Abstract and Keywords

Carl Schmitt’s conceptual history of war is routinely invoked to comprehend the contemporary mutations in the concept and practice of war. This literature has passively relied on Schmitt’s interpretation of the nomos of the *Ius Publicum Europaeum*, which traced the transition from early modern ‘non-discriminatory war’ to the US–American promotion of discriminatory warfare as a new category in liberal international law. This chapter provides a critical reconstruction of Schmitt’s antiliberal narrative of war and argues that his polemical mode of concept formation led to a defective and, ultimately, ideological counterhistory of absolutist warfare, designed to denigrate liberalism’s wars as total while remaining silent on Nazi Germany’s de facto total wars. The historical critique is supplemented by an interrogation of his theoretical presuppositions: decisionism, the concept of the political, and concrete order thinking. It shows that Schmitt’s history of warfare is not only empirically defective but also theoretically unsecured by a succession of arbitrarily deployed and hyperabstract theoretical registers. At the center of Schmitt’s work yawns a huge lacuna: the absence of social relations as a category of analysis.

Keywords: *jus publicum europaeum*, nomos, absolutist warfare, nondiscriminatory war, discriminatory war, total war, decisionism, concept of the political, concrete-order-thinking

Introduction

The literature on Carl Schmitt has not yet generated an in-depth study of his conceptual history of war in the context of his geopolitics of international law. This is perhaps surprising given that war is, according to Schmitt, the ultimate expression of the friend–enemy binary and therefore the “leading presupposition” of his notion of the political ([1932] 1996, 34). The elision of this central Schmittian category in the wider Schmitt literature indicates a distinct political chronology in the Schmitt reception, which cleaves into an early phase, which revolves largely around the domestic aspects of Schmitt’s opus, and a more contemporary phase, which seeks to recover his international thought. While a voluminous and growing first wave of *Schmittiana* dominates the field, including studies on his conception of political theology (Meier 1998); constitutionalism and law (Dyzenhaus 1997, 1998, 2006; Scheuerman 1999; Koskenniemi 2001; Kennedy 2004); and liberalism, democracy, and the state (Holmes 1996; McCormick 1997; Kalyvas 2008) and extending to his collusion with National Socialism (Rüthers 1990; Blasius 2001), antisemitism (Gross 2007), intellectual reception in postwar Germany and Europe (van Laak 2002; Müller 2003), and possibilities of his Left appropriation (Mouffe 1999, 2005; Balakrishnan 2000; Hardt and Negri 2000; Buck-Morss 2008), Schmitt’s texts on war received in this body of writing very little explicit attention.1

International Legal Struggle over the Monroe Doctrine ([1939] 2011c).

These translations, partly prompted by the George W. Bush Doctrine and his War on Terror, have thrown Schmitt’s actuality into sharp relief. They occasioned a second wave of Schmittiana—centering either on Schmitt’s influence, mediated via Leo Strauss, on neoconservative ideology (Norton 2005; Drolet 2011); or on Schmitt as a critic of liberal imperialism and the US-led perversion of an alleged classical legal category of public war among sovereign states (Rasch 2004; Stirk 2005; Scheuerman 2006; Odysseos and Petito 2007; Hooker 2009; Slomp 2009; Legg 2011; de Benoist 2013). Here, Schmitt is validated as the prescient diagnostic of a trend line that began with the dissolution of a territorially defined *jus publicum europaeum* around the turn of the century, the rise of a legal liberal universalism during the interwar period, and the invention of the discriminatory concept of war; was codified in the Treaty of Versailles and the League of Nations; and ended in the grotesqueries of US-American pan-interventionism after 9/11. Schmitt’s Weimar writings on the turn to discriminatory warfare have been mobilized to understand the conceptual genealogies of the contemporary neologisms of roges states, liberal interventionism, irregular warfare, geographies of extralegality, unlawful combatants, asymmetric warfare, and the political justice of the War Crime Tribunals in The Hague and elsewhere. However, the contemporary Schmitt literature, particularly in the discipline of international relations (IR), has rather uncritically accepted and passively relied on the historical plausibility and conceptual coherence of Schmitt’s wider historical narrative. This was best set out in *The Nomos of the Earth*, which traced changes in the category of war from the Middle Ages to the Cold War. This history of international law is often adduced to lend historical depth and intellectual legitimacy to Schmitt’s more conjunctural interventions into interwar international politics. In fact, one prominent and discerning Schmitt scholar, while qualifying some aspects of Schmitt’s history, suggests that “what Schmitt claims for this period has been corroborated by historians of international relations” (Scheuerman 2004, 538). Others claim that “the *Nomos* is widely regarded as the masterpiece of Schmitt’s intellectual production and offers perhaps the most compelling history of the development of international law from the ashes of the Middle Ages to the beginning of the Cold War” (Odysseos and Petito 2007, 1). And most recently, a serious study concurs that “the great breadth and erudition of what is, in a self-evident sense, Schmitt’s *magnum opus* appears destined to guarantee a place for *Nomos of the Earth* in the canon of essential IR reading” (Hooker 2009, 3). Much of the neo-Schmittian revival takes Schmitt’s antiblilotering historical counternarrative at face value, applying Schmittian categories of analysis to contemporary affairs without having sufficiently interrogated their intellectual provenances and plausibility. In the process, the reproduction of the tired jargon of the Westphalian state system is performed by the invocation and assimilation of Schmitt’s depiction of the *jus publicum europaeum* to IR’s most cherished master category: *Westphalia Redivivus*. One myth is chasing another.

This chapter, in contrast, explores the historical veracity of Schmitt’s conceptual history of the category of war in the context of the permutations of international public law from the late Middle Ages to the early Cold War. It examines furthermore whether this history is secured by the theoretical shifts that accompanied his thought on the subject during the Weimar and Nazi periods. For if Schmitt’s theoretically informed historical counternarrative is to a large degree flawed, representing more of an ideological construction than a reliable and verifiable grand narrative, then much of the neo-Schmittian literature’s celebration of Schmitt’s prophetic genius across the social sciences—from the Left to the Right—requires reconsideration.

Reading Schmitt

Carl Schmitt’s thought on war and political violence developed across three distinct stages, each positioning his evolving conceptions of war in response to concrete world-historical conjunctures and each grounding these conceptual readjustments and realignments in more fundamental theoretical shifts. His defense of the classical legal concept of war in his revisionist interwar writings against the Versailles turn toward a discriminatory concept of war, reliant on the retrieval of just war considerations, was tied to his conception of executive sovereignty. This was theoretically secured by decisionism and his concept of the political. By the mid-30s, this gave way to a fascist concept of territorial *Landnahme* (land capture)—brute acts of seizure and occupation that repartition the world—in which war was reconceived transhistorically as a legality-constituting uract of legitimacy, establishing through a series of Raumrevolutionen (spatial revolutions) new interstate nomoi. These unities of space, law, and political order were forged by wars of conquest, establishing radical titles to land. This move was theoretically anchored in Schmitt’s turn away from decisionism toward concrete-order thinking as a new type of juristic thought. In the post-WWII period, this was to be followed by examinations of the figure of the partisan as the last authentic and...
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legitimate political bearer of physical violence in a largely depoliticized and spaceless world, grounded, if more casually, in a return to the concept of the political.

Schmitt’s writings on war form interventions into and adaptations to specific geopolitical constellations but remain unified in the continuity of a deep underlying leitmotif: the quest for the autonomy of the political, which informed his views on the polemical nature of concept formation.

All political concepts, images, and terms have a polemical meaning. They are focused on a specific conflict and are bound to a concrete situation; the result (which manifests itself in war or revolution) is a friend–enemy grouping, and they turn into empty and ghostlike abstractions when this situation disappears. Words such as state, republic, society, class, as well as sovereignty, constitutional state, absolutism, dictatorship, economic planning, neutral or total state, and so on, are incomprehensible if one does not know exactly who is to be affected, combated, refuted, or negated by such a term (1932) 1996, 30–31).

Schmitt’s polemical (i.e., combative) approach to concept formation, most clearly exemplified in his rejection of the self-professed and seemingly value-neutral and depoliticized rendition of the political and legal terminology of American imperialism, is decisive for understanding his hyperpoliticized mode of knowledge production. It was conceived as an explicit program to forge a countervocabulary and counternarrative against the faux semantic neutralizations of liberal universalism. For Schmitt, political science and jurisprudence are subject to and in the service of his definition of the political—the public friend–enemy distinction—that demands an existential act of decision, politically and intellectually. “It is one of the most important phenomena in the entire legal and intellectual life of humanity that whoever has real power is also able to appropriate and determine concepts and words. Caesar dominus est supra grammaticam: the emperor is ruler over grammar as well” (1933) 2011a, 44). Schmitt’s method of concept-formation is consequently not simply devised as an analytic to capture the history of thought, but deliberately designed to fabricate counter-concepts in the political and conceptual battles for intellectual hegemony (Pankakoski 2010). In this sense, Schmitt’s method has to be turned against himself to reveal the political construction of an anti-liberal history of the evolution of the concept of war in international law.

Political combat blends into conceptual combat. In this sense, partisan intellectual commitment is intrinsic to the intensification of collective differences and identities—the essence of the political—whose ultimate resolution escalates to the level of war and physical killing. War defines the very possibility of a political community and constitutes the highest expression of the political. (1932) 1996, 32–35) Tertium non datur! Schmitt’s intransigence (Anderson 2005) reflects a personal temperamental disposition and a deep existentialist concern for the question of German independence and, after defeat, the figure of the partisan—the vanishing point of the political. This generated Schmitt’s acute fixation on the defense of the autonomy of the political, domestically and internationally, encapsulated in Germany’s self-determined decision and capacity to conduct war.

