The end of the Cold War and of the bipolar division of the world has posed again the question of a viable international law grounded in a new world order. This question was already urgent before WWI, given the decline of the *ius publicum Europaeum* at the end of the 19th century. It resurfaced again after WWII with the defeat of the Third Reich. If the 20th century is defined politically as the period beginning with the “Great War” in 1914 and ending with the collapse of the Soviet empire in 1989, it may be seen as a long interval during which the question of a new world order was suspended primarily because of the confrontation and resulting stalemate between Wilsonianism and Leninism. Far from defining that period, as claimed by the last defenders of Left ideology now reconstituted as “anti-fascism,” and despite their devastating impact at the time, within such a context fascism and Nazism end up automatically redimensioned primarily as epiphenomenal reactions of no lasting historical significance. In retrospect, they appear more and more as violent geopolitical answers to Wilsonianism’s (and, to a lesser extent, Leninism’s) failure to establish a new world order.

Both the League of Nations and the United Nations have sought to reconstitute international law and the *nomos* of the earth, but neither succeeded. What has passed for international law throughout the 20th century has been largely a transitory semblance rather than a true system of universally accepted rules governing international behavior. The
geopolitical paralysis resulting from the unresolved conflict between the
two superpowers created a balance of terror that provided the functional
equivalent of a stable world order. But this state of affairs merely post-
poned coming to terms with the consequences of the collapse of the *ius
cpublicum Europaeum* and the need to constitute a new world order. What is most significant about the end of the Cold War is not so much
that it brought about a premature closure of the 20th century or a return
to the geopolitical predicament obtaining before WWI, but that it has
signaled the end of the modern age — evident in the eclipse of the
nation state, the search for new political forms, the explosion of new
types of conflicts, and radical changes in the nature of war. Given this
state of affairs, today it may be easier to develop a new world order than
at any time since the end of the last century.

At the beginning of the 20th century, Ernest Nys wrote that the
discovery of the New World was historically unprecedented since it not
only added an immense area to what Europeans thought the world was but
unified the whole globe.¹ It also resulted in the European equilibrium of
land and sea that made possible the *ius publicum Europaeum* and a viable
world order. In his “Introduction” to *The Nomos of the Earth*, Carl Schmitt
observes that another event of this kind, such as the discovery of some new
inhabitable planet able to trigger the creation of a new world order, is highly
unlikely, which is why thinking “must once again be directed to the
elemental orders of concrete terrestrial existence.”² Despite all the spatial
exploration and the popular obsession with extra-terrestrial life, today there
is no event in sight comparable to the discovery of a New World. Moreover,
the end of the Cold War has paved the way for the further expansion of
capitalism, economic globalization, and massive advances in communi-
cation technologies. Yet the imagination of those most concerned with these
developments has failed so far to find any new alternatives to the prevailing
thinking of the past decades.

**Beyond the Cold War**

The two most prominent recent attempts to prefigure a new world order
adequate to contemporary political realities have been made by Francis

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¹. Ernest Nys, “Introduction” to Franciscus de Vitoria, *De indis et de ivre belli
relectiones* — part of *Relectiones Theologicae* XII, Ernest Nys, ed. (Washington: Carnegie
Institution, 1917), pp. 64-65.

². Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*
Fukuyama and Samuel P. Huntington. Fukuyama thinks the West has not only won the Cold War but also brought about the end of history, while Huntington retreats to a kind of “bunker mentality” in view of an alleged decline of the West. While the one suffers from excessive optimism and the other from excessive pessimism, both fail primarily because they do not deal with the “elemental orders of concrete terrestrial existence” and both remain trapped in an updated version of Wilsonianism assuming liberal democracy to be the highest achievement of Western culture. While Fukuyama wants to universalize liberal democracy in the global marketplace, Huntington identifies liberalism with Western civilization. But Huntington is somewhat more realistic than Fukuyama. He not only acknowledges the impossibility of universalizing liberalism but exposes its particularistic nature. Thus he opts for a defense of Western civilization within an international bellum omnium contra omnes. In the process, however, he invents an “American national identity” and extrapolates from the decline of liberal democracy to the decline of the West.

Fukuyama’s thesis is derived from Alexandre Kojève’s Heideggerian reading of Hegel and supports the dubious notion that the last stage in human history will be a universal and homogeneous state of affairs satisfying all human needs. This prospect is predicated on the arbitrary assumption of the primacy of thymos — the desire for recognition — which both Kojève and Fukuyama regard as the most fundamental human longing. Ultimately, according to Fukuyama, “Kojève’s claim that we are at the end of history... stands or falls on the strength of the assertion that the recognition provided by the contemporary liberal democratic state adequately satisfies the human desire for recognition.”


4. In his penetrating critique of Huntington, William H. McNeill points out that: “Retreat into a local cultural past — even when it is a reconstructed past that never existed before — can indeed sustain local morale and cohesion in times of troubles. But when the resulting bunker mentality dictates a systematic disregard of, or deliberate inattention to the ideas and skills alien peoples have at their command, the end result is to be disastrously left behind by the rest of the world.” See his “Decline of the West?” in The New York Review of Books (January 9, 1997), p. 21.

assumption that at the end of history “there are no serious ideological competitors to liberal democracy.” This conclusion is based on a whole series of highly dubious ideological assumptions, such as that “the logic of modern natural science would seem to dictate a universal evolution in the direction of capitalism” and that the desire for recognition “is the missing link between liberal economics and liberal politics.”

According to Fukuyama, the 20th century has turned everyone into “historical pessimists.” To reverse this state of affairs, he challenges “the pessimistic view of international relations . . . that goes variously under the titles ‘realism,’ realpolitik, or ‘power politics’.” He is apparently unaware of the difference between a pessimistic view of human nature, on which political realism is based, and a pessimistic view of international relations, never held by political realists such as Niccolò Machiavelli or Hans Morgenthau — two thinkers Fukuyama “analyzes” in order to “understand the impact of spreading democracy on international politics.” As a “prescriptive doctrine,” he finds the realist perspective on international relations still relevant. As a “descriptive model,” however, it leaves much to be desired because: “There was no ‘objective’ national interest that provided a common thread to the behavior of states in different times and places, but a plurality of national interests defined by the principle of legitimacy in play and the individuals who interpreted it.” This betrays a misunderstanding of political realism or, more plausibly, a deliberate attempt to misrepresent it in order to appear original. Although he draws different and even antithetical conclusions, Fukuyama’s claim is not inconsistent with political realism.

