

## Article

# From Globalisation to Planetarisation: The Principle of Interdependence as a Vector for a New Law of the Earth: The *Lex Anthropocenae*

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**Abstract:** The principle of interdependence is the core of the idea of a Common Home, a notion introduced into the public debate by the encyclical *Laudato si'*, and one which is essential to overcome the anthropocentric narrowness of the ethical–legal normativity on which the Rule of Law is based. The theological contribution to the formulation of the principle of interdependence is embedded in a rich legal–philosophical tradition, which has in C. Schmitt a leading exponent. Thanks to the juridical *spatial turn* outlined by this author, we may recognize that law regulates not only inter-human relations but also inter-system relations between society and the Earth’s ecosystem. To implement a corresponding structural change, however, we need move beyond Schmittian reductionism, which univocally associates the idea of law with the physical dimension of the occupation of space and its rational inscription as *property* and *sovereignty*, a form of predatory appropriation and domination which has brought us to the threshold of the current global ecological and political disorder. Only by juridically implementing interdependence as a new regulator of the relationship between Earth and society and of the relations between peoples can we politically govern and solve the ongoing (ecological, health, social, and international) world crisis.

**Keywords:** Carl Schmitt; interdependence; common home; property; sovereignty; earth system law



**Citation:** Bartolomei, Teresa. 2023. From Globalisation to Planetarisation: The Principle of Interdependence as a Vector for a New Law of the Earth: The *Lex Anthropocenae*. *Religions* 14: 1176. <https://doi.org/10.3390/rel14091176>

Academic Editors: Alex Villas Boas, Alexandre Palma and Alfredo Teixeira

Received: 28 July 2023

Revised: 8 September 2023

Accepted: 8 September 2023

Published: 14 September 2023



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## 1. Introduction

One of the greatest theologians of the past century, Michel de Certeau, did not write about Christology, Trinitarian doctrine, biblical theology, or the social doctrine of the Church. He wrote about historiography, ethnography, psychoanalysis, political current affairs, philosophy, sociology, mysticism, journalism, Sixty-Eight, subaltern cultures, everyday life strategies, and poetry.

The great theoretical operation embodied by his entire oeuvre, beyond the exemplary results in terms of content, is that of a radical epistemological relocation of theological discourse, which is not simply called upon to adapt its language to the light of the categories of contemporary thought, but to broaden its object, widening the horizon of historical revelation far beyond doctrinally determined and circumscribed content, to include the historical form of the human being in his own time. A good theology, in de Certeau’s perspective, does not speak only of God, but of man in actual history in his relationship with God: it does not speak only of eternal and universal truths, but reads the present in a theological key, making itself capable of interpreting it and, even before that, of ‘understanding’ it on the basis of its own critical–hermeneutical categories, identifying and promoting its anthropologically emancipative and redemptive potential and reconstructing the conditions of self-transcendence inscribed and activable in it.

What does our time tell us, asks de Certeau, if we question it on the basis of what is for him the essential ‘onto–ethical’ form of self-understanding of the Christian: *Never without the other?*<sup>1</sup>

What does our time tell us if we make this idea of relationality constitutive and foundational, not complementary and derivative, if we make of it the category through which

we analyse our individual, collective, particular, and universal experience? Consistent are the consequences on the ethical, juridical, social, epistemological, and existential levels if the founding element of being in the world is not that of a sovereign, self-sufficient consciousness, capable of an unconditionality that makes it a universal legislator (on the Kantian individual or Hegelian and Marxian historical levels), as claimed by liberalism and historicism, but is that of an insurmountable insufficiency, so that the subject is not determined as an absolute (*the separate*), from itself, from its identity, but from its relationship with and dependence on *the other from itself*. If not the subject as identity, but rather the subject's relationship is the onto-ethical core of being in the world, the outlook on modernity changes radically: normative priorities are redefined and the ethical-legal architecture of rights is reformulated.

Contractualism, the cornerstone of liberalism, then proves to be too narrow, anthropocentrically implanted on a voluntary and unilaterally self-determining relationality, exclusive of that dimension of relationality with the non-human, starting with Earth's ecosystem, whose importance for the definition of the 'social' is tragically evident today in light of the ecological crisis that threatens the quality of life, if not the very survival, of humanity. Thinking about ethical and political choices only in terms of society is no longer sufficient, as evidenced by the paradigm shift introduced by the notion of a *common home*, which is not just a metaphorical play on words to sweeten with a connotation of domesticity the collective membership, but a radical rethinking of the form of the relationship and its contractors, who are not only human.

The idea of a common home,<sup>2</sup> launched by Pope Francis in the encyclical *Laudato si'* (Francis 2015), converging in many respects with the lexicon and objectives outlined by various UN documents on the need to reformulate the notion of development in a sustainable key,<sup>3</sup> is based on a principle of interdependence, of normativity of a dimension of relationality that is not purely inter-human, which has its roots in an exquisitely Christian theological figure, as reconstructed by de Certeau, but which constitutes an autonomous rational criterion of fundamental importance for devising a new political and legal strategy capable of tackling and resolving some of the major historical challenges of our time, starting with the ecological crisis.

We must remember that is within the framework of theological reflection and magisterial teaching of the 19th and 20th centuries that a key principle of the European Union's legal architecture, the principle of subsidiarity, was developed.<sup>4</sup>

Similarly, it is theological thought (in its exquisitely critical Certeauian version, and in its authoritatively magisterial Franciscan enunciation) that has come of age on the threshold of the third millennium, which with the principle of interdependence—the core of the idea of a common home—provides contemporary political and juridical discourse with a fundamental category, whose conceptual determination is just starting out, but whose roots in the modern philosophical tradition must be carefully highlighted in view of its effective and clear theoretical and practical operationalisation. It is to the illustration of an important chapter in the conceptual history of the notion of interdependence, grafted into the heart of Western culture by its Christian matrix, that this text is dedicated.

## 2. From Sovereignty to Interdependence

Carl Schmitt's entire oeuvre is an exasperating combination of dazzling historical and legal insights and aberrant dogmatic postulates, of incomparable analytical clairvoyance and sinister political brutality. Programmatic anti-universalism and anti-liberalism deform the scholar's formidable historical diagnoses into regressive strategies of systematic discrediting of modernity and its civilising potential for pacification and progress. It is difficult to deny, however, that his lucidity in demystifying the ideological perversions inherent in the doctrinal and historical incarnations of naturalistic and liberal universalism makes him a great twentieth-century master of suspicion, whose corrosive impact in the legal domain can be compared to Nietzsche's in the field of philosophical tradition and to Freud's in that of the sciences of the mind. If the anti-progressive radicalism and the vile

adhesion to Nazism (which resulted in a *damnatio memoriae* more radical than that suffered by his Catholic–pagan *Geistesbruder* of the Black Forest) have long limited its reception, the chronological distance has gradually alleviated the revulsion towards a thought that, as a whole, is toxic, but which provides conceptual keys of undeniable power. As in the case of Nietzsche, one does not have to agree with Schmitt's theses to recognise the pertinence of some of his analyses. We cannot but read Schmitt if we want to understand the democratic modernity he abhors, and thus, perhaps, save it at least from some of the distortions that, in his eyes, condemn it, but that perhaps, also thanks to his diagnostic contribution, can be rectified.

