

## THE FETISH OF GEOPOLITICS

### *Reply to Gopal Balakrishnan*

**G**OPAL BALAKRISHNAN IS one of the foremost experts in the Anglo-American world on the life and work of Carl Schmitt, and I am grateful for his response in *NLR* 68, ‘The Geopolitics of Separation’, to my essay on the thinker, ‘Decisions and Indecisions’, in *NLR* 67.<sup>1</sup> Balakrishnan’s intellectual biography of Schmitt, *The Enemy*, remains, according to one eminent voice in the field, ‘the best English-language study’ on the subject.<sup>2</sup> For a critical American scholar, the attraction of exploring and validating Schmitt as a radical and insightful critic of American imperialism and its liberal-cosmopolitan apologists would seem unobjectionable. Schmitt deployed a remorseless and uncompromising vocabulary to dissect the crisis of the legal form in the inter-war period, analysing the pathologies of liberal international law and the relations between constitutionalism, democracy and emergency powers, in order systematically to deconstruct the practice and ideology of the liberal-capitalist ‘zone of peace’—and with it, the incipient neutralization of inter-state relations.

Within this context, Balakrishnan not only regards Schmitt as a necessary complement to Marx, but clearly as a superior analytical voice and point of reference in fully understanding the legal-political controversies and geopolitics that marked the crisis-ridden transition from the *ius publicum europaeum*—the classical European inter-state order, regulated by international law—to an apparently de-politicized legal-moral universalism, codified in the Versailles Peace Treaty and institutionalized in the League of Nations. Schmitt, Balakrishnan suggests, identified a politico-jurisprudential problematic—and developed a corresponding categorial register—that Marx, in his own time, had never fully addressed or

conceptualized. The systematic exploration of this register constitutes the strength of Balakrishnan's outstanding study.

Yet, given Balakrishnan's Marxist credentials and background, the remit and objective of what is, after all, an intellectual portrait, remain curiously restricted. The introduction to *The Enemy* frames his approach from the angle of a 'diachronic contextualization' and 'intertextual reconstruction' of Schmitt's work, resulting in a 'provisional framework for the comprehensive and critical evaluation of his thought'. The first aim conveys the nature of the work better than the second. For this promise of critique—already toned down by Balakrishnan's prefatory warning that 'adopting the role of either prosecutor or defence attorney in discussing Schmitt' presents a false choice—remains unfulfilled.<sup>3</sup> Critique in *The Enemy* hardly ever reaches beyond occasional and rhetorical references to Schmitt as a deeply disturbing figure. In the process, the study's emphasis on textual exposition and reconstruction relegates any systematic critique of the intellectual architecture, analytical purchase and political legacy of Schmitt's thought to the sidelines, rendering the work primarily a philological, exegetic and informational exercise—with greetings from Germany to the US. In fact, Schmittian categories now seem to form the strategic centre of Balakrishnan's broader reflections on the grand contours of the post-Cold War international scene, encapsulated in the master-idea of neutralizations.<sup>4</sup>

More than a decade after *The Enemy*'s date of publication, such professed equidistance and equanimity, turning in the interim into embrace rather than critique, can no longer be afforded (if it ever could). The growing recognition and celebration of Schmitt in the wider social sciences and, specifically, in the field of International Relations, the actuality of

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<sup>1</sup> Gopal Balakrishnan, 'The Geopolitics of Separation: Response to Teschke's "Decisions and Indecisions"', NLR 68, March–April 2011; and Benno Teschke, 'Decisions and Indecisions: Political and Intellectual Receptions of Carl Schmitt', NLR 67, January–February 2011. I would like to thank Frédéric Guillaume Dufour, Kees van der Pijl, Justin Rosenberg, Sam Knafo, Kamran Matin, Steffan Wyn-Jones and the members of the Sussex PM Research Group for comments.

<sup>2</sup> Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt*, London and New York 2000. Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge 2001, p. 423.

<sup>3</sup> Balakrishnan, *The Enemy*, pp. 3, 1.

<sup>4</sup> Balakrishnan, *Antagonistics: Capitalism and Power in an Age of War*, London and New York 2009, pp. iiv–xiv.

Schmittian tropes in 21st-century American foreign-policy circles and the current contestation of dictatorial states of exception across the Middle East, from Tunisia and Egypt via Syria to Bahrain, have sharply re-politicized his significance, reception and legacy.

### *Restating the argument*

In this context, my intervention in NLR 67 was formally organized around five axes of inquiry. The first part provided an exposition of Schmitt's grand historical-conceptual narrative of the 'spatial revolutions' that punctuate the history of international law and order, from the New World Discoveries to Hitler's *Großraumpolitik*; followed by an outline of current neo-Schmittian attempts to comprehend an altered contemporary geopolitical constellation in comparable terms. The second section, drawing on Reinhard Mehring's recent biography of Schmitt, set out a compressed diachronic contextualization of his intellectual and political trajectory.<sup>5</sup> It concluded that Schmitt's thought, far from constituting the *ad hoc*, disconnected and conjunctural interventions of an intellectual *bricoleur* and footloose adventurer, can be better understood as revolving around an organic and consistent set of intellectual and political preoccupations, expressed in a recognizable problematic: the crisis of legal determinacy, the value of the state executive, German autonomy, political and geopolitical order in times of extremes. In face of these, Schmitt developed a series of ever more radicalized solutions: from his proto-decisionist writings of the late *Kaiserreich* and defence of the legality of Imperial Germany's war during the 1920s, via the conception of the political in terms of the agonal friend–enemy binary in the late 1920s and advocacy of presidential emergency powers during the crisis of the Weimar Republic (his definition of sovereignty), to the full-throated embrace of the 'total state', the *Führer*-principle and insistence on territorial conquests as the *fons et origo* of all international law, as the *Wehrmacht* marched towards Moscow. Though his natural intellectual maturation and political opportunism afforded conceptual adjustments and theoretical shifts that need to be registered, it is this underlying *Leitmotiv*—rather than any 'unifying fascist logic'—that forms Schmitt's *basso continuo*, which any de-totalization of his thought is likely to render invisible.

