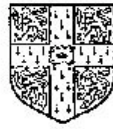


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**Security as a Norm in Hobbes's Theory of War: A Critique of Schmitt's
Interpretation of Hobbes's Approach to International Relations**

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It is well known that security is a central concern of Hobbes's theory of the state and international relations. Indeed, the end for which men agree to submit themselves to the common power of a sovereign is "to live peacefully among themselves, and be protected against other men".¹ It is also well known that Hobbes wrote very little on security and war in international relations proper. No long and technical treatise such as Grotius's *De jure belli ac pacis*, not even a separate chapter in one of his three major political treatises. Despite this rather thin production on the subject, coming to no more than a few paragraphs and remarks here and there, Hobbes's name appears to be very familiar to contemporary specialists in international relations, who tend to consider him the original proponent, alongside Thucydides and Machiavelli, of the realist view that there can be no morality in the way states deal with one another.

Even though international life is not only a battlefield, it seems possible to describe it in Hobbesian words as a permanent war, consisting "not in the act of fighting, but in a tract of time wherein the will to contend by battle is sufficiently known".² Contemporary references

¹ Thomas Hobbes, *Leviathan*, XVIII, 1, ed. Edwin Curley (Indianapolis/Cambridge, 1994), p. 110. When possible, I give references to Hobbes's works in the form of the chapter and paragraph number. For *Leviathan*, I do the same, although the paragraph number does not appear in the original version.

² Hobbes, *Leviathan*, XII, 8, p. 76.

to Hobbes's views on power politics,³ or the anarchical society,⁴ can be considered either as a symptom of the historical ignorance of specialists in international relations,⁵ or as testimony to the productivity of Hobbes's theory beyond its original historical context. Noel Malcolm has followed the first line of interpretation, showing that the standard portrayal of Hobbes's theory of international relations "appears to be based, for the most part, on a handful of passages in one or two of his works (ignoring many comments on international affairs elsewhere in his writings); and even those few passages have been misunderstood".⁶ This critical textual approach is a helpful reminder that what Hobbes actually says about relations between states is very far from the caricature which often circulates under his name in the field of international relations theory.

Contrary to that view, I would like to consider here Hobbes's approach to security in international relations as a normative one, and in order to do so I shall contrast it with the reading of the most radical form of realism in this field, that of Carl Schmitt and his views on the formation of European international law. This comparison is all the more interesting because the idea that security could be a Hobbesian norm clashes from the start with Schmitt's decisionist interpretation of Hobbes. My approach, however, will not be to discuss Schmitt's interpretation of the Hobbesian sovereign as the typical decision-maker,⁷ but rather

³ Hans J. Morgenthau, *American Foreign Policy: A Critical Examination* (London, 1952), p. 34.

⁴ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London, 1977).

⁵ Noel Malcolm's frontal attack against international relations theorists illustrates this position: "And the interpretation of Hobbes put forward by modern international relations theorists, meanwhile, has become fixed and ossified, functioning at best as an 'ideal type' and at worst as a caricature." ("Hobbes's Theory of International Relations", in Noel Malcolm, *Aspects of Hobbes* (Oxford, 2002), p. 433).

⁶ Malcolm, "Hobbes's Theory of International Relations", p. 435.

⁷ For a definition of Hobbes as the characteristic decisionist thinker, see Carl Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Hamburg, 1934), chap. 1.2: "The classic case of decisionist thinking first

to examine how Hobbes fits into, or rather does not fit into, the Schmittian interpretation of the seventeenth-century international world order.

Despite its political origins in Nazi Germany,⁸ Carl Schmitt's approach to international relations still exerts a fascination and claims a right to impose its mark on the reading of Hobbes's place in the history of war and state. One explanation for this fascination is that Schmitt's theory is supposed to help us consider the double aspect of a classical sovereign state: as a means, on the one hand, of limiting the intensity of war within the frontiers of Europe, and on the other hand, as an instrument for waging wars of destruction beyond the borders of Europe.⁹ Being as it is a geopolitical approach to law and politics, Schmitt's

appears in the seventeenth century with Hobbes. All *Recht*, all norms and statutes, all interpretations of laws, and all orders are for him essentially decisions of the sovereign, and the sovereign is not a legitimate monarch or established authority, but merely the one who decides in a sovereign manner." (*On the Three Types of Juristic Thought*, transl. by J.W. Bendersky (Westport, Conn./London, 2004), p. 61).

⁸ For a clear presentation of the origins of the book and interesting remarks on the link with the *Glossarium*, see Peter Haggemacher, "Présentation. L'itinéraire internationaliste de Carl Schmitt", in Carl Schmitt, *Le Nomos de la terre*, trad. L. Deroche-Gurcel (Paris, 2001), p. 1–46. On the various facets of Schmitt's anti-Semitism and in particular on the origins of the notion of nomos in the Protestant theology of nomos, see Raphael Gross, *Carl Schmitt and the Jews: the "Jewish Question", the Holocaust, and German Legal Theory*, transl. by J. Golb (Madison, 2007).