If it is in the field of constitutionalism and the history of political thought that Schmitt's legacy has found the greatest resonance, the turbulent turn of the third millennium has seen increased attention to his thinking in the field of international law: in the context of the new geopolitical balance established by globalization, political analysts recognize the formidable analytical relevance of sulphurous diagnoses such as that of the obsolescence of the nation-state and the rise of a multiverse network of *Großräume* (large spaces, supranational spheres of influence), as well as the progressive spread of war and the 'total' enemy and the rise of the figure of the partisan fighter (the terrorist) who makes no distinction between military and civilian, the protagonist of a global civil war.

When EU leaders speak of European sovereignty as a necessary complement to national sovereignty, or when Putin invades Ukraine to prevent its NATO membership, effectively and in principle claiming to annex a sovereign state to the Russian *Großraum*, the facts confirm, both from a democratic and a ruthlessly autocratic perspective, the Schmittian thesis of the dissolution of the international balance of modernity, characterised by a pluriverse of independent nation states, equally and absolutely sovereign thanks to the legal delimitation of their own intangible territorial identity.<sup>5</sup>

However, it is not these specific issues that are examined here, but rather the genealogical framework of Schmitt's doctrine of international law, with its founding notion of *Nomos of the Earth*, developed in the work of the same name: *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Schmitt [1950] 2011) (henceforth referred to as *NE*). Three hypotheses guide this reflection:

1. The Schmittian thesis that the legal order is not merely a social order, but also a spatial order, more precisely, that it constitutes a configuration of interhuman relations starting from man's physical relation to the Earth (the *Nomos*, the legal order, is "unity of space and law, of order and location", *NE*, p. 13ff. | 42ff.),<sup>6</sup> provides the conceptual basis for a reformulation of national, international, and supranational legal systems in a way that is not suppletive but constitutively ecological, with the establishment of a law that recognises environmental sustainability, respecting the inter-systemic interdependence and compatibility between mankind and Earth's ecosystem as its own constitutive invariant and not merely an additional variable.<sup>7</sup>
2. The thesis of the physical co-matrix of law as a rational ordering of not only inter-human but also spatial relations (the intersystemic relations between Earth and society) is not incompatible with the universalism of liberal normativism (as claimed by Schmitt) if this physical inherence of law as a topological as well as inter-human ordering is freed from the territorialist reductionism that affects Schmitt's discourse. This is univocally focused on a historical and conceptual divide between land understood as soil, solid ground (*Land*), and sea,<sup>8</sup> dictated by the primacy of the (rational) juridical principle of property/sovereignty, which prevents the full implementation of the holistic turn, with a planetary profile, intrinsic to the perception of Earth (*Erde*) as a global spatial horizon which is, however, lucidly diagnosed by Schmitt as a historical acquisition of modernity.
3. Identifying the reductionism inherent in Schmitt's thinking, which univocally associates the idea of law as a topological as well as a societal order with the rational principle of property and sovereignty, makes it possible to highlight other dimensions of the intersystemic relationship between Earth and society, particularly relevant

in its planetary dynamics, which can be rationally configured as principles of law. The notion of interdependence will be proposed here as a possible vector for this categorical integration of the principles of property and sovereignty (relevant only in the perspective of territoriality).

### 3. Schmitt: Law as an Ordering of Spatial, Intersystemic, and Not Only Interhuman Relations

The fundamental objective of *NE* is to dismantle as an illusion the preeminent conviction within the liberal, contractualist tradition (in line with its ancestry in natural law) which sees in law only a rational configuration of interhuman relations, a device of pure societal regulation.

For Schmitt it is necessary to correct this mystifying simplification by introducing a further point of view which implies not a simple structural integration but a real genealogical reversal. At the basis of the positive body of laws of a society there is, in fact, in his view, a more original normativity (the *Nomos*) that originates as a regulation of the intersystemic relationship between the Earth and mankind.<sup>9</sup> Every legal system is genealogically a spatial system (*NE*, p. 36 | 67).<sup>10</sup>

The *Nomos* is therefore “the inner measure of an original, constitutive act of spatial ordering” from which “all subsequent regulations of a written or unwritten kind” (*NE*, p. 47 | 78) draw their strength.

To prove his thesis, so visionary and provocative about the essentially anthropocentric tradition that characterises universalist normativism in general (in its onto-theological versions as well as in the post-metaphysical and secularised versions of liberal contractualism) that it has long remained ignored,<sup>11</sup> Schmitt elaborates an extensive fresco of the history of modern international law, presenting its evolutionary process as an essentially geopolitical dynamic.

In this sense, *The Nomos of the Earth* tears away the *veil of ignorance* with which universalist normativism conceals the contingent and particularist dimension of the historical process of the establishment of modern law. Where the liberal vulgate sees only the advancement of the legal implementation of universal principles of practical reason in the regulation of inter-human relations, Schmitt ruthlessly highlights how legal progress on European soil (the regulation of war, made possible by the establishment of state sovereignty), achieved since the dissolution of the medieval order of the *Respublica christiana*, has been ‘bought’ at the price of the exclusion from the legal system of non-European territories, degraded to a free field of conquest, subjugation, and exploitation, in which only the law of the strongest holds sway. The consequence of the legal conquests of Western modernity, says Schmitt, is colonialism, the degradation of the rest of the world to prey (*LM*, pp. 74–75 | 40).

The political–legal asymmetry between the North and South, the West and rest of the world, for Schmitt, is inscribed in the genetic code of modernity, it shapes its entire genealogical tree, and normativist universalism is the ideological cover for a state of affairs based on mere relations of force. The alleged promotion of universal values, first Christian and then secularly humanistic, in this reconstruction, is the mask and justification of a secular particularistic policy of imperialistic dominance of the West.

It is not our purpose to argue here the theoretical scope and phenomenological–historical rightness of the genealogical demystification of universalist normativism carried out by Schmitt, who, moreover, is decidedly detached from the front of the critics of Western imperialism for the antithetical objectives and consequences of the denunciation (Schmitt does not intend to engage in a genealogical delegitimization of the *Jus publicum Europaeum*, which in his eyes represents an effective conquest, thanks to its capacity for pacification and a reduction in violence on the continent). What is relevant for our discussion is the basic thesis underlying this historical reconstruction, which is not without its own gross simplifications, according to which this legal form is historically particular, contingent, the product of a constellation of different factors (rational, situational, technological, scientific,

cognitive, and spatial), in which the physical dimension of humankind's relationship to space is essential.

In Schmitt's reconstruction, the *Respublica Christiana* (a transnational legal order, endowed with transcendent founded *potestas*) dissolved at the dawn of modernity, to be gradually supplanted by the *Jus publicum Europaeum* in the wake of two fundamental geostrategic changes:

- (a) The geographical discoveries made by the Portuguese and Spanish empires, with the consequent establishment of commercial networks and political domination on a planetary scale, radically transformed the worldview of European peoples, breaking up their centripetal self-referentialism and converting it into a centrifugal expansionism commensurate with the extension of the globe.
- (b) Whereas medieval civilisation understood itself exclusively as a geocracy (territorial *potestas*),<sup>12</sup> the new political order that arose from the 16th century onwards incorporated a dimension of thalassocracy (the seas ascended to a key component in the political and military chessboard), which became predominant from the point of view of the most enduring world power of modernity, Great Britain (*NE*, p. 19ff. | 49 ff.).