Following this ploy, Fukuyama reiterates his main argument that: “Peace will arise instead out of the specific nature of democratic legitimacy, and its ability to satisfy the human longings for recognition.” He is

6. Ibid., p. 211.
7. Ibid., p. xv.
8. Ibid., p. 206.
9. Ibid., p. 3.
10. Ibid., p. 246.
11. For example, in the “Six Principles of Political Realism” introducing his most famous work, Morgenthau writes: “Realism does not endow its key concept of interest defined as power with a meaning that is fixed once and for all”; “The same observations apply to the concept of power. Its content and the manner of its use are determined by the political and cultural environment.” See Hans J. Morgenthau, Politics Among Nations: The Struggle for Power and Peace, 3rd ed. (New York: Alfred A. Knopf, 1960), pp. 8 and 9 respectively.
12. Ibid., p. 279.
apparently unaware of the distinction between legality and legitimacy, and of the tendency within liberal democracies for legality to become its own mode of legitimation.\textsuperscript{13} Even in countries in which legality remains determined independently by a democratic legislative body, there is no reason to believe it will be concerned primarily or at all with satisfying any “human longing for recognition”; rather, it will pursue whatever goals the predominant culture deems desirable. Consequently, it does not necessarily follow that, were democratic legitimacy to become universalized with the end of the Cold War, international conflict would also end and history along with it. Even Fukuyama admits that: “For the foreseeable future, the world will be divided between a post-historical part, and a part that is still stuck in history. Within the post-historical part, the chief axis of interaction between states would be economic, and the old rules of power politics would have decreasing relevance.”\textsuperscript{14}

This is nothing more than the reconfiguration of a standard liberal argument in a new metaphysical guise: the old historical world determined by politics will be displaced by the new post-historical world determined by economics. Schmitt rejected this argument in the 1920s: according to liberals, the “concept of the state should be determined by political means, the concept of society (in essence nonpolitical) by economic means,” \textsuperscript{15} but this distinction is prejudiced by the liberal aversion to politics understood as a domain of domination and corruption resulting in the privileging of economics understood as “reciprocity of production and consumption, therefore mutuality, equality, justice, and freedom, and finally, nothing less than the spiritual union of fellowship, brotherhood, and justice.”\textsuperscript{16} In effect, Fukuyama is simply recycling traditional liberal efforts to eliminate the political — a maneuver essential for his thesis of the arrival of “the end

\textsuperscript{13} The distinction between legality and legitimacy is essential for understanding Fukuyama’s confusion. Schmitt argued that the parliamentary state’s closed system of legality had developed into its own justification and that this legality was directed against the “legitimacy” not only of monarchs but of any higher authority. In this he followed Max Weber who had argued that “this legality can pass for legitimacy” and that “the most familiar contemporary form of legitimacy is the belief in legality.” Thus, both legitimacy and legality merge into a “common concept of legitimacy.” See Carl Schmitt, \textit{Legalität und Legitimität} (1932), 2nd ed. (Berlin: Duncker & Humblot, 1968), pp. 13-14.

\textsuperscript{14} Ibid., p. 276.


\textsuperscript{16} For a critique of how another prominent contemporary liberal, Friederick von Hayek, prefigures this development along roughly similar lines, see Alain Benoist, “Hayek: A Critique,” forthcoming in \textit{Telos}.
of history” with the end of the Cold War. Accordingly: “The United States and other liberal democracies will have to come to grips with the fact that, with the collapse of the communist world, the world in which they live is less and less the old one of geopolitics, and that the rules and methods of the historical world are not appropriate to life in the post-historical one. For the latter, the major issues will be economic.”

Responding to Walter Rathenau’s claim in the 1920s that the destiny then was not politics but economics, Schmitt said “what has occurred is that economics has become political and thereby the destiny.”

For Fukuyama, the old historical world is none other than the European world: “Imperialism and war were historically the product of aristocratic societies. If liberal democracy abolished the class distinction between masters and slaves by making the slaves their own masters, then it too should eventually abolish imperialism.” This inference is based on a faulty analogy between social and international relations. Not surprisingly, Fukuyama really believes that “international law is merely domestic law writ large.” Compounded with an uncritical belief in the theory of progress and teleological history, this leads him to generalize his own and Kojève’s questionable interpretation of the master-slave dialectic (understood as the logic of all social relations) to include international relations: “If the advent of the universal and homogeneous state means the establishment of rational recognition on the level of individuals living within one society, and the abolition of the relationship of lordship and bondage between them, then the spread of that type of state throughout the international system of states should imply the end of relationships of lordship and bondage between nations as well — i.e., the end of imperialism, and with it, a decrease in the likelihood of wars based on imperialism.”

Even if a “universal and homogeneous state” were possible today, in an age when all nation-states are becoming ethnically, racially, linguistically and culturally heterogeneous, it is unclear why domestic and international relations should be isomorphic. Rather, the opposite may very well be the case: increasing domestic heterogeneity is matched by an increasingly heterogeneous international scene where “the other” is not regarded as an equal but as “a paper tiger,” “the Great Satan,” “religious fanatics,” etc.

20. Ibid., p. 281.
21. Ibid., p. 245.
At any rate, imperialism for Fukuyama is not a particular historical phenomenon which came about because of the discovery of the New World at the beginning of the age of exploration by the European powers. Rather, it is seen as the result of some metaphysical ahistorical “struggle for recognition among states.” It “arises directly out of the aristocratic master’s desire to be recognized as superior — his megalothyria.” Ergo: “The persistence of imperialism and war after the great bourgeois revolutions of the eighteenth and nineteenth centuries is therefore due not only to the survival of an atavistic warrior ethos, but also to the fact that the master’s megalothyria was incompletely sublimated into economic activity.” Thus the formal market relation between buyer and seller, both reduced to the level of the hyper-rational and calculating homo oeconomicus, comes to displace the master-slave dialectic whereby, miraculously, the interaction between these economic abstractions generates as much recognition as anyone would want, rendering conflict obsolete and putting an end to history.