This chapter suggests that the mutations in Schmitt’s concept of war can be productively read against the temporal exigencies of this polemical epistemological background. His reflections on the subject cannot be dissociated from his deeper theoretical presuppositions and his ideologically motivated attempt to retrace and redefine the evolution of the concept of war within a revised history of international law and order for specific political purposes. But here a specific problem arises. Any objections to Schmitt, which are themselves primarily politically driven, run the danger of confirming Schmitt’s basic insight that no intellectual agreement can be reached by following the liberal protocols of removing “extraneous” political commitments from sober “scientific” debate—into the light of the suasive force of the better argument and its suprapolitical chimera of dispassionate objectivity and value neutrality. Max Weber’s irrational demons (i.e., those ultimate value convictions) loom too large. Avoiding this Schmittian trap—reading any critique as an a priori validation of his basic epistemological presuppositions, or the idea of ultimately irreconcilable intellectual combat grounded in existential differences—requires therefore the deployment of the method of immanent critique: (1) assembling and reconstructing Schmitt’s premises and concepts from within, or internal according to their own self-deﬁnitions and declared purpose; (2) developing and exposing the internal limits and contradictions of these premises and concepts according to their own logic, forcing the concepts to a crisis; (3) and interrogating and registering the distance between explananda and explanantia (the match or mismatch between the method of explanation and the object of inquiry) until both capsize. This method of immanent critique will be supplemented by an external standard of critique (i.e., using the accumulated state of historical scholarship), some of which is available to Schmitt at the time—to ascertain the plausibility of his conceptual history of war within the framework of his history of international law and order.
The Schmittian project will therefore be assessed in the light of three questions. First, what is the explanatory power of his triple core theoretical axiomatics to capture the history of sovereignty, war, geopolitics and international law? We take these axiomatics to include decisionism, the concept of the political, and concrete-order thinking, reflected in their substantive analogues: sovereignty defined in terms of the declaration of the state of emergency; the agonal friend–enemy binary; and the notion of the nomos as a unity of law, space, and order established by acts of land grabs.— Second, how credible is his history of international law and order when checked against the current record of historical, juridical, economic, diplomatic, and sociological scholarship? And third, what are the contextual conditions that shape Schmitt's ideologically supercharged view of concept formation as political combat, and what are its intellectual liabilities?

In answer, I argue that the conjunction of immanent critique, external critique (i.e., exposure to historical counter-evidence), and ideology critique reveals that Schmitt's triple axiomatics are too restrictive to grasp the phenomena under investigation and too opportunistically deployed to provide for consistency and coherence. This opens up a gap between explanatory premises and historical narrative. Schmitt's theoretical architecture cannot sustain the explanatory burden of the task at hand. It therefore leads to a specious, selective, and defective history of war, geopolitics and international law. This failure is ultimately grounded in Schmitt's consistent suppression of social relations as a relevant category of analysis, which the ultrapolitict cast of his premises systematically elided. This disabled any attempt to relate transformations in modes of warfare, geopolitics, and law to transformations and crises in lived social relations. As a result, the abstraction of power from domestic and international social contexts and its elevation to the neuralgic center of Schmitt's thought leads ultimately to the reification and fetishization of the political and the geopolitical. More specifically, decisionism and the definition of sovereignty in terms of the declaration of the exception exclude the agency of social forces meant to be excepted from the normal rule of law, rendering decisionism a desocialized, depoliticized, and one-sided concept outside any sociopolitical context. The notion of the political externalizes any specification as to what activates the intensification of differences to a condition of potential killing, rendering the notion formalistic, abstract, and empty. Concrete-order thinking identifies the concrete with the factual rather than with the analysis of the confluence of multiple determinations, and it removes any explanation of the question of what drives land captures (i.e., what causes war?) from its explanatory remit. It thereby regressed into a descriptive affirmation of occupation tel quel as a pristine and metaphysical act of legitimacy.

The remainder is organized as follows. I start by providing an outline of Schmitt's wider narrative of the history of war and its relationship to geopolitics and international law. I then explore and critique the theoretical presuppositions Schmitt put in place to secure this distorted narrative. The chapter then delves more deeply into this problematic narrative by unpacking in detail the flaws in Schmitt's invented history of geopolitics both empirically and theoretically. I conclude by identifying the misreadings, contradictions, and omissions in his theoretically informed treatment of war from 1492 to the early Cold War.

**Schmitt's History of War**

Schmitt's thought on war is embedded in his history of international law and order, revolving around the centrality of the jus publicum europaeum—the body of maxims and praxes of early modern international law that prevailed, roughly, throughout the period from 1492/1648 to World War One—as a functioning system of legal norms (Schmitt [1950] 2003). Its achievement, according to Schmitt, resided in its ability to regulate the excesses of interstate anarchy in a geopolitical pluriverse without erasing the essence of sovereign statehood: the public and sovereign decision to conduct war. The jus publicum—a unity of space and law termed by Schmitt a nomos, in contradistinction to the medieval and liberal-capitalist cosmos—revolved around five core categories: the state, as the only legitimate subject of war and peace; secularized and absolute state sovereignty; the executive, as the final locus of reason of state and the arbiter over the state of exception; the idea of justus hostis (just enemy), the just enemy; and the associated concept of nondiscriminatory war.

What distinguished the early modern international legal and political order was that the monopolization of warfare by states—jus beli ac pacus: the rights to war and peace—removed violent conflict from the ideological struggles of civil society and recentered organized violence at the level of the state. Absolutism for him referred to a state strong enough to depoliticize 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, codified in the exclusive right to make war and peace. This arrogation of the monopoly of violence by absolutist states formalized therefore a double distinction: first, that between public and private, delegitimitizing and demilitarizing private actors (lords, cities, estates, pirates, military orders) while elevating the public state as the only subject of international law and politics; and second, between inside and outside, separating a domestically neutralized and pacified civil society from an international sphere of interstate rivalries.

This dualism fortified the distinction between public international law and private criminal law. Since the absolutist state was prerepresentational or preparliamentarian, 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 interstate conflict by means of a nondiscriminatory concept of war. The rise of the jus publicum was premised on the concrete order of this state-centric spatio-political revolution (Schmitt [1950] 2003, 126).

While war remained an indispensable and irreducible manifestation of concrete political communities—indeed, the essence of the political—it was the crowning achievement of early modern public law to have channeled generalized collective violence (i.e., an ongoing European civil war) into a “war in form” (Schmitt [1950] 2003, 141), conducted exclusively among legally recognized states according to certain rules and conventions. This move entailed, according to Schmitt, a clear distinction between belligerents and neutrals, combatants and noncombatants, states of war and states of peace. Schmitt referred to these achievements as the bracketing of war or a war in form, which he lauded as the civilization, rationalization, and humanization of war. Modern interstate warfare came to be conducted among equals, according to certain intersubjectively agreed and commonly binding legal conventions—a combination of the right to war (jus ad bellum) and rights in war (jus in bello)—which also implied the positive making of peace. The jus ad bellum came to be divorced from just cause (justa causa) considerations, which were declared immaterial for determining the legitimacy of war.

This gave rise to the notion of a nondiscriminatory concept of war (Schmitt [1950] 2003, 152), which superseded medieval just war doctrines. Thus, juridically externalized, the reasons for war declaration were placed outside any legal, moral, or political judgment, implying the retention of the status of the enemy, even during the fighting, as a just enemy rather than its demotion as a foe, criminal, or barbarian. Morality, in that sense, came to be divorced from politics proper. A destructive moral universalism, as expressed in the fifteen- and sixteenth-century wars of religion, was replaced by a salutary moral relativism in interstate relations. Accordingly, the jus publicum implied a decisive rupture with medieval just war theories, grounded in the moral universalism of the res publica christiana.

This new concept of war—at once public (i.e., restricted to interstate war), bracketed (i.e., circumscribed by rational rules of conduct), and nondiscriminatory (i.e., morally neutral)—contrasted sharply with the anterior medieval practice of violence. Within feudal Christian Europe, the arms-bearing status of the nobility and, in particular, the instrument of the feud, rendered all distinctions futile between the private and the public as well as between the domestic and the international. A feud was not a war, since it was regarded as an instrument for the execution of justice. Outside feudal Christian Europe, the enemy was categorically rendered as a barbarian, which included, by definition, the threat of his annihilation, exemplified in the Crusades. This shift from the medieval jus gentium (law of the peoples) to the jus inter gentes (law between peoples) established a historically unprecedented and exemplary nomos, capable of combining untrammelled state sovereignty with the anachronistic mitigating effects of international law.

This line of reasoning was powerfully invoked by Schmitt against the post-WWI criminalization of the German Reich as an outlaw nation, whose political status as a sovereign state was revoked by the Versailles Diktat ([1940] 1988; [1932] 1996). Since Germany was not admitted to the peace negotiations and war guilt and war crime were not juridical concepts in interstate relations (nullum crimen, nulla poena sine lege), their formulation and intrusion into international law after 1919 transformed public interstate law into an incipient world domestic law, which started to domesticate, remoralize, and juridify the interpolitical by introducing a new discriminatory concept of war ([1950] 2003, 259–299; [1937] 2011b). This reinscribed just war considerations into the definition of the legality of warfare. This move, according to Schmitt, castrated the essence of the political—the sovereign decision to go to war against an enemy. Versailles thereby abrogated the cornerstone of the classical jus publicum, undermining war’s status as the autonomous, purest, and highest form of interstate relations. It transformed war into a policing exercise and thus redomesticated it. Worse, the Wilsonian invocation of the concept of humanity reconnected
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post-Versailles conceptions of international law to medieval just war doctrines, which contained a tendency toward the total negation of the just enemy and its degradation to an enemy of mankind—a nonhuman ([1932] 1996).

