

Chapter 3 Sea and Land: Domains of Power

Ho scritto un Sindbad di Mediterraneo,
un marinaio piú [sic] insonne che immortale,
coetaneo del mare di Giona [...] e del mare degli
emigranti italiani del millenovecento, inghiottiti
vivi dalle Americhe. [...] Quest'opera con Sindbad
è ancora affidata alla misericordia delle onde,
che sono piú [sic] ospitali della nostra terraferma.
E. De Luca, *L'ultimo viaggio di Sindbad*

1. Introduction

Cultural history emerges as a meta-commentary of the process of civilization, a process that developed in the Western world and which is not easy to describe. As Fernand Braudel writes, “It would be pleasant to be able to define the word ‘civilization’ simply and precisely, as one defines a straight line [...]. The vocabulary of social sciences, unfortunately, scarcely permits decisive definitions” (1993, 3). Yet “the vocabulary of social sciences” that describes the concept of civilization bridges many – if not all – gaps, places many objects on the right shelves, connects many apparently unrelated dots, literally as well as figuratively, as Braudel himself explains:

Civilizations, vast or otherwise, can always be located on a map. An essential part of their character depends on the constraints or advantages of their geographical situation. [...] To discuss civilization is to discuss *space, land and its contours*, climate, vegetation, animal species and natural or other advantages. It’s also to discuss what humanity has made of these basic conditions: agriculture, stock-breeding, food, shelter, clothing, communications, industry and so on (9-10, emphasis added).

Braudel’s idyllic picture is inevitably rather simplified. Although the scholar is right when he states that “to discuss civilization is to discuss space, land and its contours,” I contend that one would run the risk to merely touch on the “Eclogue” genre should one be content with Braudel’s basic conditions. By contrast, I maintain that among the basic conditions that humanity has had to account for and react to, the drive to conquer and oppress the neighbor or the foreigner – both on sea and on land – has been paramount. In fact, “war” seems to have been as significant as “peace” in the definition of the ‘event’ that is called Western civilization—a historical process which was born along the shores and on the waters of the Mediterranean Sea before expanding to the rest of Europe and the New World. Hence, if one has delve into geography in order to understand ‘civilization,’ one’s analysis cannot fail to come to terms with the war/peace dyad as well—history, in other words. Yet, in spite of its considerable role in human history, the cyclic relation of war and peace is either second-hand knowledge (hence, it is understood only by dint of *ex-post facto* historical study), or is characterized by ontological “distance” so that it fails to be culturally constructive in the temporal context in which it arises. As I showed in the first chapter, the opposition sea/land appears *simultaneously* both in a theosophical discourse of antagonism (as in Hesiod) and in the representation of a political strife (Alcaeus).

Therefore, since its very beginning the conflicting context reveals a privileged literary venue wherein to scrutinize the interplay between sea and land.

An object of perennially untimely recognition, the war/peace dyad also screens the concept of Origin, a long-standing philosophical and cultural challenge in Greek and, consequently, Western thought that remains persistently opaque to analysis, and defies our effort to grasp it.¹ We will see how the exemplary cities of Athens and Venice, centuries apart, have resorted to the testing question of their respective Origin – in other words, they have underlined what role sea and land played in the formation of their self-assessment as independent, political powerhouses – when they had to come to terms with belligerent neighbors (Venice) or wanted to expand their domain (Athens).

As far as the origin of the so-called Western world is concerned, the ten-year battle on the Trojan shore may arguably be considered as fundamental as the School of Athens; nonetheless, why and to what extent they both are so important remains harder to evaluate. In this chapter, I will examine the burgeoning parallelism between land and sea in ancient and early modern times, a prickly parallelism per se that has often turned into conflicting juxtaposition. The question of the origin of civilization, as grounded in the relation of sea to land, which was sometimes implicit and sometimes explicit, and the juridical context that it helped to shape (in particular, in relation to the question of *Nomos* as it is worked out by Carl Schmitt), the political importance of law and violence, war and peace, will be the objects of this chapter. Finally in the last section I will focus on a very specific case study: the Republic of Venice and its struggle to control the Adriatic sea during the sixteenth and seventeenth centuries as it fruitfully summarizes and implements the theoretical discourse that I will have been developing up to that point. Because of its peculiar characteristics of sea republic, Venice perfectly embodies a hybrid political entity, one in which sea and land coexist and determine its governmental form and structure. Moreover, Venice's protracted dispute with the most important land power of the time (the Papal State and the Austrian Empire, that is) fits perfectly my topic, as it suitably displays the impact of sea and land within dynamics that also involve war, peace, and law.