Born, therefore, from the transformation of the geostrategic coordinates with which mankind relates to the Earth, which took place in the transition from the Middle Ages to the Modern Age, the *Jus publicum Europaeum* entered a crisis at the turning point between the 19th and 20th centuries due to a similar profound alteration of the spatial order produced by the changed economic, technical, and political order. The conquest of the air as a means of transport (with the invention of aviation) and communication (with the invention of the telephone and radio) exponentially accelerated the deterritorialisation of social processes, already triggered by the progressive prevalence of economic over politic normativity promoted first by Great Britain, a naval power that built its world domination on the disengagement from territorial boundaries, and then by the United States, the 20th century champions of the economic disarticulation of politics and the anti-statist societal pre-eminence of the market.

#### 4. From the Order of Modernity to the Disorder of Globalised Post-Modernity

There are many scholars who, from different political fronts, have recognised in this post-World War II Schmittian reflection not only a penetrating demystification of colonialism but also a far-sighted prophecy of globalisation. In years in which the dominant public perception was that of an exaggerated politicisation of international relations in the confrontation between opposing ideological blocs (Western liberal democracy vs. communist autocratic totalitarianism), Schmitt identifies different long-term dynamics, diagnosing that the historical process underway was rather that of the erosion of the primacy of politics, ousted from its state role as the monopolistic agent of social *potestas* by the progressive affirmation of the economic imperative of profit production and the technical imperative of the strengthening and optimisation of the processes of control and exploitation of physical reality as the primary drivers of collective decisions, with their 'maritime' logic of deterritorialisation: the annulment of borders, hierarchies and centralisms, and institutional and axiological architectures. Capitalism, an 'anarchic' combination of economics and technology, empties politics, marketising and monetising social relations, but does not defuse violence, which re-emerges (this is Schmitt's prognosis, which has sinisterly come true) as an uncontrolled and irrational phenomenon, not governed by institutional devices, of devastating social polarisation and a permanent terrorist threat.

It is a fact, however, that Schmitt, a diviner of the reasons for chaos, for the disorder of post-modernity that succeeds the dissolution of the order of modernity, provides no other formulas for reconstruction and a way out, if not the sluggish hope of the re-establishment of sovereignty through the dislocation of national states to mutually hostile *Großräume*, large tribes that are separated by incompatible interests and values and therefore unable to address the common problems that are unfolding today on a planetary scale. Where the law of political decision-making is the conflicting logic of friends/enemies opposed



by ideological divisions and alternative interests, as Schmitt claimed and as seems to be factually confirmed by a world scenario marked by increasing tension between the ‘great of the Earth’, the irreversible consequences associated with globalisation are ungovernable.

### 5. Globalisation and the Anthropocene: The Emergence of the Spatial Paradigm of Interdependence

If a unified world governance today appears only as the remote goal of the utopian wishful thinking of well-intentioned cosmopolitanism, the current alternative, ‘real’ but not realistic, is totally inadequate to solve the problems on the table, of a “pluriverse” horizon (according to Schmitt’s fulminating formula) of great powers that, if they do not directly and openly wage war against each other (perhaps displacing it, by proxy, in circumscribed but strategic scenarios, such as in Syria, Ukraine, Yemen, and various African countries), nevertheless ruthlessly compete with each other in order to gain increasing margins of economic, technological, military, and political power at the expense of the contenders.

As Schmitt rightly observes, there are “constituent situations” in which the law in force enters crisis because it does not take hold of the changed reality. Political institutions come to a standstill, powerless to contain the disorder, because they are incapable of governing social and spatial processes: it is not only a problem of societal relations, but of intersystemic relations between society and the Earth, whose changed ‘habitational’ conditions escape the legal rationality configured on previous coordinates.

The new spatial order created by globalisation (the “spatial revolution”, *LM*, p. 55ff. | 27ff.) is one of irreversible ecological, economic, technological, media, demographic, and health interdependence. A mere quantitative redefinition of the legal principle of sovereignty, a principle of separation and exclusion, elevated from the national scale to that of the great areas of influence, does not grasp the qualitative difference established by the emergence of a new spatial paradigm qualified by interdependence: the Anthropocene ([Crutzen and Stoermer 2000](#); [Steffen et al. 2011](#)).

The choice to characterise this change as a genuine new geological era is justified by its supporters through the observation that the exit from the relative climatic stability guaranteed to humankind by the Holocene is not produced by intra-natural but by anthropogenic factors: since the industrial revolution of the 19th century, humanity has become a real ‘geological’ factor of alteration of the biophysical balances of the planet. The traditional dependence of mankind on its natural habitat has been transformed into a systemic (not purely punctual) dependence of the habitat on human intervention, with consequences of non-linear complexity and unpredictability. Intersystemic interdependence between the planet and society is the central phenomenon of the Anthropocene, characterising itself as a dystopian threat until we can convert the destructive and predatory nature of human presence into synergistic “custodianship” and caring “stewardship”. In this sense, the geological era is now, indissociably, a historical era, imposing a general reformulation not simply of laws, but of the *Nomos* (*NE*, pp. 48 | 78–79).

It is not a rhetorical or alarmistic forcing to say that we are in one of these historical moments of a “constituent” nature. Globalisation and the Anthropocene make it imperative to adapt our legal instruments for the collective regulation of societal and inter-systemic relations to the spatial order that has emerged from them.

The weakness of the European Union in dealing with three of the major crises of the present day—ecological, migratory, and pandemic—is a clear indication that a purely quantitative correction, the enlargement of the sphere of sovereignty, is not enough. New instruments must be invented. The hypothesis presented here is that after the *Respublica Christiana* and the *Jus publicum Europaeum*, we are called upon to establish a new international order, which is not that advocated by Schmitt (of a multiverse network of independent *Großräume* in regulated competition) but that of the *Lex Anthropocenae*. It is necessary to advance along the path of planetarisation, of the construction of a new order (flexible, open, inclusive, calibrated on complexity), which includes in the regulation of transnational integration processes the spatial vector of their ‘terrestriality’ and makes

the principle of interdependence the essential device of the new *Lex Anthropocenae* (Kotzé 2018). The tragic problems of our time cannot be tackled by a pluriverse of small and large powers, of independent *Großräume*, which compete with each other, when they are not openly at war, under the illusion of self-sufficiency, but by a network of state and non-state agents, institutions and communities—religious, epistemic, political, national and transnational—that recognise themselves as interdependent with each other and with the ecosystem, building on this principle orders and practices marked by social and ecological sustainability, justice, and inter-human and inter-systemic convergence.

## 6. Property and Sovereignty: The Fundamental Legal Principle of the Schmittian *Nomos* and Its Limits

The time has come to recognise that law, as Schmitt intuited with a singular if paradoxically semi-conscious clairvoyance, is intrinsically ecological because it is ‘physically’ topological: it is the ‘Habitat’, the environment, that co-determines its conformation. *Ordnung* is *Ortung*: the legal order is a topology of regulation of the human presence on Earth in its plurality of physical environments (terrestrial space is a combination of land, water expanses, atmosphere; urban, anthropised, wooded, cultivated, deserted areas; accessible or inaccessible, habitable, or uninhabitable ones; ones rich or ‘lacking’ in resources, virgin or degraded ones; etc.) and anthropological ones (coexistence between individuals and between communities). Schmitt puts an end to a purely anthropocentric conception of international law,<sup>13</sup> opening the door (well beyond himself, despite himself: *NE* is a remarkable example of a work that dramatically transcends the author’s intentions) to the integration of an intersystemic perspective, in which law is configured as the integration of the Earth system with the system of human society.

Schmitt’s formidable enunciation of this intersystemic dimension of law has two fundamental merits.

