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Notes on the *Nomos*

I

The astonishing contemporaneity of Carl Schmitt’s *The Nomos of the Earth* can be registered in at least two ways:

A. It is postmodern in its innovation in spatial analysis, which, combining juridical and geographical reference, transcends both (see below).

B. The bitterness of its anti-Americanism (motivated by Schmitt’s long detention and interrogation after the war) may well prolong all kinds of European traditions (including the exclusion of England from Europe) but also overlaps the Cold War and anticipates a situation in which the United States has become “the only superpower,” thereby debasing and enfeebling the old European international equilibrium and all possible conceptualizations of a “just war.” The situation also holds for countless constructions and arguments in which “theoreticians of the League of Nations and American jurists and politicians (for example) laboriously attempt to revive medieval doctrines, in par-
ticular those dealing with just wars, in order to utilize them in the service of their own worldviews.”

Ironically, this leads Schmitt to associate Goebbels’s notion of “total war” with the postwar United States.

II

The origins of the book’s “spatial thought” are, however, more traditional. Following Husserl, whose critique of modern abstraction (in *The Crisis of the European Sciences*) locates the fall in the separation, the occultation and/or repression, of geometry from the existential praxis of land surveying in ancient Egypt, Schmitt diagnoses a similar degradation in the dissociation of the juridical tradition from the brute geographical fact of *Landnahme*, that is to say, the seizure and occupation of land as such. (It should be added that these terms are misnomers and anachronisms, insofar as they codify or ideologically appropriate the situation of “land capture” for a given historical *nomos*. This qualification, however, makes it clear that for Schmitt the concept of the *nomos* is a kind of equivalent of the function of the “mode of production” for Marxism; that is, it names a structure of totality that has taken various historical forms.)

III

But this phenomenological spatiality, which opposes the concrete praxis (land surveying for Husserl, land occupation for Schmitt), is as regressive as Heidegger’s ontology, to which it is of course intimately related. For Heidegger, the authentic and the concrete alike (where they are not one and the same) mark a nostalgia for the old ur-Germanic peasant village (supported by the various Heideggerian “preuves par l’étymologie,” which as Jean Paulhan remarked long ago are in reality so many philosophical arguments). It has always seemed paradoxical to me that postexistential thinkers like Derrida should be so fascinated by this ontological worldview. In Schmitt, however, unlike what obtains in either Husserl or Heidegger, there is a genuine uncertainty and a vacillation between such ontological nostalgia and a more Marxian historicism of the various structural moments of the *nomos*. 
IV
Thus, a seemingly primordial opposition between land and sea (later on itself relativized and historicized)—between landed order and maritime lawlessness—fails, despite the Deleuzian overtones of smooth (maritime) versus striated or landed space, to generate any nostalgia for the nomadic, for gypsies or hunters and gatherers, as that utopian and Rousseau-esque valorization of early social forms emerged from Lévi-Straussian structuralism.

V
Nor is the land power–versus–sea power opposition (theorized by Sir Alfred Thayer Mahan) deployed in the stereotypical Cold War fashion (United States vs. Russia). On the other hand, the assimilation of air war to the sea in the modern period tends to limit Schmitt’s visionary anticipation of a postmodern “total war” (see below).

VI
We enter on the true originality of Schmitt’s “spatial thinking” with the historical discussion of the peculiar institution of the “friendship line,” the rayas that develops into the Franco-English “amity line” (59), which divides a “civilized” area in which treaties and legal truces are respected by European powers, from a no-man’s-land in which every kind of predation is permitted (piracy, governmental or individual plundering, attacks on powers with whom one is at peace on the other side of the line). In this particular nomos, two spatial worlds coexist: in the one a specific international law holds sway, in the other an utter state of nature or anarchy.

