

The Return of Politicised Space: Carl Schmitt's Re-Orientation of Transnational Law Scholarship

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Abstract

This article addresses the possible relevance of the spatial dimensions of Carl Schmitt's theoretical contribution to a regionalist model of international law focused upon large spaces (*Grossraum*). Does Schmitt's *Grossraum* analysis allow us to better understand today's situation, where it is not States considered as self-sufficient entities, but rather assemblages of States, brought together in regional power blocs, that are the central players within international relations, and hence creators and enforcers of transnational law? To answer this question, we need to consider the historical eclipse of the traditional model of the State, as well as the implications and possible contemporary relevance of Schmittian *Grossraum* analysis, particularly its theory of the spatial dimension of delimited territory as a central theme for international law scholarship. This study concludes with a series of generally constructive criticisms of Schmitt's work in this field.

Keywords

international law theory; Carl Schmitt; *Grossraum*; spatial relations; decline of the modern state; regionalism; hegemonic international law

1. Introduction

I aim here to focus upon the potential relevance of the spatial dimensions of Carl Schmitt's theoretical contribution to a regionalist model of contemporary 21st century world geopolitics - and thereby the practices of international law as a subset of the latter.¹ The core research question is whether

¹ cf John P McCormick, 'Carl Schmitt's Europe: Cultural, Imperial and Spatial Proposals for European Integration, 1923-1955' in Christian Joerges and Navraj Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Hart Publishing 2003). Schmitt's analysis of *Grossraum* and related spatial issues is largely contained in the articles brought together in the postwar collection

Schmitt's *Grossraum* (theory of large spaces) analysis allows us to better understand today's situation, where it is not states considered as self-sufficient entities, but rather assemblages of states brought together in regional power blocs, or '*Grossräume*' (the plural term), engaged in competitive relations with each other.

The following study explores this central question and its implications over five sub-sections, which consider the following topics:

1. The historical eclipse of the state.
2. The implications of Schmittian *Grossraum* analysis.
3. The latter's possible contemporary relevance.
4. Reclaiming the spatial dimension of geopolitically delimited territory as a central theme for international law scholarship.
5. Conclusions and possible criticisms of Schmitt.

Carl Schmitt certainly claims that the concept of a *Grossraum*, first exhibited within international law through the *core idea* of the original US Monroe Doctrine of 1823; that is, of non-intervention by extra-regional powers, is 'translatable to other spaces, other historical situations, and other friend-enemy groupings (...) based on the state of political reality'.²

What though is the Monroe Doctrine? It was a declaration from US President Monroe on 2 December 1823, stating that further efforts by European nation states to colonise land or interfere with American nation states would be viewed as acts of aggression requiring US intervention. The Doctrine noted that the USA would neither interfere with existing European colonies, nor intervene within the internal affairs of European countries. The most relevant section states:

entitled *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916-1969*, G Maschke (ed), (Duncker & Humblot 1995). This includes the following noteworthy studies: 'Raum und Grossraum im Völkerrecht', 234-268; 'Völkerrechtliche Grossraumordnung', 269-320; 'Die Raumrevolution: durch den totalen Krieg zu einem totalen Frieden,' and 'Die letzte globale Linie,' 441-448. See also Carl Schmitt, 'Grossraum gegen Universalismus: Der Völkerrechtliche Kampf um die Monroedoktrin' [1939] *Zeitschrift der Akademie für Deutsches Recht* 6, 333. See also Mathias Schmoeckel, *Die Grossraumtheorie* (Duncker & Humblot 1994) and Michael Schmoeckel, 'Ortung und Ordnung. Carl Schmitt im Nationalsozialismus' (1996) 51 *Aus Politik und Zeitgeschichte* 34, 47. For a helpful and critical overview, see Peter Stirk, 'Carl Schmitt's Völkerrechtliche Grossraumordnung' (1999) 20 *History of Political Thought* 2, 357-374.

² Carl Schmitt, 'The Grossraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers' in Carl Schmitt, *Writings on War* (Polity Press 2011) 88.

We owe it, therefore, to candour and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States.³

This Doctrine became not only a defining moment in US foreign policy, but also one of its longest-standing principles invoked by many later US Presidents. In effect, it declared that the entire continent of America represented an exclusive zone of influence and protectorate of the USA. Schmitt invokes the Monroe Doctrine as an early precedent and illustration of a relatively successful (if short-lived) *Grossraum* principle, albeit not one that could be mechanically transplanted into, say a European or East Asian context without modification.

2. The Historical Eclipse of the State

Schmitt developed his *Grossraum* theory from 1939-1941, with modifications and nuances contained in his post-war publications, particularly *Nomos of the Earth*. The historical context of Schmitt's argument includes the claim that, by at least the third decade of the 20th century, the era of independent nation states had largely come to a close.⁴

The traditional system of so-called 'international' law, but actually Eurocentric transnational law, which focuses upon relations between and among formally equal nation states, has been eclipsed. It has been partly overtaken by a historical reality that requires a focus upon relations between and amongst different *Grossräume* - understood as regional power-blocs.⁵ This eclipse is happening for a variety of technological, military and geopolitical reasons, including imperialistic forms of Americanisation, disguised strategically as 'liberalisation' (the 'freeing of

³ James Monroe, 'Seventh Annual Message to Congress' (2 December 1823).

⁴ Carl Schmitt, *Nomos of the Earth* (Telos Press 2003) 211.

⁵ George Schwab, 'Contextualizing Carl Schmitt's Concept of Grossraum' (1994) 19 *History of European Ideas* 185, 187.

markets’) and ‘globalisation’. And yet, at the same time, the democratic idea of a distinct people’s right to exercise political self-determination has become increasingly entrenched. Schmitt’s key concern is that forms of US imperialism, deploying universalistic rhetoric of “freedom”, actually operate, in practice, to diminish the collective freedom of nation states in order to determine for themselves their chosen modes of government and principles of both political and economic organisation.

Grossraum analysis is not politically neutral. On the contrary, it is specifically geared to combat this imperialistic form of assimilation that diminishes a people’s right to exercise political self-determination and popular sovereignty. Against the familiar arrogance of imperialist disregard for the integrity of other states, expressed in a stance of righteous unilateralism concealing its own hegemonic power, Schmitt’s *Grossraum* concept projects ‘the principle of national respect’ as a doctrine that ought to operate as a key doctrine of international law.⁶

Hence, a Schmittian could argue that the *Grossraum* element has to come to the fore as a realistic and pluralistic alternative to imperialistic assimilation into a US-led unipolar world order.⁷ The latter promotes an unmediated liberal individualism, together with an equally unmediated collectivism of ‘humanity as such’. This takes place at the expense of various intermediate and mid-level categories, such as social class and highly particularistic national identities, cultural traditions, subcultures and ‘peoples’.⁸

Schmitt argues that the acceptance of *Grossraum* analysis is a precondition for a viable and realistic form of international law scholarship: one that is receptive to substantive spatial questions and capable of addressing a demarcated or fenced-off coexistence on a sensibly divided up planet.⁹ Unlike abstractly universalistic and cosmopolitan alternatives devoid of spatial differentiations, such analysis is able to both recognise and adjust itself to the early 20th century context. Here, according to Schmitt, ‘several

⁶ Carl Schmitt, *Volkerrechtliche Grossraum ordnung mit Interventions verbot fur raum-fremde Machte* (2nd edn, Duncker & Humblot 1941) 71; William Scheuerman, *Carl Schmitt: The End of Law* (Rowman & Littlefield 1999) 144.