In the first place, it breaks with a rigidly anthropocentric vision of law as a pure regulation of inter-human relations, which resists to this day in the substantial lack of critical self-awareness of its own unilaterality, and which represents one of the most serious limits of the liberal tradition, as emerges with ghostly clarity in John Rawls’ work on international law (Rawls 1999). Rawls does not even entertain the suspicion that intersystemic relations may play a role in the configuration of law. Key notions such as Earth, space, territory, geography, do not deserve a specific section, treatment, or mention in his text (not even appearing in the final index of names and themes).

Secondly, it provides an indispensable conceptual key to take on the “constituent” responsibilities of our historical moment, the Anthropocene era, with respect to which a reductively anthropocentric juridical perspective (à la Rawls) is, as already pointed out, painfully short-sighted and inadequate.

However, to be able to implement all the innovative potential of this notion of a law that is constitutively and not accessorially ecological, it is necessary to free it from the reductive prejudice that conditions it and that Schmitt adopts directly from the legal tradition to which he refers, basing the intersystemic relationship exclusively on the principle of appropriation: *property* on the individual level, *sovereignty* on the public level.

In rejecting the normativist universalism of contractualist and liberal rationalism based on the ‘abstract’, ahistorical, and bureaucratic principle of law (see *NE*, p. 36ff. | 67ff.),<sup>14</sup> Schmitt contrasts this with the no less abstract and universal principle of appropriation (*Nehmen*). Appropriation is, for Schmitt, the rational principle that legally configures the intersystemic relationship between Earth and society (*NE*, pp. 16–18 | 46–48), just as the friend/enemy divide (the principle of exclusion) is the rational principle that legally configures interhuman relationships on the communitarian level (see *Der Begriff des Politischen* (Schmitt [1932] 2015)).

In other words, according to the German jurist, appropriation, and conflict (both marked by an exclusionary device) are the driving forces of human history and (paradoxically) the rational principles that shape social and terrestrial relations.

The idea that interhuman relations are normatively regulated by conflict and not by cooperation is a thesis whose phenomenological evidence is so ambiguous as to be factually undecidable, while its rational validity is contestable on the level of transcendental evidence.<sup>15</sup> On the other hand, the exclusive relevance of the principle of appropriation as the sole legal regulator of intersystemic relationships between Earth and society does indeed appear to be a historically predominant option in Western legal and political systems, the consistency of which is nevertheless called into question by the new spatial order emerging from the convergence of globalisation and the ecological crisis as fundamental vectors of the Anthropocenic condition.

A legal order adequate to this condition, a *Nomos* of the Earth, renewed in the light of the changes emerging in it, is in fact based on two postulates: (1) interdependence is a constitutive dimension of the intersystemic relationship between Earth and society; (2) for this reason, the condition of interdependence must be implemented as a principle of legal regulation of this relationship, coming not to replace but to integrate the principle of appropriation (property and sovereignty).

### 7. *Nehmen, Teilen, Weiden* (Appropriate, Share, Avail)

The universal form of the intersystemic relationship between society and Earth, between mankind and physical space, is, according to Schmitt, the triangulation of *nehmen, teilen, weiden*: to appropriate, to share, to avail (exploit, cultivate).<sup>16</sup> Space is an object of circumscribed domain, distinct from the domain and property of others, and a source of yield. In other words, location, positioning (*Ortung*), consubstantial to the *Ordnung* (order) on which the legal system is based, is originally established as collective sovereignty and private property. There is no sovereignty without some territorial expression, without a material basis. And if immaterial property exists, it is always inseparable from its material expression (copyright regulates the reproducibility of works). Conversely, man's relationship with space is essentially that of the determination of place, as the delimitation of what is mine and yours: while time is physically inappropriable because it is inclusive, as the order of successions (according to the Leibnizian definition)<sup>17</sup> allows everyone and everything to inhabit the same instant, space is appropriable precisely because it is exclusive: as the order of coexistences (again according to Leibniz), no one else can occupy the portion of space co-extensive with my body, occupied by me. The regulation of space as occupation, the ordering of coexistence, and the articulation of places is therefore intrinsically divisive, being based on a physical principle of incompatibility which inscribes otherness as a material condition, a vector of conflict.

Schmitt's thesis, according to which war is the structural dynamic of inhabiting the Earth as spatial occupation/appropriation, in view of the use of its spaces and products as resources for survival, appears difficult to dispute in this topological perspective of reconstruction of the physical matrix of our being in the world. However, it is partial because the law of the physical relationship between mankind and the Earth is not only that of occupation but also that of reversibility and interdependence.

The inclusiveness of the order of time, which welcomes everyone into the simultaneity of coexistence and the permanence of duration, is linked to an inexorable irreversibility of the line of succession, which shapes it as painful exclusivity: the arrow of time may well be (science is still divided on this) an anthropological illusion or the approximate description of a small region of physics (thermodynamics), with resounding chemical and biological consequences, but from a phenomenological point of view it is inexorable power, a coessential device of the human condition. Imaginatively, memorably, emotionally we may inhabit the past and the future, but physically we are inexorably bound to the now: this is one of the fundamental laws of the reality principle.

In contrast, the physical exclusivity of the order of space is articulated in a double condition, which defines it as second-degree inclusivity:

Firstly, the order of space is produced as a condition of reversibility and freedom of movement which relativises the physical occupation of a place to pure possibility. The



indexicalised ‘here’ of the occupation of a spatial portion, of a place, can become a ‘there’ and vice versa in a contingency of states denied to the difference between *now* and *then*. Occupation, which is essential to define space as place, is a ‘mobile’, contingent category which is structurally declined as a possibility of dislocation.

Secondly, as an order of co-existences, space unfolds as a topological network, a web of contiguous or discontinuous places which are nevertheless associated with each other, that is, related. The *here* is separate, divided from the *there*, but they co-exist. For this reason, not only can the person or the occupant ‘transit’ from *here* to *there*, and vice versa, through dislocation: it is the occupation itself that, by virtue of this reversibility and compatibility, cannot be thought of as absolute punctuality but as a point in a surface, as a place in a network of places. Localisation, positioning is not mere occupation but the possibility of movement and relationship: otherness is not merely exclusive, but reversible co-potentiality and co-existing contextuality. The order of co-existence is not purely that of occupation but that of interdependence.

The intersystemic relationship between society and the planet cannot be configured solely through the vector of appropriation because this does not consider interdependence, which draws the physical possibility of point occupation as part of a system of coexistences. The behaviour of physical entities can only be described in terms of system logic. Interdependence is an intrinsic law of spatiality.<sup>18</sup>

Society does not relate to the Earth solely in terms of appropriation, repartition, availing/exploitation, and naming (knowledge), but also in terms of interdependence, in (1) global and (2) local terms: (1) the Earth is manipulated by this occupation and vice versa mankind is conditioned by the environmental state of the planet; (2) the punctual occupation of a space is articulated to the occupational conditions of neighbouring spaces and beyond.

The evidence of this twofold interdependence, which has long been latent throughout human history, in the context of the modest impact of human occupation of the planet and its physical dispersion, comes to the fore in the current context, considering the entry into the Anthropocene era and the crises triggered by globalisation. Only by adapting the configuration of the legal system to this dimension of interdependence of the intersystemic relationship between society and the planet is it possible to respond adequately to the problems triggered by this twofold historical change.