In terms of Fukuyama’s own formulation, the real end of history, as he understands it, is not even close. In his scenario, since there are still a lot of unresolved conflicts between the historical and the post-historical worlds, there will be a whole series of “world order” problems and “many post-historical countries will formulate an abstract interest in preventing the spread of certain technologies to the historical world, on the grounds that world will be most prone to conflict and violence.” Although the failure of the League of Nations and the UN has led to the general discrediting of “Kantian internationalism and international law,” in the final analysis, despite his Heideggerian Hegelianism, Fukuyama does not find the answer to the end of history in Hegel, Nietzsche or even Kojève, but

22. Ibid., p. 256.
23. Ibid., p. 259.
24. Ibid., p. 266.
25. Ibid., p. 278.
26. At least in the short run, Kojève entertained no Panglossian vision of the end of history. In a recently published manuscript, dated August 27, 1945, when he was working as a French diplomat, Kojève projects a postwar structure of the world in terms resembling Schmitt’s conception of Grossräume outlined in 1941, i.e., federations of states each dominated by a hegemonic power and subscribing to some fundamental principles. See Alexandre Kojève, “L’Empire Latin. Esquisse d’une doctrine de la politique francaise (27 Aout 1945),” in La regle du jeu, Vol. 1, No. 1 (May 1990), pp. 89-123. See also Michael Roth, Knowing and History: The Resurgence of French Hegelianism from the 1930s through the Post-War Period (Princeton: Princeton University Press, 1988); Dominique Auffret, Alexandre Kojève. La philosophie, l’etat, la fin d l’histoire (Paris: Grasset, 1990); and Alain de Benoist, “The Idea of Empire,” in Telos 98-99 (Winter 1993-Spring 1994), pp. 81-98.
rather in Kant, who argued that the gains realized when man moved from
the state of nature to civilization were largely nullified by wars between
nations. According to Fukuyama, what has not been understood is that “the
actual incarnations of the Kantian idea have been seriously flawed from the
start by not following Kant’s own precepts,” by which he means that states
based on republican principles are less likely than despotisms to accept the
costs of war and that an international federation is only viable if it is based
on liberal principles.

Although Huntington has a much better grasp of international relations
than Fukuyama, his decline of the West scenario is equally unconvincing.
The central theme of his book is that “culture and cultural identities, which
at the broadest level are civilization identities, are shaping the patterns of
cohesion, disintegration, and conflict in the post-Cold War world.” But
whereas Fukuyama couches his thesis in terms of a universal desire for
recognition, Huntington couches his thesis in terms of a global search for
identity: “Peoples and nations are attempting to answer the most basic
question humans can face: ‘Who are we?’ The result is a “multipolar and
multi-civilizational” world within which the West should abandon its
presumed universalism and defend its own particular identity: “In the clash
of civilizations, Europe and America will hang together or hang separately.
In the greater clash, the global ‘real clash,’ between Civilization and
barbarism, the worlds great civilizations . . . will also hang together or hang
separately. In the emerging era, clashes of civilizations are the greatest
threat to world peace, and an international order based on civilizations is
the surest safeguard against world war.”

In Huntington’s new world, “societies sharing civilizational affinities
cooperate with each other.” Leaving aside his cavalier blurring of the
differences between cultures, civilizations and societies, what does
Huntington regard as the essence of Western particularism? Here he is
ambiguous: he first mentions Christianity, then some secular residues of
Christianity, but when he adds up the civilizational core of the West it turns
out to be none other than liberalism. As Stephen Holmes points out, it is
“the same old ideology, plucked inexplicably from the waste-bin of history,
that once united the West against Soviet Communism.” But Huntington

28. Ibid., p. 21.
29. Ibid., p. 321.
30. Ibid., p. 20.
also claims that the West had a distinct identity long before it was modern (since he insists that modernization is distinct from Westernization, so that non-Western societies can modernize without Westernizing, thus retaining their civilizational distinctiveness). In this case, however, the West cannot really be identified with liberalism, nor can its heritage be equated sic et nunc with “American national identity.” While liberalism may very well be declining, this need not translate into a decline of the West as such. Similarly, if “American national identity” is threatened by “multiculturalism,” it need not signal the arrival of barbarians at the gates but may only mark another stage in the statist involution of liberalism. Huntington’s fears of a decline of the West at a time when it is actually at the acme of its power and vigor is the result of the unwarranted identification of Western civilization with liberalism and what he understands by “American national identity.” Today liberalism has degenerated into an opportunistic statist program of “a small but influential number of intellectuals and publicists,” and “American national identity” into a fiction invented as part of a failed project after the War between the States to reconfigure the American federation into a nation-state.

According to Huntington, the assumption of the universality of Western culture is: false, because others civilizations have other ideals and norms; immoral, because “imperialism is the logical result of universalism”; and dangerous, because it could lead to major civilizational wars. His equation of universalism and imperialism, however, misses the point of both — it misunderstands the philosophical foundations of Western culture and the historical roots of Western imperialism. Other civilizations do have their own ideals and norms, but only Western civilization has an outlook broad enough to embrace all other cultures, which explains why it can readily sponsor and accommodate even confused and counter-productive projects such as “multiculturalism.” Of course, Europeans set forth on their journeys of discovery and conquest not only in order to bring Christianity and “civilization” to the world but also to plunder whatever riches they could find. But whatever the reasons, Europeans were the ones who opened the world to global consciousness and what Schmitt called “awakened occidental rationalism.”

34. McNeill applauds Huntington’s rejection of the moral imperialism implicit in American rhetoric, given the lack of resolve to back it up. See McNeill, “Decline of the West?” op. cit., p. 18. In so doing, however, both McNeill and Huntington betray their latent Wilsonianism and self-righteousness.
Until recently, largely because of American cultural hegemony and technological supremacy, the goal of the rest of the world has been “Westernization,” which has come to be regarded as synonymous with modernization. In Huntington’s “realist” view, however: “A universal civilization requires universal power. Roman power created a near universal civilization within the limited confines of the Classical world. Western power in the form of European colonialism in the nineteenth century and American hegemony in the twentieth century extended Western culture throughout much of the contemporary world. European colonialism is over; American hegemony is receding.”

The real question is whether continued American world hegemony is primarily a function of the persistence of colonialism. Despite his emphasis on culture and civilization, Huntington does not appreciate the importance of cultural hegemony. Had he not restricted the Western tradition to late 20th century liberalism, he may have appreciated the extent to which the rest of the world is becoming increasingly more, rather than less dependent on the US — in communication technologies, financial matters and even aesthetic forms. Today the Internet is potentially a more formidable agency of cultural domination and control than was the British Navy at the peak of the Empire. Here McNeill is right: Huntington’s gloomy perception of the decline of the West may merely mistake growing pains for death throes.