⁹ Cf. Carlo Galli, *Spazi politici. L'età moderna e l'età globale* (Bologna, 2001) and also the quotations from this book in Etienne Balibar, *Europe Constitution Frontières* (Bègles, 2005), p. 96, note 2: "Parmi ses nombreuses publications [i.e., Galli's] figure le travail de référence sur la pensée de Carl Schmitt: *Genealogia della politica: Carl Schmitt e la crisi del pensiero moderno*, Il Mulino, Bologna, 1996, dont une grande partie est consacrée à la discussion de la théorie du 'Nomos de la terre' (au double sens de distribution et de loi). A beaucoup d'égards le dernier livre de Galli relève du débat international très animé qui tend à rechercher des *alternatives non schmittiennes au problème géo-politique posé par Schmitt*, et à la philosophie de l'histoire qui le sous-tend" (my italics).

analysis has been claimed to help us understand Hobbes's philosophy in what would be its real, that is, geographical, international context.¹⁰

In order to break the Schmittian spell, it is necessary to stress first, as I shall try to do in the first part of this essay, that the aspect of Hobbes's foreign politics which is stressed in *The Nomos of the Earth* (a book published in 1950, but whose material is already present in articles and essays of the war period)¹¹ is part of a broader interpretation of international relations based on sovereign territorial states at war with one another. This international theory, which was to govern the life of European states from the sixteenth to the nineteenth century, is based at the same time on the assumption of territorial sovereignty as the ultimate definition of politics, and on the paradoxical hypothesis that a plurality of sovereign states is less dangerous for peace than the spiritual competition between various Christian faiths, since it allows for a moderate state of war within the frontiers of Europe. We shall see whether Hobbes fits into this Schmittian interpretation of the history of law and politics.

In the second part, I turn to what Schmitt says about Hobbes's international relations theory in the context of the division of the earth according to what Schmitt called "global lines". Global lines theory is used to explain how the Hobbesian state of nature could also apply to the terrible war of all against all supposed to be raging beyond certain geographical lines secretly agreed upon by the European powers.

In a last part of this essay, I offer evidence for the contradiction between this interpretation and the actual Hobbesian approach to international relations.

¹⁰ In his interpretation of Hobbes, Carlo Galli stresses the "spatial" characteristics of the state of nature and of the civil state in a way that blurs the ideological dimension of Schmitt's argument, notably in the case of the non-discriminating concept of war: "... data la parità ontologica dei contendenti, la guerra *risulta* limitata e non 'giusta', ovvero non assoluta né discriminatoria." (Carlo Galli, *Spazi politici*, p. 47; my italics).

¹¹ For some of those articles, see Carl Schmitt, *Staat, Grossraum, Nomos. Arbeiten aus den Jahren, 1916–1969*, ed. Günter Maschke (Berlin, 1991).

The Hobbesian state of nature and the Schmittian *jus publicum europaeum*

Let us begin with the analysis of Hobbes as a good representative of the European law of nations. The first characteristic of this law, referred to by Schmitt as *jus publicum Europaeum*, is that it is based on the concrete principle of territorial sovereignty, or more exactly on a division of the territory of Europe amongst separate sovereign entities.¹² In contrast with the legal organisation of empires, either spiritual (papacy) or temporal (the medieval Holy Roman Empire), and with the feudal organisation of medieval kingdoms, this new legal set of principles can be called truly international, or interstatal, as it aims at organising the relations between states, soon to become nation-states, on the basis of the occupation of a well-defined territory. This territorial division of Europe into different states with borders to defend presupposes the occupation of a geographical space that is not limited to the borders of Europe but extends to territories in the New World.¹³ The classical international order is thus based on discovery as a legitimate title to occupying newly found

¹² “Continental European international law since the 16th century, the *jus publicum Europaeum*, originally and essentially was a law among *states*, among European sovereigns. This European core determined the *nomos* of the rest of the earth.” (Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (4th ed., Berlin, 1997; [1st ed., 1950]), p. 97; *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, transl. by G.L. Ulmen (New York, 2003), pp. 126–7; Abrev.: *The Nomos of the Earth*, page in the German edition/page in the English translation).

¹³ On the fact that the enclosed European territorial order is linked to the opening of a maritime space, see Jean-François Kervégan, “Carl Schmitt and ‘World Unit’”, in Chantal Mouffe (ed.), *The Challenge of Carl Schmitt* (London, 1999), pp. 65–6. See also Schmitt, *The Nomos of the Earth*, p. 112/140: “The concrete spatial order of these territorial states gave European soil a specific status in international law, not only within Europe, but in relation to both the free space of the open sea and to all non-European soil overseas.”

lands.¹⁴ Seventeenth-century European states do not therefore proceed from an abstract model, which we might call the universal state-form, but from a European way of organising the world order by means of discovery and conquest: this is precisely what the Greek term *nomos* is here taken to mean, that is, a juridical world-ordering based on the occupation of the earth. Schmitt's understanding of the world order as a "nomos of the earth" thus explains his refusal to consider the state as a universal political category.¹⁵ The state-form is linked to the geopolitical development of Europe, to a certain relationship between Europe and the rest of the world, and therefore cannot be considered as the universally valid result of a logical deduction.

This statement constitutes a first difference between Schmitt's and Hobbes's approaches to the state. Hobbes considered his demonstration to have a universal scope: "The final cause, end, or design of men (who naturally love liberty and dominion over others) in the introduction of that restraint upon themselves in which we see them live in commonwealths is the foresight of their own preservation, and of a more contented life thereby".¹⁶ This quotation clearly shows that *Leviathan* was not written for the citizens of Europe only, let alone for the citizens of Great Britain, but for any man willing to live a peaceful life under the protection of a state. There is no reference here to the well-delineated territory of a particular state, but the general formula of the solution to a universal problem: if the timber of human nature is crooked, as indicated by the fact that most human passions are contrary to morality, then there is only one solution to the problem of having men act morally, that is, to establish a "visible power to keep them in awe, and tie them by fear of punishment to the performance of their

¹⁴ Cf. Schmitt, *The Nomos of the Earth*, pp. 100–4/130–3: "Occupation and Discovery as Legal Title to Land-Appropriation".

¹⁵ "'Statehood' is not a universal concept, valid for all times and all peoples. Both in time and space, the term described a concrete fact." (Schmitt, *The Nomos of the Earth*, p. 97/127).

¹⁶ Hobbes, *Leviathan*, XVII, 1, p. 106.

covenants”.¹⁷ Since the “visible power” is a general solution to a universal problem, it is of no importance who invented the solution and where on earth it was invented.