⁷ Mika Luoma-Aho, ‘Geopolitics and Grosspolitics from Carl Schmitt to EH Carr and James Burnham,’ in Louiza Odysseos and Fabio Petito (eds), *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order* (Routledge 2007) 41.

⁸ Carl Schmitt, *Die Wendung zum diskriminierende Kriegsbegriff* (Duncker & Humblot 1938); Schmitt (n 6) 270–275.

⁹ William Hooker, *Carl Schmitt’s International Thought: Order and Orientation* (Cambridge University Press 2009) Ch 6.

difference spheres (*Grossräume*) of international law appeared on the scene, at the same time that the great problem of a new spatial order of the earth from the West - from America - became evident.¹⁰

Indeed, whilst the Monroe Doctrine provided an early indication of the shape and nature of 'the idea of international law specific to a *Grossraum*', this innovation was not at this time widely registered or adopted within other continents, least of all within Africa, Europe and Asia.¹¹

According to Schmitt, *Grossraum* analysis aims to apply to the on-going consequences of what he considers to have been a 20th century revolution in spatial awareness and imagination. This transformation has been analogous to what occurred during the 16th and 17th centuries, stemming from both various scientific insights, and the 'discovery' of the New World.¹² We thus need to interpret *Grossraum* analysis less as an abstract 'theoretical model', than as an effort to come to terms with what Schmitt claims are empirically ascertainable historical trends. Such analysis seeks to clarify these trends' profound implications for our understanding of international law and transnational relations within an increasingly post-statist epoch.¹³ Here, the 19th century model of the sovereign state has been increasingly 'dethroned' by 20th century developments and even, in some respects, made 'impotent' and 'obsolete'.¹⁴ In this new context, it is the actions of regional power-blocs, functioning under the hegemonic control of a dominant state, which have become the *de facto* creators of international law.

Here, it follows that traditional and still dominant 'interstate ways of thinking' within international law scholarship, whose spatial concern is focused exclusively upon state territory, has now become unacceptably 'conservative', even anachronistic.¹⁵ In response, Schmittian theory seeks to accomplish its central cognitive goal of providing an adequate model, for interpreting the meaning and implications of contemporary trends, by articulating those reworked categories and 'ordering principles'. These principles appear more appropriate to such historical trends than either

¹⁰ Schmitt, (n 4) 231.

¹¹ *ibid.* On Schmitt's analysis of this Doctrine, see Stirk (n 1) 364. For a critique of Schmitt's alleged distortion of the Monroe Doctrine, see Lothar Gruchmann, *Nationalsozialistische Grossraumordnung* (Deutsche Verlags-Anstalt 1962).

¹² Schmitt, (n 6) 314-6; Hooker (n 9) 142, 143.

¹³ Schmitt (n 2) 112; Schmitt (n 4) 211.

¹⁴ Carl Schmitt, *Concept of the Political* (Chicago University Press 1996) preface; Schmitt (n 2) 79, 104, 112.

¹⁵ *ibid* 112

traditional – but now out-dated – state-based approaches, which are predicated on the self-sufficient sovereignty of individual states, or imperialistic superpower approaches. The abstract universalistic orientation of such imperialistic approaches disregards concrete spatial relations and territorial borders altogether. It thereby misses out on what merits recognition as key themes for international scholarship.¹⁶ In one sense at least *Grossraum* analysis of concrete great spatial orders seeks what could be called a ‘third way’ irreducible to the familiar, if false, either/or alternatives between state-centric and imperialistic orientations.

Schmitt further argues that, by the mid to late 1920’s, international politics had changed to the point where a spatial reordering, upon the basis of a small number of *Grossräume* held in equilibrium by a balance of power, had become a real possibility.¹⁷ His *Völkerrechtliche Grossräumordnung* claims that the traditional Eurocentric order underlying international law – that is, relations between and among sovereign states – was by the mid-1920’s being superseded by relations between and amongst a small number of sovereign *Grossräume*.¹⁸ This implies the possibility of a post-imperialist and pluralistic-regionalist world order arising; one that includes, for example, a balance of power between central Asian, Pan-American, European, and Pan-African *Grossräume*.¹⁹

McCormick, who is generally critical of Schmitt, compares his work to that of the abstract idealist and pseudo-humanitarian ‘inclusiveness’ of cosmopolitan visions for Europe, which are incapable of differentiating distinctly European from non-European qualities. He argues that ‘Schmitt’s work (...) like a spectre haunts the study of European integration’.²⁰ Indeed, a provocative German constitutional court decision on the Treaty on European Union, the *Brunner Decision*, addressed precisely this question in noticeably Schmittian terms, of whether a substantive, yet distinctive European-wide ‘demos’, had yet fully emerged.²¹

¹⁶ Schmitt (n 2) 109; Stirk (n 2) 364.

¹⁷ Luoma-Aho (n 7) 40, 41.

¹⁸ Schmitt (n 6) 76, 77, 81, 104.

¹⁹ Schmitt (n 2) 109; Hooker (n 9) 151, 152; McCormick (n 1) 140, 141. McCormick’s rather rosy and idealistic account of how the EU also differs from a Schmittian *Grossraum* is contestable on my reading of the latter, as if there is no anti-Americanism in European culture, desire to appropriate aspects of Eastern Europe, or that the ‘central’ powers of France and Germany are not currently dominant forces within the geopolitics of the EU.

²⁰ McCormick (n 1) 140–141.

²¹ Marti Koskeniemi, ‘Review of Joerges and Ghaleigh’ (2004) 15 *European Journal of International Law* 839. *Manfred Brunner and Others v The European Union Treaty* [1994]

It is arguable that his *Grossraum* theory's recognition of the combination of the complete exclusion of 'foreign' intervention from powers outside the *Grossraum* in question, and a predominant state directly exercising hegemonic power and embodying a political idea radiating outwards, constitutes the essence of a new and realistic principle of international law and practice of international relations.²² Indeed, Schmitt suggests that adoption of his *Grossraum* thinking is necessary, to pave the way for a significant change in the theory and practice of international law within a world-historical era where the viability of single, individual nation states, each acting on its own initiative, can no longer be relied upon as a grounding.²³ He makes a sharp contrast between the defensive, even anti-imperialist role, originally played by the US Monroe Doctrine from 1823-1890 (when South American states were threatened with re-colonisation by European powers), and what he takes to be the sham universalism and imperialistic orientation of *both* liberal-capitalist and communist forms of global domination that have replaced the Doctrine's key principles previously discussed.

As Hooker recognises, Schmitt's conception of *Grossraum* is expressly particularistic and pluralistic, that is, a '(...) counterpoise to the dangerous ascent of liberal universalism.²⁴ The latter undermines every rational demarcation and distinction. Perhaps, following suitable adaptation, aspects of the counter-imperialist dimension of Schmitt's *Grossraum* theory, which clearly aspires to possess applicability to other geographical contexts within our late modern age, can provide a more interesting way of addressing, for example, the 'right of self-determination' in a post-statist epoch?