## 8. The Decline of Globalisation as the Triumph of Deterritorialisation. Planeterisation as the Spatial Paradigm of a New *Nomos* of the Earth: The Lex Anthropocenae

The last decade of the last century, the euphoric 1990s, marked the rise of globalisation as the ideological identity of the Western world, massively exported as a commodity to the rest of the planet. In Schmittian categories, globalisation can be read as the triumph of Anglo-Saxon mercantilism over continental statism;<sup>19</sup> the affirmation of the thalassocratic model (which is radically paroxysmal in the physical dematerialization permitted by the technical conquest of the ether and airspace—*NE*, p. 293ff. | 316ff.) over the terrestrial model; the irresistible conjugation between the economic imperative of profit and the technical unification of the world achieved by triumphant capitalism. Western centrality, which took over from the modern European centrality called into question by the Monroe doctrine of the Western hemisphere (*NE*, p. 256ff. | 281ff.), is relativized in fact and in principle (even if the protagonists take at least a couple of decades to realize it) in the structural decentralization of a system of economic and financial powers that are increasingly virtualized, mobile, interchangeable, and integrated and in the reconfiguration of the systems of universal knowledge (science, information, art) as a global network thanks to the advent of the Internet and the gradual corrosion of traditional institutions for the production and transmission of knowledge with a largely territorial and national profile (schools and universities, public information channels, the press, art markets), which have been drastically downsized by the growing industrialisation of the processes of scientific and cultural creation (with the takeover of research by multinationals in the pharmaceutical,

telecommunications, energy, and IT sectors; with the corporatisation of the art market, absorbed and dominated by private monopolies; with the concentration of ownership of the press and publishing houses in transnational monopolies of invincible financial power).

The land borders of the nation states, on which the (disordered and turbulent) order of the modern era was based, are increasingly porous, defused both by top-down political processes (such as the construction of the Union, a milestone of which is the opening up of internal borders to the free movement of people and goods ratified by the Schengen Agreement) and by the bottom-up phenomenon of the increasing conversion of relations from confrontation (of particular, stable units, calibrated on the predominance of the principles of self-sufficiency and self-definition) to flow (of information, technology, goods, labour, symbolic codes, and cultural products).

Globalisation shifts the balance of power from politics to economics. These are the years in which Western rulers preach and practice (conditionally)<sup>20</sup> the doctrine of the primacy of soft power over hard power. Sovereignty must be rethought in more sophisticated formulas than the defence of borders and respect for the rule of law. Delocalisation in the name of lowering labour costs; the financialisation of markets, now conceivable only as global reservoirs of liquid volatility; and the fiscal nomadism of companies and capital redesign capitalism, freeing it from the logic of national territoriality and its traditional subordination to the political system. The viral slogan according to which the package of capitalism and democracy/rule of law constitutes a nuclear, inseparable device soon turns out to be a propaganda hoax rather than a diagnostic tool. The ruthless neo-liberalism into which old school liberalism has shrunk ratifies the growing detachment of the economy from politics and the tendency to downgrade it to administrative (para-democratic) practice, celebrating the versatility of financial capitalism which, against all liberal predictions, thrives in authoritarian regimes such as China's no less, if not more, than in democratic ones. The monotheism of efficiency (the creed established by technology according to Ellul ([1954] 2008) and Ellul ([1977] 2012) is a way of accounting for the economic non-performance of democracy and of crediting elements of antagonism where 20th century democrats saw only synergy. While in Asia the principle that doing without democracy helps economic growth is becoming government practice, in the USA and in various Western countries, the poisonous distinction between democracy and freedom (individual and economic) is gaining ground, becoming the pick of the Republican Right and its European associates to erode the rule of law.

In giving absolute preponderance to technical and economic vectors, globalisation is at the same time, paradoxically, a process of world unification and deterritorialisation: at a time when the vectors of wealth production are drastically dematerialised (blatantly concealing the question of their redistribution) and distances are burnt away by the technical virtualisation of proximity as image, of communication as instantaneousness, by the existential and material trivialisation of displacements, by the reaffirmation of nomadism as a mode capable of competing with sedentarity, globalisation empties the space factor of social and anthropological relevance and thus presents itself precisely as a revolutionary reconfiguration of the spatial paradigm of human civilisation.

If globalisation as the technical and economic unification of the world is clearly an irreversible phenomenon (unless we generalise on the planetary scene the relapse into the Taliban Middle Ages), its ideological adoption as a *Weltanschauung* based on the disengagement of technology and economics from culture and politics—from the normative constraint of the criteria of truth, sense, and justice and from democracy, the self-determination of peoples—in the name of the self-referential primacy of efficiency and of deterritorialization has rapidly exhausted itself in the first two decades of the millennium under the blows of a series of crises that have highlighted the inadequacy of purely techno-economic categories to govern society and its relationship with the planet, placing the physical dynamics of spatiality back at the centre of political discourse. If global economic and technical unification *excludes a generalised reterritorialisation* of production, financial, information, and technological processes, the *reterrestrialisation of political dynamics is an*

*emerging fact* of the current scenario. The pandemic, the ecological crisis, the waves of migration, and the war in Ukraine bring demographic, health, energetic, and environmental challenges to the forefront, highlighting their centrality. What is at stake is the survival of the species in its interaction with the Earth system. *From globalisation we have moved to a planetarisation of political discourse.*

### 9. From Occupation and Appropriation to Interdependence

If the financialisation of the economy, the delocalisation of agricultural and industrial production and services, and digital integration have euphorically stylised the survival of national borders as obsolete architectures of the past with the decorative function of those heavy curtains that no one wants in their homes anymore, the crises that have overlapped in this difficult beginning of the millennium (terrorist, climate, pandemic, migratory, war in Ukraine) dysphorically highlight their functional impotence with respect to some of the fundamental tasks that they are still called upon to perform: guaranteeing security, citizens' health, public and international order, environmental sustainability, and climate stability. The principles of sovereignty and private property are blunt instruments in the face of the problems posed by climate change; the spread of viruses; the internal insecurity created by fundamentalist violence and the militaristic–expansionist drift of undemocratic regimes; and the migratory pressure of masses of people fleeing war, poverty, and environmental devastation.

As we have seen with dismay in the management of the pandemic, migratory flows, and climate agreements, the contractualism inherent in the perspective of well-meaning liberal multilateralism is incapable of providing legal and political solutions at the height of the challenges. It is not the goodwill of the partners that is at stake, but the very conditions under which human societies survive in light of their conditions of sustainability. The moral call for solidarity and fairness breaks down in the face of the iron logic of sovereignty and ownership that is radicalised in the populism that is rampant even within democracies. The time has come to 'realistically' redesign the architecture of relations between peoples based on the actual spatial paradigm underlying society's inter-systemic relationship with the planet, recognising the one-sidedness of the topological criterion of occupation/repartition, legally configured in the principle of sovereignty/property. If applied in absolute terms, cancelling interdependence in the exclusive privileging of occupation/appropriation, this device for regulating the inter-systemic relationship proves to be a counterproductive, if not radically self-destructive, factor in the current context, in which the mechanisms of interdependence on a planetary level, both within the social system and with regard to the complex of relations between this system and that of planet Earth, are preponderant, intensified, and accelerated by technical, demographic, and economic evolution.