The emergence of several states, instead of a single empire, was of course a new source of contention in seventeenth century Europe, as the Thirty Years War was notably to demonstrate; since those states exerted their power over a determined territory, the defence of territorial borders was likely to lead to war. However, this obvious feature of the interstatal organization of classical Europe has – and this is a second aspect of Schmitt’s analysis – concealed the fact that those interstate wars were far less dangerous for the stability of the continent than had been the previous wars of religion. The reason for this difference in the intensity of war is that the state operates a *de-theologisation* of public life, in both domestic and foreign affairs.¹⁸ Thus the new interstate wars no longer split society into opposed factions, each fighting for transnational religious truths, such as sixteenth century wars between French Protestants and Catholics had done. No longer a war for eternal salvation, that is, a theologically justified war, interstate war is supposed to be less violent because the enemy’s cause is not *ipso facto* considered unjust and the enemy himself wicked. Playing its part in *The Nomos of the Earth*, this conceptual distinction between two kinds of war is already central to Schmitt’s 1938 book on the concept of discriminating war;¹⁹ in both cases, the idea is that the violence of a war is due not only to the techniques and technologies of war, but also to the claim that the war being fought is a just war. Schmitt refers to the just war theories of the Middle Ages, notably to the one developed by Francisco de Vitoria, but he also has in mind the military intervention of the United States in 1917 and the spirit of the Treaty

¹⁷ *Ibid.*

¹⁸ “The first effective rationalization of the ‘state’ as a spatial form, in terms of both domestic and foreign policy, was achieved by the detheologization of public life and the neutralization of the antitheses of creedal civil wars.” (Schmitt, *The Nomos of the Earth*, p. 112/140; modified translation).

¹⁹ Carl Schmitt, *Die Wendung zum diskriminierenden Kriegsbegriff* (Munich, 1938).

of Versailles. The idyllic picture he draws of seventeenth century interstate wars is the exact, and perhaps all-too-clear-cut, opposite both of sixteenth century religious wars and twentieth century ideological wars of destruction. When compared with wars of annihilation, fighting for limited goals, such as a modification to a border or a claim to dynastic heritage, can appear as relatively benign.

How does this historically far-reaching Schmittian analysis apply to Hobbes's conception of interstate relations? Let us turn first to the famous passage about states' relations in the description of the state of nature in chapter XIII of *Leviathan*:

But though there had never been any time wherein particular men were in a condition of war one against another, yet in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators, having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms, and continual spies upon their neighbours, which is a posture of war. But because they uphold thereby the industry of their subjects, there does not follow from it that misery which accompanies the liberty of particular men.²⁰

Two things, at least, are clear in this text: first, Hobbes recognises that states have always been in a condition of war with one another; second, that the interstate condition of war is not as bad as the inter-individual state of hostility, since the former, and not the latter, allows for peace, that is, for economic exchanges and industry at home. Whereas commentators have often read this text as if it described relations between states as anarchical, stressing the less than friendly description of “their weapons pointing, and their eyes fixed on one another”, they have hardly noticed that the whole description relies on a comparison of states with gladiators, which could allow for a very different interpretation. And that is

²⁰ Hobbes, *Leviathan*, XIII, 12, p. 78.

precisely what Schmitt puts forward. If states can be legitimately compared to duellists, there is certainly a good reason for considering their conflicts in the Hobbesian state of nature in a different perspective. Although duels can be fatal to the life of those actually engaged in them, Schmitt stresses the fact that this danger is less threatening than in private wars waged in the name of God or of justice. If justice matters, it is not because the just cause should always triumph, but because there are juridical forms that have to be respected.²¹ The duellists must be men of honour, they must keep to the rules established in such circumstances, and they must abide by the decisions of a referee.

Just as in duels fighting is limited by respect for strict juridical rules, so the effects of war between states in the classical period are considered by Schmitt to have been limited by respect for juridical laws defining the *casus belli*, the juridical conditions of warfare, and the obtaining of peace. Just as in duels there are witnesses who attest to the proper course of the fight, so in the classical European law of nations there are neutral states capable of playing the part of mediators between conflicting parties. The plausibility of this analogy rests on one central element, namely the definition of the state, but this definition itself varies somewhat in the two texts where the analogy is introduced. In Schmitt's *The Leviathan in the State Theory of Thomas Hobbes*, the state is featured as a juridical mechanism, allowing for both technical efficiency in the transmission of orders and for a strictly positivistic respect of the law,

²¹ “In other words, a duel is not ‘just’ because the just cause always wins, but because there are certain guarantees in the preservation of the form — in the quality of the parties to the conflict as agents, in the adherence to a specific procedure (effected by bracketing the struggle), and, especially, in the inclusion of witnesses on an equal footing. Here, law has become a completely institutionalized form; here, men of honor have found a satisfactory means of dealing with a matter of honor in a prescribed form and before impartial witnesses.” (Schmitt, *The Nomos of the Earth*, p. 115/143; modified translation).

excluding by definition all kind of resistance;²² in *The Nomos of the Earth*, a new dimension comes to the fore, that is, the territory occupied by the state, which is the spatial subject represented as a person.²³ This does not mean that the two other aspects have been denied, but rather that the geopolitical dimension is now the crucial dimension. There has been an evident change in the presentation, but the core thesis remains unchanged by the transformed historical context: the modern state has modified the nature of the relations between justice and war, since justice in war is no longer of a substantial theological nature, but of a procedural juridical nature, which can be addressed in front of a tribunal – precisely the tribunal of war. To the main features Schmitt has added a new one, space and its importance for the state, but the central thesis is still the same: reintroducing a discriminating concept of war in the twentieth century, as was done according to Schmitt by the Treaty of Versailles, was an enormous juridical and political mistake. In a way, the violence of European conflicts after World War I is a direct consequence of this mistake. This remark shows the Schmittian thesis on discriminating war to be more relevant to the situation of the early twentieth century than to seventeenth century Europe.²⁴ The question now is to determine how this twentieth

²² On the mechanistic and neutral dimensions of the modern state illustrated by Hobbes, see Carl Schmidt, *Der Leviathan in der Staatslehre des Thomas Hobbes. Sinn und Fehlschlag einer politischen Symbols* (Hamburg, 1938), transl. in English by G. Schwabe and E. Hilfstein as *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (Westport, Connecticut/London, 1996), chap. 4.