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<sup>5</sup> Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall, Eine Biographie*, Munich 2009.

The third and central part of my essay performed two tasks: first, it mounted an immanent critique of the gap between Schmitt's core theoretical axioms—decisionism, concept of the political, concrete-order-thinking, and their substantive analogues: state of emergency, friend–enemy distinction, *nomos*—and the historical narrative constructed on their premises, outlining deficiencies in both. It was my thesis that this triple axiomatic consistently suppressed social relations as a relevant category of analysis for the history of international law, while elevating the abstraction of antagonistic power, the fetish of the political (and geopolitical), to the neuralgic centre of Schmitt's thought. This theoretical orientation is actively consonant with the political Schmitt as a counter-revolutionary *étatist* and, later, fascist thinker. Further—and against Schmitt's own advice<sup>6</sup>—the section probed whether it was possible to extricate Schmitt's conceptual apparatus as a generic analytic to illuminate past and present geopolitical transformations and configurations, as the neo-Schmittian literature seems to suggest, answering in the negative. The essay then examined Schmitt's notion of *Großraum*, as the territorial unit for a new planetary regionalism and the central juridical category of the Nazi 'new international order', along with his *ex post* attempts to sanitize this category's political complicity with Hitler's *Großraumpolitik*.

The final section returned to Schmitt's intellectual and political legacy, indicating—*contra* Mehring's thesis of his role as a *quantité négligeable* in the Federal Republic of Germany and beyond—Schmitt's profound impact within (West) German social sciences, his influential role in the American disciplines of politics and International Relations and, more specifically, in American neo-conservative thought, which provided the ideological backdrop to the foreign policy of the Bush II presidency. Moral aversion was reserved for the epilogue; no aprioristic ideological condemnations should foreclose the analytical view on Schmitt's thought.

### *Case for the defence?*

Balakrishnan's response declines to engage with the formal composition of my essay, which delineated precisely 'the relationship

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<sup>6</sup> 'All political concepts, images and terms have a polemical meaning. They are focused on a specific conflict and are bound to a concrete situation.' Carl Schmitt, *The Concept of the Political* [1927], Chicago 1996, p. 30.

between theoretical assumptions, ideological limitations and political alignments' that he demands. Instead, he couches his response in terms of an overriding and, ultimately, banal summary judgement: my intervention was tarnished by an ideological dismissal of Schmitt that blocked a careful unscrambling of what is alive and what is dead in his thought—a task that can only be performed by (yet another) sober diachronic contextualization and a critically informed interrogation of his entire *oeuvre*.

From this core message derive several relevant, but secondary charges: that I misrepresent Schmitt's awareness of the socio-economic pre-conditions of emergency powers; conflate Schmitt's writings of the Weimar and Nazi periods; misread Schmitt's wider history of international law and order; and overlook an inconvenient and possibly embarrassing similarity between Schmitt's 'fascist epic' of the rise and fall of the 'Westphalian System' and my own interpretation of Europe's long-term trajectory, leading to the objection that my conception of capitalist geopolitics—the alleged 'geopolitics of separation'—looks one-dimensional compared to Schmitt's 'dialectical' reading of the relation between geopolitics, statehood and capitalist development. The response concludes with a nonchalant dismissal of the significance of Schmitt's influence on neo-conservative foreign policy, suggested to be in line with the structural continuity of America's role in the world. Throughout his response, Balakrishnan attempts to diffuse my critique of Schmitt by composing a *florilegium* of citations gleaned from the *ephemera* of Schmitt's writings, rather than directly confronting his central theoretical propositions, developed in the texts that dominate the Schmitt reception and discussion.

In the following, I will argue that any theoretical, rather than biographical, reading will disclose that a Schmittian sociology of sovereignty or emergency is a contradiction in terms. I will further clarify why Schmitt's history of international law and order, especially as outlined in *The Nomos*, has to be understood in context-specific ideological terms, which render it deeply problematic on theoretical, logical and empirical grounds. By contrast, I will remind Balakrishnan how my own attempts to rethink this history from the angle of Political Marxism lead to a fundamentally different historical narrative, which Balakrishnan misrepresents. Rather than implying that Schmitt and Marx can be read as mutually supplementary critics of liberalism and capitalism, I will

suggest that the ontological, epistemological and theoretical premises of Marxism are diametrically opposed to Schmitt's, forcing us to renew our efforts to rethink the history of geopolitics in genuinely Marxian terms. I will conclude by arguing that, rather than conceive of Schmitt's theoretical apparatus as complementary to Marx's, there is more evidence to suggest that Schmitt understood his own intellectual production in terms of an anti-Marx for his own times.<sup>7</sup>