The latency of the criterion of interdependence with respect to that of occupation/appropriation has been painfully dysfunctional in the evolution of man's presence on Earth, resulting in the historical condition of the pre-eminence of conflict over collaboration (the military erosion of peace) and the senseless reduction of the ecosystem to an (unlimited) fund of resources to be exploited (the object of domination and ownership), and can be identified as one of the main causes of the current ecological catastrophe. Its rehabilitation and juridical–political inscription are urgent and indispensable for the construction of intra- and inter-systemic relations that, on the domestic and international level, overcome the voluntaristic logic of solidarism and multilateralism, realistically recognising the material, structural weight of interdependence and its role in integrating the juridical principles of sovereignty and property. The impending ecological catastrophe 'apocalyptically' highlights (as a revelation) the inter-systemic interdependence between society and the Earth's ecosystem: its destruction implies the self-destruction of mankind. The "spatial revolution" intrinsic to the transition into the Anthropocene era, whose implementation and awareness have been exponentially accelerated by globalization, has tragic contours, but it is still possible to avoid the worst by adopting a model of planetarisation of intersystemic

and interhuman relations in which the principle of sovereignty/property is integrated, modulated, and rectified by that of interdependence.

The alteration of the spatial paradigm underlying the legal configuration of interhuman and intersystemic relations implies a change not simply in content but in general structure. It is not a question of introducing the category of ecology as a supplementary voice in legal systems and political discourse, but of reformulating the underlying categorical device. In this sense, for example, there is a need to broaden the perspective well beyond the dichotomies of public/private, common/particular. A culture of sustainability that acquires the notion of interdependence as its key principle goes well beyond the proposals, albeit appreciable, to socialise some components of the ecosystem as public resources (in the logic of the “commons”, according to [Ostrom 1990](#)), and to consider the climate balance stabilised in the Holocene as the *common heritage* of humanity.<sup>21</sup> It is not enough to socialise dominion and property. It is necessary to go one step further. The normative value of the legal system remains limited and conditioned from the point of view of the sustainability of medium- and long-term practices and strategies as long as the Earth system is considered solely as a space of occupation and appropriation, domination, distribution, and fruition/exploitation (*nehmen, teilen, weiden*) by the social system and not as an entity interdependent with it, endowed with its own irreducible self-organising autonomy,<sup>22</sup> the violation of which has devastating consequences for the relational balance and therefore also for the subsistence of the system related to it.

Ultimately, Schmitt’s unconditional defence of the principle of property and sovereignty provides us with an essential key to its juridical relativisation: this institution embodies a particular historical figure calibrated on a specific constellation of international and intersystemic relations that today must be radically reshaped to avoid irreversible degradation or radical degradation of the conditions of survival of humans on Earth.

## 10. A New *Nomos* of the Earth

It is evident that Schmitt’s contrast between the legitimising substantivism of the *Nomos* as the legal ordering of man’s spatial relation to the Earth and the formalism of normativistic, purely legalistic pertinence is a distorting ideological straining conditioned by his ill-fated refusal to recognise in the principle of human dignity a substantive regulator of law. However serious, this limit does not invalidate his criticism of the inadequacy and perniciousness of adopting the anthropocentric principle of human dignity as the exclusive normative criterion, and the contextual expulsion of the regulating principle of the intersystemic relationship between society and the planet remains valid.

If Schmitt is wrong in selectively identifying this criterion in the physical–legal figure of occupation (of the binomial property and dominion), while it is necessary to integrate it with the figure of interdependence, he is right in exposing the anthropocentric monism of the law and political tradition. Even when it is ethically redeemed by the centrality of the principle of human dignity, it represents a reductionism and a concealment of the biophysical dynamic of the human presence on earth, to which a substantial co-responsibility must be attributed in the ecological crisis that currently threatens the survival of the mankind, or at least its quality of life.

The three pre-eminent historical processes of the first two decades of the third millennium—globalisation, ecological crisis, pandemic—converge to determine a new spatial order, a new configuration of inter-systemic relations between Earth and society that can be qualified as the Anthropocenic condition. This change, as reconstructed by Schmitt, requires a re-founding of law “internally and externally” (*nach Außen und nach Innen*) on the individual and collective, private and public levels in order to adapt the international legal system to the changed factual reality. Pure ethical rationality is not enough to produce a legal body capable of ‘governing’ reality. To produce historically effective regulatory mechanisms, it is necessary to integrate ethical rationality with a political rationality that interprets material processes. Where laws are not legitimised by ethical rationality, they are unjust; where they are not guided by a political rationality that intercepts the changing material

conditions, implementing corresponding regulatory strategies, they are ineffective and powerless to stem the growth of disorder. The current international political framework is singularly characterised by a clear imbalance between the legitimacy of the ethical rules and value orientations invoked by democratic governments and by a transnational body such as the European Union (world champion of defending and promoting the rule of law, cooperative multilateralism, international solidarity, and commitment to ecological transition) and political impotence (the fragmented, incoherent, aleatory management of migration policies by the various member states is one of the dramatic examples of this inconsistency).

We need to adapt the foundations of law to the inter-systemic relations of Earth and society that emerge as the Anthropocene condition. The rational principle of appropriation (*Landnahme*) is not sufficient to legally regulate the material processes that characterise this condition, and its exclusivist application is distorting: it disrupts rather than orders. International relations oriented towards proprietary (*nehmen*), exclusivist (*teilen*), and productivist–consumerist (*weiden*) sovereignty are inefficient and even self-destructive. Their reconfiguration based on the integration of the rational principle of sovereignty/property with the rational principle of interdependence is therefore not an ethical option but an adaptation to the changed physical reality of the relations between Earth and society to which the legal system is called to give rational regulation.

Interdependence, a structural dimension of inter-systemic relations between Earth and society, comes to assume a central role in the Anthropocene condition, being able to relativize and in some cases even neutralise the intersystemic vector of appropriation. In the changed demographic, economic, and technological constellations that inscribe man's life in the Earth, frontiers (proprietary, national, bureaucratic, physical, biological, cultural) erode, giving way to flows; spatial and temporal individuation, expressed as delimitation and independence (the here and now of appropriation, of proprietary and sovereign status), is relativised to a regulatory dynamic that is factually limited and destructive if interpreted as an absolute right of use (consumption).

For demographic, technological, economic, and, not least, cultural reasons, globalisation and the pervasive influence of mankind on the balance of the Earth system initiated by industrialisation are irreversible processes. It is therefore necessary to equip ourselves with adequate political and legal instruments to move from the era of globalisation to that of planetarisation, i.e., from the disorder of global processes largely removed from legal regulation, politically governed on the basis of the principle of appropriation and, consequently, in the logic of conflict and competition, to the order (dynamic, open, and not centralised but integrative) of a rational institutionalisation of the interhuman and intersystemic dynamics of interdependence that emerge ever more clearly as preponderant on the level of physical and societal processes.

By integrating the principle of appropriation with that of interdependence, the functionality of the vector of division recedes with respect to that of synergy (in other words, the functional and not simply ethical need to articulate conflict into cooperation, hostility into solidarity is highlighted) and the vector of consumerist or accumulative fruition recedes before the evidence that the intersystemic dynamic—relational, holistic, and bidirectionally active—is irreducible to an indiscriminate one-way manipulation (of domination) and proprietary objectification. The extra-human components of the Earth ecosystem (soil, water, energy, raw materials, and plant and animal life) can be treated as resources, available goods, or commodities to be exploited at will, but the system as a whole exhibits an autonomy and power of feedback that escapes human control and 'reacts' with the autopoietic force of its own balance, or imbalance, to human intervention. The Earth system cannot be considered as a simple object of appropriation and domination, not because this is not 'right', but because this does not correspond to the 'reality of the facts', ignoring the autopoietic dynamics of the planet.