2. Sea or Land? The Question of Origin

Is it a sea surrounded
by land or land by a sea?
P. Matvejević, *Mediterranean:
A Cultural Landscape*

In a short book written while the noise of the Second World War was deafening the entire planet, Schmitt states that:

¹ The question of Origin is relevant for the cultural understanding of the parallel sea/land, and for the general comprehension of how the Western thought developed and still functions. Not only, in fact, did the pre-Sophistic philosophers pose and then investigate such a question at the dawn of civilization; throughout the history of philosophy to this day, ontology and metaphysics – which directly focus on beginning and being, Origin that is – have been objects of analysis: Nietzsche, Wittgenstein, Heidegger, are among the most famous thinkers who reflected on these arguments, as is well known.

Man is a terrestrial, a groundling. He lives, moves and walks on the firmly-grounded Earth [...]. He derives his point of view from it, which is also to say that his impressions are determined by it and his world outlook is conditioned by it. [...] That is why he calls Earth the star on which he lives, although, as it is well known, the surface of the planet is three fourths water and only one fourth firm land; even the largest continents are but huge floating islands (1997, 1).

The short “reflection on the history of the world” (so reads the subtitle of the work in German), which the German scholar dedicated to his daughter Anima, focuses on the mythic, primordial relationships of sea and land. Schmitt deemed that relationship to be the forge within which the history of the Western world has been shaped. While he wonders to which traditional and natural element (of fire, water, land, and air) humanity *essentially* belongs, Schmitt poses the question of Origin in these terms: “So, it is worth asking: what is our element? Are we the children of the earth or of the sea?” (3) Predictably, there is no unambiguous answer, precisely because civilization – and its relation to space, as noted by Braudel – *is* and therefore *makes* every human process very complex. Civilization is also a stage in the adventure that has lured land-people to sail the seas (and eventually this combination has become sea-people), and the consequent interaction – not necessarily a peaceful one – between groups of human beings differentiated by the element upon which they projected their highest ideals.

In the first chapter, I discussed Hesiod’s criticism of the business of trading by sea, which he found risky and contrary to divine will. His remarks tell of a time when the sea, which he portrays as the cradle of evil, was still a beast hard to tame. While the land represents for Hesiod the sacred shrine, the sea signifies the profane and unholy, the unwise adventure and the downright insane hazard. Therefore, the Greek had already detected and acknowledged the existence of a fundamental binary (“Two kinds of Strife upon the earth, not one, have been always,” 2006, 57, 11), such as those of good and evil, holy and profane, divine and human – with human meaning precisely un-divine. The binary sea/land appears to be one of these oppositions, as fundamental as those mentioned above. However, more significantly and conspicuously than those, because more *visible*,² sea and land seem to better embody and convey metaphorical and synecdochic meanings, so that they come to subsume and signify all of them.

The mere existence of opposition calls for an explanation, a rationalization. Writes Massimo Cacciari:

Nell’istante stesso in cui emerge il *Due* (e la radice di *dýo* è la stessa del verbo che dice il timore, *deído*, e del termine che indica il tremendo, lo spaesante, *deinós*), e la *meraviglia* per esso inquieta e spaventa, emerge anche la ricerca intorno alla sua origine (1994, 12).

² It might be worth remembering that the Greek root of “theory,” *theorein*, means to see, to observe.

However, Hesiod seems only slightly concerned with the search for origins and the disquieting concepts of strife, conflict, opposition. An inspired cosmological poet, he preferred to be attuned to the phases of time, the function of the divine in human and natural existence, and was enticed by the harmony of the universe; by contrast, he despised any human attempt to drop out of the cycle of life, so to speak. Gods determine rise and fall, victory and loss, happiness and misery: humans need not interfere with divine will and power.