If Huntington’s salon Spenglerianism were not bad enough, he also adopts a kind of simplistic Schmittianism (without ever mentioning Schmitt). Complementing his “birds of a feather flock together” concept of civilizations — with “core states” assuming a dominant position in relation to “fault line” states — he pictures an “us versus them” type of friend/enemy relations based on ethnic and religious identities. But Schmitt’s friend/enemy antithesis is concerned with relations between political groups: first and foremost, states. Accordingly, any organized group that can distinguish between friends and enemies in an existential sense becomes thereby political. Unlike Huntington (or Kojève, who also explicitly drew geopolitical lines primarily along religious lines\(^\text{36}\)), Schmitt did not think in terms of ethnic or religious categories but rather territorial and geopolitical concepts. For Schmitt, the state was the greatest achievement of Western civilization because, as the main agency of secularization, it ended the religious civil wars of the Middle Ages by limiting war to a

conflict between states. In view of the decline of the state, Schmitt analyzed political realities and provided a prognosis of possible future territorial aggregations and new types of political forms.

Huntington finds the “realist” school of international affairs “a highly useful starting point,” but then proceeds to criticize a straw man version of it, according to which “all states perceive their interests in the same way and act in the same way.” Against it, not only power but also “values, culture, and institutions pervasively influence how states define their interests. . . . In the post-Cold War world, states increasingly define their interests in civilizational terms.” Had Huntington paid more careful attention to Hans Morgenthau, George Kennan or other reputable political realists, he would have concluded that their concept of power is not as limited as his caricature of it. In particular, had he read Schmitt more closely he would not have claimed that nation-states “are and will remain the most important actors in world affairs” — at a time when economic globalization has severely eroded their former sovereignty and they are practically everywhere threatened with internal disintegration and new geopolitical organizations. At any rate, political realism has been concerned primarily with the behavior of states because they were the main subjects of political life for the past three centuries. If and when they are displaced

37. See “Just Wars or Just Enemies?” in this issue of Telos. Huntington acknowledges the importance of the *ius publicum Europaeum* in defining international law from the Treaty of Westphalia to very recently (op. cit., p. 54). In a typically ahistorical fashion, however, he predicts the return of the *status quo ante* of religious strife as a result of the decline of the *ius publicum Europaeum*. He does not seem to realize that, although rooted in the Christian tradition, Western civilization has long since become secular — at least in its political forms — and, as such, able to accommodate practically all religions and ethnicities. It is unclear, therefore, why non-Western religions should pose any political threat to Western hegemony.


39. Ibid., p. 36.

40. Already in the 1920s, Schmitt noted that definitions of the political exclusively in terms of the state were justifiable only as long as the state was a clear and unequivocal entity confronting nonpolitical groups, i.e., only as long as it held a monopoly on politics, as in the 18th century (when it had not yet recognized society as an antithetical force), or at least stood above society (as it did in the 19th and into the 20th century). But the equation of state and politics ceases to make sense precisely “when state and society penetrate each other” (Schmitt, *The Concept of the Political*, op. cit., p. 22), i.e., when ostensibly neutral domains such as religion, culture, education, the economy, etc., become politicized. In 19th century Europe, liberalism insisted on the antithesis of state and society, state and economy, etc., while democracy tended to eliminate all such antitheses. Once “liberal democracy” became dominant, however, the age of the state was over and the political expanded to include other agencies. This state of affairs does not make political realism obsolete, since it requires only that concrete political situations be analyzed in political terms and the subjects and goals of politics be determined accordingly.
by other political forms, political realism then shifts its focus accordingly.

Huntington attempts to think beyond the Cold War. But since he cannot think beyond the nation-state, he cannot conceive of new political forms. When he writes that cultural commonality “legitimates the leadership and order-imposing role of the core state for both member states and for the external powers and institutions,” he seems to have in mind something akin to the concept of Großerraum. But Schmitt’s model was the American Monroe Doctrine excluding European meddling in the Western Hemisphere. At that time (and well into the 20th century), the US was not a nation-state in the European sense, although it assumed some of these trappings thereafter. Thus it generally followed George Washington’s policy — because of the “detached and distant situation” of the US, it should avoid entangling alliances with foreign (primarily European) powers. The Monroe Doctrine simply expanded on the reality and advantages of this situation. Schmitt rightly saw the global line of the Western Hemisphere drawn by the Monroe Doctrine as the first major challenge to the international law of the ius publicum Europaeum.

Given the current understanding of national sovereignty, it is difficult to see what Huntington means by “core state.” Despite the title of his book, he has no concept of international law or of world order. Not only does he abandon hope for global regulations governing the behavior of states and civilizations, but he reverts to a kind of anthropological primitivism: “Civilizations are the ultimate human tribes, and the clash of civilizations is tribal conflict on a global scale.” All he can suggest for avoiding major inter-civilizational wars is the “abstention rule” (core states abstain from conflicts in other civilizations), and the “mediation rule” (core states negotiate with each other to halt fault line wars). Huntington’s vision is thus surprisingly conformist — it merely cautions the US from becoming embroiled in the Realpolitik of countries belonging to other civilizational blocs while defending a contrived liberal notion of “Western” civilization.

Anti-Colonialism and Appropriation

The anti-colonialism of both Fukuyama and Huntington is consistent with the predominant 20th century ideology directed primarily

43. Ibid., p. 207.
44. Ibid., p. 316.
against Europe. Anti-colonialism is more historically significant than either anti-fascism and anti-communism. As Schmitt pointed out in 1962: “Both in theory and practice, anti-colonialism has an ideological objective. Above all, it is propaganda — more specifically, anti-European propaganda. Most of the history of propaganda consists of propaganda campaigns which, unfortunately, began as internal European squabbles. First there was France’s and England’s anti-Spanish propaganda — the leyenda negra of the 15th and 16th centuries. Then this propaganda became generalized during the 18th century. Finally, in the historical view of Arnold Toynbee, a UN consultant, the whole of Europe is indicted as a world aggressor.”

Thus it is not surprising that the 500th anniversary of the “discovery” of America was greeted with more condemnation than celebration.