Schmitt's endorsement of the Monroe Doctrine is not an advocacy of its uncritical and exact transposition to contemporary contexts, but rather, an argument relating to the current relevance of its underlying core principles relating to spatially grounded and demarcated regionalism.²⁵

(Cases 2 BvR 2134/92 & 2159/92) [44] before the Bundesverfassungsgericht (2 Senat) (Federal Constitutional Court, 2nd Chamber) BverfG (Ger) exhibited a Schmittian concern for the importance of cultural homogeneity as a precondition for effective European integration.

²² Schmitt (n 2) 109-11; Hooker (n 9) 136-138; Luoma-Aho (n 7): 40, 41.

²³ Schmitt (n 6) 314.

²⁴ Hooker (n 9) 133.

²⁵ Gary Ulmen, 'Translator's Introduction' in Carl Schmitt, *Nomos of the Earth* (n 4) 23; Luoma-Aho (n 7) 40, 41.

One possibility is to recast this as a citizen's entitlement to belong to spatially-grounded processes of political will-formation, extending beyond the frontiers of traditional nation states.

Whatever its author's original intentions and undisclosed immediate objectives,²⁶ Schmitt's *Grossraum* concept is certainly formulated in wider theoretical terms as a 'generally applicable' theoretical conception.²⁷ Following the American victory in the Cold War and the collapse of credibility of the Marxist alternatives, Schmitt's theory has been attracting renewed interest.²⁸ Despite some occasional internally inconsistent formulations, which are reflective of his immediate biographical situation within Nazi Germany,²⁹ Schmitt's *Grossraum* notion arguably remains a central category for a distinctly pluralistic and self-restraining form of international law scholarship, purporting to capture aspects of our contemporary reality. It is designed to expand the state-centred and intra-state system of traditional international law, to include concrete relations between a small number of *Grossräume*.

²⁶ Detlev F Vagts, 'International Law in the Third Reich' (1990) 84 *American Journal of International Law* 3, 661-704; Michael Salter, 'Neo-Fascist Legal Theory on Trial: An Interpretation of Carl Schmitt's Defence at Nuremberg from the Perspective of Franz Neumann's Critical Theory of Law' (1999) 5 *Ratio Juris* 161-193.

²⁷ Schmitt (n 6) 278.

²⁸ Chantal Mouffe, 'Schmitt's Vision of a Multipolar World Order' in William Rasch (ed), 'Special Issue on Schmitt's Nomos of the Earth' (2005) 104 *South Atlantic Quarterly* 245-251; Hooker (n 9) Ch 6; McCormick (n 1); Luoma-Aho (n 7).

²⁹ There are some very occasional and probably inessential references to volkish-nationalistic ideology of 'blood and soil' which pander to the official Nazi ideology that dominated this field in 1932-1942, which are contradicted by the main cultural and anti-essentialist thrust of the remainder: See Vagts (n 26). It almost goes without saying that the present study makes no defence of Schmitt's personality or political choices, either generally, or with respect to his period of intense collaboration with Hitler's regime between 1933-1936 and efforts to regain his position from 1938-1943 by reference to international law writings, which, at one level and in some respects at least, appeared to support particular aspects of Nazi foreign policy, or at least not to be obviously opposed to attempts to expand Germany's role into the leading state of a central European power-bloc, akin to that hegemonic position the USA has long enjoyed with respect to Latin America. Schmitt's writings offer no theoretical justification for distinctly military, as opposed to diplomatic and cultural means to secure this pre-eminence, and this even became clear to his Nuremberg interrogators who late released him without charge: see Salter (n 26). The importance of Schmitt's *Grossraum* theory for us in the second decade of the 21st Century is clearly quite different from that of his contemporaries in the German context of the later 1930's and 1940's, and it would be absurd to claim that this theory is somehow 'essentially' fascist or 'reactionary' - irrespective of its actual or potential impact upon today's changed context of interpretation, re-appropriation and concrete application.

3. Implications of Schmittian Analysis

Of course, we cannot take for granted, or otherwise accept on trust, Schmitt's claims regarding the relevance and validity of *Grossraum* analysis. Instead, they depend upon clear proof of the contemporary relevance of *Grossraum* thinking for making sense of currently unfolding events, not least providing a critical analysis of US-led military interventions and associated anti-partisan and counter-insurgency operations, developed under the auspices of 'the war on terror'.³⁰ Perhaps, Schmittian analysis here needs to be critically assessed primarily in these pragmatic, rather than purely historical, biographical or jurisprudential terms.³¹

For those who accept at least aspects of Schmitt's *Grossraum* theory, such theory certainly possesses specific implications for transnational law categories and analysis. For instance, his post-statist model of transnational law and international relations distinguishes between the internal and external relations of a *Grossraum*³²; it provides a distinctly international law interpretation of the architectural structure of this form of legal reconstituted spatial entity that transcends classic inter-state models of international law.³³ Taking the Monroe Doctrine as a blueprint, relations between *Grossräume*, considered as totalities, must be governed by the principle of non-intervention. In turn, this needs to be interpreted as an obligation to practice respect for the pluralist principle of peaceful coexistence, trade and other relations between different nations and *Grossräume* exhibiting necessarily divergent orientations and principles.³⁴ Here, international law needs to recognise that even the most powerful *Grossraum* is not hermetically sealed off from others, and that certain relations of mutual dependence in matters of trade and both scientific and educational exchanges for example, are inevitable.³⁵ The guiding principles of a mutual recognition and acceptance of regional differences, express not so much any abstract moral orientations, than each *Grossraum's* own material

³⁰ Gary Ulmen, 'The Military Significance of September 11' in 121 *Telos* (2001) 174-84; William Scheuerman, 'Carl Schmitt and the Road to Abu Ghraib' (2006) 13 *Constellations* 108-124; Schmitt (n 6) 306.

³¹ McCormick (n 1).

³² 'Alexandre Kojève-Carl Schmitt Correspondence' Erik De Vries (ed and trans) (2001) 29 *Interpretation* 1, 23.

³³ Schmitt (n 2) 110; Hooker (n 9) 136; Schmitt (n 4) 211.

³⁴ Schmitt (n 2) 111.

³⁵ *ibid* 83, 110.

self-interest. In other words, respect for difference is a precondition for their continued viability.

As well as regulating: (1) inter-*Grossraum* relations, transnational law according to Schmitt's analysis also has a potential interventionist role in tackling relations (2) not only between the leading states (or 'major powers') - who act as protectorate for each *Grossraum* over which they exercise spatial hegemony - but also (3) interactions between different minority and majority groups within each of these regional blocs.³⁶ Other aspects of international law analysis thus include the legal regulations of peoples within a single *Grossraum* and across different instances of the latter.³⁷ The fourth task for *Grossraum* analysis is to address the dimension of *trans-Grossraum* relations between different ethnicities, religions, occupations and other groups.³⁸ In short, Schmitt's *Grossraum* analysis presents traditional interstate forms of international law thinking with a series of challenges and new analytical tasks, including the four distinct levels already set out. Fortunately, the conception of 'international' within international law may be sufficiently elastic to accommodate these new levels of analysis, supplementing more traditional and narrowly focused scholarly agendas shaped by the restrictive premises and assumptions of legal positivism.³⁹

Schmittian analysis, thus, has to address how the internal relations of each *Grossraum* would probably have to consist of largely technical arrangements for not only optimising stable coexistence but also sustaining the pre-eminent geopolitical position of the dominant power tasked with protectorate responsibilities. This predominance must be sufficiently reiterated to at least ensure a state's capacity to exercise the regional security function lying at the core of the entire *Grossraum* conception.⁴⁰

4. Contemporary Relevance

Events during the last decade of European 20th century history suggests that Schmitt was right to insist, during the immediate post war decades, that international lawyers should not assume that it was historically inevitable that the bipolar cold war division of the world, stemming from the

³⁶ Schmitt (n 4) 211.

