

Nomos of the Earth

Presentation in Mytilene, 16 July 2018

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Two Narratives

- Carl Schmitt – *Nomos of the Earth/Nomos der Erde* (1950)
- Michel Villey – *La Formation de la Pensée Juridique Moderne* (1975)

Pindar's Poem: *Nomos* as *Physis*, not *Nomos* and *Physis*

- *Nomos-Physis* debate
- Pindar's poem = *nomos* as *physis* – Closer to Heraclitus than Plato and Aristotle
- Thucydides = another a return to Heraclitus?

Nomos as kosmos

- Villey's lectures 1961 – 1966
- No explanation of how *nomos* came to be grafted onto *kosmos*
- Aristotle: Transformation of *physis* into *nomos* through through the distinction the between *energeia* and *entelecheia* or potentiality and actuality

Nomos and Nous

- Parmenides
- Homer

Schmitt: *Nomos* as Concrete Political Space and Order

- Nomos – *nemein*: sharing
- Fundamental act of ordering of space = *Raumordnungsakt* = *geschichtlicher Vorgang* or even *Grundvorgang*
- *Zusammenhang von Ortung and Ordnung*

Ius Publicum Europaem

- Medieval Europe:
 - Rome
 - Kat-echon
 - Pope and Emperor/King – one, not two societies
 - *War between Kings/Princies = Rechtsbehauptungen [und] Rechtsverwirklichungen = umhegten Kriege = contained wars*
- Modern Europe : 16th to 19th centuries
 - territorial states – *Flachenstaten*
 - constellation of equal sovereigns
 - War = non-discriminating measuring of strength – *iustus hostis*
 - Again: contained wars/*umhegten Kriege*

The High Seas

- The Sea – not amenable to *Ort*, *Ortung* or *Ordnung* (place, structuring of space or order). Open space or arena, free for all, the abode of pirates
- The Amity line
 - This (Europe's) side = Contained wars – mutual preservation of sovereignty as just enemies, public law – private law distinction.
 - Other side of the line – no limits to aggression and destruction – the just enemy no longer at issue. Public law – private law distinction also no longer relevant or applicable.

Vitoria

- Shift toward abstract universalism – the distinction between Christian and non-Christian not relevant to the universal duty of Christian love and respect for the equal dignity of all human beings.
- Spanish conquest nevertheless justifiable because of the resistance to the propaganda, missionary and commercial freedom of the Spanish ships. It provoked a war that then led to the conquest and occupation.

Grotius

- End of the just war argument and beginning of the occupation (discovery argument)
- Grotius – like Vitoria = representative of the new universalism. Engages with the problem of occupation of land in the New World from the perspective of a innovative private law (Roman law) conception of original ownership
- Bypasses the major questions of the international public law of his time – his fame is largely undeserved, suggests Schmitt.

Congo Conference 1885

- Land-taking by European states beyond the amity line largely irrelevant.
- Nevertheless not without justification: Civilizing vision of the European states – taking of land = bringing of civilization to uncivilized peoples and regions of the world.
- New racial solidarity between the European States – drawing of a new Amity line – but also the beginning of the erasure of the old amity line of 16th and 17th centuries.

The end of the European World Order

- Recognition of the Congo as an independent state and effective occupation of the Congo by Belgium soon after = erasure of the distinction between European and non-European Soil
- Disintegration of the relation between the European states themselves – change of the meaning of war between 1914 and 1908.
- End of the concept of the *justus hostis* – the Emperor Wilhelm charged with war crimes in the Treaty of Versailles.

The Foundering and Reconstruction of Nomos from Athens, Mytilene and Melos to Versaille

- The virtue of Athens – from *sophrosune* (moderation) to the competitive and agonistic spirit of the Homeric warrior-king
- The different fates of Mytilene (428 BC) and Melos (416 BC)
- *Nomos* equated with or reduced to *physis*
- The Future Challenge of Aristotle, Roman Law, and European Public International law to separate *nomos* and *physis* again and to re-align *nomos* with *cosmos* (world order).

The Order of the *Ius Publicum Europaeum*

- The response to the challenge of separating *nomos* and *physis* by the *Ius Publicum Europaeum* according to Schmitt
- Institutionalisation of war as an orderly relation between states: = highest form of order of which human strength is capable.
- How did the *Ius Publicum Europaeum* achieve this order?: The amity line: The amity line unburdened the European states from excessive aggression and cruelty by allowing them to direct this aggression and cruelty to peoples and places beyond the amity line where aggression and cruelty did not matter.

Human Rights the new World Order?

- Human rights = final collapse of the old European distinction between European and non-European soil, final confirmation of the collapse of the old European order when Europe was still the sacred center of the earth *die sakrale Mitte der Erde*, as Schmitt puts it more than once in *Der Nomos der Erde*.
- Human Rights the foundation of a new world order (Habermas)?
- Hannah Arendt's Critique of Human Rights
- Ayten Gündoğdu: Arendt's Aporetic Conception of Human Rights

And now?

- Europe's Possible Responses to Migration in view of the absence of a significant distinction between European and non-European soil:
 - Human Rights the new Nomos (however aporetic)?
 - The Collapse of Human Rights and the return of *nomos as physis*, the construction of the Mediterranean sea as the new amity line, and, the effective return to Mytilene (428BC) and Melos (416), and the latest turn in the eternal return of the weeping philosopher and the gay scientist?