### *Sociology of the emergency*

According to Balakrishnan, my account 'missed Schmitt's many attempts to frame the problem of emergency powers in socio-political terms'.<sup>8</sup> Drawing a line from Schmitt's recognition of the rise of the proletariat to the financial crisis of the Weimar state, set in train by the Versailles reparations, Balakrishnan implies a deep awareness on Schmitt's part of the socio-economic determinants that produced the instrument of the state of emergency. But this is not tantamount to the much more demanding—and implausible—proposition that Schmitt articulated or understood his own history and theory of sovereignty in terms of a historical sociology of constitutional developments. Balakrishnan fails to distinguish between historical references and theoretical concepts. For no amount of localized commentary and exemplary illustration can validate the suggestion that Schmitt systematically incorporated the sociological as the strategic point of reference for a reformulated approach to the history of constitutional developments. Social relations remained theoretically exterior to, and systematically excluded from, his conception of sovereignty, as formalized in political decisionism. Sovereign is he who decides over the state of exception—'an absolute decision created out of nothingness'.<sup>9</sup> This definitional narrowing—in fact: erasure—of the net of determinations of the decision to an unmediated subjective act is the essence of Schmitt's idea of sovereignty. *Quis iudicabit?* Who will decide?

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<sup>7</sup> Charge two—Balakrishnan's suggestion (NLR 68, pp. 63–4) that I conflated Schmitt's Weimar and Nazi writings—seems disingenuous: see 'Decisions and Indecisions', pp. 70–7. If there was one decisive theoretical caesura, but not a hiatus, in Schmitt's writings, I would locate it in *The Three Types of Juristic Thought* (1934). Schmitt's deep-seated and, at times, histrionic anti-Semitism is discussed in Raphael Gross, *Carl Schmitt and the Jews: The 'Jewish Question', the Holocaust and German Legal Theory*, Madison, WI 2007.

<sup>8</sup> Balakrishnan, 'Geopolitics of Separation', p. 61.

<sup>9</sup> Schmitt, *Political Theology* [1922], Cambridge, MA 1985, p. 66.

Social forces do not enter Schmitt's definition of the extra-normative declaration of the state of emergency, which remained analytically a supra-sociological, extra-constitutional (as well as ideologically anti-social) device—a liminal concept—for the restoration of order. In this context, it should be recalled that Schmitt's decision to define sovereignty in terms of the exception was not the result of a dispassionate and scholarly enquiry into the ultimate locus of power, but a politicized and normative intervention into the jurisprudential debates on the interpretation of the Weimar Constitution's Article 48, on the scope of presidential emergency powers and executive government by decree. For Schmitt, sovereignty *should* reside in the authoritative decision, rendering it a non-relational concept, outside society and even outside politics—analogue to the miracle in theology. Balakrishnan surely knows that Schmitt explicitly related his notion of the exception to political theology, rather than a historical sociology of public law.

While Schmitt's *The Dictatorship* advances a much richer history of state theory and constitutional law—from the classical Roman institution of the dictator to Weimar's Article 48—than his *Political Theology*, social relations remain empirically acknowledged, but theoretically undigested.<sup>10</sup> Schmitt is not known or read as a theoretician of the inter-war economic downturn, revolutions and civil wars; and no neo-Schmittian writer, as far as I am aware, has actually reformulated Schmitt's ultra-narrow definition of the exception to develop a theoretical perspective on sovereignty that would enlarge its scope to incorporate the historicity of differential social relations of power. Schmitt developed a legal-political register, unsupported by sociological or political-economic analogues. This does not *per se* invalidate this register, but leaves it suspended in mid-air. Schmitt constructed legal-political concepts *against* the crisis of the Weimar state, rather than concepts *of* the crisis. That a historical sociology of the exception remains a distinct possibility—and an ongoing research desideratum—from an alternative Marxist perspective can be learned from the writings of Schmitt's disciples, Franz Neumann and Otto Kirchheimer, on the nexus between capitalist crisis, the dissolution of

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<sup>10</sup> Schmitt, *Die Diktatur: Von den Anfängen des Modernen Souveränitätsgedanken bis zum Proletarischen Klassenkampf* [1921], 7th edn, Berlin 2006. For a brief statistical survey that relates the declaration of states of emergency to strikes and class conflict (rather than to martial law) see Mark Neocleous, "The Problem with Normality: Taking Exception to "Permanent Emergency"", *Alternatives*, vol. 31, no. 2, 2006, pp. 191–213.

the rule of law and the legal structure of Nazism.<sup>11</sup> A distinctly Schmittian sociology of power remains, however, a contradiction in terms.

### *Towards a Marxist geopolitics*

Balakrishnan further suggests that Schmitt's work and my own share common theoretical orientations, as 'what Schmitt wrote often seems to touch on the conceptual centre of [Teschke's] Marxist understanding of modern statehood and geopolitics, which hinges on the historical process of the separation of the political from the economic, of coercion from the conditions of surplus appropriation'.<sup>12</sup> From this premise, three consecutive moves follow for Balakrishnan. First, that in my reading this separation, once established, 'never becomes problematic in the subsequent history of capitalism'—the alleged 'geopolitics of separation'. In contrast, Schmitt's reading of the multi-level crisis entailed by the collapse of the distinction between state and economy, or inter-state system and capitalist world-market, generated a much more 'dialectical' interpretation. Second, that Schmitt's historiography of the rise and fall of the 'Westphalian' inter-state system, as set out in *The Nomos of the Earth* (1950), constitutes a similar, if *in toto* superior, narrative to my *Myth of 1648*; and, third, that Schmitt's history demonstrates greater affinities and parallels with Marx's original categories than I would allow.