³⁷ Schmitt (n 2) 110.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.* 109, 110; Hooker (n 9) 136.

geopolitics of the post-WW2 settlement, would persist indefinitely. Nor, he argues, should they take it for granted that, if the US triumphed and attained the status of a sole remaining superpower, this would signify ‘the end of history’ characterised by the final triumph of an imperialistic movement towards a unipolar ‘world unity’. Instead, Schmitt insists that the future shape of international law would be determined by real global choices to be made between universalism and pluralism, and between superpower monopoly and a polypoly or pluralism of coexisting *Grossräume*.⁴¹

Schmitt’s post-war writings consider three alternative scenarios:

1. The reiteration of bipolar conflict between rival universalist movements, akin to the Cold War, but perhaps with different parties.
2. The complete triumph of US imperialism in establishing a unipolar world order from which national sovereignty, and thus a politically organised people’s right to self-determination, has substantially disappeared.
3. The displacement of a superpower dominated world order by a newly-emerging regional and spatial pluralistic order of different *Grossräume*.⁴²

For Schmitt, the second scenario entails a universal American empire as a final victory of the dominance of economy and technology and their bearers over the rest of the world. In his last major article, published in 1987, Schmitt concluded that this alternative, an industrial world appropriation, involving the subjugation of all the industries of the world under one imperial power policing the globe in its own interests, was the most likely alternative: ‘The day *world politics* comes to the earth, it will be transformed into a *world police power*.’⁴³

Schmittian *Grossraum* analysis is, for reasons already explained, intrinsically and necessarily hostile to a superpower dominated world order, regarding this as essentially and unacceptably imperialistic. Furthermore, the second option of a reiteration of the bipolar division of the cold war has now clearly ended, and does not therefore merit further discussion. The third option of a plurality of *Grossräume* operating within a balance of power and each respecting the integrity of all others, is clearly preferable

⁴¹ Schmitt (n 4) 243, 244.

⁴² McCormick (n 1) 139, 140.

⁴³ Carl Schmitt, ‘The Legal World Revolution’ (1987) 72 *Telos* 73, 80 (emphasis in the original); Marti Koskeniemi, *The Gentle Civilizer of Nations* (Cambridge University Press 2001) 420; Schmitt (n 4) 321.

from the pluralistic regionalism of a Schmittian perspective. It entails the evolution of an essentially pluralistic type of world order, supportive of principles of political self-determination. Following a 'dynamics of pluralisation', this would take the form of a 'pluriverse' of 'several independent *Grossräume*' – Pan-European, Pan-Arab etc.

A pluriverse of this kind would consist of a structure of territorial division between a limited number of large *Grossräume* – each of which recognises each other's legitimacy and right to exist as self-determining peoples, and thus exclude external intervention.⁴⁴ It would constitute a renewed equilibrium and balance of power within international affairs: one that would itself constitute a 'new order of the earth'.⁴⁵ The result would still be a global order regulated by international law, but, in a clear reference to Anglo-American imperialism: 'not one that is sustained and controlled by a hegemonic combination of sea and air power'.⁴⁶

In effect, Schmitt projects the possibility of a post-imperial and 'multi-polar world order', a 'pluriverse' of regional power-blocs akin – within a very different historical context – to that of the American Continent under the original Monroe Doctrine, understood in *Grossraum* terms as it broadly operated from 1823-1900. That is, prior to its corruption into an imperialistic device, justifying military intervention outside of the context of a Pan-American *Grossraum*, previously operating essentially as a voluntary, essentially defensive and mutually beneficial protectorate arrangement grounded in a single continent. By contrast, from 1900, but especially from 1917, US foreign policy had transformed this Doctrine into an imperialistic, pan-interventionist world ideology, interfering in everything under humanitarian pretences.

Under a *Grossraum* arrangement, a major regional power would take enhanced responsibility for effective regional defence and economic coordination, whilst still respecting remaining aspects of the sovereignty of member states.⁴⁷ It was the USA of the 19th century that not only provided the organisational and normative blueprint and rationale for this world-historical model, but also acted to make it a transnational and regional reality. Later it succumbed to the temptations of imperialistic military and other interventions outside of the American continent.

⁴⁴ Koskenniemi (n 43) 420.

⁴⁵ Schmitt (n 4) 355.

⁴⁶ *ibid* 355; McCormick (n 1) 139.

⁴⁷ Schmitt (n 2) 85; William Rasch, 'Enmity as a Structuring Principle' (2005) 104 *South Atlantic Quarterly* 253, 261; Schwab (n 5) 186.

According to Schmitt, for continental Europe to regain its former prestige, it must become a counterweight to the would-be universalistic imperialism of both the USA and the former-Soviet-controlled power-bloc (Warsaw Pact) - or perhaps now China.⁴⁸ This could mean re-constituting itself as regional *Grossraum*, treating the Monroe Doctrine – rather than either the 19th century type of European colonial military conquest, occupation and annexation, or Wilsonian liberalism – as its blueprint and role model.⁴⁹ Such a development would allow a possibly federated European community to effectively resist *de facto* imperialist powers.⁵⁰ Europe needs to learn important lessons from the wrong turn the USA took at the end of the 19th century: the displacement of the Monroe Doctrine by an evangelical and universalistic form of liberal cosmopolitanism.⁵¹

Schmitt insists that in terms of the establishment of a viable global order, the third pluralistic option is the most rational exit route away from contemporary forms of US imperialistic domination. The latter's impact has been to spawn multiple forms of resistance, ranging from anti-capitalist protests through to terroristic campaigns in the name of political Islam. However, this only holds good if two conditions can be fully met. Firstly, the *Grossräume* themselves must be properly and meaningfully differentiated from each other according to real and decisive cultural differences. Secondly, they must be internally unified according to an overarching and widely accepted political idea, such as 'European unity' or 'Asian values.'⁵²

Schmitt's revival of the promise contained in the original version of America's original (that is 1823-1900 *Grossraum*-related) version of the Monroe Doctrine as, in part, a possible blueprint of principles for a post-imperialist form of international law, can be usefully understood in this light. His analysis has recently drawn sympathetic attention from contemporary leftist-pluralists, such as Chantel Mouffe, Danilo Zolo and others.⁵³ Even a critic of Schmitt on this specific point, such as Hooker, recognises that his *Grossraum* conception signifies:

[T]he most detailed and heavily conceptualised of Schmitt's attempts to theorise beyond the state towards a renewed political future. (...) The theory of

⁴⁸ McCormick (n 1) 139, 140.

⁴⁹ Schmitt (n 2) 90.

⁵⁰ Schmitt (n 8).

⁵¹ McCormick (n 1) 139, 140; Luoma-Aho (n 7): 40, 41.

⁵² Schmitt (n 4) 355; Carl Schmitt, 'Die Einheit der Welt' (1952) 6 *Merkur* 505.