Anti-colonialism is primarily anti-European propaganda because it unduly castigates the European powers for having sponsored colonialism. Given that there was no international law forbidding the appropriation of the newly discovered lands — in fact, European international and ecclesiastical law made it legal and established rules for doing so — the moral and legal basis for this judgment is unclear. On closer analysis, however, it turns out to be none other than the West’s own universalistic pretenses. Only by ontologizing their particular Western humanist morality — various versions of secularized Christianity — as universally valid for all times and all places can Western intellectuals indict colonialism after the fact as an international “crime.” Worse yet, this indictment eventually turns into a wholesale condemnation of Western culture (branded as “Eurocentrism”) from an abstract, deterritorialized and deracinated humanist perspective hypostatized to the level of a universally binding absolute morality. Thus the original impulse to vindicate the particularity and otherness of the victims of colonialism turns full circle by subsuming all within a foreign Western frame-work, thereby obliterating the otherness of the original victims. The


ideology of anti-colonialism is thus not only anti-European propaganda but an invention of Europeans themselves, although it has been appropriated wholesale and politically customized by the rest of the world.

As for world order, this propaganda has even more fundamental roots: “The odium of colonialism, which today confronts all Europeans, is the odium of appropriation,”48 since now everything understood as nomos is allegedly concerned only with distribution and production, even though appropriation remains one of its fundamental, if not the most fundamental, attributes. As Schmitt notes: “World history is a history of progress in the means and methods of appropriation: from land appropriations of nomadic and agricultural-feudal times, to sea appropriations of the 16th and 17th centuries, to the industrial appropriations of the industrial-technical age and its distinction between developed and undeveloped areas, to the present day appropriations of air and space.”49 More to the point, however, is that “until now, things have somehow been appropriated, distributed and produced. Prior to every legal, economic and social order, prior to every legal, economic or social theory, there is the simple question: Where and how was it appropriated? Where and how was it divided? Where and how was it produced? But the sequence of these processes is the major problem. It has often changed in accordance with how appropriation, distribution and production are emphasized and evaluated practically and morally in human consciousness. The sequence and evaluation follow changes in historical situations and general world history, methods of production and manufacture — even the image human beings have of themselves, of their world and of their historical situation.”50 Thus the odium of appropriation exemplified by the rise of anti-colonialism is symptomatic of a changed world situation and changed attitudes. But this state of affairs should not prevent our understanding of what occurred in the past or what is occurring in the present.

In order to dispel the “fog of this anti-European ideology,” Schmitt recalls that “everything that can be called international law has for centuries been European international law. . . [and that] all the classical concepts of

50. Ibid., p. 56.
existing international law are those of European international law, the \textit{ius publicum Europaeum}. In particular, these are the concepts of war and peace, as well as two fundamental conceptual distinctions: first, the distinction between war and peace, i.e., the exclusion of an in-between situation of neither war nor peace so characteristic of the Cold War; and second, the conceptual distinction between enemy and criminal, i.e. exclusion of the discrimination and criminalization of the opponent so characteristic of revolutionary war — a war closely tied to the Cold War.”\textsuperscript{51} But Schmitt was more concerned with the “spatial” aspect of the phenomenon: “What remains of the classical ideas of international law has its roots in a purely Eurocentric spatial order. Anti-colonialism is a phenomenon related to its destruction. . . . Aside from . . . the criminalization of European nations, it has not generated one single idea about a new order. Still rooted, if only negatively, in a spatial idea, it cannot positively propose even the beginning of a new spatial order.”\textsuperscript{52}

Having discovered the world as a globe, Europeans also developed the Law of Nations. Hugo Grotius is usually credited with establishing this new discipline with his \textit{De iure belli ac pacis} (Paris: 1625), since he was the first to deal with the subject as a whole (although various European scholars had dealt at length with themes such as the justice of war, the right of plunder, the treatment of captives, etc.). Nys writes: “. . . from the 11th to the 12th century the genius of Europe developed an association of republics, principalities and kingdoms, which was the beginning of the society of nations. Undoubtedly, some elements of it had been borrowed from Greek and Roman antiquity, from Byzantine institutions, from the Arabo-Berber sultanates on the coast of Africa and from the Moorish kingdoms of Spain. But at the time new sentiments developed, longing for political liberty. The members of this association were united by religious bonds; they had the same faith; they were not widely separated by speech and, at any rate, they had access to Latin, the language of the Church; they admitted a certain equality or at least none of them claimed the right to dominate and rule over the others. A formula came into use to describe this state of affairs: \textit{respublica Christiana, res Christiana}.\textsuperscript{53}

Steeped in Roman law, 13th and 14th century jurists opposed any “Law of Nations” recognizing political distinctions between different peoples. 

\textsuperscript{52}. \textit{Ibid.}, p. 595.
the Roman system, different peoples were only “parts of the Roman
Empire.” Thus, in a wider sense, *ius gentium* extended to all civilized
peoples and included both public and private law. In a narrower sense,
however, it also dealt with the rules governing relations between Romans
and foreigners. Understood in this narrower sense, *ius gentium* promoted
the constitution of distinct peoples and consequently kingdoms, intercourse
and conflicts between different political communities, and ultimately wars.
For this reason, those who still believed in the viability of the Holy Roman
Empire thought that this interpretation of *ius gentium* led to disintegration.
This is why the Law of Nations — European public law and international
law — did not become a distinct “science” until the Middle Ages.