The point of departure of my wider work was to develop a research programme that would incorporate the problematic of geopolitics, theoretically and historically, into a revised Marxist framework. The relative absence of geopolitics in Marx's and Engels's own works, and the hitherto insufficient attempts to resolve this challenge from within the Marxist tradition, formed the reference point for my critique, informed by the premises of Political Marxism.<sup>13</sup> *The Myth of 1648* built on and further problematized the pathbreaking work by Robert Brenner, Ellen

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<sup>11</sup> Wolfgang Luthard, ed., *Von der Weimarer Republik zum Faschismus: Die Auflösung der Demokratischen Rechtsordnung*, Frankfurt 1976; Franz Neumann, *Behemoth: The Structure and Practice of National Socialism*, New York 1944; William Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law*, Cambridge, MA 1994; Scheuerman, ed., *The Rule of Law under Siege: Selected Essays of Franz Neumann and Otto Kirchheimer*, Berkeley 1996.

<sup>12</sup> Balakrishnan, 'Geopolitics of Separation', p. 62.

<sup>13</sup> For a critical survey on Marxism and International Relations see Teschke, 'Marxism', in Christian Reus-Smit and Duncan Snidal, eds, *The Oxford Handbook of International Relations*, Oxford 2008, pp. 163–87.

Wood and George Comninel on the class conflicts driving the transition towards agrarian-capitalist social property relations in late medieval and early modern England.<sup>14</sup> One of its aims was to show how the conceptual assumption of a differentiation between the economic and the political in capitalism translates into a historical account of the contested construction of a new form of English 17th-century sovereignty, culminating in the 1688 formula of ‘the King-in-Parliament’: a parliamentary, constitutional monarchy that institutionalized, though in non-linear ways, the formal separation between a public, de-personalized state and a privatized economic sphere. Post-1688 England also started to develop new foreign-policy techniques, encapsulated in ‘balancing’ within the context of a pre-capitalist and predominantly ‘absolutist’ European inter-state system.

If capitalism is conceived not as a de-politicized and de-subjectified market economy, governed by ‘economic laws’, but as a set of socio-politically contested social relations, the implications of its rise cannot be conceived in terms of abstract logical derivations, but demand a radical historicization of its further, inter-state development. For the separation-argument is not conceived as an absolute, once-and-for-all insulation of spheres, but as an internal relation between states and markets whose degrees of de-politicization and re-politicization depend on historically concrete praxes. Capitalism is a relation of power. This also implies that capitalist social relations—once established in one country—do not automatically and transnationally replicate themselves across the components of the international system. The articulation of their international effects and implications requires a sharp move away from teleology, from a universalizing structural economism and a geopolitical functionalism; it demands a geopolitics as process, rather than superstructure.

These elementary ideas resulted in a novel research prospectus, explicitly opposed to the *Communist Manifesto*’s cosmopolitan universalism—the expansion of a capitalist world-market as the mega-subject of

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<sup>14</sup> Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations*, London and New York 2003. See also T. H. Aston and C. H. E. Philpin, eds, *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe*, Cambridge 1985; Ellen Wood, *Democracy against Capitalism: Renewing Historical Materialism*, Cambridge 1995; George Comninel, *Rethinking the French Revolution: Marxism and the Revisionist Challenge*, London and New York 1987. See also Heide Gerstenberger, *Impersonal Power: History and Theory of the Bourgeois State* [1990], Leiden 2007.

world history; curiously echoed in Schmitt's long-term prognostics of a 'spaceless universalism'. The new geopolitical Marxism not only demands a re-politicization of capitalist development, as a contested and regionally differentiated institutionalization of social relations, but also a radical geopoliticization of its historical course, initially refracted through the drive of pre-capitalist 'absolutist' territorial polities towards 'geopolitical accumulation'. Contra Marx and Engels, *The Myth of 1648* argued that the expansion of capitalism was a political and, *a fortiori*, a geopolitical process, in which pre-capitalist ruling classes had to design counter-strategies of reproduction to defend their position in an international environment that put them at an economic and coercive disadvantage:

More often than not, it was heavy artillery that battered down pre-capitalist walls, and the construction and reconstruction of these walls required new state strategies of modernization. These . . . ranged from the intensification of domestic relations of exploitation and the build-up of an increasingly repressive state apparatus for military and fiscal mobilization, via 'enlightened' policies of neo-mercantilism and imperialism, to the adoption of liberal economic policies.

While the initial impetus towards modernization and capitalist transformation was geopolitical, state responses to this pressure were refracted through respective class relations in national contexts, including class resistance. In this sense, the 'alignment of the provinces' generated nothing but national *Sonderwege* (special paths):

If Britain showed its neighbours the image of their future, it did so in a highly distorted way. Conversely, Britain never developed a pristine culture of capitalism, since she was from the first dragged into an international environment that inflected her domestic politics and long-term development. The distortions were mutual. The transposition of capitalism to the Continent and the rest of the world was riddled with social conflicts, civil and international wars, revolutions and counter-revolutions.<sup>15</sup>

This perspective prompted my ongoing reconceptualization of political Marxism into geopolitical Marxism, to problematize the orthodox Marxist notion of bourgeois revolution.<sup>16</sup> The historical substantiation of these programmatic notes and the extension of the story of *The*

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<sup>15</sup> Teschke, *The Myth of 1648*, pp. 265–6.