Correlatively, it generated a new and distinct liberal way of war, more total in its aims than the bracketed and limited wars of pre-1914 Europe, since it aimed—next to the killing of nonhumans—at the direct transformation of politics, society, and subjectivities: the making of liberal subjects. For Schmitt, the Versailles Peace Treaties declared a status mixtus between war and peace—a continuation of war by other means.

The development of the discriminatory concept of war was for Schmitt closely tied to the historical trajectory of US foreign policy, shaped by the 1823 Monroe Doctrine toward the Western hemisphere, rendering the sovereignty of Latin American countries conditional on the domestic maintenance of private property and free trade; otherwise, US intervention beckoned. This precedent was inflated to universal proportions in the League of Nations’ redefinition of the category of war with its morally recharged discourse of law states versus outlaw states, good versus evil, humanity against terrorists, and the impossibility of neutrality. This was further entrenched in liberal humanitarian law, notably in the 1928 Kellogg-Briand Pact, which sought to outlaw wars of aggression. The invocation of a common humanity leads, paradoxically but logically, to the depoliticization of former just enemies (Schmitt [1950] 2003, 266), their criminalization as outlaws, even their dehumanization as foes and to the radicalization of warfare through its transformation into an annihilatory exercise of unqualified killing and the structural impossibility of concluding peace in the absence of a legal enemy—a war without end. Wilson’s “war to end all wars,” laconically derided by Schmitt as “the last war of humanity” ([1932] 1996, 70), is paradoxically total in purpose and unending in space and time.

According to Schmitt, the totalizing character of liberal war invariably includes the liberal transformation of targeted states, societies, and subjectivities. It is structurally incapable of leaving a defeated enemy state and its society intact or of readmitting it into the international community—a historical practice ideal typically exercised with post-Napoleonic France’s readmission into the Concert of Europe, agreed at the Vienna Congress—without its constitutional and social alignment with liberal norms. In this perspective, liberal war no longer deserves the appellation war but is repackaged in pacifist terminology and transformed into a series of policing actions, otherwise known as humanitarian intervention. This opened up the prospect of the return to the global civil wars of the pre-Westphalian period, even though American world unity had immeasurably expanded the efficacy of universal law in a cosmopolitan age, defined as a spaceless universalism driven by the ideology of pan-interventionism (Schmitt [1932] 1996; [1933] 2011a; [1939] 2011c; [1939] 2011d). These developments are inscribed in the long-term logic of the world-historical departure from Schmitt’s golden age of limited interstate wars, which then appears in retrospect as—and is accordingly elevated to the status of—the highest achievement of liberal universalism: the genius of European jurisprudence.

Schmitt’s critique of liberalism’s discriminatory and total category of war forced him to reconcile his definition of conventional war in the context of the rise of National Socialism and his personal complicity with Hitlerism, as he joined the National Socialist German Workers’ Party on May 1, 1933. While his Weimar writings against Versailles relied on the classical notion, as he saw it, of early modern sovereignty and nondiscriminatory warfare, portraying Germany as a revisionist and defensive power concerned to reestablish the status quo ante, this position became intellectually increasingly indefensible in the light of Adolf Hitler’s main foreign policy moves and the final descent into open warfare during the late 1930s. For while Schmitt’s early embrace of Nazism emphasized its anti-universalism as a defensive project, designed to protect ethnic differences and “German blood” on the customary grounds of national self-determination ([1934] 2005a, 391–423), he now had to justify and rationalize the offensive wars for German Lebensraum beyond the original geography of ethnic German settlement, which broke with all conceptions of just enmity and many conventions of jus in bello—brute wars of conquest, murder and plunder.

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The anti-universalist category of the Großraum came to form the fulcrum of the theoretical structure of Nazi international law, designed to revolutionize the international system. Schmitt was prescient enough and faithful to his own radical historicism not to harbor any nostalgic notions of a return to the classical interstate civilization, as he saw it. The age of (nation-)states and the post-Versailles Kleinstaaterei (mini-state proliferation) was irretrievably over. The future, he argued, belonged to a different type of political unit, for which the Monroe Doctrine provided the historical and legal precedent. Schmitt's normative agenda for a pluriverse of pan-regions was most clearly set out in his 1939 Order of Greater Spaces in International Law ([1939] 2011d), published before the signing of the Molotov–Ribbentrop Pact in August 1939. Schmitt lambasted the legal double standards entertained by the United States at Versailles: simultaneously advocating the notions of national self-determination and nonintervention, conditional upon the acceptance of democracy and capitalism, while declaring the western hemisphere—South and Central America and the Pacific—an exclusive American zone. The western hemisphere was hors de la loi, that is, outside the league framework and outside any intervention by European powers. Inversely, this American greater space would serve as the foil for Schmitt's notion of a German Großraum—a self-contained and autarchic German security zone, immune and off-limits to any intervention by raumfremde (alien) powers. For the Monroe Doctrine not only had prohibited interference by European powers in American affairs but also had articulated a legal concept of American intervention and limited sovereignty for other states within the Western hemisphere. Against the threat of an American spaceless universalism, Schmitt developed during his fascist period the notion of a Großraum as the elementary building block for an anticosmopolitan, anti-universal organization of the international order based on a plurality of coexisting Großräume, each one under the leadership of one imperial nation. Pan-regions are meant to provide guarantees against the homogenization of the world into a liberal flatland—essential for the maintenance of difference and pluralism, indeed, essential for the very possibility of the political, the friend–enemy distinction, encased in mutually exclusive regional blocs.

Since Germany, in contrast to the United States, had first to carve out its greater space, Schmitt returned to the question of how the preliberal European legal order—the jus publicum europaeum—was itself established, identifying 1492—the discovery of the New World—as the last great spatial revolution of world-historical proportions, premised on a simple but effective act of seizure and occupation (Schmitt [1958] 2003). Schmitt conjoined Nazi expansionism with the history of war as a law antecedent act of legitimacy, which refounds territorial and legal international orders. Wars of conquest, wars of aggression, and acts of land capture precede any legal order, forming their material-terrestrial basis and establishing radical title to land. World history itself ([1942/1954] 1997) is now reconceived as a series of wars between land and sea powers, allowing Schmitt to insert the German quest for Lebensraum in a transhistorical continuum from which there is no liberal escape. War is therefore reinstated as a quintessentially political and not a juridical concept. War precedes law.

Political Decisionism

This account was theoretically framed by Schmitt through three distinct, chronologically successive, but substantially partly overlapping theoretical perspectives: his conception of sovereignty derived from political theology and decisionism; his concept of the political defined as the agonal friend–enemy binary; and his concrete-order thinking, understood as a more sociological perspective on the constitution of a nomos as a unity of space, power, and law (i.e., an international order). The exposition of these theoretical perspectives will be followed by their immanent critique to specify their explanatory limits and to ascertain whether this triple theoretical architecture can carry the burden of the narrative above.

In his 1922 Political Theology, which reconceived the state of law and sovereignty from the angle of the exception, Schmitt programatically announces that “sovereign is he who decides on the emergency situation” (1985b, 5). Not Max Weber's classical definition of sovereignty as the legitimate monopoly over the means of violence but the monopoly of the decision moves center stage. Schmitt develops this key thesis in his attempt to defend and strengthen Article 48 of the Weimar Constitution—executive government by emergency decrees—against legal positivism. This theme cuts across Schmitt's major writings from his Weimar period: Dictatorship ([1921] 2010); The Crisis of Parliamentary Democracy (1923); The Concept of the Political (1927); Constitutional Law (1928); The Guardian of the Constitution (1931); and Legality and Legitimacy (1932). Since legal norms could function only in normal situations, legal positivism was liable to a depersonalized, apolitical, and ahistorical blindness. Sovereignty, according to Schmitt, is not invested in the state as an impersonal and objective legal subject, an aggregate of rules and statutes, but intermittently crystallizes if and when political crises and social
disorder—liminal situations—escape constitutional norms. Such constitutional crises require an extralegal and eminently political executive decision by a single authority for the reassertion of order, grounded in the state's inalienable right to self-preservation. Moments of indeterminacy and indecision in the objective legal order require rapid and firm, discretionary if not arbitrary, fact-setting acts of subjective decision: *Autoritas, non veritas facit legem*. Decisionism captures the idea that sovereignty resides ultimately in that power that can declare and enforce the state of exception, suspending the constitution in an emergency. Its declaration cannot be derived from extant legal norms and standard procedures of decision-making. The gap between legal norm and decision inserts an indeterminacy that can be closed only by an interpretation of the sovereign. The sovereign decision is a self-referential, self-empowering and unmediated act of authority—singular, absolute, and final. Jurisprudentially, it appears ex nihilo. This discretionary element of political surplus value reestablishes the primacy of politics over the rule of law. Legality does not exhaust legitimacy.