⁵³ Mouffe 2005 (n 28).

large spaces was therefore Schmitt's initial attempt to adopt a predictive stance, and to grasp for future principles of global order.⁵⁴

If, as even his strongest and best-informed critics concede, Schmitt's analysis contains elements that are as descriptively insightful and 'critical' of imperialistic dimensions, in an immanent sense of this term, as his underlying methodology allows, then that clearly merits positive appreciation. It is arguable that Schmitt's choice of this particular research methodology, whose interpretative orientation is similar to the phenomenological hermeneutics of Husserl, Gadamer and Heidegger, is itself open to criticism. However, that is not a point which his critics have, to date, adequately confronted.

Schmitt suggests that international law scholarship could usefully embrace his *Grossraum* theory in an express manner. This would contribute to the challenge of contesting US imperialism both as a worthwhile goal in itself, and as a way of overcoming some of the negative consequences for global instability that stem from such superpower domination. In particular, he argues that the reduction of the number and intensity of armed conflicts cannot be achieved through the non-spatial and universalistic approaches and agendas promoted by US imperialism. On the contrary, these tend to be proved counterproductive by intensifying conflicts through the demonisation and criminalisation of (geo)political enemies, and the related elevation of heightened military power into a presumed moral-legal superiority - in which warfare is disguised as international law enforcement.⁵⁵

What is needed instead is a revival of democratically legitimate forms of regional integration, founded upon pluralistic and multilateralist orientation giving effect to principles of mutual respect, of which the theory and practice of *Grossraum* forms an integral part.⁵⁶ From this perspective, it is arguable that the extension and application of *Grossraum* theory within an associated multi-polar framework is a real alternative to a type of American imperialism claiming world power.⁵⁷ It would require international law scholarship to reformulate classic positivist doctrines, which are centred upon individual nation states, to embrace relations between different *Grossräume* as a central theme. The thrust of Schmitt's suggestion remains anti-imperialist insofar as Schmitt considered the interwar years following

⁵⁴ Hooker (n 9) 127.

⁵⁵ Schmitt (n 4) 321.

⁵⁶ Danilo Zolo, *Cosmopolis: Prospects for World Government*, (Polity Press 2007) 160.

⁵⁷ Ulmen (n 30) 28.

the Treaty of Versailles as an epoch of expanding US-led imperialism, when international law was being reshaped in the opposite direction according to requirements of Wilsonian universalism, a tendency that escalated following the Allied military victory of 1945.

Even if one accepts the relevance of Schmitt's analysis as set out above, it still has to be conceded that its theoretical foundations have yet to be outlined, particularly in terms of a theory of spatial relations. For Schmitt, the world of international law and relations is not 'in' space, like soup is 'in' a soup can. On the contrary, the sense and implications of concrete spatial relations arise within and through the interpretative and material activities of this social world itself. This will now be discussed.

5. Reclaiming Spatial Territoriality and Delimitation

Schmitt argues that the conceptual formations of earlier and essentially uncritical forms of international law scholarship, overly dominated by the *status quo* ideology of 'contractual positivism', have 'totally neglected' those 'important questions of principles of spatial order.'⁵⁸ In particular, distinctly spatial categories, such as of 'spheres of influence', 'back country', 'contiguity' and 'propinquity', are clearly relevant to the material substance of the type of transnational relations and events that international law seeks to regulate.⁵⁹ It would, for example, be absurd to suggest that transnational questions concerning sovereignty have to be indifferent to the question of whether territorial areas constitute a single continuous landmass, such as Belgium, or a global fragmented empire or commonwealth, such as the British Empire, and later Commonwealth. Indeed, there is no reason to assume that lines on a political map typically coincide with real borders with respect to the exercise of geopolitical power. Nor does it follow that a state with no or minimal military capabilities must be considered an 'equal partner' within international relations and law with that of military superpower equipped with nuclear weapons located not only within its own territory but also in submarines, long-distance bombers and, perhaps, even within orbiting space stations.

Even international law principles that Schmitt regards as unrealistic, such as the doctrine of the formal 'equality' of all states, their 'equal weight'

⁵⁸ Schmitt (n 2) 79, 80, 112.

⁵⁹ Charles Kruszewski, 'International Affairs: Germany's Lebensraum' (1940) 34 *The American Political Science Review* 5, 964, 974

and ‘standing’ as legal subjects, which disregard the phenomenon of client states of imperial powers and differential quotas of geopolitical power, still exhibit a spatial element meriting close analysis.⁶⁰ The same is true of both discredited and ideologically-abused conceptions of ‘natural borders’.⁶¹

Indeed, compared with *Grossraum* analysis, formalistic and positivist types of international law scholarship, centred around relations between notionally autonomous individual states and intra-state treaties, have typically ‘lost all sense of spatial thinking’ through their reliance upon a ‘state-centric microspatiality’.⁶² The rise, at the start of the 20th century, of a largely positivistic and interstate model of international law has meant that ‘awareness of the great problem of a spatial order of the earth disappeared’.⁶³ Earlier spatial categories, or more precisely concepts that presupposed the spatial nature of Europe, such as the distinctions between ‘civilised’ and ‘uncivilised’ nations, and between European territory and that of European colonies, survived within international law discourse but only as anachronistic residues.⁶⁴

In keeping with this narrowly restricted interstate agenda, traditional positivistic spatial doctrines confined themselves to applying a simplistic either / or opposition, a binary distinction between state territory and non-state territory. Slices of the globe were either actually or potentially elements of state territory, or – in the case of the ‘free seas’ – were assumed to be essentially incapable of being subjugated to state authority, and thus lacked real significance for international law.⁶⁵

The formalism, and hence lack of geopolitical realism, stemming from the 19th century liberal-positivist doctrine of the ‘equal standing’ of all modern states, impeded international law scholarship from recognising the central role of colonialism in the founding of their discipline’s basic framework of categories. In particular, it impeded recognition of the spatial ordering of ‘amity lines’. These had divided the globe into two zones: a non-European zone ‘beyond the line’, where unrestrained colonial conflict could take place without resulting in any more general war, and a distinctly European space. Here, similar conflict would indeed constitute war. The inverse also applied. For example, during the 18th century, warfare within the ‘Amity line’ remained confined to the European continent; it did not

⁶⁰ Schmitt (n 2) 101.

⁶¹ Schmitt (n 2) 79, 80.

⁶² *ibid* 116.

⁶³ Schmitt (n 4) 230.

⁶⁴ *ibid*.

⁶⁵ Schmitt (n 2) 113.

automatically result in armed conflict 'beyond the line' between adjacent colonies of the warring European powers.⁶⁶

In short, Schmitt insists that the spatial demarcation founded upon the practice of colonialism has operated as 'the foundation of hitherto existing European international law'. Ironically, the post-WW1 1919 re-ordering signalled the end of the traditional Eurocentric order and spatial demarcation, which had limited and contained intra-European warfare from 1648.

More generally for Schmitt, positivistic conceptions have typically 'assumed the opposite of a concrete conception of space', that is, an 'empty dimension of planes and depths with linear borders'.⁶⁷ Such conceptions are perverse because both interstate and other forms of international law 'can be understood only within a comprehensive spatial order sustained by states'.⁶⁸

Furthermore, such neglect of real processes of spatial ordering and re-ordering is far from being politically neutral, as required by classic positivistic either / or dualisms between law and politics. Indeed, it results in a *general depoliticisation* involving a lack of realism concerning, for example, how imperialist states have developed hegemonic 'spheres of interest', colonies, client states, protectorates, and 'zones of control'. It also fails to register the reality of bans on 'outside' intervention, claims to exercise legitimate intervention rights and associated preferential entitlements located beyond a state's national borders, and – more generally – spatial delineations of the seas, including rights to either undertake, or resist, naval blockades.