<sup>16</sup> Teschke, 'Bourgeois Revolution, State-Formation and the Absence of the International', *Historical Materialism*, vol. 13, no. 2, 2005, pp. 21–2.

*Myth of 1648* into the nineteenth century and beyond are yet to come. However, the idea that, once established, two logics—the geopolitics of the inter-state system and the transnationalizing economics of a capitalist world-market—can travel unproblematically and in unison side by side is the exact opposite of my argument.<sup>17</sup> Balakrishnan's ascription of a 'geopolitics of separation' to my work thus represents a substantial misreading.

### *Aporias of concrete-order thought*

Does Schmitt provide a geopolitics of non-separation, possibly even a dialectical one, which keeps geopolitics and geo-economics internally related? To ascertain this, Schmitt's substantive writings on law and history would need to be re-anchored in the reformulated theoretical premises announced in his 1934 paradigm shift from decisionism to concrete-order-thinking. He first deployed this to replace the liberal and universalist idea of the rule of law—and its increasingly threatened principles of generality and predictability—by a situation-bound de-formalization of law, upheld by and encased in different nationally homogeneous legal cultures.<sup>18</sup> As Schmitt's preoccupations moved from constitutional to international law during the mid-1930s, he realized that political decisionism was insufficient to capture the politics and geopolitics of land-appropriations and spatial revolution, which he now privileged as foundational, constitutive acts of world-ordering, so as to write the history of international law as an anti-liberal, anti-normative tract. The subsequent shift to concrete-order-thinking was meant to remedy this explanatory vacuum. It is premised on a single and axiomatic thesis: 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: a *nomos*—a unity of space, power and law.<sup>19</sup>

Given this turn to the 'concrete', how could Schmitt theoretically account for his otherwise perceptive remarks on the separation of the economic

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<sup>17</sup> This argument is further developed in Teschke, 'Debating "The Myth of 1648": State-Formation, the Interstate System and the Rise of Capitalism—A Rejoinder', *International Politics*, vol. 43, no. 5, 2006, pp. 531–73; and Teschke and Hannes Lacher, 'The Many "Logics" of Capitalist Competition', *Cambridge Review of International Affairs*, vol. 20, no. 4, 2007, pp. 565–80.

<sup>18</sup> Schmitt, *On the Three Types of Juristic Thought*, Westport, CT 2004.

<sup>19</sup> Schmitt, *The Nomos of the Earth in the International Law of the Ius Publicum Europaeum*, New York 2003, pp. 44–7.

and political, the world market and inter-state system, which formed the historical condition of possibility for a transnationalizing US imperialism, without negating his axiomatics? Even to begin to grasp this double separation, Schmitt had to have recourse to the Hegelian-Marxist figure of thought of the separation between society and the state, which he duly acknowledged in a footnote. Balakrishnan might be right that ‘the multi-level crisis of this constitutive difference is, in fact, the central problem cutting across nearly all of Schmitt’s writings on the inter-war disorder’.<sup>20</sup> But Schmitt’s turn to international political economy imperilled the core of his geopolitical axiomatic: a retraction from concrete-order-thinking and a move towards a transnational economism, reserved for Anglo-American liberal imperialism but bracketed for inter-war Germany.

For Schmitt’s theoretical excursion into the field of international political economy forced him to change theoretical registers—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 international political economy of American rule—an analysis that contradicts his premise that every international legal order is grounded in an original and constitutive act of ‘land appropriation’. For Wilhelmine Germany was not invaded, occupied or annexed. Capitalism’s border-cancelling tendency also cancels the core thesis of his fascist period. What ultimately emerges is less a dialectical reading of geopolitics and geo-economics, but rather the fetishization of a German formal empire against an informal US imperialism, insulated from any enquiry into the domestic political economy of fascist imperialism. The former arises like a *deus ex machina* from the purely political invocation of the friend–enemy distinction to counter the abstract Western notion of a spaceless universalism with the German concrete-order, a fascist *Großraum*.<sup>21</sup>

### *A Nomos for Das Kapital?*

Having suggested that my text ‘gives scant consideration to Schmitt’s Weimar writings, i.e. the texts for which he is best known and form the basis of almost all of the contemporary reception of his work’, Balakrishnan finally turns to Schmitt’s fascist literature, *The Leviathan*

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<sup>20</sup> Balakrishnan, ‘Geopolitics of Separation’, p. 62.