²³ “Now the state was conceived of juridically as a measure relative to a new spatial order, as the new legal subject of a new international law; as a juridical concept, it had become irresistible. However, essentially this state was a unified, self-contained area of European soil that was at the same time represented in the guise of a *magnum homo* [great man].” (Schmitt, *The Nomos of the Earth*, p. 117/145; modified translation).

²⁴ But the main reference here is the essay on the transformations of the concept of war after World War I and the Treaty of Versailles: Carl Schmidt, *Die Wendung zum diskriminierenden Kriegsbegriff* (Munich, 1938), and also “Über das Verhältnis der Begriffe Krieg und Feind” (1938), in Carl Schmitt, *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923–1939* (Hamburg, 1940).

century context affects Schmitt's interpretation of Hobbes, and, in particular, the description of interstate relations as a "state of nature". Is this not in contradiction with what Schmitt suggests, that is, that a state of war between two states should be less opposed to a rapid return to peace than a Hobbesian state of nature is usually considered to be?

One way of dealing with this embarrassing question is to say, as Schmitt does, that the important point is not the nature of the state of nature, but the nature of the state. As a matter of fact, the state of nature is only a type of relation existing outside the state-order. Whether the new European international order is to be considered "an antisocial struggle between Leviathans (according to Hobbes) or (with Locke) as an already sociable community of gentlemen" is a "secondary question"²⁵ for the historian of political thought, but not for the legal philosopher. What really matters is the "*international personal analogy*"²⁶ at the basis of the new international order, in as much as it allows the *jus gentium* to be considered as the right existing between persons who are the representatives of states equally entitled to wage war.

²⁵ Schmitt, *The Nomos of the Earth*, p. 118/146 (modified translation): "For example, one such secondary question is the dispute about whether one should think of these 'great men' as existing in a 'state of nature' beyond an amity line and, in turn, whether one should consider this state of nature (in the sense of Hobbes) to be an asocial struggle of Leviathans, or (in the sense of Locke) already to be a social community of thoroughly proper gentlemen".

²⁶ *Ibid.* This passage is quoted in English in the text. When first using this expression, Schmitt (*The Nomos of the Earth*, p. 119, note 1/147, note 7) refers to "the extraordinarily important article by Edwin de Witt Dickinson, 'International Personal Analogy', in the *Yale Law Journal*, Vol. XXII (1916–17), pp. 564–589", which does not support his thesis and was published under a different title: "The Analogy between Natural Persons and International Persons in the Law of Nations".

Hobbes is important for Schmitt not so much for his characterisation of the state of nature as for his definition of the international personal analogy.²⁷ The comparison between states and persons must nevertheless be correctly interpreted, that is, on the basis not of a psychological analogy, but of a juridical definition.²⁸ When the gigantic persons – states – are compared to gladiators in a posture of war, it does not necessarily mean that they do not belong to the same society. All the more so as those gigantic persons are linked not only by treaties and international contracts, but also by more traditional bonds such as religion and economy,²⁹ not to mention the blood ties of most of the sovereigns of seventeenth century Europe. Seen in the perspective of this new concept of state personality, it is clear that Hobbes's contribution to the definition of a new European international order has been quite central. Although the representation of states as *magni homines*, or “big men”, can be traced to its use in allegory and so was not invented by Hobbes, it remains true that Hobbes contributed greatly to the juridical clarification of the notion itself, notably in chapter XVI of *Leviathan*. It is therefore no less true to say that the rules which apply to seventeenth century Europe are not those of an anarchical society, but rather those of a relatively polite, if undisciplined, society of states. After all, duels take place only between people belonging to the same aristocratic milieu.

²⁷ Schmitt, *The Nomos of the Earth*, pp. 118–9/146 (modified translation): “Moreover, Hobbes's theory of *magni homines* in the [international] state of nature was accepted as true and exercised the strongest intellectual influence.”

²⁸ Noel Malcolm gives a clear formulation of the difference between the psychological and the juridical concepts of persons: “As the famous engraved title page of *Leviathan* reminds us, Hobbes does indeed have a theory of the collective person-hood of the commonwealth. But his use of the concept of a ‘person’ here is not a matter of some generalized psychological comparison between individual and collective behaviour”. (Malcolm, “Hobbes's Theory of International Relations”, p. 443).

²⁹ Schmitt, *The Nomos of the Earth*, p. 120/148: “But, in reality, strong traditional ties – religious, social, and economic – endure longer.”

The famous Hobbesian observation in the preface to *De Cive* – *homo homini lupus* – may be interpreted within the same perspective: not only does it not mean that men behave as ferocious beasts to one another; it also does not imply that some states are ewes. Since every one of those public persons has an equal *jus ad bellum*, there is no single wolf among the European flock. If Hobbes is right to consider these big individuals as wolves to one another, it is because all share this quality. Schmitt's fixed idea is that no one can deprive the others of their *jus ad bellum*; no one can declare that he is an ewe, while only the others are wolves.³⁰ Here, again, the same obsession comes to the fore, that is, that the classical right of war is right because it does not recognise a discriminating concept of (just) war.