A. Neglect of this essentially legal-spatial institution leads to misunderstanding of the philosophical thought of the period, from Pascal and Hobbes to Locke (63–66).
B. The assimilation of the pirate to the tyrant (34) offers an interesting implicit reinterpretation of Benjamin’s baroque book, which Schmitt admired, and in which tyranny is a central figure.
C. The maritime element “beyond the line” offers a first, spatial, English approximation to the Ausnahmezustand or “state of exception” (66) that played so basic a role in Schmitt’s earlier thought (“Sovereign is he who determines the state of exception”). It also anticipates the
utopian inclusion of zones of absolute freedom or lawlessness, as in Samuel Delany’s *Triton*, the legal no-man’s-land in which everything is permitted, a kind of spatial equivalent of Bakhtinian carnival.

D. In a way, the conceptual incommensurability of the lawful area of international law (land) and this state of anarchy (the sea) begins to stage Schmitt’s pessimistic vision of the overcoming of the old lawful continental Europe (“just wars”) by Anglo-Saxon “total war,” first in the English freebooters, then in the American intervention in Europe from World War I on.

E. The “structuralism” of Schmitt’s spatial thought now emerges in the way in which the British sea power stands as an ec-centric, Lévi-Straussian, outside third to the one-to-one relations of the continental powers, in the system that overcomes religious and feudal wars after the Peace of Westphalia (1648). Land and sea are thus revealed not to have been a dualism, after all.

VII

The concept of the *nomos* as a periodizing and structural category (whose family likenesses, besides one to the Marxian “mode of production,” might also include one to Foucault’s historical epistememes) then inevitably brings with it the problem of the break, not particularly solved by the notion of a “transition.” In Schmitt, however, the fact of the break is an energizing one: first, because it suggests that each break, the historical disintegration of a given *nomos*, will call for a historically original production of a new legal superstructure or *Novum*. This call then lays in place the notion of an active moment of constitutive power of the kind theorized in our time by Antonio Negri, and in turn qualifies the seeming pessimism of the open end of the work.

VIII

The “philosophy of history” of *nomos* posits at least three moments; in this medieval outlook a first space of belief, empire, or papacy is confronted with one of unbelief or heresy.

A. The first space is qualified as the *kat-echon*, or defender/place-holder, of the divine (the reference is to Apocalypse; on this see Gopal
Balakrishnan);² the second can easily slip into a space before civilization, while the whole system is clearly susceptible to a slippage into the “total war” situation of modern times. Indeed, we now know that this situation is not merely a reflex of American Protestant hypocrisy but is also accompanied by a return of religious wars and conflicts.

B. This medieval system then knows a first break with the discovery of the New World and the problem of its nonbelieving population. With what conceptual system or nomos is the Landnahme of these immense continents to be justified? It is a dilemma addressed adequately only by Francisco de Vitoria.

C. A period of turmoil—the religious wars, but perhaps also the English dominance of the sea—now leads to the Westphalian system of nation-states, in which, for the first time, the new nomos of state equality and friend-foe emerges. The friend-foe opposition is possible, indeed, only between equals: it includes Hegelian recognition, except that whereas Hegelian struggle aims to produce recognition, Schmitt’s version is enabled only after mutual recognition is secured. The individual analogy is with the duel. These wars are generally dynastic ones or wars of succession. They replace and overcome the feudal and religious carnage resulting from the breakdown of the previous nomos and are positively valorized.

D. With the breakdown of this Westphalian nomos, owing to the intervention of the United States in Europe (itself a prolongation of the British sea power as a nonplace outside the European system), the First World War raises the nightmarish prospect of “total war” and the absence of nomos.

IX

The friend-foe system is a genuinely original form of spatial thought, a “concept” that cannot be thought independently of spatial relations, it being understood that the latter is not in itself an autonomous form of thought, and also that Schmitt’s thinking is not geographical in any absolute disciplinary sense. But it is also a critique of the juridical in the sense that the latter is also not autonomous but requires the completion of space.
Yet the prophecy of an air-power return to total war, with the friend-foe pairing replaced by self and other, human and subhuman, is only partially correct, for it is no longer a question of air as an element, but one of cyberspace. Information is the new element that reproblematises the spatial.

Notes

1 Carl Schmitt, Der Nomos der Erde (Berlin, 1988), 26; translation mine. All further page references to this edition are given within the text.