Spanish theologians first articulated the theoretical and practical
problems of *ius gentium* understood as the Law of Nations. Chief among
them was Francisco de Vitoria, whose *Relectiones theologicae* on the
Indians and the right of a “just war” have become classics. 54 In his lectures,
Vitoria invokes the Law of Nations — the *ius gentium*. At the beginning of
the third section of his account of the Spaniards’ relations with the
aborigines in the New World, he treats them as one people among others,
and therefore subject to *ius gentium*: “The Spaniards have a right to travel
into the lands in question and to sojourn there, provided they do no harm
to the natives, and the natives may not prevent them. Proof of this may in
the first place be derived from the law of nations (*ius gentium*), which either
is natural law or is derived from natural law.” 55 That he understands peoples
in the sense of “nations” becomes even more clear when he speaks about
gentes nationes. He distinguishes between the political community — the
respublica — and the private individual. The latter may defend his person
and his property, but he may not avenge wrongs or retake goods after the
passage of time. This is the respublica’s prerogative — it alone has
authority to defend itself and its members. Here Vitoria identifies the
prince’s authority with that of the state: “The prince is the issue of the
election made by the respublica . . . . The state, properly so called, is a perfect

54. At the time, a “relectio” was a kind of theological exercise similar to the disputa-
tions in celebrated universities in earlier epochs known as *quodlibeticae questiones*. See
the editorial preface to *Relectiones theologicae XII*, written by “one of the Doctors of
Sacred Theology at Ingolstadt,” in *ibid.*, p. 110. Although Vitoria never published anything
himself, his former students edited his lectures after his death. The first edition appeared in
Lyon in 1557; a more reliable one in Salamanca in 1565. These lectures are “devoted to an
examination of the titles which the Spanish might put forward in order to justify their dom-
ination in the New World. They were delivered in 1532 and are the first complete exposi-

55. Vitoria, *De indis*, *op. cit.*, pp. 257 and 151.
community, that is to say, a community which forms a whole in itself, which, in other words, is not a part of another community, but which possesses its own laws, its own council, its own magistrates.”

Clearly, what developed in Europe from antiquity to the republica Christiana, from the origin of the sovereign state and ius publicum Europaeum to the Enlightenment and beyond, was as unique and significant as the discovery of the “New World.” Yet, given today’s predominant ideology, European culture has almost become the truth that dare not speak its name. Not only is Columbus demonized, but the whole Age of Discovery and all of European (Western) culture is dismissed as “imperialistic,” “racist,” “sexist,” etc. The Nomos of the Earth is a much needed antidote to this anti-European propaganda, which is only a symptom of the crisis of European identity and consciousness. All the major themes of Schmitt’s book are either implicit or explicit in “The Land Appropriation of a New World”: the origin and significance of the European and Eurocentric epoch of world history; the discovery of the New World and the American challenge to the European order; the search for a new nomos of the earth; the critique of the discriminatory concept of war; the critique of universalism and the danger of total relativism.

The Conquest of America and the Concept of a “Just War”

In the 20th century, the ideology of anti-colonialism was articulated most prominently by Woodrow Wilson and Vladimir Lenin, signaling the end of European domination in world history. Now, after the collapse of


57. See the discussion of the crisis in Paul Piccone and G. L. Ulmen, “Schmitt’s ‘Testament’ and the Future of Europe,” in Telos 83 (Spring, 1990), pp. 21ff.: “Both Schmitt’s European jurisprudence and Husserl’s European science are different facets of the same epoch-making project, begun in Greece and subsequently codified with science and Roman law, to structure life rationally. Because of their different thematic concerns, Husserl’s reconstruction leaps over two millennia, from Athenian Greece to Descartes, while Schmitt’s goes from Roman law to Hobbes and Savigny. Yet both accounts focus on the roots of the project — understood not as an ethnic, racial or geographical construct, but as a cultural one which, to the extent that it aspires to universality, encompasses all of humanity. . . . Recent fashionable challenges of the whole Western project from the viewpoint of an advanced stage of development of that very same project are pre-subverted by this very fact, thus undermining the alleged radical character of the challenges and rendering them hopelessly parasitic. When transubstantiated into a post-modern Western cultural imperialism, this philosophical ploy turns out to be merely another subtle way of perpetuating that same cultural imperialism by other means. . . . Thus the solution to the crisis of European science and jurisprudence can only be internal to the project, i.e., from the viewpoint of universalizing consciousness gone astray to the point of forgetting its own identity” (p. 22).
the Soviet Union and the end of communism, some American intellectuals have turned this anti-European propaganda against the US, seemingly unaware that their critique is possible only within the orbit of the European culture they otherwise castigate and dismiss. To attack European culture is tantamount to attacking American culture as well, since the latter is but a special case of the former, which is precisely why it has been able to accept and absorb peoples and influences not only from the Western hemisphere but from all over the world. American universalism is but an extension of that same Christian universalism which for centuries has defined European identity. As Schmitt emphasized, the European equilibrium of the *ius publicum Europaeum* presupposed a seemingly homogeneous Christian Europe, which lasted well into the 19th century. The American project has always been a fundamentally heterogeneous undertaking and Americans have always come from the most diverse ethnic, racial, religious and linguistic backgrounds. But if there had not been some homogeneous culture to unify this diversity, there would have been no distinct American culture which, unfortunately, today many educated Europeans and Americans no longer understand and therefore have come to despise.

A paradigmatic example of this general anti-European syndrome is Tzvetan Todorov’s *The Conquest of America*. In an effort to vindicate the particularity of “the other,” the author ends up castigating West European culture as a whole by deploying a secularized version of Christian universalism. Openly acknowledging the moralistic objectives and “mythological” character of his account, Todorov develops a “politically correct” postmodern interpretation of the Spanish *conquista* not to understand its historical significance but to show how it has shaped today’s Western imperialist identity — one allegedly still unable to come to terms with “the other” and therefore inherently racist, ethnocentric, etc. The book closes with a discussion of “Las Casas’ Prophesy” concerning the wrath that “God will vent” not only upon Spain but all of Western Europe because of its “impious, criminal and ignominious deeds perpetrated so unjustly, tyrannically and barbarously.”

Todorov overlooks not only the generally religious framework of Las Casas’ prophesy, but also the idiosyncratically Western concept of justice.

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the Dominican bishop deployed. Having ontologized a humanism derived from the Western axiological patrimony, he does not realize the extent to which his postmodernism has already reduced “the other” to “the same,” precisely in his effort to vindicate its particularity.  

Worse yet, inhibited by his “politically correct” moralism, he not only provides a ridiculous, if academically fashionable, explanation for the Spaniards’ success, but he manages to subvert his own arguments with the very evidence he adduces to support them. He claims that the “present” is more important to him than the past, but in defining genocide he makes no reference whatsoever to either the Armenians or the Holocaust as reference points. Consequently, his claim that “the sixteenth century perpetrated the greatest genocide in human history” remains not only unsubstantiated but falsified. By his own account, most of the victims died of diseases and other indirect causes: “The Spaniards did not undertake a direct extermination of these millions of Indians, nor could they have done so.” The main causes were three, and “the Spaniards’ responsibility is inversely proportional to the number of victims deriving from each of them: 1. By direct murder, during wars or outside them: a high number, nonetheless relatively small; direct responsibility. 2. By consequence of bad treatment: a high number; a (barely) less direct responsibility. 3. By diseases, by ‘microbe shock’: the majority of the population; an indirect and diffused responsibility.”