Concept of the Political

Decisionism was complemented in 1927 by Schmitt's concept of the political ([1932] 1996). It was formally defined in terms of an intensification of latent antagonisms escalating to the friend–enemy distinction, which demands at some unspecified point a political decision on the identification of the internal and external enemy to forge a decisive political unit and maintain existential collective autonomy. The decision activates the differentiation between inside and outside and, within the inside, what must be externalized and excluded. This precipitated a redefinition of the meaning of democracy. For Schmitt, “democracy requires therefore, first homogeneity and second—if the need arises—elimination or eradication of heterogeneity” rather than the “perennial discussions” of parliamentary democracy, grounded in liberal pluralism ([1923] 1985b, 9). This instantiated the consolidation of an otherwise intensely fragmented industrial and mass-democratic society into a socially homogeneous political community—and, ultimately, an ethnically defined (artgerecht) *demos*—through the joint first principles of autonomous executive sovereignty: external war and internal repression.

The politics of the exception transmuted into the politics of fear as a socially integrative device. By appealing to the *prima ratio* of self-preservation, the overriding threats to security and independence demote and flatten all domestic differences and generate the required unity and unanimity. Democracy, according to Schmitt, is thus redefined in identitarian terms as the direct representation of a unified people (Volks) by the political leadership. This may be mediated by irregular acts of spontaneous acclamation or plebiscitary elements, intermittently renewing the bond between leader and led—the national myth of direct democracy. Schmitt systematically deconstructs the bourgeois state of law in favor of the total state to resolve the crisis of the Weimar Republic.

Concrete-Order Thinking

After his ostracizing from power in 1936, Schmitt resumed his academic work and produced three major texts: *The Order of Greater Spaces in International Law; Land and Sea;* and *The Nomos of the Earth*, written 1943–45 but published in 1950; as well as the edited 1940 volume, *Positions and Concepts*, collecting the essays written in his struggle against Weimar, Geneva, and Versailles. This turn toward international law and international history was premised on a paradigmatic move away from political decisionism, which criticized legal normativism from above, to concrete-order thinking, which attacked legal normativism and decisionism from below. This was first announced in 1934 in a somewhat obscure but theoretically important book, *On the Three Types of Juristic Thought* (2004). Schmitt first deployed this new type of juristic thought 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 formalization of law, upheld and encased in different nationally homogeneous legal cultures. As Schmitt's preoccupations moved from constitutional to international law during the mid-30s, he realized that political decisionism was insufficient to capture the politics and geopolitics of land appropriations and spatial revolutions, which he now privileged as foundational and constitutive acts of world ordering to rewrite the history of international law as an antiliberal and antinormative tract. This revealed another weakness in normativism, for which the original formation of statehood—indeed, the very presence of sociopolitical normacy—appeared as an extralegal and nonjurisprudential problem. Neither normativism nor decisionism had an answer to the question: what foundational uract of legitimacy precedes acts of legality? What constitutes territorial order? Any answer had to revise constitutional law in the direction of a sociologically and politically expanded notion of jurisprudence as a new type of juristic thought, which Schmitt referred to as concrete-order thinking. Here, the term *nomos*, in contradistinction to an undifferentiated universal
cosmos, was designed to fill this deficiency in conventional jurisprudence: “nomos is precisely the full immediacy of a legal power not mediated by laws; it is a constitutive historical event—an act of legitimacy, whereby the legality of a mere law is first made meaningful” ([1950] 2003, 73). This conception of a law-antecedent act of legitimacy came to inform Schmitt’s interpretation of the history of international law—from the Discoveries to the Großraum—for it put the question of the origins of spatial and legal order as the focus.

What is concrete-order thinking as a sociologically enhanced jurisprudence in international law? Schmitt exemplified his paradigmatic turn most clearly in The Nomos. It is premised on a single overarching thesis, stating that all legal orders are concrete, territorial orders, founded by an original, constitutive act of land capture. This establishes a primary and radical title to land: a nomos, a unity of space, power, and law. Acts of land appropriation and distribution, their partition and classification, form the material matrix that constitutes a nomos. Schmitt derives the term—in contradistinction to law as statute (Gesetz)—from the Greek verb nemein, meaning the tripartite act of appropriating, dividing, and pasturing. “Nomos is the immediate form in which the political and social order of a people becomes spatially visible—the initial measure and division of pasture-land, i.e. the land appropriation as well as the concrete order contained in it and following from it” ([1950] 2003. 70). Nomos connotes the situative unity of a spatial order (Ordnung), and the position or orientation (Ortung) of any community, creating a unity of space and law. Against the prevailing aspatial, ahistorical, and depoliticized legal positivism—which conceived of domestic and international law as an abstract web of norms, tied together in a seamless hierarchy, ultimately derived from the Grundnorm of the constitution to which even the state is subjected—Schmitt explicitly opts for this brute act of seizure and occupation to argue for the metalegical origins of any international order that grounds its law in a material-terrestrial reality. Legal orders have spatial and martial origins. Might generates right.

Schmitt conjoined concrete-order thinking to his critique of the post-Versailles order and the Monroe Doctrine, in setting out the intellectual terrain for his geopolitical vision of a new greater territorial order. This was encapsulated in his notion of Großraum, which argued for the coexistence of several pan-regions, one of which included Central and Eastern Europe, under Germany’s imperial hegemony. The turn to the category of the nomos had a dual function. First it offered a revisionist history of international law and order, as revolving around a series of land grabs and spatial revolutions, which also served to heap up intellectual resources and arguments to legitimize Hitler’s Raumrevolution and Großraumpolitik. Second, it detonated all the pieties of the League of Nations, as Nazi German expansion was now inscribed within the transhistorical recurrence of primeval nomos-constituting acts of conquest and land appropriations. History is rewritten in the light of Schmitt’s (geo-)politics, and this historical revisionism justifies German imperialism.

Schmitt’s Theoretical Presuppositions: A Critique

To which degree can Schmitt’s theoretical perspectives (i.e., decisionism, concept of the political, concrete-order thinking) and his key concepts (i.e., sovereignty as exception, friend–enemy, nomos, and pan-region) function as generic analytics, able to theoretically secure the rewriting of the history of statehood, war, and international law? Clearly, the central axis of Schmitt’s intellectual project revolves around the insufficiencies of legal positivism in answering the question of the state and war in historical perspective. He formulated this critique, prior to 1934, from the vantage point of political decisionism and thereafter from the angle of concrete-order thinking, as a new type of juristic thought—the two methods that frame the aforementioned categories.

Analytically, Schmitt’s notion of the extralegal decision that instantiates the politics of the exception—while jurisprudentially an important corrective to the depoliticized world of legal positivism—is little more than a passe-partout that can be applied to an indiscriminate range of polities, which under duress turn to emergency powers. The application of Schmittian concepts to the exception can only descriptively confirm, a posteriori, an already instituted state of affairs as a fait accompli. The explanation of the emergency is outside their remit; its critique cannot be formulated from within the Schmittian vocabulary. Why is that the case? Since Schmitt’s method—be it decisionism, the friend–enemy distinction, or concrete-order thinking—is bereft of any sociology of power, decisionism lacks the analytics to identify what constellation or balance of sociopolitical forces can activate, in what kind of situation, the politics of the exception and fear. For the declaration of the state of exception is never a nonrelational creation ex nihilo—a unique and self-referential event, equivalent to the miracle in theology. It remains bound to the social by an indispensable act of calculation, preceding its declaration, as to its chances of
implementation and daily public compliance or resistance by those upon whom it bears: the social relations of sovereignty.

The exception remains quintessentially inserted in a relation of power whose reference point remains the social. The decision alone is never decisive. Of the two sides of the exception—the power that invokes it and the power that is being excepted from the normal rule of law—Schmitt theorizes only the first. Social relations remain 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" ([1922] 1985a, 66). 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? Social forces do not enter Schmitt's definition of the extranormative declaration of the state of emergency, which remained analytically a suprasociological, extraconstitutional (as well as ideologically antisocial) device—a liminal concept—for the restoration of order by executive force.

Desocialized, Schmitt's conception of sovereignty also remains curiously depoliticized: he seeks to identify an Archimedean point not only outside society but also equally outside politics—superinsulated from any sociopolitical contestation—to neuter domestic politics altogether: ultrasovereignty. This extrapological vantage point is deliberately chosen—and here political theology and hyperauthoritarianism converge—to pinpoint that chimeraic location that restabilizes social processes from nowhere, ex nihilo, yet with overwhelming force: the apotheosis of the state. But this "place beyond" belongs to the sphere of theology proper. Here, at the latest, political theology—the conception of sovereignty modeled on absolutism and the papal *plentudo potestatis*—collapses into arbitrary state terror. Schmitt's restrainer, conceptualized as the force that "holds back," transmogrifies into the Antichrist ([1950] 2003, 59–62).

Schmitt's conception of sovereignty constitutes a normative prescription, designed specifically for a hyperauthoritarian solution to the intractable crisis of the Weimar state, and cannot function as a generic analytic for ubiquitous invocations of emergency powers. 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 instead was a politicized 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 nonrelational concept, outside society and even outside politics—alogous to the miracle in theology. Schmitt explicitly related his notion of the exception to political theology rather than a historical sociology of public law. His ultra narrow definition of the exception failed to develop a theoretical perspective on sovereignty that would enlarge its scope to incorporate the historicity of differential and contested 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 it leaves it suspended in midair. Schmitt constructed legal-political concepts against the crisis of the Weimar state rather than concepts of the crisis. Sovereignty as exception is singularly unable to incorporate the social forces that contest sovereignty and to gauge the different constellations and transformations between political authority and social relations as well as geopolitics and international law.