<sup>21</sup> For the policy-impact and widespread circulation of the terms *Großraum* and *Großraumwirtschaft* in 1933–45, see the documents collected in Reinhard Opitz, ed., *Europastrategien des Deutschen Kapitals, 1900–1945*, Cologne 1977, parts III and IV.

in the *State Theory of Thomas Hobbes* (1938), *Land and Sea* (1942) and *The Nomos of the Earth*—the central text for the current Schmittophilia in the discipline of International Relations—while ignoring Schmitt's *Völkerrechtliche Großraumordnung* (1939): the intellectual blueprint for his conception of the new fascist 'greater territorial order'. According to Balakrishnan, *The Nomos* was a piece of saturnine melancholia, written when the contours of German defeat in the East were already visible after Stalingrad. This is a misrepresentation of its conception and intention, though its execution had to square the divergence of unfolding historical reality with its core thesis: land-appropriations. Rather than a coda and lament—'a conservative retrospect on the origins of an inter-state civilization that had arisen out of the fiery chaos of war and primitive appropriations', which 'now seemed to be returning to it', as Balakrishnan suggests—*The Nomos* was designed as the 'official' celebration and justification of Hitler's *Großraumpolitik*, which Schmitt reconnected with pre-liberal *nomos*-constituting acts of land-appropriations, legitimizing both.<sup>22</sup> What had come to an end was not the inter-state civilization of the *ius publicum europaeum* (terminated at Versailles, 1919), but rather the new Germanic vision of intra-regional law and order, revolving around a pluriverse of co-existing pan-regions, that was Schmitt's counter-programme to liberal capitalism's 'spaceless universalism'. The Red Army had not only put an end to the *Wehrmacht*, it had also decapitated the cap-stone of *The Nomos*—the unfinished final chapter and the missing Conclusion—forcing it into an abrupt and speculative ending. This was evidenced by the absence of the three corollaries which were added to the 2003 English translation, written by Schmitt in the 1950s, from the German original.

Balakrishnan's attempt to dissociate *The Nomos*, as a post-fascist afterthought, from Schmitt's pro-fascist writings is ultimately grounded in his inattention to concrete-order-thinking as the unifying theoretical perspective in Schmitt's writings in and for the Third Reich.<sup>23</sup> This unity of

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<sup>22</sup> For the genesis of *The Nomos* see Peter Haggemacher's introduction to the French edition. Schmitt, *Le Nomos de la Terre dans le Droit des Gens du Jus Publicum Europaeum*, Paris 2001, pp. 1–44.

<sup>23</sup> The concepts of *Großraum* and *nomos* were floated in 1928 and remained central organizing terms thereafter. Carl Schmitt, 'Völkerrechtliche Probleme im Rheingebiet', in *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923–1939* [1940], Berlin 1988, pp. 97–108. See also Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916–1969*, ed. Günther Maschke, Berlin 1995.

Schmitt's Nazi texts, theoretically secured by *The Three Types of Juristic Thought*, is expressed in the trilogy of *The Order of Greater Spaces, Land and Sea* and *The Nomos*, each illuminating the idea of land-appropriations through a different register—the legal structure of Nazi inter-regional law, the geo-mythology of the elementary distinction between land and sea, and the history of international law from the New World Discoveries onwards. How could *The Nomos of the Earth*, written between 1942 and 1945, and *Land and Sea*, published in 1942, not have been conceived as long historico-legal detours to accumulate the intellectual resources and arguments to legitimize Hitler's *Raumrevolution*—a re-writing of history by one of the leading intellectuals of the ascendant Axis power? 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 lord over grammar'.<sup>24</sup> A German legal-political counter-vocabulary was required to regain existential autonomy in the geopolitical struggle for survival. This was the task of Schmitt's fascist writings on international law.

### *Land grabs*

But ideological purpose need not nullify their message. Balakrishnan finds much to admire in *The Nomos*, detecting an analogy between Marx's 'account of the primitive accumulation of capital in great land grabs and colonial conquests' and Schmitt's account of the 'Westphalian order', premised on the division between the civilized denizens of the Old World and the uncivilized barbarians of the New. This opposition 'expressed a world-historical expropriation of non-European peoples and territories'. But this quasi-equation of the Marxist category of 'primitive accumulation' with Schmitt's notion of 'land appropriation' leads astray, as the former depicts a qualitative transformation of social property relations, antithetical to a quantitative, territorial notion of land grabs. Not every form of conquest, booty and plunder can be vaguely associated with the idea of the dispossession of direct producers from their means of reproduction and their transformation into abstract labour. The Discoveries did not introduce capitalism to the New World; nor were the gains from plunder overseas, which greased the wheels of mercantile

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<sup>24</sup> Schmitt, 'Völkerrechtliche Formen des Modernen Imperialismus', in *Positionen und Begriffe*, p. 202.

and colonial commerce, of importance for the rise of capitalism in the Lusio-Hispanic parts of Europe, or a sufficient precondition for the origins of agrarian capitalism in England.

Balakrishnan claims that ‘the *nomos* arising out of early-modern state-formation and overseas conquests divided the world into two zones, with two laws of war and appropriation’, concurring with Schmitt’s account of the early-modern inter-state system, and the notion of ‘bracketed’ warfare within the civilized zone. But any closer reading of *The Nomos* shows that Schmitt was not only deeply ambivalent in his explanation of the European system—vacillating between the *Conquista* (1492), the rise of the Absolutist state (1648) and English balancing (1713) as the formative moment—but that he explicitly excluded the conquests of the Americas from the constitution of early-modern Europe. His discussion of the rationalization—jurisprudential and material—of the colonization process by Spain and Portugal reveals, paradoxically, that the Conquests did not precipitate the ‘spatial revolution’ and the subsequent rise of the new European inter-state *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 the form of the *rayas* (divisional lines) was laid down in the 1494 Treaty of Tordesillas between Spain and Portugal, establishing a dividing line a hundred miles west of the Azores and Cape Verde: all the land west of the line should go to Spain; all the land east of it to Portugal.<sup>25</sup> This meant the conditional territorialization of both the seas and the newly discovered lands, as required by feudal land-holding patterns and social-property relations.<sup>26</sup> The Americas, the Atlantic and the Pacific remained firmly within the reach of the late-medieval law-governed cosmos of the *res publica Christiana*, including the papal-missionary mandate and the just-war doctrine against non-Christians. ‘The later antithesis of firm land and free sea, decisive for spatial ordering in international law from 1713–1939, was completely foreign to these divisional lines’.<sup>27</sup> All land and sea remained jurisprudentially ‘firm’. At least formally, the Vatican was still the central supra-territorial source of adjudication in