The intersystemic relationship between society and the Earth, exercised only in terms of predatory appropriation and domination, has brought us to the threshold of a crisis that



threatens the very survival of humankind. The ongoing ecological catastrophe demonstrates that the reductionism of a *Nomos* reduced to proprietary domination of the Earth, articulated as repartition, and aimed at exploitation is not only unjust but dysfunctional: it leads to the self-destruction of the ‘master’, making the space reduced to ‘property’ uninhabitable. Only by combining the spatial order configured by the Anthropocene condition in the emergence of interdependence as a fundamental regulator of the intersystemic relationship between Earth and society and of relations between peoples in a legal order will we be able to politically govern the disorder (ecological, health, social, and international) that hangs over our lives.

## 11. Conclusions

Carl Schmitt’s thought has gained increasing prominence on the horizon of contemporary legal–political philosophy because it helps to identify and deconstruct two fetishes of the liberal tradition that undermine rather than promote its emancipatory and universalist ambition as a normative platform of human rights and the rule of law.

On the one hand, Schmittian reflection genealogically relativises as an ideological artifice the idea of an absolute, ahistorical, decontextualised rationality that expels any particular, cultural, and religious matrix from its (Weberian) alleged evaluative neutrality. In stating that “all the most pregnant concepts of modern state doctrine are secularised theological concepts”,<sup>23</sup> Schmitt takes up and re-actualises the Hegelian idea of culture (and therefore secularisation) as a process of necessary alienation, in which the process of civilisational learning embodied in ethical and religious traditions must separate from itself (not deny itself) in order to enact itself as universal.<sup>24</sup>

In this perspective, the secularisation of political theology in the doctrine of the state is therefore a general indicator of the fact that the path of ethical and scientific universalisation that is produced as modernity/modernisation does not imply the abandonment (substitution) of religious normativity in favour of rational–secular normativity, but is established as a dialectic of mutual co-determination which refines and increases the respective discourses, which cannot be substantialised as separate entities but can only be understood as relational poles of a single social dynamic of public and private, individual and collective legitimisation.

On the other hand, Schmittian thought highlights the conceptual limits of a strictly anthropic–societal framework such as the liberal one, which restricts the normative relevance of rationality to the rational self-determination of the citizen and expels any instance external to this anthropic sphere.

Under both these aspects, what is highlighted is the inconsistency of an absolute self-founding claim not only of the formal device of positive law, but also of its universalist matrix, which instead finds its normative key in relationality—between subjects, between systems, between the given and otherness—and therefore in a historical process that excludes all relativism but welcomes a principle of incompleteness, fallibility, and plurality that unmasks as an idol every instance of totalisation.

If today the rule of law, democracy, peace, and the balance of the ecosystem are in crisis on a planetary level, this is not due to a historical fatality or the malevolence of a few, but to dysfunctions intrinsic to abstractly secularist, anthropic, and abstractive reductionism of a juridical–political model that has expelled as particular, and therefore illegitimate, ethical and religious value rationalities, which in the radical neo-liberal version have been supplanted by economic normativity and its power to subjugate the political rationale.

The idea that justice arises if one casts a “veil of ignorance” over history (if foundational political discourse emancipates itself from any consideration of the historic and from its own religious and value-based preconceptions in the ideal as if of an “original position”, Rawls [1971] 2009) has distanced theory from reality and from a correct self-understanding, handing it over to the overpowering force of economic rationale.

Stemming from the religious notion of creaturalty, the notion of interdependence, reconstructed from the consideration of the spatial dimension of legal normativity, presents

itself as one of those secularised theological concepts on which it is possible, and necessary, to build (well beyond the univocal category of property and sovereignty) a new political order, which will enable us to face the epochal challenges of our time.

**Funding:** This research received no external funding.

**Data Availability Statement:** Not applicable.

**Conflicts of Interest:** The author declares no conflict of interest.

## Notes

- <sup>1</sup> The fundamental condition of meaning and therefore of being, [de Certeau \(\[1969\] 2005, p. 9ff.\)](#) observes, elaborating on a Heideggerian intuition, is that of “*pas sans*”, a dimension of common human experience that the Gospel reveals as the very form of God’s existence.
- <sup>2</sup> The notion of the Common Home actually has ancient roots, referring both to the Cynic-Stoic idea of “cosmopolis”, the universal community of human beings, rooted in a feeling of belonging, affinity, familiarity, towards others (*Oikeiôsis*) ([Kleingeld and Brown 2019](#)) and to the historical-geographical idea of “ecumene”, which—beginning with Xenophan—came to designate the ‘civilised’ terrestrial area, either inhabited or habitable by human beings (or by the Greeks and Romans alone, to the exclusion of the barbarians) ([Schmitt 2000](#)).  
Nevertheless, one should not, underestimate the novelty of the contemporary use of this concept, in which the two perspectives, of the social unity of the human race and its terrestrial habitat converge without, however, prejudicially implying cosmopolitan political solutions (the ethical, social, and environmental unity of the human race does not necessarily have to translate into its political unity). Thinking about the common destiny of humanity and the Earth’s ecosystem determined by the growing technical, economic, media, and environmental integration is an unprecedented contemporary challenge in its factual concreteness, which transcends the utopian perspective traditionally associated with philosophical and juridical cosmopolitanism in its programmatic option for the centralisation of political and institutional power at the supranational level. The growing integration of the peoples of the Earth, brought about by globalisation and planetarisation requires increasingly robust and effective legal and decision-making federative instruments, but this ever-increasing coordination does not necessarily translate into concentration, fusion, monopolisation. On the contrary, the maintenance of plurality and difference is the core of that multipolarism which is the very infrastructure of interdependence and which allows universalism to be thought of in a political horizon that is pluriversal and not universal, monological ([Resta 1999](#)). In this perspective, Carl Schmitt’s vehement objections (sometimes charged with a katechontic apocalypticism) to the philosophical-legal universalist cosmopolitanism of the Enlightenment and its two arms (politico-military humanitarian and techno-economic), which for him represent the ideological cover for the US strategy of imposing its imperialist supremacy on the rest of the world, transforming post-war bipolarism into the monopoly of a hegemonic “global political unity” ([Schmitt \[1952\] 1995](#)), seem associated with the Cold War landscape and somehow out of touch with the current political situation.
- <sup>3</sup> See especially the *Sustainable Development Goals* formulated in 2015 by the United Nations General Assembly (UNGA) as part of the Post-2015 Development Agenda (2030 Agenda; [UN 2015a](#)) and the Resolution of Adoption of the Paris Agreement ([UN 2015b](#)).
- <sup>4</sup> The incubation of this idea in Thomist theology found a catalyst in the Calvinist reform and later in the anti-statist instances of the Church’s social doctrine from the 19th century onwards. An initial generic formulation in *Rerum Novarum* (1891) was taken up and systematised in Pius XI’s *Quadragesimo Anno* (1931) thanks to the fundamental contribution of the German Jesuit Father Oswald von Nell-Breuning.
- <sup>5</sup> Whether this evolution opens the way to a constellation of mutually hostile and mutually alien powers, as invoked by the realist Schmitt, or to an integrative process of peaceful transnational cooperation through common institutions and practices of shared, deterritorialised governance, as hoped for by the notorious democratic universalists, is an outcome left to the choices of those concerned, the subject of an entirely open political battle. Moreover, as pointed out by [Zolo \(\[1995\] 2002\)](#), the alternatives on the factual level are much more ambiguously contiguous than what is propagandized by the supporters of the respective fronts.
- <sup>6</sup> The quotations from Schmitt’s works *Der Nomos der Erde* and *Land und Meer* ([Schmitt \[1942\] 1981](#), henceforth cited as LM) show the page number of the German original, followed by that of the English translations. The version presented here, however, differs from the reference text on a specific lexical choice: the English translation of the German original, “Ortung”, with the term “orientation” does not seem to me fully satisfactory, as it elides the connotation of settlement and power of this lexical unit, which designates an “occupational” positioning. I have therefore preferred to translate with “location”.
- <sup>7</sup> See [Ehlers and Krafft \(2006\)](#); [Biermann \(2014\)](#). The adoption of a ‘systematic’ point of view (in the scientific and political analysis of the set of phenomena of an ‘environmental’ nature as a complex systemic process, inclusive and arising out of interdependencies) is the pivot of the proposal of an “Earth System Approach” and of the corresponding model of an “Earth System Law” whose objectives, contents, and perspective are fully received in the present reflection with the intention, however, of integrating it into a more extensive strategy that is not sectoral and affecting the very foundations of law. The “new legal paradigm” of an “Earth System Law” is in fact mainly characterised in terms of content ([Kim and Kotzé 2021, p. 13](#)), representing, according to [F. Biermann](#)