But this was the task set by *The Nomos of the Earth* and the turn toward concrete-order thinking in the mid-30s, generating a reinterpretation of history as a succession of spatial-legal nomoi that tied Schmitt's present to a seemingly remote and reconceived past. Schmitt's glorification of the classical age of the European interstate civilization—the *jus publicum europaeum*—served the purpose of depicting the Anglo-American conception of international law as degenerate and total, with Nazi Germany and Großraumpolitik as their rightful historical nemesis—in fact, the torch bearer of geopolitical pluralism. Between the two central axes that sustain Schmitt's ideas of sovereignty—the brute act of land appropriation and the extratemporal state of exception—his invocation of the *jus publicum* finds no systematic position. His approach to constitutional and international law receives its illumination from these two vantage points—above and below—but not from positivist law itself. Schmitt's reinterpretation, from his discussion of the discoveries of the New World through to the Großraum regional blocs, oscillates permanently between two mega abstractions: the literal acceptance of the *jus publicum*, endorsing a legal positivism and formalism that he otherwise violently contested; and the abstraction of spatial concretion, which was originally meant to provide an antidote to the former. Between these two reifications, any determinate social content and process disappears from view.
Concrete-order thinking fails to provide guidance on what processes drive the politics of land appropriation and world ordering. What causes war? This leads to an asociological and curiously nongeopolitical—in the sense of geopolitics as an intersubjective conflict—stance: the nature of sixteenth-century Spanish absolutism, the relations between the conquistadores and the Spanish Crown, and the interempire relations between the expanding European overseas empires remain unexamined. The concrete processes of land appropriation, distribution, and property relations in the Americas—the geopolitical clash with the natives as historical subjects—remain not only off-screen but by definition also outside any purely political or geopolitical notion of conquest as concretion. In this sense, concrete-order thinking remains blunt, since the concepts for specifying the dynamics of the social property and authority relations that drive overseas expansion are nowhere developed or deployed. Schmitt’s nonsociological account of the New World discoveries is compounded by the absence of an inquiry into the interpolitical nature of the encounter. The native Amerindians remain missing from his account of the regionally differentiated resolutions of land and property conflicts. They are not even acknowledged as passive bearers and victims of the incoming Spaniards and Portuguese but instead are nullified and written out of history. Schmitt conceives of the Americas as a desubjectified vacuum.

In the end, Schmitt provides no answer to his own question: what processes established the order of the jus publicum? The “concrete” is largely the factual. The descending journey from the concrete to its manifold inner determinations and the ascending return journey to the concrete as a concrete in thought, captured in its rich inner determinations, are never undertaken. The concrete—facticity—turns into an abstraction in Schmitt’s work. But this cannot really be surprising: concrete-order thinking remains, throughout Schmitt’s work, strictly extrasociological since the lateral dynamics of geopolitics and land appropriations remain abstracted from, and nonarticulated with, the vertical dynamics of social relations and surplus appropriation. In fact, it is self-consciously antisociological, in line with Schmitt’s generic Weltanschaung as a counterrevolutionary étatist thinker. This suppression and elimination of social relations was, of course, already prefigured in his concept of the political, which now informed his concept of the geopolitical. Both detach the political, or geopolitical, from the social—in fact, prioritize and valorize the political and geopolitical over and against the social. This renders both the jargon of the exception (the reformulated essence of sovereignty) and the jargon of the concrete (the reformulated essence of territorial orders) abstract, formalistic, and explanatorily empty.

The Invention of Schmitt’s Geopolitical History

Given the self-limitations of Schmitt’s theoretical architecture, to which degree is his history of sovereignty, war, and law still plausible? Is his history consistent with and carried by his triple theoretical axiomatics? And what is the ultimate ideological motive behind and fallout of Schmitt’s revision of the history of international law and order? This section argues that his historical narrative is flawed because the New World Discoveries did not precipitate, as Schmitt admits, the spatial revolution that drove the construction of the new nomos of the jus publicum.

Furthermore, it argues that Schmitt’s account of the absolutist state as an archetypical decisionist polity has long been historiographically discredited and suggests that his acceptance and glorification of the jus publicum as a binding system of international law is empirically untenable and inconsistent with his general critique of legal positivism and normativism. It further shows that the practice of early modern warfare was diametrically opposed to Schmitt’s definition of nondiscriminatory war as a rationalized, civilized, and humanized affair, subject to the laws of war, and that the attempt to hedge and regulate war was de facto the achievement of international humanitarian law forced by liberal-constitutional states from the late nineteenth century onward. It argues that Schmitt’s ascription of the category of total war to liberal states is historically problematic and conceptually misconstrued, as Schmitt deflected attention from Nazism’s self-declared total war as a new class of war on which he remained silent. It finally suggests that Schmitt had to abandon concrete-order thinking—without any admission—to theorize the derealitarianizing nature of American imperialism, adopting a political-economic theoretical register on loan from Marxist theories of informal imperialism. Inversely, he refused to theoretically ground Germany’s turn toward new wars of aggression and conquest in a political economy of German Lebensraum/Großraum, opting instead for a pure invocation of the friend–enemy distinction to rationalize Nazi expansionism. It concludes by proposing that these inconsistencies and theoretical failures are grounded in the systematic suppression of social relations as a category of analysis to fully comprehend the history of war, geopolitics, and international law, rendering his narrative empirically defective, theoretically flawed, and ultimately ideological.
Did the Conquest of the New World Establish the *Jus Publicum Europaeum*?

While the Wehrmacht marched toward Moscow and Stalingrad, Schmitt invoked in the early ’40s the Spanish discoveries of the Americas to exemplify his thesis that revolutions in the structure of international law follow spatial revolutions, which are themselves grounded in the fact-setting acts of land captures: wars of conquest (Schmitt [1940] 1995b, [1950] 2003). But as soon as this thesis was announced, it was descriptively immediately qualified and retracted by Schmitt himself in his much subtler historical analytics of the impact of the Discoveries on the demise of the medieval cosmos and the rise of the new interstate *nomos*. In fact, the latter history negates the former thesis.

Any closer reading of *The Nomos* shows not only that Schmitt was deeply ambivalent in his explanation of the European interstate system—vaccillating between the Conquista (1492), the rise of the absolutist state (1648), and English balancing (1713) as the formative moment—but also 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 interstate *nomos* that he generically associated with the enclosure processes overseas. This is most clearly expressed in his differentiation between the *rayas* (divisional lines) and the amity lines. The first repartition of the oceans after the Discoveries in the form of the *rayas* 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 and all the land east of it to Portugal (Schmitt [1950] 2003, 88–89; [1954/1942] 1997, 41). 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 (Teschke 1998). 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” (Schmitt [1950] 2003, 89). All land and sea remained jurisprudentially firm. At least formally, the Vatican was still the central supraterritorial source of adjudication in Catholic Europe. Against Schmitt’s express purpose—the centrality of land appropriations for the constitution of the law-governed European interstate civilization—he shows that this causal nexus does not hold.

The quantum leap to the *jus inter gentes* is precipitated not 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 challenged only by the Spanish–French Treaty of Cateau-Cambresis (1559) and the subsequent seventeenth-century Anglo-French and Anglo-Spanish treaties that fixed the amity lines, dividing the world into a civilized (i.e., law-governed) zone within these lines and an anarchic zone, a state of nature, “beyond the line” (Schmitt [1950] 2003, 94). This designated not only the land but also the sea beyond the line as free and lawless. *Res nullius* is also *res omnium*—up for grabs by the strongest taker. 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 nineteenth century. Irrespective of this misreading, he 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 redefinition from an integrated appendix of the Eurocentric Old World to a distinct New World to be reapropriated and divided in a morally neutral agonal contest according to the law of the stronger. Schmitt provides ample evidence—*rayas*, scholasticism, *res publica Christiana*—that rather than dissolving the old medieval and catholic *cosmos*, his purported spatial revolution of 1492 was jurisprudentially assimilated to prevailing discourses of Christian expansion and aligned to late-medieval customs of conditional territorialization.

The *Jus Publicum* and the Absolutist State: Decisionism or Social Collaboration?

Schmitt’s history of the rise and decline of the *jus europaeum* evinces another paradox. It consists in the
contradiction between Schmitt’s interpretation and idealization of the absolutist state as a decisionist polity (literally absolved from law; *legibus absolutus*), which gave free rein to rulers in imposing domestic law and order, and his simultaneous embrace of the *jus publicum* as a system of international laws and norms, which prescribed absolutism’s external (i.e., nondiscriminatory, civilized, and limited) wars and wider foreign affairs as law-abiding, rationalizing military conduct subject to the *jus belli ac pacis*. A logical problem is here compounded by a historical one. How, given Schmitt’s lifelong antipathy against legal positivism, could he suddenly embrace legality over political legitimacy? How could a system of mere norms tame the absolutist war machines of continental Europe? How could Schmitt assign executive sovereignty to omnipotent absolutist rulers while simultaneously celebrating a European-wide legal formalism that he otherwise castigated intellectually in his debates with Hans Kelsen? This pretense to legality by the Great Powers is characteristically un-Schmittian. Logically speaking, the legal groundlessness of the subjective decision should have operated in external relations as much as in internal affairs—a conclusion that Schmitt failed to draw but that is much closer to the historical record.

