

Warning Concerning Copyright Restrictions

The Copyright Law of the United States (**Title 17, United States Code**) governs the making of photocopies or other reproductions of copyrighted materials. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be used for any purpose other than private study, scholarship, or research. If electronic transmission of reserve material is used for purposes in excess of what constitutes "fair use," that user may be liable for copyright infringement.

The *Nomos* of the Earth

**in the International Law of
the *Jus Publicum Europaeum***

Carl Schmitt

Translated and Annotated by G. L. Ulmen

Telos Press Publishing

2006

Copyright © 2003 by Telos Press, Ltd.

All Rights Reserved. No portion of this book may be reproduced, by any process or technique, without the expressed written consent of the publisher.

Manufactured in the United States of America

10 09 08 07 06 05 04 03 02 01

Typeface: Times New Roman

Printer and binder: Cushing-Malloy, Inc.

Library of Congress Cataloging-in-Publication Data:

Schmitt, Carl (1888–1985)

Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum
(Berlin: Duncker & Humblot, 1950; 2nd ed., 1974);
The *Nomos* of the Earth in the International Law of
the *Jus Publicum Europaeum*

Includes translator's introduction, translator's note and acknowledgments, glossary of foreign terms, subject index, and name index.

ISBN: 0-914386-29-8 (cloth)
0-914386-30-1 (paper)

1. History 2. International Law 3. Political Theory 4. Philosophy 5. European Civilization 6. American Foreign Policy

Telos Press Publishing
431 East 12th Street
New York, NY 10009

Author's Foreword

This book, the defenseless product of hard experiences, I lay on the altar of jurisprudence, a discipline I have served for more than forty years. I cannot foresee who will take my offering in hand, be it a thoughtful or a practical person, be it a destroyer and annihilator who ignores the asylum I offer. The fate of a book does not lie in the author's hands, any more than does his personal fate upon which it hinges.

Given this fact, the motto for this book might be two verses Goethe wrote in 1812:

All petty things have trickled away,
Only sea and land count here.

For I speak here of firm land and free sea, of land-appropriations and sea-appropriations, of order and orientation. However splendid that motto might be, it would be misleading. Both extraordinary verses steer attention too much away from international law, and to either a geographical-scientific or an elemental-mythological approach. That would not do justice to the essentially jurisprudential foundations of this book, which I have taken much pains to construct.

I am much indebted to geographers, most of all to Mackinder.¹ Nevertheless, a juridical way of thinking is far different from geography. Jurists have not learned their science of matter and soil, reality and territoriality from geographers. The concept of sea-appropriation has the stamp of a

1. [Tr. Sir Halford John Mackinder (1861-1947) was both a geographer and a politician. In January 1887, the fame of his Oxford extension lectures resulted in an invitation to speak at the Royal Geographical Society in London. During the discussion after the lecture, he defined geography as "the science of distribution, the science, that is, which traces the arrangement of things in general on the earth's surface." In 1899, he was instrumental in establishing the first British school of geography, at Oxford. He is best known for his theory of the "heartland," which influenced the geopolitical thinking of Karl Haushofer. Mackinder's writings on land power are comparable to the ideas of Alfred Thayer Mahan (1840-1914) on sea power, which also influenced Schmitt's thinking.]

jurist, not of a geopolitician. As a jurist, I agree with Camilio Barcia Trelles,² an important scholar of contemporary international law, who also has dealt with the theme of land and sea.

The ties to mythological sources of jurisprudential thinking are much deeper than those to geography. These were revealed to me by Bachofen,³ but the many profound insights of Jules Michelet should not be forgotten. Bachofen is the legitimate heir of Savigny.⁴ What the founder of the Historical School of Law understood to be historical authenticity, Bachofen extended and made much more fruitful. This historical authenticity is not just archeology and a museum artifact. It concerns the existential question of jurisprudence, which today would be sundered between theology and technology if the ground of its being here and now were not understood properly and developed fruitfully in terms of its historical relevance.

For this reason, the question of presentation is especially difficult. At present, there are all sorts of restraints and restrictions. A critic unencumbered by them will have no trouble finding bibliographic and other imperfections. What is more, I avoid mention of contemporary affairs and break off at many points, so as not to give a false impression. All experts lament the Babylonian linguistic confusion of our time: the crudeness of the ideological struggle, the disintegration and contamination of the most common and familiar concepts of contemporary public life. Since both the given subject and the present situation are overwhelming, all we can do is

2. [Tr. Given the significance Francisco de Vitoria plays in this book, it is noteworthy that Schmitt says "Barcia Trelles' lectures constituted the strongest breakthrough for the world at large" in the Vitoria renaissance after World War I. See *The Nomos of the Earth*, p. 118n. Elsewhere, Schmitt speaks of this Spanish teacher of international law as one who discussed "the confrontation between the contemporary fronts of the Free World and the Communist Bloc." See "Die geschichtliche Struktur des heutigen Welt-Gegensatzes von Ost und West: Bemerkungen zu Ernst Jüngers Schrift: *Der Gordische Knoten*" (1955), reprinted in Carl Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916-1969*, ed. by Günter Maschke (Berlin: Duncker & Humblot, 1995), p. 529. Schmitt here mentions Camilio Barcia Trelles, *El Pacto del Atlántico, la tierra y el mar frente a frente* (Madrid: Instituto de Estudios Políticos, 1950).]

3. [Tr. Johann Jacob Bachofen (1815-1887) was appointed to the chair of Roman law in Basel, but resigned in 1844 to devote himself to the history of art. His major interests, however, were ancient Roman law and Greek antiquity, and it was in his investigation of these subjects that he became fascinated by myths.]

4. [Tr. Friedrich Carl von Savigny (1779-1861). In Schmitt's "Testament," written in 1943-44 while he was working on *Der Nomos der Erde*, he called Savigny's 1814 treatise, *Of the Vocation of Our Age for Legislation and Jurisprudence*, an "alternative paradigm" to legal positivism and to the crisis of jurisprudence. See my translation of Schmitt's "Testament": "The Plight of European Jurisprudence," in *Telos* 83 (Spring 1990), pp. 35-70.]

sift through the wealth of material, present new ideas objectively, avoid unnecessary controversy, and not fail to grasp the magnitude of our theme. Both the theme and the situation are overwhelming.

The traditional Eurocentric order of international law is foundering today, as is the old *nomos* of the earth. This order arose from a legendary and unforeseen discovery of a new world, from an unrepeatabe historical event. Only in fantastic parallels can one imagine a modern recurrence, such as men on their way to the moon discovering a new and hitherto unknown planet that could be exploited freely and utilized effectively to relieve their struggles on earth. The question of a new *nomos* of the earth will not be answered with such fantasies, any more than it will be with further scientific discoveries. Human thinking again must be directed to the elemental orders of its terrestrial being here and now. We seek to understand the normative order of the earth. That is the hazardous undertaking of this book and the fervent hope of our work.

The earth has been promised to the peacemakers. The idea of a new *nomos* of the earth belongs only to them.

Carl Schmitt
Summer 1950

Earthy names might literally mean earth, stone, or ground, such as Adam or Jade, or they may refer to places and characteristics of the earth. Earth-related heroes and mythological figures related to the earth can inspire earth names too. Along with Adam and Jade, other names that mean earth in the US Top 1000 include Aaron, Axton, Clay, Gemma, Mason, Mira, Ruby, and Sierra. Other earthy baby names worth considering include Everest, Gardener, Lone, and Petra. Earth names might appeal to parents who are gardeners, mountain climbers, or ecologists. One of these names that mean earth can offer st