Todorov does acknowledge that Columbus was motivated by the “universal victory of Christianity” and that it was Columbus’ medieval mentality that led him “to discover America and inaugurate the modern era.” His greatest infraction, however, was that he conquered land rather than people, i.e., he was more interested in nature than in the Indians, which he

60. The problem of “the same” inexorably overwhelming “the other” goes back to Plato’s *Sophist* and *Timeaus*. In fact, Emmanuel Lavinias condemns all of Western philosophy for always reducing “the other” to “the same.” See Adrian Peperzak, *The Other: An Introduction to the Philosophy of Emmanuel Lavinias* (West Lafayette, IN: Purdue University Press, 1993), p. 99. It remains unclear the extent to which such a critique applies only to modernity rather than to Western philosophy as such, and whether a truly equitable account of “the other” necessitates moving from philosophy to theology. In the present context, however, it is immediately obvious that not only does Todorov not escape Western philosophy, but he remains so inextricably entangled within modernity and secularism as to rule out any possibility of doing justice to “the other” or, as he puts it, of taking “a first step into the world of the discovery of the other” (*op. cit.*, p. 4) without automatically reducing it to “the same.”

61. Almost laughable, but fully in line with the current academic fad of linguistic “discourses,” is Todorov’s claim that the Spaniards won by means of “communication,” in other words, by deploying “signs.” See Todorov, *op. cit.*, p. 251ff.


treated as “the other”: “Columbus’ summary perception of the Indians [is] a mixture of authoritarianism and condescension . . . . In Columbus’ hermeneutics human beings have no particular place.”

Had Todorov set aside his abstract moralizing, he may have realized that the conquest of the New World was primarily a land appropriation. It is not surprising, therefore, that the conquerors thought they were bringing “civilization” to those they conquered — something probably also true of the Mongols who invaded and colonized China, Russia and a few other countries which, by contrast, had higher civilizations than their own.

The ideological slant of The Conquest of America is by no means unusual. Long before, Schmitt noted that non-European peoples who have undertaken conquests, land appropriations, etc. were not being tarred with the same brush as Europeans. Unlike Todorov’s moralistic tirade, The Nomos of the Earth is addressed to historians and jurists. In no way does Schmitt excuse the atrocities committed by the Spanish, but rather explains how they were possible in the given circumstances. “The Land Appropriation of a New World” begins with a discussion of the lines drawn by the European powers to divide the world. In this connection, Schmitt discusses the meaning of “beyond the line,” which meant beyond the reach of European law: “At this ‘line’ Europe ended and the ‘New World’ began. At any rate, European law — ‘European public law’ — ended. Consequently, so did the bracketing of war achieved by the former European international law, meaning the struggle for land appropriations knew no bounds. Beyond the line was an ‘overseas’ zone in which, for want of any legal limits to war, only the law of the stronger applied.”

For Todorov, it

65. Ibid., p. 33.

66. With respect to the anti-European attitude, Schmitt wrote: “It appears that the conquests, land appropriations and suppressions by non-European peoples are not subject to the odium of anti-colonialism.” See Schmitt, “El Orden del Mundo depues la segunda Guerra Mundial,” in Revista de Estudios Políticos, op. cit., p. 15. Even Todorov seems to be somewhat aware of this state of affairs, as he writes: “We cannot avoid wondering, when we read the history of Mexico, why did the Indians not offer more resistance? Didn’t they realize Cortéz’s colonizing ambitions? The answer displaces the question: the Indians in the regions Cortés first passed through are not more impressed by his imperialist intentions because they have already been conquered and colonized — by the Aztecs. . . . So that far from incarnating an absolute evil, Cortéz often appears to them as a lesser evil, as a liberator, so to speak, who permits them to throw off the yoke of a tyranny especially detestable because so close at hand.” See Todorov, op. cit., p. 58. Shortly thereafter, however, Todorov cannot resist forcing a comparison unfavorable to the Spaniards: “here we may speak of sacrifice-societies and massacre-societies, of which the Aztecs and the sixteenth century Spaniards would be the respective representatives,” ibid., p. 143.

is a much simpler explanation: “Far from central government, far from royal law, all prohibitions give way, the social link, already loosened, snaps, revealing not a primitive nature, the beast sleeping in each of us, but a modern being, one with a great future in fact, restrained by no morality and inflicting death because and when he pleases.”

The Spaniards are simply racist, ethno-centric, ruthless exploiters, etc., i.e., modern — they already exhibited traits Todorov claims are characteristic of Western identity.

Of particular interest here are Todorov’s comments on Vitoria and the concept of a “just war,” since most of Schmitt’s chapter is devoted to these subjects. By his own admission, Todorov mixes (in fact, confuses) medieval and modern categories. This is particularly true in the case of Vitoria. Todorov observes that: “Vitoria demolishes the contemporary justifications of the wars waged in America, but nonetheless conceives that ‘just wars’ are possible.”

More to the point: “We are accustomed to seeing Vitoria as a defender of the Indians; but if we question, not the subject’s intentions, but the impact of his discourses, it is clear that ... under the cover of an international law based on reciprocity, he in reality supplies a legal basis to the wars of colonization which had hitherto had none (none which, in any case, might withstand serious consideration).”

But there was no “international law based on reciprocity.” Here Todorov is simply transposing modern categories to medieval matters for his own ideological purposes.

Unlike Todorov, Schmitt places the problem in perspective: “For 400 years, from the 16th to the 20th century, the structure of European international law was determined by a fundamental course of events — the conquest of the New World. Then, as later, there were numerous positions taken with respect to the justice or injustice of the _conquista_. Nevertheless, the fundamental problem — the justification of European land appropriations as a whole — was seldom addressed in any systematic way outside moral and legal questions. In fact, only one monograph deals with this problem systematically and confronts it squarely in terms of international law. ... It is the famous _relectiones_ of Francisco de Vitoria.”