If this duel-like attitude of person-like states towards one another were the whole story, however, there would be no reason to discuss Schmitt's interpretation any further, since there is no such a contradiction between the latter and a normative approach to Hobbes's state of nature. Indeed, duels would not exist were there no established rules to organise them. Similarly, the wars between classical European states would not have arisen without a certain amount of regulation,³¹ to which each state agreed to submit. But whereas recent commentators have tended to consider this moderate view on the international state of nature as the whole Hobbesian story, Schmitt adds a few features in relation to his conception of the spatial dimension of politics, and those features completely change the nature of the picture.

³⁰ Schmitt, *The Nomos of the Earth*, p. 119/147: "Even if one accepts that 'man is a wolf among other men' in the *bellum omnium contra omnes* [war of everyone against everyone] of the state of nature, this has no discriminatory meaning, because also in a state of nature none of the combatants has the right to suspend equality or to claim that only he is human and that his opponent is nothing but a wolf."

³¹ N. Malcolm provides evidence that this regulation finds its expression in the laws of nature: "Indeed, there is something very implausible about the claim that Hobbes's laws of nature cannot apply at the international level, given that one of them relates directly to diplomatic practice". ("Hobbes's Theory of International Relations", p. 439).

The Hobbesian state of nature and the space beyond the lines

One characteristic feature of Schmitt's reflection in *The Nomos of the Earth* is its interest in the process that establishes a new international juridical order: not only constituted power matters, that is, the state system and its bureaucracy, but also constituting power, that is, the original violence behind institutions. In world history, this phenomenon is described by Schmitt as a phenomenon of conquest, what he calls *Landnahme*, the taking of land, which he says is more fundamental than *Landteilung*, the division of conquered territory.³² Since not all kinds of conquests are the beginning of a new juridical order, what is of interest to Schmitt is how Europe juridically organised its conquest of the New World, and what consequences this way of conquering the world had on the organisation of a European law of nations.

This historical approach to the formation of the European state system constitutes a second major difference between Schmitt and Hobbes, since Hobbes says extremely clearly that the question of the origins of commonwealths is of no consequence as far as the obligation to obey them is concerned. Although the English philosopher acknowledges that some commonwealths are such by acquisition,³³ he stresses the fact that the latter's violent origins are not relevant as far as rights of sovereignty are concerned: "... the rights and consequences of sovereignty are the same in both (i.e., in the commonwealth by institution and in the commonwealth by acquisition)".³⁴ Schmitt maintains exactly the contrary: the way a piece of land (or of sea) is conquered determines the kind of law that will apply to it and

³² Schmitt, *The Nomos of the Earth*, p. 49/81 (modified translation): "For our purposes, the term land-appropriation is better than land-division, because land-appropriation, both externally and internally, points clearly to the constitution of a *radical title*."

³³ Hobbes, *Leviathan*, chap. XX, "Of Dominion Paternal and Despotical".

³⁴ Hobbes, *Leviathan*, XX, 3, p. 128.

also the relations between the conquering powers. When considering the interpretation Schmitt gives of Hobbes's state of nature in relation to the discovery of America, this important difference should be borne in mind.

The Schmittian interpretation of the Hobbesian international state of nature depends on the idea that, once European powers took possession of the New World, they established their respective properties on it by means of global divisions of the earth, which established very different regimes of law and of war according to where one lived or waged war. The peace treaties signed by the powerful kingdoms of Europe throughout the classical period would not be complete, insists Schmitt,³⁵ if one were to ignore a few secret clauses which were attached to them. Those secret clauses, based on the global division of the earth amongst the European powers, describe a very different picture of international relations than the peaceful one that we have previously envisaged. Before turning again to Hobbes's state of nature, it is therefore necessary to say a few words about the idea of global lines dividing the earth, since they play a significant role in Schmitt's interpretation of Hobbes.

The first thing to be noted is that those lines have had a global character from the start, that is, since the discovery of the New World by Spain and Portugal. Those lines are therefore, according to Schmitt, the expression of a Eurocentric approach to world politics. The second thing to be noted is that, although the geographical situation of those lines have greatly varied from the time of the first discoveries and the intervention of the papacy to the end of nineteenth century, the Monroe doctrine and the intervention of the United States, they have been from the start not merely geographical but also geopolitical and, if it may be put

³⁵ Schmitt, *The Nomos of the Earth*, p. 60/92: "Although the historical type of so-called *amity lines* was related to European land- and sea-appropriations of the New World, it was based on completely different premises. Amity lines first appeared (and were agreed upon only verbally) in a secret clause in the Treaty of Cateau-Cambrésis (1559)."

this way, geojuridical³⁶ divisions, based on a global view of the domination of the earth. In this perspective, globalisation, or global thinking, is not at all a new concept, for it dates back to the first treaties between Portugal and Spain at the end of fifteenth century. But the characteristic feature of this Schmittian approach to globalisation is that it is an anti-universalistic one: Global lines are there to delineate different kinds of juridical regimes according to the powers that have command over a land; they are the expression of a geographical way of thinking about international matters, where the central question is not so much the validity of the norms *per se* as of the imperial powers behind the norms. A major aspect of this global line thinking is, indeed, that it rests on the idea of empire more than on the idea of state. This, of course, raises the essential question (to which I shall return in my conclusion) whether or not Hobbes's vision of politics is sympathetic to an imperial approach to international relations.

But before treating that point, it is necessary to consider what Schmitt's global lines were, and in particular what they were at the time of Hobbes. Among the three main divisions considered by Schmitt, the first type – the *raya* – was clearly linked to the hegemony of the papacy in European politics, since the first global line was defined in the papal bull *Inter caetera divinae*, issued by Pope Alexander VI (4 May 1494 [in fact 1493]), and was followed not long after by the famous Treaty of Tordesillas (7 June 1494), which divided the Atlantic Ocean between Portugal and Spain.³⁷ But what is of more interest for our seventeenth-century

³⁶ Friedrich August von der Heydte described Schmitt's approach as constituting some kind of "Geojurisprudence". Cf. Haggemacher, "Présentation", in Carl Schmitt, *Le Nomos de la terre*, p. 41, note 2.