How does Schmitt’s account of absolutism and early modern warfare square with historical research? Schmitt defined absolutism as a fully rationalized, secularized, and morally neutralized public order. Assisted by its preparliamentarian constitutional nature, which exalted monarchical executive government, Old Regimes had successfully carried through the distinction between the domestic and the international, the public and the private, overcoming the religious and civil wars of the sixteenth century ([1926] 1995a; [1950] 2003, 140–151). But since Schmitt was unconcerned with the social relations of sovereignty and power, his interpretation of the classical period of European interstate civilization, abstracted from the clashing value claims and competing interests of civil society, turns out to be a historical fiction. Absolutist states, rather than institutionalizing a secularized notion of depersonalized sovereignty that neutralized domestic politics and rationalized interstate relations, remained personalized, sociopolitically highly contested, legitimized by divine authority, and embodied in the persons of their respective princes. And the multiplicity of these dynastic houses across Europe—and their interdynastic relations—patterned the intense geopolitical conflicts over land and people across the period of the *jus publicum*.

Why does a social interpretation of absolutism lead to this conclusion? And why is it more in sync with the contemporary literature, Marxist and non-Marxist alike, on absolutism that has dominated the historiographical debate since the 1980s (Beik 1985; Bonney 1995, 1999; Parker 1996; Ernman 1997; Gerstenberger [1990] 2007)?

Class relations had developed in France along a specific trajectory since the late Middle Ages (Brenner 1985). Here, social conflict over the distribution of peasant surplus had replaced by the seventeenth century the feudal rent regime between lords and peasants in favor of an absolutist tax regime. Peasant communities benefited from competition between the monarchy and local nobles for their surplus, gaining freedom in the process and establishing inheritable tenures that owed fixed dues that subsequently lost value with inflation: With the waning of the old feudal powers of lordly domination and extraction, the monarchy became the central institution that could force income from the peasantry through taxation. However, the relations of exploitation remained governed throughout the Ancien Régime (and even beyond) by political conflicts between the monarchy and the aristocracy over the terms and the distribution of the rights of appropriation, though now in the form of state-sanctioned privileges. Taxation became the key arena of domestic political conflict. The logic of political accumulation—the extortion of surplus from direct producers through extraeconomic coercion—continued to rest on personalized praxes of domination, revolving around the personalized sovereignty of the Crown: *L’État, c’est moi!* In the context of this social property regime, a formal separation between the political and the economic, the public and the private, state and civil society, could not be carried through.

Since the pressures for political accumulation persisted internally, the logic of geopolitical accumulation, that is, the predatory accumulation of territories and control over trade routes, characterized foreign policy as well. The normal way to expand the tax base was to acquire territory and control over its taxable population, driving a territorial-demographic (extensive) mode of taxation. But since absolutist sovereignty came to be personalized in the figure of the king, he also remained enmeshed in the Westphalian logic of dynastic unions through royal marriage policies and its wars of succession. Warfare was endemic. Territorial redistributions were a constant of early modern international relations.

The old sword-carrying aristocracy (*noblesse d’épée*), especially during and after the crisis of the seventeenth century, came to be increasingly domesticated, absorbed, and integrated into the tax/office state through office venality and other channels of privilege, while a new office nobility (*noblesse de robe*) was promoted by the Crown. These complex and ungovernable forms of interruling-class cooperation created over time a very unstable
and regionally differentiated modus vivendi between the privileged classes and the Crown, which William Beik (2005) refers to as social collaboration (2005). Its center became the court society at Versailles—a jamboree of patronage, clientilism, and nepotism. Feudalism, based on the regionally and locally autonomous powers of the militarized lordly class, was replaced by the institutionalization of aristocratic power in estates and other representative and corporate bodies, whose powers had to be continuously renegotiated in relation to the Crown. Autonomous lordly powers of domination were replaced by state-sanctioned privileges. Feudalism was dead, yet absolutism never materialized (at least not in its orthodox meaning). To remain financially afloat and to pacify the office nobility, French monarchs sold and auctioned off public offices in ever-greater numbers. Over time, venal offices were held in perpetuity and heredity and became thus a privatized source of income. The Crown thus lost control over its fiscal, financial, and juridical administration. It failed to establish a central bank or secure lines of credit and was also forced to borrow on short-term loans at high interest rates from a class of wealthy financiers, who were themselves often taxfarmers.

As a result, during every war, French kings were obliged to resort to the artificial creation and then the sale of more and more offices to raise money. They effectively mortgaged the extractive powers of the state to private financiers and tax farmers. This led to the Byzantine and hopelessly bloated nature of the French semiprivate—sempublic state apparatus. This ruled out any progress toward a modern, rationalized, and efficient bureaucracy that would administer a uniform and country-wide tax code (i.e., a public rule of law) or would establish a state-controlled standing army, staffed by salaried professional soldiers. At the same time, the peasantry had to carry ever-higher rates of taxation so that the agrarian economy—the tax base—remained mired in stagnation. While war thus increased the absolutist claims of French monarchs over their subjects, it simultaneously paralyzed their long-term financial and administrative capacity to rule.

Since early-modern states were not rationalized public apparatuses but were confessional dynastic-composite constructs claiming a sacralized form of sovereignty, public power was not de-theologized and neutralized (Gorski 2000). While the age of absolutism did break with the transterritorial theological absolutism of the Vatican, it simultaneously fragmented the unitary confessional papal claims and reassembled them across the spectrum of a pluriverse of creational mini-absolutisms, after 1555 and again after 1648. The Augsburgian 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 (1562–1598) 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 monocoфессионаlized, even sacralized states. Against this background, Schmitt’s rendition of absolutism as the embodiment of a decisionistic polity cannot be sustained.

Was Early-Modern War a Rational and Civilized Affair?

Correlatively, the praxis of Ancien Régime warfare contrasts sharply with Schmitt’s nondiscriminatory concept of war as a bracketed war in form: civilized; rationalized; limited; and humanized. While there is some evidence to suggest that the notion of Kabinettskriege attempted to rationalize the conduct of battle, the pairing of limited and total—more precisely, absolute—war, which Schmitt adopted from Clausewitz, is too coarse to capture the nature of early modern warfare. Clearly, Napoleonic and post-Napoleonic warfare marks a qualitative shift in the nature of military affairs, though this does not mean that prer evolutionary warfare can be generically referred to as bracketed or limited in Schmitt’s sense. His idealization of Ancien Régime warfare is compromised by the frequency, magnitude, duration, and intensity as well as the costs and casualties of early-modern conflicts. For example, at the end of the Seven Years’ War, casualty figures in the Prussian Army stood at 180,000 soldiers, which was the equivalent of two-thirds of its total size and one-ninth of the Prussian population (Anderson 1988). This was partly due to innovations in military technology, including the development of firearms, artillery, and new techniques like infantry volley fire, and partly to the existential threat of territorial dismemberment and repartition posed by defeat to dynastic Houses. While casualty figures in early-modern wars do not by themselves discredit the category of bracketed warfare, Schmitt’s purely legal category is unable to decipher the social sources of and real nature of Old Regime warfare, powered by the requirements of precapitalist geopolitical accumulation.
Military praxes render Schmitt’s claim of its civilized, rationalized, and humanized character implausible, given the noncompliance with the nominal conventions of war, the nondistinction between combatants and noncombatants, the customs of recruitment, and the problems of provisioning (Kroener 2000). The effects of war on civilian populations were devastating. Since war logistics were not properly developed and soldiers lacked permanent provisioning, early-modern armies lived off the land, either by looting and pillaging on foreign soil or by way of sequestration and ransom. Armies tended toransack civilian areas in an effort to feed themselves, causing plunder, rape, famines, and population displacement. Bellum se ipse alet (war feeds off itself) captures this predicament. The absence of a clear set of rules and powers of enforcement concerning the treatment of prisoners and noncombatants implied their ransom for money or other prisoners, if they were not killed outright. Forced conscription of civilians was a common practice. Any sociology of contemporary armies shows that, in spite of all the Weberian and Foucauldian emphasis on the increasingly rationalized, professionalized, and disciplined character of the new standing armies, soldiers were generally not salaried bureaucrats but were in pay of noble officers who had usually themselves bought their military commissions. Armies were not public armies but precisely the king’s armies yet were essentially beyond their disciplinary control (Kroener 2000, 205).

While most of these wars of succession and trade wars were largely redistributitional, in terms of land and control of trade routes, and thus were limited in their war aims, they were simultaneously total insofar as whole regions and kingdoms vanished (Polish Partitions). The notion of justus hostis (a just enemy) whose territory and order would remain intact after defeat was a legal fiction. This manifested itself by an imperial, if not totalizing, drive toward the infinite accumulation of land and booty, as evidenced in aggressive outward orientation—colonialism. Most of these wars of succession, from the Wars of the Spanish and Austrian Succession to the Seven Years’ War, were multilateral if not world wars. This would also qualify Schmitt’s thesis that the assignment of the lands and seas beyond the line—the externalization of the international state of nature from Europe—caused the civilization of intra-European warfare, as codified in the droit public de l’Europe.8

It is furthermore unclear how Schmitt’s argument on early modern limited war can be squared with the standard historical argument that Old Regime permanent war states or fiscal-military states succumbed to their military expenses, leading—with the important exception of capitalist Britain—to fiscal crises, bankruptcies, and state collapse (Skocpol 1979; Brewer 1988; Contamine 2000a; Glete 2002; Storrs 2009). Early modern intra-European wars were not occasional rule-governed contests—prettified by Schmitt as gentlemanly duels—narrowly circumscribing the external relations of states within an essentially stable interstate order but were a continuous, structural presence, deeply rooted in the nature of social relations that reached into and finally transformed their very sociological cores. Ancien régime polities were not only sociologically transformed under the pressure of military rivalries but also eventually were exhausted and destroyed by the combination of spiraling war expenditures, mounting public debts, fiscal crises, repressive rates of taxation, and social discontent, leading in the case of France to 1789. Wars eventually devoured their own masters—dynastic Houses. The idea of nondiscriminatory warfare regulated by the jus publicum is 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 appear only as a decivilizing perversion. Schmitt’s whole account of the Westphalian system is both empirically and theoretically deeply flawed.