Hesiod's works reflect the philosophy of a time when respect and observance of divine law were admired. Although hard to define in terms of specific dates, it was an historical time in which humans had neither developed the desire for adventure nor become acquainted with the space around them. The origin is in the divine message that the Muses sing and teach ("The Muses once to Hesiod taught lovely song indeed, while he was tending to his sheep on holy Helicon," Hesiod 2006, 24, 22-23); it is beyond human reach and knowledge and hence can only be given, not acquired. The universe is philosophically a whole, albeit divided in good and evil.

When Hesiod's brother Perses, replicating their late father's mistake, prepares his sea trade, he places himself perilously close to the fine line that – divinely planned – keeps apart right and wrong, observance and transgression; and his challenge allegorically anticipates the conflicting age to come. In, fact, looming close by is the loss of measure and the dissolution of the Olympic world. Perses, the first and therefore paradigmatic figure of the uncaring – or colonizing, which may be the other side of the coin – pioneer who turns land-people into sea-people, abandons the shiny temple within which the Olympians dwell to answer a different call. In so doing, he begins the symbolic process of modification of the higher cosmological order in the same way that natural forces like air or water erode the earthly landscape. From the tension of those forces results a different scenario, one whose configuration depends on cultural developments as much as on nature: "Thus even the land is the creation of the sea, the Mediterranean" (Matvejević, 38).

3. Borderline conflicts

World history is the history of the wars waged by maritime powers against land or continental powers, and by land powers against sea or maritime powers.
C. Schmitt, *Land and Sea*

In recent years, Predrag Matvejević has undertaken the remarkable and probably impossible effort to travel the Mediterranean waters and coasts in order to compose "a veritable philology of the sea" (4). In his works, history and culture melt harmoniously, almost as though they aim to mirror the melting pot of the object they are attempting to describe. It is a mere consequence of the fact that the boundaries of the Mediterranean "are drawn in neither space nor time. [...] Hellenic emporia were markets and embassies; Roman roads spread power and civilization; Asian soil provided prophets and religions. Europe was conceived on the Mediterranean" (10).

This is only one side of the story. Where Matvejević sees a somewhat peaceful, recurrent interplay between land and sea, which unfolded quietly as though following the laws of nature, thinkers such as Hugo Grotius and Paolo Sarpi around the end of the sixteenth and the beginning of the seventeenth century, and Schmitt in the central decades of the twentieth, had different experiences and opinions. Sarpi and Grotius, as we will see later, had to rely on Origin and tradition – although politically flavored – in order to win legal battles to keep their respective cities independent and in control of their space. Schmitt, on the other hand, envisaged a biblical battle of elements in which was at stake the destruction of the current land order and, consequently, the establishment of a new one where the sea would engender a remarkable impact. Because of his high purpose to describe this new world order, as opposed to the philosophically less noble end of Grotius and Sarpi to preserve the *status quo*, Schmitt’s work better serves as theoretical backdrop for my analysis—although my choice by no means excludes disagreement, at times. Schmitt’s attention to historical and political reasons in order to interpret the world order and the role of the humankind in it is compelling and worth noting. As he maintained, “man is not a creature wholly conditioned by his medium. Through history, he has the ability to get the better of his existence and his conscience” (1997, 5). The resistance to external, environmental conditions, and the need to overcome them shaped human history, politics, civilization.

Perses’s myth-destroying and paradigmatic choice to take on the challenge offered by the sea may be seen as forerunner to that mix of curiosity and perhaps inconsiderate bravery which, along with the fervent economic reason that motivated Perses himself, led to man’s exploration of the globe. Schmitt says: “sea-appropriations became possible only at a later stage in the development of human means of power and human consciousness of space” (2003, 44). Seafaring represents the emergence of one among the foremost characteristics of Western civilization (another, related, one is the drive to wage war), as Schmitt points out that “the world of Ancient Greece was born of raids and wars undertaken by nations of sailors” (1997, 7). Schmitt notices that the consequences that followed the implementation of this peculiar form of civilization – and which I would define, more bluntly, a strategy of domination – within the Mediterranean world have been epochal: the entire organization of human existence was either radically modified or originally conceived anew.

