of capitalism in favour of redistribution, including between the developed and developing countries' as against Schmitt's own pessimism about the inability to arrive at a world order to match the collapsing *jus publicum Europaeum*. We are confronted here again with the essential Schmittian dilemma between universalism and pluralism as the core question for the future nomos of the earth, but also with the more specific and topical issue of the relationship of Europe with the Mediterranean world.

In 1982, at the age of 94, Carl Schmitt answered the final question of an interviewer on whether he felt more a jurist or a political scientist: 'I am one hundred per cent jurist and nothing else. And I do not want to be anything else. I am a jurist, I remain a jurist and I die as a jurist and all the misfortune of a jurist is involved in that.'¹¹ These had been more or less the same words Schmitt had used in the opening of his autobiographical testimony – and arguably most revealing work – *Ex Captivitate Salus*, written while in prison between 1945 and 1947, when he affirmed that as a scholar he was familiar with two areas of legal science – constitutional and international law – both part of public law and, as such, concerned with real issues of domestic and international politics and, hence, 'exposed to the danger from "the political"'.¹² More than fifty years after these words were penned, students and scholars of international politics and international law cannot really escape the

¹¹. F. Lanchester, 'Carl Schmitt: un giurista davanti a se stesso', an interview with Carl Schmitt, (1983) III *Quaderni costituzionali* 5, at 34, our translation. Of course, here Schmitt is also referring, in an arguably excessive self-justificatory way, to his engagement with the Nazi regime.

¹². C. Schmitt, *Ex Captivitate Salus: Erfahrungen der Zeit 1945–47* (1950), 55.

stringency of Schmitt's argument and if they want to advance in their understanding of the present global situation they need to avoid both 'the nirvana of pure positivist'¹³ international law and the legal blindness of power-centred international relations. Not only that: what is suggested in this special issue is that Schmitt's international theory already moves us in this direction when it provides scholars of international relations and international law with a common multidisciplinary platform, on the basis of which we can consider the current crisis of international society.

¹³ Ibid.