Who Civilized War?

Throughout his narrative, Schmitt stresses that the delimiting of war, its escape from the confines of the jus publicum, was a result of the total wars perpetrated by liberal states, driven by a reversal to just war thinking, which turned former just enemies into mere foes, criminals, and outlaws. This unleashed the absolute moral judgments that characterized the new discriminatory concept of war after 1919. The limited and civilized wars of yore were replaced by the total wars of liberal states. Schmitt imputes throughout that absolutist states, rather than liberal states, articulated, codified and practiced the jus in bello. But any closer inspection suggests—and standard histories of international humanitarian law confirm (Roberts and Guelff 2000; Neff 2005, 159–214; Kalshoven and Zegveld 2011)—that the attempt to civilize and regulate the conduct of armed hostilities (to codify war as a legal institution) did not originate within the jus publicum europaeum but was the distinct achievement of primarily liberal-constitutional states in the context of the rise of legal positivism. This was enshrined in the growing body of multilateral treaty law throughout the second half of the nineteenth century: the 1856 Paris Declaration Respecting Maritime Law abolished privateering, a standard practice fully supported by early-modern states as they regularly
enlisted pirates as corsairs and privateers in the service of monarchies, blurring the distinction between public armed forces and private subjects, combatants, and noncombatants; the 1864 First Geneva Convention proscribed rules for the amelioration of the wounded and sick in armed forces in the field; the two Hague Conventions of 1899 and 1907, the two most substantial pre-WWI agreements on the laws of war, specified rules, among others, for the pacific settlement of disputes, the opening and closing of hostilities, the laws and customs of war on land, the rights and duties of neutral powers and persons in case of war, the status of enemy merchants ships, the laying of automatic submarine contact mines, the bombardment by naval forces, and the adaptation to maritime war of the principles of the Geneva Convention; the 1925 Geneva Protocol prohibited the use in war of asphyxiating, poisonous and other gases and of bacteriological methods of warfare; and the 1929 Geneva Convention pertained to the treatment of prisoners of war.

None of these multilateral and open-ended treaties outlawed wars per se and left therefore the sovereignty of liberal and illiberal states (the *jus ad bellum*) intact. Furthermore, the series of conventions and protocols that litter the second half of the nineteenth century constitute in their majority innovations rather than codifications of existing practices. Schmitt either consciously suppressed or simply failed to note the fact that all major multilateral treaties on the laws of war and international humanitarian law were suggested and enacted primarily by liberal-constitutional states. Inversely, his discussion of the laws of war during the early modern period relied primarily on the textual exegesis of moral philosophy, political theory, and scholastic thought, conducted without any attempt to pursue the question whether these deliberations—from the Salamanca School to Grotius and Vattel—were ever codified in international treaty law or abided to on the battleground. Pre-WWI “liberal” international law developed a nondiscriminatory concept of war brought into form by a positivistic *jus in bello*, governing armed hostilities. Schmitt’s attempt to identify a liberal concept of discriminatory war with just war, and both with total war, suppressed the admission that liberal states themselves sought to detotalize liberal war by hedging and bracketing the conduct of war.

**Total War, American Imperialism, Fascism**

This critique objects to only one aspect of Schmitt’s analysis of liberalism’s total wars—the assignment of the *jus in bello* to absolutism rather than to liberalism’s attempt to bring wars into form—and leaves his argument of liberal wars as polity and society-reshaping exercises untouched. But even here, Schmitt’s argument is misleading. While his Weimar writings targeted US imperialism, he reserved special venom in his fascist period for the British practice of total war, grounded in its maritime tradition of conducting naval warfare. Since Britain—amphibious and autothalassical in nature—was never fully integrated into the continental tradition of limited land warfare, it was the arch-representative of total war: “naval wars were based on the idea of the necessity of treating the enemy, trade and economy as one. Hence the enemy was no longer the opponent in arms alone, but every inhabitant of the enemy nation, and ultimately, every neutral country that had economic links with the enemy” ([1942/1954] 1997, 47). Maritime powers not only reformulated international law but also pioneered the praxis of total war and the category of the total enemy, including the nondistinction between combatants and civilians and the nondistinction between acts of war and acts short of war (blockades, capture of merchant men, economic sanctions). According to Schmitt, liberal wars were total, presupposing a total enemy as the total population became the target of war ([1938] 1994, [1943] 2005b).

But while Schmitt's legal dissection of Anglo-American imperialism, the Versailles Treaty, the League of Nations, and the new notion of discriminatory war was effective, it could not be reconciled with his method of concrete-order thinking. For the analysis of American imperialism was now shifted onto a much deeper sociological terrain that gave Schmitt a privileged insight into the structural transformations of international law and order at the start of the twentieth century. These revolved around the developing dualisms between international public law and transnational private law, a territorial interstate order and a subterritorial world economy, a public pluriverse and a private universalism, grounded in the separation between the political and the economic across the member states of the international system. Schmitt lays bare the structural correspondence between a transnationalizing capitalism and American postwar grand strategy ([1950] 2003, 235, 255). These structural complementarities inform Schmitt’s analysis of the American vacillation between isolationism and internationalism, encapsulated in the dialectic between political absence and economic presence, ethical pathos and economic calculation: informal empire.
The United States, after Versailles, was politically absent in Europe, both as a league member and as an occupying power, yet it was economically present by its inscription of free trade and its political precondition: the generalization of liberal constitutionalism, private property relations, the rights-bearing and free individual, and the rule of law into the League’s Covenant. This strategy, according to Neil Smith, presented a political project of global domination—the rationalization of global space driven by a nonterritorial capitalist imperialism for American economic Lebensraum (2004). This rested on the central insight that economic expansion could be decoupled from territorial aggrandizement, divorcing political geography from international accumulation. In this way, the flattening of differently organized political territories and their submission to common legal principles sanctioned a constitutive dualism between the proliferation of liberal-constitutional states and the expansion of a borderless private world market.

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

Second, Schmitt’s theoretical excursion into the field of international political economy forced him to change theoretical register—a volte-face not licensed by his method of concrete-order thinking. Where Schmitt excavates the roots of the new universal order, he is pressed into an analysis of the international political economy of American world order—falsifying his axiomatic statement that every international legal order is grounded in an original act of land appropriation. The predominantly nonterritorial nature of the US restructuration of the interwar European order provided a direct refutation of Schmitt’s axiomatic thesis of international orders based on land grabs: Germany, though trimmed in size and regime changed, like Austria-Hungary and the Ottoman Empire, was neither occupied nor annexed. Schmitt’s account of the dissolution of the *jus publicum*—suggesting a constitutive nexus between the space-canceling tendencies of transnational capital and the transition from the *jus publicum* to the age of international law—directly uninges the premise of his concrete-order thinking. This abrupt turn toward international political economy constitutes a theoretically uncontrolled move, not licensed by his own method. This forces him to deploy a Hegelian-Marxist figure of thought: the separation between the political and the economic, with its international analogue; the separation between a territorialized interstate system and a private, transnational world market (1950: 2003, 293–4). Simultaneously, this turn toward the separation argument cancels his central thesis that the *jus publicum* rested already on the differentiation between public statehood—with the institutionalization of the early-modern interstate system—and private civil society. Capitalism’s border-canceling tendency also cancels Schmitt’s core method and core thesis. As the novelty and distinctiveness of US world order is not rooted in a logic of territorialization—but in an attempt to promote informal empire—this negates and transcends Schmitt’s now curiously anachronistic notion of concrete-order thinking and his spatialized counterproject: a German Großraum.

Third, Schmitt had pressed too far the argument about the geopolitics-dissolving effects of capitalist expansion. For the period between 1880 and Versailles and beyond did not simply constitute a passage, however chaotic and disorderly, from the *jus publicum* to a universal international law or, alternatively, from interstate geopolitics to a space-canceling economic universalism. It rather experienced first the intense interimperial rivalries among the capitalist European empires and their associated reterritorializations of the world, before the settlement of WWI launched a supremely power-political project of the American state. This involved the territorial, military, political, and constitutional reconfiguration of Europe as an ongoing grand strategy of American power projection. The result was not a depoliticized liberal spaceless universalism but an attempt to reconstitute and align European political geography with American economic and security concerns, including the creation of the cordon sanitaire as a buffer zone against the Soviet Union. Schmitt overinterprets the space and geopolitics—dissolving impact of Anglo-American capitalism after Versailles and effectively embraces a transnational economism that out-Marx Marx. Schmitt failed to see the difference between a spaceless universalism—a universal liberal empire—and a US-supervised European interstate system. The combination of the League of Nations system and American grand strategy did not lead to an apolitical and deterritorialized spaceless universalism during the interwar period. Rather, it only reconstituted and aligned European political geography with American economic and security concerns.
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without erasing the interstataleness of the continent—as German Großraumpolitik itself was to demonstrate.