The cultural loss of the Olympian world meant that a self-sufficient collective structure of rules and roles was now useless and human beings, in their “solitude,” had to supply a reliable, if now secular, web of organized relationships.³ The *end* was to maintain control, as a result of the ripened drive to invade and dominate both over land and over sea; the *means* was aggression and abuse; the *stage* was an area rich in resources and traditions: the Mediterranean. In ancient times, the Mediterranean sea and its shorelines witnessed changes of rule at a fast pace, as evident in the transitional (or decadent, if you will) time described by the poets. There was no stable order: “the great primeval acts of law remained terrestrial orientations: appropriating land, founding cities, and

³ Please, on this point see the first chapter, section 2.

establishing colonies” (2003, 44). Lest someone misunderstands his thought, Schmitt underscores in the remainder of the sentence that the phrase “primeval acts of law,” in Schmitt’s expression, is a peculiar way to describe what modern scholars would define as usurpation and conquest; yet, he is trying to bestow a sense of unity to a long and diversified process, the process that led to the birth of the political powers territorially defined, whether they be those of city or state.⁴ As a matter of fact, the typical movement which has generated political institutions, in the current sense of the term, has at least three well-defined phases, which can be coeval and therefore deeply implicated in one other’s advancement: firstly, *land-appropriation*, secondly *legalization*, and finally *political definition*. These three eminently broad, generic political actions were possible only during a time of major change, and their coming about filled the void of power left by the flight of the gods (or, to phrase it in historical terms, by the advent of a revolutionary turn of events).

According to Schmitt, these actions all belong to the sphere of the *Nomos*, which he defines as the result of order and orientation: “*nomos* [...], understood in its original spatial sense, is best suited to describe the fundamental process involved in the relation between order and orientation. [...] Originally, it was used for statutes, acts, measures, and decrees of all sorts” (67). As my analysis proceeds, I will shed light on this quite obscure definition.

During these times of oscillation between divine and secular orders to which Schmitt refers, a famous episode in Greek history occurred, in which the main actors expected to show incontrovertibly that they were embracing the will of the gods while attempting to expand their domain. I am referring to the speech of the Athenians to the Melians, a remarkable episode within the larger narrative of the Peloponnesian war reported by Thucydides (1934). While at war with another land power, Sparta, Athens decides to wage war over sea against a small island, Melos. The Athenians address the islanders as naturally subjects to their command because Athens claims the authority that belongs to a sea-power—hence, a power that has to rule over water *and* lands within water (islands, in other words). Moreover, the Athenians display a striking logic that connects natural order – *Nomos*, that is – and political power upon which they build their case for the control over the Melians. Finally, the Athenians’ argument regarding law and violence as interconnected with government makes the episode very significant for my point.

⁴ Politics always follows the enforcement of laws; sovereignty is a juridical concept that politics just borrows, does not invent (see Quaglioni 2004). As Agamben says, “The essential contiguity between the state of exception and sovereignty was established by Carl Schmitt in his book *Politische Theologie* (1922)” (2005, 1). On the one hand, because I am focusing more directly on the concept of *Nomos* as related to land *and* sea, I can trace here neither the history of this contiguity nor the history of the two concepts separately. I will therefore mention either one or the other concept when appropriate, yet without lingering on them specifically. On the other hand, as we will see later, Schmitt’s theory has known so many developments and twists that one could arguably question Agamben’s statement regarding the definitive character of this contiguity, as well as of each and every of Schmitt’s ideas. Finally, as far as my analysis is concerned, I will show the intricacy between violence and law below.

The story is well-known: during the sixteenth year of the second phase of the war between Athens and Sparta (431 to 404 B.C.), Athens decided to extend its domination over Melos, a small island in the Cretan Sea which had been neutral during the conflict, although officially a Lacedaemonian ally. After an astounding exchange, in which the Athenians stated their right to rule and the Melians their will to remain free, the siege ensued. Contrary to what the Athenians boasted and possibly thought, the military endeavor turned out to be difficult and costly in terms of soldiers, resources, and time. Eventually, the Melians lost both their freedom and their lives – the Athenians ruthlessly killed all adult men and enslaved the children and women. However, this outcome was possible only by means of treachery, not strength.