³⁷ Schmitt, *The Nomos of the Earth*, p. 57/89: "Pope Alexander VI's global line was consistent with the one drawn somewhat to the west of it, approximately through the middle of the Atlantic Ocean (370 miles west of Cape Verde), by the Spanish-Portuguese Treaty of Tordesillas (June 7, 1494), in which the two Catholic powers agreed that all newly discovered territories west of the line would belong to Spain and those east of the line to Portugal. This line was called a *partition del mar océano*, and was sanctioned by Pope Julius II."

perspective is Schmitt's comment on the second type of global lines. Also called "Amity" lines, since they express some kind of "friendship" between the contracting European powers, those lines established new rules for dividing newly discovered territories among European powers. But contrary to what was the case with the *raya*, the agreement was now based on the absence of a common referee, since the Pope could no longer play such a part in mediations between Protestant and Catholic powers. In the absence of a common judge capable of deciding conflicting claims, the powers agree that force will be the judge beyond certain lines. For the study of the treaties, including clauses on Amity lines, Schmitt relies mainly on F.G. Davenport's *European Treaties bearing on the History of the United States* (Washington, 1917), but historical evidence is scarce: Schmitt refers, for example, to a declaration of the King of France, Louis XIII, on 1 July 1634, forbidding French sailors to attack Portuguese and Spanish boats on the European side of the Tropic of Cancer, but allowing them to do so beyond that line.³⁸

On the European side of those lines, peace was more or less preserved thanks to a law of nations allowing war only between states;³⁹ but beyond those lines the limits on war no longer existed, and privateers were allowed to ransom or destroy foreign ships and wage what might be called total war. Incapable of agreeing on a fair distribution of lands and seas in the New

³⁸ Schmitt, *The Nomos of the Earth*, p. 61/93: "Thus, Cardinal Richelieu made a declaration in the name of the French king on July 1, 1634, according to which French seafarers were forbidden to attack Spanish and Portuguese ships on this side of the Tropic of Cancer, but were given liberty to do so beyond this line, if the Spanish and Portuguese refused them free access to their Indian and American possessions on land and sea." For a convincing critique of the historical evidence, see Haggemacher, "Présentation", in Carl Schmitt, *Le Nomos de la terre*, p. 41.

³⁹ On this aspect, see Schmitt's comments (*The Nomos of the Earth*, p. 122/149) on Rousseau's statement in *On the Social Contract* (Book I, Ch. IV, ed. by Donald A. Cress, Indianapolis, 1987, p. 21): "War is a relation between one state and another." Schmitt quotes Rousseau in French: "La guerre est une relation d'Etat à Etat."

World, the European powers could only agree on the fact that the new spaces were free, which means, according to Schmitt, that the distribution of lands and seas could only be decided by force. Of course, the other implicit point of agreement was that the New World could only be divided between the European powers. What was then the juridical consequence of those Amity lines? That what happened “beyond the line” was not submitted to the moral, juridical and political limitations imposed on European states by the *jus publicum europaeum*, that is, the law of supposedly civilized nations. The new space of liberty thus opened both on land and sea was indeed a space in which international laws limiting the violence of interstate conflicts would no longer apply. Properly speaking, the space beyond the Amity lines was anything but a friendly one; rather something like the wild west of Europe.⁴⁰

The few elements that I have just mentioned will help us to understand the second dimension of Schmitt’s interpretation of Hobbes’s international relations theory. If we allow this global division of the earth in seventeenth century Europe (a point I shall discuss in the final section), we can clearly see that there is room for a completely different approach to the Hobbesian notion of an international state of nature.

On the one hand, as we have already seen, the relations between states can be interpreted on the model of a duel between public persons, and the state of nature as a juridical concept liable to impose limits on the effects of war within Europe; but, on the other hand, there is also room – and quite a lot, it could be said – for a more radical interpretation in which the state of nature would be considered a radical state of war among pirates, with no juridical limits imposed on violence. The idea of global lines thus allows us to conciliate two apparently contradictory readings of Hobbes, one which insists on the absence of laws in the

⁴⁰ Schmitt, *The Nomos of the Earth*, p. 62/93–4: “Beyond the line was an ‘overseas’ zone in which, for want of any legal limits to war, only the law of the stronger applied.”

international state of nature (the anarchical society reading) and the other which presses the existence of the natural law as the law of nations (the society of states reading). But before assessing the validity of this possible conciliation, let us consider the interpretation given by Schmitt of the state of nature in the light of the Amity lines.

The reference to Hobbes is one among three, the two others drawing on Pascalian and Lockean arguments, but it may be considered the most important one. Schmitt declares here that the Hobbesian idea of a state of nature is the “effect of the Amity lines”⁴¹ and that the general, quasi neo-Kantian, interpretation of it must be rejected on the basis of this historical evidence. Although he does not deny that this idea may have had other historical origins (following here Leo Strauss and Franz Borkenau),⁴² and that it might have gained in generality in the later works (agreeing here with Ferdinand Tönnies),⁴³ he stresses the fact that the real and most concrete origin of Hobbes’s idea is to be found in the transformation of international relations and the institution of Amity lines. The state of nature is not a general idea, but rather a concrete idea that can be ascribed a local origin in the space beyond the line. A first argument is taken from the revival in Hobbes’s work of the famous Latin formula, *homo homini lupus*. Whereas Vitoria rejected this formulation, for which he substituted the humanistic formulation *homo homini homo*, Hobbes was to recast the idea under the impact of

⁴¹ Schmitt, *The Nomos of the Earth*, p. 64/95: “The second [example] is Thomas Hobbes’s doctrine of the state of nature contained in his construction of the state.”