How was that possible? As Weimar Germany was already fully integrated into the world economy when GroßRaum thinking started to preoccupy Schmitt in the 1930s, he was forced into yet another theoretical volte-face. He turned away from international political economy and reembraced a spatial-legalistic register that capitalist imperialism, by his own reasoning, either had long dissolved or—but this could not feature in Schmitt’s theory—had regenerated through the general capitalist crisis of the 1929 Great Depression, sweeping fascism to power. But as the precepts of international political economy were reserved by Schmitt to Anglo-American imperialism and never applied to German imperialism, his legal-political argument about the desirability of a universalism-blocking concept of German GroßRaum remained strictly beyond the confines of the analysis of capitalism. Although Schmitt gestured inconclusively toward the transcendence of the classical concept of the territorial state driven by the economic imperatives of a GroßRaumwirtschaft (economic greater space) as a sphere of economic performance (Leistungsraum) ([1939] 2011d); he was theoretically unable to ground the turn toward German continental autarchy in a series of successive German strategic policy choices within the wider context of the post-1929 crisis of the world economy (O’Pit 1977). Consequently, the legal concept of the GroßRaum had to be de-economized and anchored in a reassertion of the political in the abstract, the friend–enemy distinction, arising like a deus ex machina from an identitarian notion of völkisch democracy.8

But this raises the final question of why Schmitt, as a trained constitutional and international jurist, never sought, two short diatribes apart ([1940] 1995b; [1937] 1999), to categorize and place the specific form of Nazi warfare within his legal and political history of warfare. Total war as a distinct class of warfare—normally defined as the complete mobilization of society and economy for the war effort, the nonseparation between civilians and combatants, the nondistinction between military and civilian targets and the partial suspension of the laws of war, possibly involving the complete annihilation of the enemy—was the express purpose of the Nazi regime, officially since 1943 as the latest. While Goebbels gave his infamous 1943 Sportpalast Speech, declaring total war, Schmitt ruminated on the Spanish Conquista.10 Given that Schmitt himself drew a line from French revolutionary warfare via General Ludendorff’s 1935 World War I memoir Der Totale Krieg to WWII, why did he not define total war—perhaps in the calmer waters of the 1950s German Federal Republic when The Nomos of the Earth was eventually published—as the ultimate perversion of any achievements, absolutist or liberal, in the evolution of international humanitarian law? It is surely a moral monstrosity and intellectual obscenity to wrongly ascribe limited warfare to absolutism and casting liberal warfare as total, while Nazi Germany conducted a total war and wars of extermination, systematically ignoring the most minimal conventions of war, pursuing scorched earth tactics, and perpetrating state terror and mass killing on an industrial scale. What is Schmitt’s legal and political concept of war in German total warfare? Since it is now compared to the Conquista—however cryptically—it appears as a prejuridical act without any justa causa and without any laws of war, not even a papal mandate.

And what is Schmitt’s concept of the German enemy? If it is no longer justus hostis, then it must have been a new type of foe—not even the alleged liberal criminal and nonhuman but a total enemy and more likely the subhuman. While the Nazi conception of the enemy was racialized, demoted, and perverted to the status of a subhuman (at least on the Eastern Front), Schmitt felt obliged to denounce Anglo-American war as total: “there is an Anglo-Saxon concept of enemy, which in essence rejects the differentiation between combatants and non-combatants, and an Anglo-Saxon conception of war that incorporates the so-called economic war. In short, the fundamental concepts and norms of this English international law are total as such and certainly indicative of an ideology in itself total” ([1937] 1999, 34). While Schmitt’s transition from the classical interstate war to the liberal wars of pan-interventionism conferred the title of total war to the Anglo-Americans, Schmitt preferred to remain silent throughout his life on Nazi warfare—the alleged land captures designed to bring about a new nomos of interregional legality.

Conclusion

Schmitt’s evolving conceptualizations of war are the intellectual product of an ultra-intense moment in his friend–enemy distinction in the passage from his struggle against Weimar, Geneva, and Versailles to his embrace of National Socialism—the forging and reforging of concepts and positions conceived as intellectual combat. These concepts were flanked by deeper theoretical shifts—from decisionism and his concept of the political to concrete-order thinking—meant to secure and ground concept formation. This led to a tendentious and often falsifying account of war within a revised history of international law and order. Schmitt inscribed Hitler’s spatial revolution
into a full-scale reinterpretation of Europe’s geopolitical history, grounded in land appropriations, which legitimized Nazi Germany’s wars of conquest. Consequently, Schmitt’s elevation of the early modern nomos as the model for civilized warfare—the golden age of international law—against which American legal universalism can be portrayed as degenerated, is conceptually and empirically flawed. Schmitt devised a politically motivated set of theoretical premises to provide a historical counter-narrative against liberal normativism, which generated defective history. The reconstruction of this history reveals the explanatory limits of his theoretical vocabulary—friend–enemy binary, sovereignty as exception, nomos–universalism—for past and present analytical purposes. Its ultra-politician and spatial-étatist cast remained too restrictive to capture the phenomena at hand, as the reading of history in horizontal terms failed to incorporate social relations into the dynamics of war and peace. Wherever Schmitt attempts to penetrate the social, he either mobilizes a geomythological register—British maritime existence, land versus sea—or betrays his own method, borrowing liberally from political economy. At crucial moments in this large-scale reinterpretation—1492, absolutist sovereignty, early-modern warfare, British seventeenth-century sovereignty, the classical period of the new imperialism, the origins of WWI, US informal imperialism, the crisis of the Weimar Republic, Hitler’s spatial revolution—the methods of decisionism, the friend–enemy binary, and concrete-order thinking disintegrate. They simply fail to reveal the social dynamics that drive transformations in the nature of authority and sovereignty relations, the social sources of land appropriations and spatial reconfigurations, or developments in the historical genealogy of war and peace. Furthermore, world-historical events that upset Schmitt’s spatial-étatist perspective—the origins of capitalism and the Industrial Revolution; the French Revolution and Napoleon; the late nineteenth-century New Imperialism and interimperial rivalry; the interwar Great Depression; the Bolshevik Revolution; fascist Economic Grand Strategy—are either expunged from his account or receive short shrift. Schmitt’s international political thought and historical narrative are empirically untenable and theoretically flawed—replete with performative contradictions, subterranean reversals of theoretical positions, omissions and suppressions, mythologizations and flights into épreuves éymologiques. Schmitt’s concrete-order thinking constitutes a rudimentary and failed attempt to develop a history of international law and geopolitics, which ultimately regresses into a Eurocentric historico-legal theory of geopolitical occupation tel quel.

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Notes:

(1) Münkler 1992 remains an exception, though his account is restricted to a summary of Schmitt’s argument. His later work, which introduces the distinction between Old Wars and New Wars, relies on Schmitt’s conception of early modern wars as classical state-to-state affairs (2002, 68, 114).

(2) For a more detailed exposition of the following argument see Teschke 2011a, 2011b, and 2011c and Balakrishnan’s 2011 reply.

(3) It should be noted that the argument for the de-absolutization of absolutism is not restricted to contemporary revisionist historians but was already widely proposed in the German literature in the interwar period and thus was available to Schmitt. See, for example, Joseph Schumpeter’s [1919] 1955 essay on the “Sociology of Imperialism,” which, in spite of its key thesis that imperialism constitutes the objectless disposition toward unlimited forceful expansion, provides a convincing analysis of the structurally bellicose nature of absolutism, grounded in class relations. See also Hans Delbrück’s [1920] 1990 classic work. Schumpeter was a colleague of Schmitt at the University of Bonn in the 1920s, and Schmitt cited his “Imperialism” essay in his Concept of the Political. See also Scheuerman 1999, 198. In earlier writings, Schmitt [1926] 1995a (98), himself qualified the decisionistic character of absolutism by noting that the king had to pay heed to the aristocracy, the bureaucracy, customary law, and natural law.


(5) The concept of political accumulation was originally developed by Robert Brenner 1985 (238–239), to capture the fact that under feudal social property relations the transfer of surplus from producers in possession of their means of reproduction (peasants) to nonproducers in possession of the means of violence (lords) had to rely on extra-economic coercion, a term originally suggested by Karl Marx [1894] 1981 (926–927) to grasp the nature of reproduction in all noncapitalist communities. Political accumulation is therefore not so much an anti-economic concept but rather indicates that the political (the state) and the economic (the market) were not separate institutional spheres in precapitalist Europe with their own distinct logics (power and market competition via prices).
The rate of surplus appropriation therefore always involved social conflict over the normative and political terms and obligations of the producer-appropriator relationship. This included also tendencies to the “build-up of larger, more effective military organization and/or the construction of stronger surplus-extracting machinery” (Brenner 1977, 238) in the late Middle Ages, leading in some cases from the parcelized sovereignty of the feudal Personenverbandsstaat (state of associated persons) to the more centralized Old Regime states. The classical debate over whether to define feudalism as a political phenomenon revolving around a particular type of domination or as an economic phenomenon revolving around a particular mode of production is therefore misplaced.

(6) For critiques of the hedged nature of Cabinet Warfare see Göse 2007; Extembrink 2011.

(7) See Contamine 2000b for the slow and uneven growth of state control in relation to these practices.

(8) Schmitt’s idea of no peace beyond the line appears as yet another myth. See Fisch 1984; Stirk 2011.

(9) Cf. Schmitt’s [1950] 2003 cryptic statement: “The United States believed it could turn the political into an external façade of territorial borders, that it could transcend territorial borders with the essential content of the economic. But, in a decisive moment, it was unable to prevent the political grouping of friend and enemy from becoming critical” (258). This politicism sits rather uneasily with Schmitt’s position on the academic advisory board of the Gesellschaft für Europäische Wirtschaftsplanung und Großraumwirtschaft (Society for European Economic Planning and the Greater Space Economy), founded in 1941; Opitz 1977 (930–933).

(10) The analogy is explicitly drawn by Schmitt in 1940 as the expected spatial revolution of WWII is directly likened to the spatial revolution of 1492; Schmitt [1940] 1995b (388).

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