Traditional positivist models of transnational law typically ignore these and a range of other intermediary entities, which - in contrast to typical either / or approaches - are neither intra-state nor purely extra-state formations. Furthermore, the fictions of the traditional state-centric model affords the same significance to the spatial zone subject to the sovereign authority of a regional superpower, as it does to a client, buffer or neutral state, whose very existence depends, in practice, upon superpower acceptance.⁶⁹

Schmitt maintains that the neglect of material spatial relations as an express theme of both international law scholarship and state practices ignores the palpable reality that 'from the standpoint of international jurisprudence [law], space and political idea do not allow themselves to be

⁶⁶ Schmitt (n 2) 116.

⁶⁷ Schmitt (n 2) 79–80.

⁶⁸ Schmitt (n 4) 210.

⁶⁹ Schmitt (n 2) 113.

separated from one another. For us, there are neither spaceless political ideas nor, reciprocally, spaces without ideas or principles of space without ideas.⁷⁰ Whilst space 'as such' is not a concrete and legally regulated institutional order of a specific people, every such order 'has a specific content in terms of place and space (...) internal to itself, and thereby brings with it its own internal substance and its own internal boundaries'.⁷¹

By contrast and as already noted, the primary spatial category appropriate to a *Grossraum* is that of an extended spatial realm of hegemonic control: one that is comprised of two or more adjacent nation states, and about which one can identify widely recognised and specific borders differentiating a strictly relative 'inside' from an 'outside'. The borders of each state within the *Grossraum* are thus best defined as second-tier spatial categories, located within the first-tier borders of the *Grossraum* itself.⁷²

Schmitt insists that international law scholars need to supersede positivistic orientations by recognising that the core distinctions of their discipline have been shaped by a virtual revolution in spatial relations following the discovery of the 'New World' during the early 16th century. Hence, relations of war and peace:

[C]ould only be understood on the basis of this image of space. (...) The degree to which the [obscure] earlier parcelling up and relativisation of war was achieved in international law through spatial methods has, however, not yet been made sufficiently clear.⁷³

Schmitt further insists that international law scholarship needs to recognise the importance of distinctions between control exercised over firm land, as opposed to open sea, concerning the geopolitical orientation of individual states or alliances of states. The overall orientation to transnational law issues of land-locked states oriented towards demarcated areas of land, differ in kind from those of maritime oriented powers, such as Britain, whose historic embrace of a sea-based imperialism from the 17th century fundamentally altered its relationship to international law and relations.⁷⁴ The land-sea antithesis of 'diverse spatial orders' arose only after the oceans had been opened up 'and the first global image of the earth had emerged'.⁷⁵ For Schmitt, this embrace of maritime power constituted

⁷⁰ *ibid* 87.

⁷¹ Schmitt (n 6) 319.

⁷² Hooker (n 9) 142.

⁷³ Schmitt (n 2) 114.

⁷⁴ Schmitt (n 4) 238.

⁷⁵ *ibid* 54.

‘a revolution of sweeping scope, that of planetary space’.⁷⁶ He argues that there was no possibility of any theory or practice of *Grossraum* prior to the early modern period. This is because it presupposes the capacity for thinking in global terms. By contrast, the pre-modern world ‘lacked any ordering power, because it lacked the idea of a common spatial order encompassing the entire earth’.⁷⁷ The idea of a ‘multipolar’ world of different *Grossräume* as a basis for a revised type of transnational law that is receptive to spatial thinking, is not therefore a given. Instead, it must be recognised as a distinctly modern construct and project whose potential relevance to changing patterns of international relations needs to be re-established anew in different contexts of legal analysis.

It follows from Schmitt’s arguments that international lawyers need to take account of the implications of the specific contrast and opposition between *Grossraum* analysis and more traditional positivistic modes of interpreting international law. More generally, scholarship needs to recognise that every transnational legal order has always been a *certain type of spatial order*, in which spatial questions of the appropriation and degrees of ownership of concrete slices of land, airspace and sea have typically proved to be decisive for shaping the nature and operation of the order in question.⁷⁸

Schmitt presents his *Grossraum* thinking, which treats the state order as relative, that is, as but one among many other spatial orderings, as a historically necessary corrective to traditional state-centric international law. It recognises that those changing patterns of international relations and geopolitics that underlie international law developments, including the rise of colonialism and imperialism, *will always* exhibit a distinctly spatial dimension: one that remains relevant to empirically-informed types of international law scholarship.

During temporary periods of comparative tranquility within international relations, it is too easy for a consensus-oriented and depoliticising positivistic orientation to appear credible. However, when states and indeed entire power-blocs, such as Soviet-dominated Eastern Europe, collapse, then the geopolitics of core spatial considerations returns to the fore. In turn, this reminds us that the core of international law is the legal

⁷⁶ Carl Schmitt, *Land and Sea* (Plutarch Press 1997) 8.

⁷⁷ Schmitt (n 4) 55.

⁷⁸ Schmitt (n 76) 37, 38; Stephen Legg and Alex Vasudevan, ‘Introduction: Geographies of the Nomos’ in Stephen Legg (ed), *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos*, (Routledge 2011) 9, 10.

regulation of conflictual relations of, for instance, war, insurrections, revolutions as well as their conceptual opposites. This ‘becomes visible in the concreteness of their era, and the specific conception of the globe, of a spatial division of the earth, that characterises every system of international law (...):’⁷⁹

It follows that changing spatial configurations within international relations, the ‘measures and standards of our conceptions of space’ are ‘of decisive significance for the development of international law’.⁸⁰ By at least the middle decades of the 20th century, these transformations of ‘spatial dimensions and standards of today are too conspicuous and above all too impactful for the pre-war conceptions to be maintained’.⁸¹

To its credit, international law doctrine traditionally gives particular and decisive recognition to context-specific questions of practical ‘efficacy’. However, such doctrine thereby becomes bound by its own principles to adapt its traditional framework to historical changes in spatial relations, including those stemming from the ability of major powers to enjoy effective control of airspace through military applications of satellite technology and air-power.⁸² In other words, for Schmitt, international law needs to expressly and openly adapt its interpretative framework to expressly recognise the ability of major powers, equipped with modern technology, to project their military power – and hence *de facto* sovereignty – over the oceans and into both cyberspace and airspace.

Such historical transformation cannot be inhibited by traditional principles and concerns focused exclusively upon territorial considerations shaped by 19th century geopolitical realities that, following later technological developments, have now become obsolete.⁸³ On the contrary, new principles of international law geared to *mobile forms* of sovereignty, exercisable through air and space-power, are likely to serve as models for recasting conceptions of the nature of analogous sovereignty over the seas.⁸⁴ It is comprehensible that questions of spatial relations over land once provided the established norm for defining the legal nature of, for instance, ‘territorial waters’. However, changing military technologies are currently in the process of redefining this historically contingent prioritisation. This change

⁷⁹ Schmitt (n 2) 112.

⁸⁰ *ibid* 109.

⁸¹ *ibid* 111.

⁸² *ibid* 111, 112.

⁸³ *ibid*.