⁴² He refers here to the historical interpretation of the state of nature as the anarchy of feudal organisation; Leo Strauss, *Archiv für Sozialwissenschaft und Sozialpolitik*, 67 (1932), p. 738–9; Franz Borkenau, *Der Übergang vom feudalen zum bürgerlichen Weltbild* (Paris, 1934), p. 458.

⁴³ Ferdinand Tönnies, “Hobbes und das Zoon Politikon”, *Zeitschrift für Völkerrecht*, 12 (1923): 471–2. While praising Tönnies as the best specialist of Hobbes and acknowledging the relevance of his interpretation of the development of the idea of the state of nature in terms of interiorisation, Schmitt insists on the fact that Tönnies is not a neo-Kantian philosopher and that he does not content himself with general distinctions.

the absence of common power in the New World. But the geographical dimension of the state of nature only appears when Hobbes comes to concrete examples.

When Hobbes declares in chapter XIII of *Leviathan* that “It may peradventure be thought, there was never such a time nor condition of war as this; I believe it was never generally so, *over all the world*”,⁴⁴ Schmitt would underline the last part of the sentence. If the state of nature, in its more radical form, was not generally so all over the world, it may well be because of the division of the earth between Europe and the spaces beyond the line. If we understand it in this way, we can also better understand the meaning of the example given by Hobbes in support of his thesis:

For the savage people in many places of America, except the government of small Families, the concord whereof dependeth on natural lust, have no government at all; and live at this day in that brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common power to feare; by the manner of life which men that have formerly lived under a peaceful government use to degenerate into a civil war.⁴⁵

The surprising comparison of the life of the savage people of America to the condition of life during civil wars can thus be read as the effect of the absence of limits on the use of violence on the part of the European colonising powers. Schmitt concludes his analysis by saying that if Hobbes’s state of nature is a *no man’s land*, as there clearly exists no ownership in it, “it is not therefore a nowhere”, for “it is situated by Hobbes in, among other places, the New World”.⁴⁶ Here again, Schmitt stresses the fact that Hobbes’s thought must be

⁴⁴ Hobbes, *Leviathan*, XIII, 11, p. 77 (my italics).

⁴⁵ *Ibid.*

⁴⁶ Schmitt, *The Nomos of the Earth*, p. 64/96 (modified translation): “Thomas Hobbes’s state of nature is a *no man’s land*, but this does not mean it exists *nowhere*.”

geographically situated. Before turning to my critique, I should like to add three additional remarks.

First, this interpretation is a new *historical* interpretation. There are other historical interpretations of the Hobbesian state of nature of which Schmitt is aware (for example, those of Leo Strauss and Frank Borkenau that have already been mentioned), but the originality of his own is due to the fact that it is both historical and geographical. This interpretation is also new when compared with the previous Schmittian interpretations. Thus Schmitt writes in a note of *The Nomos of the Earth* that, in his *The Leviathan in the doctrine of the state of Thomas Hobbes* (Hamburg, 1938), he had not “yet taken into consideration, in presenting the theory of the state of nature, the historical relevance of the Amity lines”.⁴⁷ Second, the evidence presented by Schmitt in favour of the Amity lines is scanty, and he acknowledges this. He says in particular that the references to those secret clauses are rare in the juridical literature of the time. In Pufendorf’s *Jus naturae et gentium*, for example, there are only a few remarks on the notion of armistice (book VIII, c. 7), but nothing directly on secret clauses appended to treaties.⁴⁸ Third, Schmitt is hostile to the interpretation of the state of nature as a sceptical hypothesis. This sceptical interpretation of Hobbes, initiated by Barbeyrac and of which we find a contemporary version in Richard Tuck⁴⁹ and in Michael Williams’s reconsideration of Hobbes’s international relations theory,⁵⁰ is considered by Schmitt as being

⁴⁷ Schmitt, *The Nomos of the Earth*, p. 65, note 1/96, note 20. Cf. Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (Westport, CT, 1996).

⁴⁸ Schmitt, *The Nomos of the Earth*, p. 60/92: “... jurists hardly knew what to make of them and treated them perfunctorily under the category of ‘truce’.”

⁴⁹ Richard Tuck, “Hobbes and Descartes”, in G.A.J. Rogers and Alan Ryan (eds), *Perspectives on Thomas Hobbes* (Oxford, 1988), pp. 11–41.

⁵⁰ Michael C. Williams, “Hobbes and International Relations: a Reconsideration”, *International Organization*, 50/2 (1996): 213–36.

too abstract; that is, failing to capture the impact of the existence of free spaces on seventeenth century ways of thinking. In order to support a non-sceptical interpretation when the reference to scepticism seems most obvious, Schmitt cites Pascal on a meridian that decides truth,⁵¹ but Hobbes too, as we have seen, plays a central part in the whole anti-sceptical demonstration.

In the final section, which will add a fourth remark to the three previous ones, I shall suggest a way of assessing the Schmittian interpretation of Hobbes and the situation of international law in the historical perspective of the idea of a global line.

Reconsidering Schmitt's reading of Hobbesian international theory and the question of empire

The link between politics and space is clearly central to Schmitt's whole interpretation of Hobbes in *The Nomos of the Earth*. The first question is therefore to determine whether that interpretation is true to Hobbes's approach to international relations. How much is there in Hobbes about the territory of the states and the conquest of new territories? As we have already seen, Hobbes certainly presupposes the existence of state territory, but it is not a

⁵¹ Schmitt gives the following quote in French: "Trois degrés d'élévation du Pôle renversent toute la Jurisprudence. Un Méridien décide de la vérité, ou peu d'années de possession. Les lois fondamentales changent. Le droit a ses époques. Plaisante justice qu'une rivière ou une montagne borne ! Vérité en deça des Pyrénées, erreur au delà." ["A three-degree rise of the Pole would ruin the whole jurisprudence. A meridian decides the truth or at least the years of possession. Fundamental laws change. Law has its own epochs. This is a strange justice that is defined by a river or a mountain. Truth on this side of the Pyrenees is error on the other."] (*The Nomos of the Earth*, p.63/95). For a more accurate quote, see Blaise Pascal, *Pensées*, ed. Louis Lafuma, no. 60. Schmitt makes the following comment: "Pascal's Meridian is nothing other than the amity lines of his time, which had created an abyss between freedom (the lawlessness of the state of nature) and an orderly 'civil' mode of existence." (Schmitt, *The Nomos of the Earth*, p. 64/95).

major topic in *Leviathan*. Moreover, the notion of a state of nature is not considered spatially, but as a state of relation between individuals or groups. If the introduction of geography into the picture (as in Abraham Bosse's frontispiece of *Leviathan*)⁵² no doubt adds a new dimension, it is not a dimension that is central to Hobbes's preoccupation.