(2007), the coordinated set of the “organised human responses to earth system transformation, in particular the institutions and agents that cause global environmental change and the institutions, at all levels, that are created to steer human development in a way that secures ‘safe’ co-evolution with natural processes.” (Biermann 2007, p. 328). See also the programmatic formulation in Kotzé (2019)

Schmitt is perfectly aware that the notion of the Earth as planet (*Erde*) is an inclusive and complex category that includes land, sea, and atmosphere, but for him (ideologically) the fundamental relationship that defines the legal order as a spatial order is the one with the land (*Land, Boden, Gebiet*) by virtue of its ‘occupability’, appropriability. The founding figure of the *Nomos* of the Earth, for Schmitt, is therefore the *Landnahme* (“Land-Appropriation”).

A comprehensive and penetrating presentation of this spatial turning point of law in Schmitt’s thought is offered by Minca and Rowan (2016), who stress its systematic relevance without, however, elaborating the innovative implications in the ecological framework (for a quick reference to this topic, see p. 254) and the remarks on the reductionism of the exclusively occupational (appropriative sovereigntist) approach.

“Every basic order is a spatial order. [...] The true, the authentic, rests essentially upon distinct, spatial delimitations. It presupposes clear dimensions, a precise division of the planet. The beginning of every great era coincides with an extensive territorial appropriation. Every important change in the image of Earth is inseparable from a political transformation, and so, from a new repartition of the planet, a new territorial appropriation” (*LM*, pp. 71 | 37–38). Some of *NE*’s main ideas (such as the insight that the colonising externalisation of unregulated conflict on non-European territory and the juridical–spatial contrast between land and sea are cornerstones of the *Jus publicum europaeum*) are briefly anticipated in *Land und Meer*, a brief history of the modern era *contée aux enfants* (the daughter Alma) that condenses in non-specialist language the analytical framework of the subsequent work. Some scattered contributions on the subject are collected also in *Staat, Großraum, Nomos* (Schmitt 1995), Sections 3 and 4.

While the re-reading of *The Nomos of the Earth* has gained a new impetus on the European continent and in the US since the early 2000s, with the English translation of the work, attention has focused essentially on the historical–analytical section. The theoretical crux of the book, the genealogical pre-eminence of the spatial dimension as the matrix of the legal system, has remained rather in the background in its general implications. Without entering a detailed review of the endless secondary literature on Schmitt, I will limit myself to pointing out a few oriented contributions focused on the dimension of spatiality: (Palaver 1996; Resta 1999; Galli 1996, 2001). For a general, valuable introduction to Schmitt’s work, see (Nicoletti 1990).

“All pre-global orders were essentially *terrestrial*, even if they encompassed sea powers and *thalassocracies*.” (*NE*, p. 19 | 49).

That this reductionism is one of the main causes of the weakness of liberal thought in the field of international law is the hypothesis at the center of an ongoing research project of mine (“From the original to the final position. Beyond the contract, beyond ignorance. The difference between agents, interlocutors, carriers, of Law relations”), which develops a comparison between the positions of C. Schmitt and J. Rawls on international law, precisely from this angle.

The selective reference to *NE* and *LM*, Schmitt’s main works regarding our topic, does not show that liberalism and universalist normativism constitute Schmitt’s main ‘enemy’ (the polemical objective that makes his theoretical–historical reflection an essentially ‘political’ enterprise), the discussion of which runs through all his work (with paradigmatic peaks such as *Legalität und Legimität* (Schmitt [1932] 2021).

That rationality can only be reconstructed only as an intersubjectively generated and intersubjectively validated exercise of cooperative processes of communicative exchange and sense-making and attribution, whereby all practices and claims of conflictual exclusion of the other (who is included in principle in the rational process of sense-making) are genealogically and in principle parasitic, is the central hypothesis of “transcendental pragmatics”, the analysis of rational normativity based on linguistic acts, elaborated by Karl Otto Apel and J. Habermas (Apel 1973, 1998; Habermas 1981, [1996] 2019).

See *LM*, p. 71 | 37, Note; *NE*, p. 36ss. | 67ss. At a later stage of his reflection, Schmitt also adds naming, knowing to these three elements, see the essay “*Nomos–Nahme–Name*” (Schmitt [1959] 1995).

“4. As for my own opinion, I have said more than once that I hold space to be something purely relative, as time is—that I hold it to be an order of coexistences, as time is an order of successions. For space denotes, in terms of possibility, an order of things that exist at the same time, considered as existing together, without entering into their particular manners of existing. And when many things are seen together, one consciously perceives this order of things among themselves”, p. 14, in “Leibniz’s Third Letter to Samuel Clarke, 25 February 1716” (Leibniz and Clarke 2000, pp. 14–18).

The analysis of physical complex systems is at the heart of the research of 2021 physics Nobel Prize winner Giorgio Parisi. For an illustration of this approach that is also accessible to non-specialists, see (Parisi 2021).

It is in economy that “the old spatial order of the Earth lost its structure” (*NE*, p. 210 | 237) to “leap into the nothingness of a universality lacking any grounding in space or on land.” (*NE*, p. 211 | 237).

The invocation of the primacy of soft power during the 1990s went hand in hand with a robust military interventionism under the banner of proactive humanitarianism, which resulted in a chain of operations of questionable and in any case unequal legitimacy, from the two so-called Gulf Wars (1990–1991 and 2003–2011) to the intervention in Bosnia-Herzegovina in 1995

For a detailed explanation of this proposal and its legal implementation, see (Magalhães 2020).

- <sup>22</sup> In this sense, the principle of interdependence implies a dimension of uncontrollability of the inter-systemic relationship, configured by the legal paradigm of Earth System Law, that in front of the self-regulating dynamics of the ecosystem, “[i]nstead of taking Holocene stability for granted, [...] departs from long-term planetary dynamism and fully embraces, and seeks to respond to, the Earth system’s key characteristics such as complexity, instability and unpredictability” (Kim and Kotzé 2021, p. 13).
- <sup>23</sup> Not “not only because of their historical development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts.” (Schmitt [1922] 1934, pp. 43, 36).
- <sup>24</sup> The literature on the role of Schmitt’s work in the theological elucidation of the limits of liberalism and in a reassessment of the ineradicable ‘religious’ dimension of politics is very rich. For some interesting contributions, see: (Critchely 2012; Crockett 2011; Kahn 2011; Raschke 2015).

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