⁸⁴ *ibid* 112.

has advanced to the point where *de facto* controls over the skies and both ‘inner’ and ‘outer’ space is now becoming a decisive starting point for recasting international law conceptions of spatial relations. For example, the ability of the CIA to deploy pilotless ‘drone’ aircraft to kill any of its political enemies anywhere in the world may still become legally intelligible in terms of recast international law categories, including those related to questions of global relations of war, peace and neutrality.

Schmitt’s *Grossraum* analysis, as set out in earlier subsections, presents itself as a new realist framework to tackle a fundamentally changed spatial pattern of international relations. Acceptance of this framework, as required by extra-doctrinal transformations, is surely preferable to more traditional incremental developments of international law through processes of strained analogy.⁸⁵ Schmitt insists that his *Grossraum* thinking meets the contemporary need to:

[D]o justice to the spatial conceptions of today and the real political vital forces in the world of today; a way of thinking that can be ‘planetary’ - that is, that thinks in terms of the globe without annihilating nations and states, and without, as does (...) imperialistic international law (...) steering the world out of the unavoidable overturning of the old concept of state into a universalistic-imperialistic world law.⁸⁶

In contrast to both traditional and later imperialistic approaches, *Grossraum* analysis ‘corresponds to both the spatial dimensions of our picture of the earth as well as our new concepts of state and nation’.⁸⁷

Schmitt’s emphasis upon territorially-defined and differentiated spatiality, centred around different *Grossräume* clearly stands opposed to both the spatial formlessness of universalistic models of international law, and an imperialistic form of geopolitics that – without any effort at reciprocity – treats other states’ territory as an ‘open frontier’ for its own interventionism, not least into Asia.⁸⁸ Indeed, a Schmittian approach to international law could seize upon the current American practice of launching drone aircraft attacks on suspected Islamic militants based in Pakistan, without first seeking the permission of this notionally independent sovereign state. Here, one could raise the question of the likely nature of US government reaction if Pakistan responded in kind with a similar attack on its nation’s political enemies, who were currently residents in Washington DC.

⁸⁵ *ibid* 112.

⁸⁶ *ibid* 111.

⁸⁷ *ibid* 109.

⁸⁸ *ibid* 90, 95, 209.

One suspects that American imperialism would interpret the former instance in terms of a morally-informed type of global law enforcement, whilst reinterpreting the latter attack as an unprovoked act of war akin to the Pearl Harbor assault of 1942, without even recognising the double-standards in play.

Schmitt's emphasis upon a people's territorially defined sense of belonging to the soil of its homeland is central to his phenomenological conception of collectively lived-space. It is this conception that his counter-imperialist conception of *Grossraum* seeks to re-affirm as the concrete reality of a definite and unique people.⁸⁹ He contrasts this reality to its subversion by cosmopolitan liberalism's more positivistic, flattened out model of space. This model is typically oriented towards universalistic categories and abstract ideas, such as 'humanity' and 'human rights', which in principle lack geographic-spatial differentiation. From a Schmittian perspective, these pose a risk of assimilation and homogenisation into that one-dimensional and unipolar world order, which Schmitt views as essentially and unacceptably imperialistic.⁹⁰ This suggests that the coherence of order and spatial orientation that is found within current US nationalism, but which American imperialism refuses to recognise as legitimate for any other state, contains real counter-imperialist potential.

It follows that Schmitt's *Grossraum* concept thus embodies an *expressly communitarian orientation* towards spatial relations. It includes the idea of a specific and physical homeland for a concrete nation, or a collection of specific and unique peoples. This spatially delimited homeland is, in some ways, aligned to – and unified by – a common (or at least overlapping) sense of identity that transcends state borders.⁹¹ Any Europe-wide *Grossraum* would, therefore, presuppose that, in addition to more particularistic and differentiated nationalistic, cultural and ethnic attachments to a spatially delimited place, such as 'Scottishness', there must also be some widespread aspiration to be recognised as 'good Europeans'. That is, of belonging to a singular and distinctive Europe-wide cultural tradition, and perhaps shared core mentality of shared orientation and collective values, which are commonly experienced as noticeably absent from those prevailing in other locations.⁹² Schmittian *Grossraum* analysis thus raises the

⁸⁹ Carl Schmitt, 'Raum und Grossraum im Völkerrecht' (1940) 24 *Zeitschrift für Völkerrecht* 145.

⁹⁰ Schmitt (n 6) 319.

⁹¹ Schmitt (n 89); Hooker (n 9) 152.

⁹² McCormick (n 1) 140; Koskeniemi (n 21) 839, 840; Hooker (n 9) 152.

question for international law scholarship of the politico-legal constitution and reiteration of concrete and particularistic forms of spatial relations, in which experiential relations of belong-to and rootedness to place are defined as primordial.⁹³

It is necessary, however, for any constructive revisions to a Schmittian model to more clearly distinguish between *two levels* of spatial relations more emphatically than Schmitt himself did. First, there are those relations that are already constituted and established, such as distinctions between what it means for the French state to be the institutional embodiment and representative of the French people and their distinctive concerns and interests. By contrast, the second level is characterised by *constituting* dynamics and processes. The first level of already constituted level of spatial relations has received most attention from leftist-pluralist Schmittian scholars in this area, such as Chantal Mouffe, Fabio Petito, and Danilo Zolo. These writers have addressed the spatiality of *Grossraum* analysis as part of a wider pluralist critique of the unipolarity of US imperialism.⁹⁴ Their analysis at the already constituted level of spatial relations focuses upon how established patterns of cultural identity and identities relate to already demarcated relations of space, such as a territorial demarcation of homeland, interpreted as continuations of on-going cultural traditions.

By contrast, the second, 'constitutive level', (the coming into being of politically constituted spatial relations), which admittedly is not fully developed by Schmitt himself, is less prominent in the scholarship of broadly 'Schmittian' scholars - despite appearing across Schmitt's own writings on law.⁹⁵ It concerns those moments where social groups act politically to redefine concrete spatial relations within their surrounding life-world in ways that, in specific, even localised, uncoordinated and *ad hoc* contexts, tend to both violate and transform established conceptions and institutional practices. If we address the issues that arise at this less developed level of Schmittian analysis of spatial relations, the focus shifts to both Schmitt's conception of 'constitutive power' and its relation to transnational productions of spatial relations. This is analysed most clearly in his recently translated Weimar work *Constitutional Theory*,⁹⁶ which – as

⁹³ Schmitt (n 89); Ghaleigh (n 1) 50–54.

⁹⁴ Rory Rowan, 'A New Nomos of Post-Nomos?' in Legg (n 78) 143, 144.

⁹⁵ *ibid* 143, 144.

⁹⁶ Carl Schmitt, *Constitutional Theory* (trans J Seizer, Duke University Press 2008).

sympathetic scholars have argued – provides some support for radically democratic theories of law.⁹⁷

Such constitutive practices may be temporary blips lacking any long-term consequences relevant to international law scholarship. However, these practices may also result in profound political restructuring of spatial relations, in ways that international law has to accommodate itself to if it is to remain relevant to those who are conscious of such practices and their concrete effects within different contexts. Clear examples include the impact of Soviet-dominated state socialism from 1917 through to 1989, the latter's collapse and the emergence of post-Soviet states freed of client state status and the collapse of the British Empire and the post-colonial legacy in the African and Asian continents. It is possible to identify other instances, such as the emergence and defeat of mid-20th century European fascism, the rise of the US as the sole surviving superpower, and the arrival of militant political Islam transforming the meaning of 'the Islamic world', coupled with the partial collapse of the once powerful tradition of Christianity, and perhaps the enlargement eastward of the EU.