Although Schmitt never says it so clearly, his interpretation of Hobbes's international relations theory presupposes that almost all European states were empires, since their relations beyond the lines are based on the will to create, maintain or extend their territorial possessions in the New World. This kind of analysis is certainly consonant with the new additions to the third and fourth editions of *Völkerrechtliche Grossraumordnung*, whose chapters' titles (for example, "Empire and Space") insist on the fact that colonialism has been the main vector of the international law of peoples, allowing almost every state, with the notable exception of Prussia, to enlarge their empires beyond the line. But Schmitt's preoccupation of the 1940s cannot be attributed to Hobbes in the 1640s and 50s, for there is no evidence that Hobbes supported the imperialist ventures of his time,⁵³ still less that he based his political theory on the necessity of building empires. In *De Cive*, commenting on the fact that Rome and Athens sometimes enriched themselves by conquest and in accord with a recurrent critique of Machiavelli,⁵⁴ Hobbes says that no state can count on such a means, since it seldom succeeds.⁵⁵

⁵² On the authorship of Abraham Bosse, see Horst Bredekamp, *Thomas Hobbes' visuelle Strategien* (Berlin, 1999), I.2.c; see also Jean-Claude Vuillemin, "Bosse, Abraham (1602–76)", in Luc Foisneau (ed.), *The Dictionary of Seventeenth-Century French Philosophers*, London/New York, 2008, vol. 1, pp.176–9.

⁵³ On Hobbes's participation in the Sandys and Virginia company and his opinion on imperialism, see Noel Malcolm, "Hobbes, Sandys, and the Virginia Company", in Id., *Aspects of Hobbes*, pp. 53–79.

⁵⁴ Cf. Luc Foisneau, "Hobbes et la théorie machiavélique de la *virtù*", *Archives de philosophie*, 60/3 (1997): 371–91.

⁵⁵ Hobbes, *De Cive*, XIII, 14, English transl., p. 150.

Amity lines are central to the Schmittian construction, since they are an open critique of the formalism of a normativist, not to say Kantian, approach to international order. But is Hobbes – and this is a third question – so far from the normativist approach when he stresses the link between security and laws of nature, both at the state and at the interstate level? His doubts about the force of positive norms in the international realm do not mean that he does not believe in the existence of organising rules: the point is that he considers the determining factors not to be the positive treaties, but the natural laws, which, whenever it is possible and useful to the international stability and not contrary to the security of a state, must be obeyed. In the seventeenth century debate on whether the international order was based on positive or natural laws, Hobbes clearly answered that it was based on the second category of laws.⁵⁶ In that category, he could be portrayed as a representative of security as a norm option, that is, a proponent of applying the law of nature to the context of security. But Hobbes' bias in favour of natural law did not particularly make him a partisan of international treaties, and still less of the secret clauses appended to those treaties. One may fear that, in a strictly historical perspective, Schmitt got this the wrong way round.

To conclude, I would say that there is more in the Schmittian interpretation of Hobbes' state of nature than is generally found in the latter by scholars of Hobbes. Schmitt does not maintain that the state of nature that existed among European states in the seventeenth century was as anarchical as has been claimed, but rather that this state of nature was twofold: a relative state of peace within the borders of Europe, and a terrible space of liberty, that is, of

⁵⁶ Cf. Malcolm, "Hobbes's Theory of International Relations", p. 439: "The debate was a real one, and even those contemporary writers who strongly rejected Hobbes's viewpoint treated it as a serious argument about how to classify international law, not as a rejection of international law as such". For a more thorough presentation of the debate, Malcolm refers to P.E. Corbett, *Law and Society in the Relations of States* (New York, 1951), pp. 21–6.

open violence, beyond those frontiers. If there is war in both cases, this war does not have the same intensity. In the one case, it is war between civilized states, a war therefore to be waged according to certain rules; in the other case, it is a terrible warfare, in which all means are used to achieve conquest.

This Schmittian contrast is fascinating for whoever wants to understand the violence that began with the development of a new phase of imperialism at the end of the nineteenth century, and which eventually turned itself against the relatively protected states of Europe during the two World Wars. Nothing compared in intensity to the killing of Atabalipa, the King of Peru, by the Spanish soldiers, recalled by Hobbes in *Behemoth*,⁵⁷ but the connection between the two events has been judged enlightening, even in the present post-colonial situation.

The difficulty, however, rests with the fact that this geopolitical interpretation of Hobbes's state and Hobbes's state of nature decidedly ignores the fact that Hobbes is not an imperialist thinker and that his vision of international relations rests on a universalistic theory of the laws of nature. Just as Schmitt turned *Leviathan* upside down in reading it from a decisionist perspective, so too he turned Hobbes's worldview upside down in reading it as the vademecum of an imperialistic Europe. Setting things upright again is all the more important for us today in view of the still open political debate regarding the interpretation of Europe's borders and of Europe's relations to the rest of the world.

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⁵⁷ Hobbes, *Behemoth*, p. 11.