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<sup>25</sup> Schmitt, *Land and Sea*, Washington, DC 1997, p. 41; *Nomos of the Earth*, pp. 88–9.

<sup>26</sup> See Teschke, ‘Geopolitical Relations in the European Middle Ages: History and Theory’, *International Organization*, vol. 52, no. 2, 1998, pp. 325–58.

<sup>27</sup> Schmitt, *The Nomos of the Earth*, p. 89.

Catholic Europe. Against Schmitt's express purpose—the centrality of land-appropriations for the constitution of the law-governed European inter-state civilization—he himself shows that this line was much more crooked than Balakrishnan assumes.

The quantum leap to the *ius inter gentes* is not precipitated by the Salamanca School, but by Dutch and English secular jurisprudence, notably Grotius and Selden, in the Spanish–Dutch/English debate on *mare clausum* versus *mare liberum*. 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 seventeenth-century Anglo-French and Anglo-Spanish 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.<sup>28</sup> *Res nullius* is also *res omnium*—up for grabs by the strongest taker. Schmitt therefore locates the decisive break from medieval-Christian to early-modern practices of spatial ordering 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 re-definition from an integrated appendix of the Euro-centric ‘Old World’ to a distinct ‘New World’ to be re-appropriated and divided in a morally neutral agonal contest according to the law of the stronger.

### *Flaws of the Westphalian system*

Of the famous ‘Westphalian peace treaties’, Schmitt hardly says anything.<sup>29</sup> Absolutism for him referred to a state strong enough to

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<sup>28</sup> It should be understood that the arguments for *mare liberum* had nothing to do with free capitalist competition, as Schmitt obscured the distinction between ‘free’ and ‘open’ seas. The notion of ‘free sea’ simply referred to its non-law-governed status and implied permanent military rivalry over the control of trading and shipping routes, as states tried unilaterally to territorialize the seas, rather than declaring them multilaterally ‘open’. Free trade across ‘open seas’ had to wait until the 19th century.

<sup>29</sup> Three passing references can be found in Schmitt, *The Nomos of the Earth*, p. 145; ‘Raum und Großraum im Völkerrecht’ [1940], in Schmitt, *Staat, Großraum, Nomos*, p. 241; ‘Völkerrechtliche Großraumordnung mit Interventionsverbot für Raumfremde Mächte’, in *Staat, Großraum, Nomos*, p. 311. Throughout the course of *The Nomos*, Schmitt progressively shortens the duration of the *ius publicum*, describing it as lasting ‘for 400 years’, for ‘300 years’, and finally ‘for more than two centuries’. *The Nomos of the Earth*, pp. 49, 140, 181.

de-politicize and neutralize civil wars domestically. Its historical achievement was 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 *raison d'État*, whose overriding interest resided in the security of the state itself, the right to make war and peace. Since the Absolutist state was pre-representational or pre-parliamentarian, conceiving of itself as *legibus solutus*, it provided the ideal-type for Schmitt's theory of the 'modern state', encapsulated in its decisionist nature, 'absolved from law'. Correlatively, as the domestic sphere was rationalized, its international flipside led to the rationalization of inter-state conflict by means of a non-discriminatory concept of war. The rise of the *ius publicum* was premised on the concrete order of this state-centric spatio-political revolution.

I have already expressed my disagreement with this story. Balakrishnan is nevertheless right to suggest that casualty figures in early-modern wars do not by themselves discredit the category of bracketed warfare. That, however, was only one part of my argument. Since Schmitt articulates only a legal category, he is unable to decipher the social sources of the frequency, magnitude, intensity and duration of old-regime warfare, powered by the requirements of pre-capitalist geopolitical accumulation. Equally, military praxes render Schmitt's claim of its civilized, rationalized and humanized character implausible, given the non-compliance with the nominal conventions of war (*ius in bello*), the customs of recruitment, the lack of a distinction between combatants and non-combatants, and the problems of provisioning.<sup>30</sup> It remains to be clarified how the notion of 'limited war' can be squared with the standard historical argument that old-regime 'permanent-war states' succumbed to their military expenses, leading to fiscal crises, bankruptcies and state collapse. And I am still in search of an answer as to how Schmitt's generic legal anti-positivism can be reconciled with his celebration of the efficacy and civilizing mission of the *ius publicum europaeum*, while Absolutist states, according to Schmitt's own reasoning, were simultaneously 'absolved from law'—decisionist polities. The idea of non-discriminatory warfare regulated by the *ius publicum* remains a fiction, designed to promote the early-modern epoch as the paragon of civilized warfare against which the subsequent descent to the liberal era of 'total war' can only appear as a de-civilizing perversion.