Here and elsewhere, international law scholarship needs to respond adequately to how collective political decisions and actions have reconstituted spatial relations. It also has to address how these relations have become connected to shared cultural-ethnic, religious and nationalistic identities, such as what it now means to identify oneself as 'European', as 'Asian' etc. Concrete political acts have re-ordered such relations in ways that cannot be reduced to the reiteration and perpetuation of an already established *status quo*. This phenomenon of spatial reordering cannot be dismissed as mere exceptions because, in this context, the very distinction between 'the exception' and 'normality' remains a situationally-defined and politically contestable one.

6. Conclusions and Criticisms

It would be inappropriate to end this study without making some critical observations, drawing upon both my own reflections and critiques from other scholars. First, it is arguable that here, as elsewhere, Schmitt's response to many of the distinctions and dichotomies underlying liberal

⁹⁷ Rowan (n 94) 144; Andreas Kalyvas, *Democracy and the Politics of The Extraordinary* (Cambridge University Press 2008).

forms of international law analysis is simply to reverse them such that ideologically repressed geopolitical issues now take centre stage. The emphasis *Grossraum* theory places on questions of subjective identification and issues of national, regional and local identity certainly reverses the one-sided rationalism of positivistic international law analysis addressed above. Yet inversion of priorities within any dualism, such as that between law and (geo)politics, still remains caught by the terms of that dualism itself. In this sense, Schmitt's anti-positivistic approach to law that addresses its geopolitical dimension is still defined by the very positivism that it claims to have overcome.

Secondly, Schmitt's analysis typically combines some very sharp conceptual determinations with unacceptably vague and indeterminate ideas.⁹⁸ These include the vital question of the internal organisation of the proposed emergent *Grossraum*, and difficult questions of which nations fall inside, outside, or at the margins of specific *Grossräume*.

Another credible criticism is that for reasons that may have been contextual and biographically explicable, but which have resulted in theoretical problems, Schmitt writes very little about the structure of inter-*Grossraum* relations. Whilst noting that these must be characterised by mutual respect for differences, and acceptance of an equilibrium between *Grossräume*, there remains a lack of detailed specification. This applies even with regard to questions of the legal regulation of conflict, the role of perhaps modified doctrines of neutrality, and so forth.⁹⁹ Schmitt's writings did not resolve the paradox that a basic tenet of a *Grossraum* is resistance to foreign intervention, both direct and indirect, such as through economic imperialism. Yet his theory clearly requires relations between *Grossräume* of some kind, hence the unmet need to clearly differentiate 'interventionist' from 'non-interventionist' state policies and practices.

Another problem concerns the constitutional and political standing of the 'leading power' (or 'Reich') exercising a protectorate function for the *Grossraum* region as a whole. While clearly this entity ought not to be confused with the more expansive *Grossraum* itself, it is far from clear how it differs in kind from simply an extended regional superpower of a familiar type.¹⁰⁰ Whilst accepting this leading power retains aspects of the state tradition, and therefore contrasts with Nazi volkish *lebensraum* conceptions,

⁹⁸ Stirk (n 1) 360, 370.

⁹⁹ *ibid* 365.

¹⁰⁰ Hooker (n 9) 137.

the precise nature of these differences remains insufficiently clear or developed.¹⁰¹

Whilst my analysis has focused on Schmitt's work in terms of its contemporary relevance, rather than war-time origins and role within Nazi Germany, there is a strand of criticism that attacks *Grossraum* analysis as at least potentially fascistic. As Stirk recognises, there have been a 'diversity of judgments that it has inspired. Judgments range from qualified exoneration, through assertions that Schmitt's ideas, though deplorable, were vague and irrelevant to the practice of the Nazi New Order, to condemnation for legitimating the worst excesses of the regime'.¹⁰² Schmitt remained evasive on the question of the fate of states that become annexed to, or otherwise absorbed into, a *Grossraum*, perhaps for highly contingent and temporary reasons, such as economic or political crisis. The requirements for a voluntary entry into and exit from a specific *Grossraum*, perhaps through formal legal treaties, remain unclear, despite their obvious relevance to the geopolitics of international relations.¹⁰³ This question overlaps with the wider issue of what is the status of the traditional trappings of national sovereignty left to a member of a *Grossraum*? Do previously sovereign nations become little more than mere local authorities exercising delegated powers? Would they cease to have the power on their own initiative to send ambassadors, trade missions and cultural exchanges to extra-*Grossraum* states?

It is also arguable that both the emphasis placed on spatial relations of belonging to a defined homeland as a precondition for full belonging to a particular *Grossraum*, as well as a potential exclusionary 'political idea' as a ground for regional unification, contains potential for legitimating ethnic intolerance, even ethnic-cleansing for minority groups that are dispersed, nomadic and/or currently stateless, such as the Kurds, Palestinians or historically the Jews.¹⁰⁴ And yet, it is certainly arguable that Schmitt's theory did not advocate war or the Nazi military conquest of Europe. Nor did he provide the 'theoretical foundations' for Nazi foreign policy or racial theory. Furthermore, whatever his intentions, the diverse forms of Nazi occupation

¹⁰¹ Stirk (n 1) 359, 365.

¹⁰² *ibid* 358.

¹⁰³ *ibid* 368, 369.

¹⁰⁴ The theme of Schmitt's actual and potential anti-Semitism is subject to vast and highly polemical literature. See, in relation to the *Grossraum* theme, D Diner, 'Rassistisches Völkerrecht' (1998) 37 *Vierteljahreshfte für Zeitgeschichte* 52; Wolfgang Palaver, 'Carl Schmitt on Nomos and Space' (1996) 106 *Telos* 115; Stirk (n 1) 372, 373.

regimes contradict any attempt to address them as if they somehow constituted applications of Schmitt's *Grossraum* theory.¹⁰⁵

In short, Schmitt's *Grossraum* conception refers to an area protected and – in one sense – dominated, by a major regional power, which reserves to itself the decisive role in determining the meaning and scope of applicable principles through the open and direct exercise of its executive authority. The latter embodies a distinct 'political idea' with which the other member states broadly identify and accept as legitimate on the basis of their overlapping cultural traditions and aspirations: something which is vital to its effectiveness.¹⁰⁶ Schmitt's principle of *Grossraum* as a pluralistic and regionalist model of transnational law with a defensive anti-imperialistic orientation, claims to offer a founding conception for the theory and practice of both international law and international relations. It engages with a historical context where traditional models of self-sufficient national sovereignty have, he claims, become largely eclipsed.

It also seeks to illustrate the benefits of recovering the politics of spatiality within transnational legal scholarship at both already-constituted and constitutive levels and processes. Acceptance of Schmittian pluralism and its hostility to US imperialistic universalism brings with it a need for theorising spatial relations as an outcome of concrete geopolitical processes. Much of this remains unfinished business meriting continuation and in places, critical revision, in the wake of specific criticisms, additional clarification and empirical supplementation before it can be fully accepted as a viable alternative to more conventional orientations within transnational legal scholarship.

¹⁰⁵ *ibid* 359, 360. See also Joseph W Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton University Press 1983) 56, 259.

¹⁰⁶ Hooker (n 9) 134.