Vitoria rejected the contrary opinions of other theologians and treated Christians and non-Christians alike. He did not even accept discovery, which was the recognized basis of legal title from the 16th to the 18th century, as legitimate. More to the point, he considered global lines beyond which the distinction

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68. Todorov, _The Conquest of America, op. cit._, p. 145.
69. Todorov, _ibid_. p. 149.
70. _Ibid_. p. 150.
between justice and injustice was suspended not only a sin but an appalling crime. However: “Vitoria’s view of the conquista was ultimately altogether positive. Most significant for him was the fait accompli of Christianization. . . . The positive conclusion is reached only by means of general concepts and with the aid of objective arguments in support of a just war. . . . If barbarians opposed the right of free passage and free missions, of liberum commercium and free propaganda, then they would violate the existing rights of the Spanish according to ius gentium; if the peaceful treaties of the Spanish were of no avail, then they had grounds for a just war.”^72

The papal missionary mandate was the legal foundation of the conquista. This was not only the pope’s position but also that of the Catholic rulers of Spain. Vitoria’s arguments were entirely consistent with the spatial order and the international law of the respublica Christiana. One cannot apply modern categories to a medieval context without distorting both: “In the Middle Ages, a just war could be a just war of aggression. Clearly, the formal structure of the two concepts of justice are completely different. As far as the substance of medieval justice is concerned, however, it should be remembered that Vitoria’s doctrine of a just war is argued on the basis of a missionary mandate issued by a potestas spiritualis that was not only institutionally stable but intellectually self-evident. The right of liberum commercium as well as the ius peregrinandi are to facilitate the work of Christian missions and the execution of the papal missionary mandate. . . . Here we are interested only in the justification of land appropriation — a question Vitoria reduced to the general problem of a just war. All significant questions of an order based on international law ultimately meet in the concept of a just war.”^73

**The Question of a New Nomos of the Earth**

Following chapters on “The Land Appropriation of a New World” and “The ius Publicum Europaeum,” Schmitt concludes his book with a chapter titled “The Question of a New Nomos of the Earth, which is concerned primarily with the transformation of the concept of war. Clearly, this problem was uppermost in Schmitt’s mind following Germany’s total defeat in WWII and the final destruction of the European system of states. But he had already devoted a treatise to the development of a discriminatory concept of war following WWI,^74 and in 1945 he wrote a legal opinion on the criminality of

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aggressive war. Despite whatever self-serving motives he may have had in writing these works, they are consistent with the historical and juridical structure of international law during the respublica Christiana, the ius publicum Europaeum, and what remains of international law today.

This progression can be put into perspective by following Schmitt’s discussion of Vitoria’s legacy: “Vitoria was in no sense one of the ‘forerunners of modern lawyers dealing with constitutional questions.’ . . . Abstrated entirely from spatial viewpoints, Vitoria’s ahistorical method generalizes many European historical concepts specific to the ius gentium of the Middle Ages (such as Volk, prince and war) and thereby strips them of their historical particularity.” In this context, Schmitt mentions the works of Ernest Nys, which paved the way for the popularization of Vitoria’s ideas after WWI but who, because of his belief in humanitarian progress, also contributed to the criminalization of aggressive war. This was also true of James Brown Scott, the leading American expert on international law, who blatantly instrumentalized Vitoria’s doctrines concerning free trade (liberum commercium, the freedom of propaganda, and a just war) to justify American economic imperialism. Schmitt sums up Scott’s argument as follows: “War should cease to be simply a legally recognized matter or only one of legal indifference; rather, it should again become a just war in which the aggressor as such is declared a felon in the full criminal sense of the word. The former right to neutrality, grounded in the international law of the ius publicum Europaeum and based on the equivalence of just and unjust war, should also and accordingly be eliminated.”

Here then is the crux of the matter. Vitoria’s thinking is based on the international law obtaining during the Christian Middle Ages rather than on the international law between states established with the ius publicum Europaeum. Moreover, as Schmitt points out, Vitoria was not a jurist but a theologian: “Based on relations between states, post-medieval international law from the 16th to the 20th century sought to repress the iusta causa. The formal reference point for the determination of a just war was no longer the authority of the Church in international law but rather the equal sovereignty

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76. Günter Maschke describes in length the historical context of Schmitt’s writings in his “Introduction” to Schmitt, Staat, Großraum, Nomos, op. cit., pp. XIII-XXVII.


78. Ibid., p. 61.
of states. Instead of *iusta causa*, the order of international law between states was based on *iustus hostis*; any war between states, between equal sovereigns, was legitimate. On the basis of this juridical formalization, a rationalization and humanization — a bracketing — of war was achieved for 200 years.” The turn to “the modern age in the history of international law was accomplished by a dual division of two lines of thought that were inseparable in the Middle Ages — the definitive separation of moral-theological from juridical-political arguments and the equally important separation of the question of *iusta causa*, grounded in moral arguments and natural law,” from the juridical question of *iustus hostis*, distinguished from the criminal, i.e., from object of punitive action.” 79

With the end of the *ius publicum Europaeum*, the concept of war changed once again: moralistic (rather than theologically-based) arguments became confused with political arguments, and the *iusta causa* displaced the just enemy (*iustus hostis*). Accordingly, war became a crime and the aggressor a criminal, which means that the current distinction between just and unjust war lacks any relation to Vitoria and does not even attempt to determine the *iusta causa*. 80 According to Schmitt: “If today some formulas of the doctrine of a just war rooted in the concrete order of the medieval *respublica Christiana* are utilized in modern and global formulas, this does not signify a return to, but rather a fundamental transformation of concepts of enemy, war, concrete order and justice presupposed in medieval doctrine.” 81 This transformation is crucial to any consideration of a new *nomos* of the earth because these concepts must be rooted in a concrete order. Lacking such an order or *nomos*, these free-floating concepts do not constitute institutional standards but have only the value of ideological slogans.

Unimpressed with the duration of the Cold War and its mixture of neither war nor peace, Schmitt speculated on the possibility of the eventual development of what he called *Großräume* 82 — larger spatial entities, similar to but not synonymous with federations or blocs — displacing states and constituting a new *nomos*. 83 Since his death in 1985 and the subsequent

collapse of communism, the likelihood of his diagnosis and prognosis has increased. While the international situation remains confused and leading intellectuals such as Fukuyama and Huntington, unable to think behind predominant liberal democratic categories, can only recycle new versions of the old Wilsonianism, Schmitt’s vision of a world of *Großräume* as a new geopolitical configuration may well be in the process of being realized.