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<sup>30</sup> Bernhard Kroener, 'The Modern State and Military Society in the Eighteenth Century', in Philippe Contamine, *War and Competition between States*, Oxford 2000, pp. 195–220.

Does Balakrishnan's tentative endorsement of Schmitt's protocols of land war and their alleged neutralization of the religious and civil wars stand up to historical scrutiny? Since early-modern states were not rationalized public apparatuses, but confessional dynastic-composite constructs claiming a sacralized form of sovereignty, public power was not de-theologized and neutralized. While the age of Absolutism did break with the trans-territorial theological absolutism of the Vatican, it simultaneously fragmented the unitary confessional papal claims and re-assembled them across the spectrum of a pluriverse of creedal mini-absolutisms, after 1555 and again after 1648. The Westphalian formula, *cuius regio, eius religio*, did not endorse religious toleration for private subjects, but sanctioned the right of regional rulers to determine and enforce 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 violent, directly politicized, century-long campaigns, culminating in 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, giving rise to mono-confessionalized, even sacralized states. Balakrishnan's acceptance of the Schmittian idea that 'the separation of sovereign power from the promotion of partisan religious causes' led to a 'rationalization-neutralization of public order' and, concomitantly, a religiously and morally neutered form of civilized war, remains within the Schmittian world. Schmitt's whole account of the 'Westphalian system' is deeply flawed, empirically and theoretically.

Balakrishnan concludes that my 'historical sociology replicates the exact form of Schmitt's fascist epic', 'underscoring the futility of [my] attempted demolition'.<sup>31</sup> Setting aside the distinction between theoretically informed explanation and quasi-mythical narration—which seems to play a subordinate role in Balakrishnan's view—this is not even minimally true on a straightforward empirical level. As sketched, my account of the rise, nature and fall of the continental system of Old Regimes—pre-modern, personalized, confessionalized, non-rationalized and constantly at war with each other—is diametrically opposed to Schmitt's. We do converge, however, in the specificity of England. But where Schmitt senses intuitively Britain's uniqueness, this is entirely reduced to geo-elemental categories.

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<sup>31</sup> Balakrishnan, 'Geopolitics of Separation', p. 11.

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.<sup>32</sup>

How was that possible? England ‘turned her collective existence seawards and centred it on the sea element’, turning into a big fish—a leviathan.<sup>33</sup> The problem with Schmitt’s ‘fascist epic’ is precisely that—it is fascist and it is an epic.

### *Reification of the geopolitical*

Schmitt concludes *The Nomos of the Earth*—in its English edition—by returning to his opening philosophical question: what is the *nomos*? The Greek etymological derivation of the meaning of the term produces a tripartite distinction: to take, to divide, to pasture—appropriation, distribution, production (cultivation). It is their interrelation that structures any concrete historical *nomos*. The question for Schmitt is how they should be ordered: ‘Their sequence and evaluation have followed changes in historical situations and world history as a whole’, but ‘all known and famous appropriations in history, all great conquests—wars and occupations, colonizations, migrations and discoveries—have evidenced the fundamental precedence of appropriation before distribution and production’, establishing radical title to land.<sup>34</sup> Appropriation, whether vertical or horizontal, is timeless and primary. This held, Schmitt qualifies, until the Industrial Revolution. Thereafter, liberalism and socialism attempted to reverse this sequence by assigning primacy to production. Liberalism claimed to transcend appropriation by the promise of the production of plenty, constructing a utopia of production and consumption cruelly deflated by world history. Socialism grounded re-distribution in a revolutionary act of re-appropriation: the expropriation of the appropriators at home and abroad.

Schmitt concludes that the horizontal relations of land-appropriations—geopolitics—precede the vertical relations of production and

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<sup>32</sup> Schmitt, *The Nomos of the Earth*, p. 173.

<sup>33</sup> Schmitt, *Land and Sea*, p. 28.

<sup>34</sup> Schmitt, *The Nomos of the Earth*, p. 327–8.

distribution—political economy. In close syntactical analogy to Marx and Engels's famous dictum that the history of all hitherto existing society is the history of class struggles, Schmitt argues 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'.<sup>35</sup> History is conceived as a lateral field of geopolitical appropriations, unreconciled to the vertical dynamics of surplus appropriation. Schmitt's international history is a deliberately anti-sociological project, seeking to validate the autonomy of political and geopolitical order over and against social conflicts and dislocations. Schmitt's mythologically essentialized ontology overwhelms his historicism and regresses into the reification of geopolitics as such.

In the end, Schmitt failed to answer his own research-organizing question: what processes drive land-appropriation—what establishes a *nomos*? The answer does not reside in a simple reversal of Schmitt's sequence of appropriation, distribution and production, but in a historical examination of the politically constituted and contested property relations that generate differential constellations of authority, sovereignty and geopolitics. If the concluding section of *The Nomos* reveals Schmitt's ulterior reference point and motivation, an anti-Marx for his times, then the future does not consist in a facile turning of the tables: an anti-Schmitt for our times. Rather, it forces us to meet the Schmittian challenge and to develop a theoretical programme that pursues a radical historicization and socialization of geopolitics—theoretically outside of, but empirically incorporating, that mega-abstraction of concrete-order-thinking: 'land-appropriation'.

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<sup>35</sup> Schmitt, *Land and Sea*, p. 5.