The Athenians' confidence relied upon visible human power that, they boldly thought, was supported – not established – by invisible (*unwritten*, that is) divine and necessary law: “Of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can. And it is not as if we were the first to make this law, or to act upon it when made: we found it existing before us, and shall leave it to exist for ever after us” (Thucydides, 334). In other words, they not only placed themselves within a superior hermeneutical circle as opposed to their foes, claiming to be capable of understanding divine will better than their antagonists, but they also drew the line between right and wrong, and were almost surprised by the Melians' refusal to accept their interpretation, which they considered truthful and in accordance with the perennial law of *Necessitas*. As Massimo Cacciari maintains:

Il discorso degli Ateniesi pretende di valere come il solo giusto – e non solo per gli uomini, ma anche per gli dèi: il *Nomos* che spinge ad usare la propria *arché* su chi puoi con la forza dominare, non appartiene ai molti, convenzionali *nómoi* della città, e neppure è stato stabilito dagli dèi, ma viene da necessità di natura [...] Non è ‘invenzione’ di uomini acuti e sapienti, ma gli uomini sono acuti e sapienti in quanto lo seguono (Cacciari, 44).

Cacciari correctly points to the Athenians' belief that their strategy was firmly buttressed by both ethereal *Nomos* (the highest, hard-to-come-by idea, not its functional derivative, the *nómoi*) and worldly power, as the crucial point of the so-called Melian conference.

The picture is obviously opaque and complex. Many implications follow from the decision to take over Melians' sovereignty. The Athenians are not merely claiming a political right; more essentially, they are proclaiming that they follow a divine, already implemented plan. The alleged interconnectedness of human action and divine design emphasizes – and complicates – the gesture of Athens inasmuch as it pretends to account for both celestial and terrestrial law.⁵

⁵ Interestingly enough, in his late essays (see, for example, “Building dwelling thinking” and “What calls for thinking?” in *Basic Writings*, 1983) Heidegger formulated the principle of *Geviert*, “square,” which is the concept he used to summarize the play of heaven and earth, divinities and mortals, as these conceptual entities set the philosophical frame within which events of thought occur.

While venturing in land-appropriation in the middle of a long campaign of war, Athens reckoned on the allegedly persuasive power of violence. The Athenians laid out their argument in the hope of avoiding the use of brute force: they made it crystal-clear that power was simply the main threatening factor in the “agreement,” a reinforcement element, not the key cause of it. The supposed imbalance of potency seemed, in fact, merely to confirm, in the Athenians’ minds, the superiority of their faction over the Melians’ and their legitimate right to rule. As a result, they attempted to instigate the idea that the order on land and sea should follow, necessarily and naturally, the *Nomos as the Athenians saw it*: “the fact that you are islanders and weaker than others rendering it all the more important that you should not succeed in baffling the masters of the sea” (Thucydides, 332). This statement introduces an additional element into the discussion, an element crucially significant for my study.

In fact, the Athenians extended the political status of the sea to the island of Melos, stripping it of its sovereignty and debasing it to the rank of plain sea booty, so to speak. After the Melians raised the question of security, and how Athenians’ will to colonize their island could jeopardize Athens’s own safety on land, the Athenians replied, keeping the discussion around this very same power line:

the fact is that continentals generally give us but little alarm; the liberty which they enjoy will long prevent their taking precautions against us; it is rather islanders like yourselves, outside our empire, and subjects smarting under the yoke, who would be the most likely to take a rash step and lead themselves and us into obvious danger (333).

Many are the implications of such a standpoint. The foremost, in terms of my focus here, is that sea and land do not share the same juridical status, at least in Athenians’ minds, during this specific moment of general strife and confusion. “Continentals,” who lie on the border of the “sea empire,” can apparently enjoy liberty and, at the same time, manifest a non-threatening tranquility, whereas “islanders” constitute a source of danger and a permanent cause of potential upheaval, regardless of their attitude. To institute order and unity under the same vestige, to secure protection and to remain in line with the *Nomos*, then, the islanders must be controlled by the same power that rules the sea, whether it is land- or sea-based.⁶

⁶ In his *Della Ragion di Stato*, Italian political theoretician Giovanni Botero states an opinion which at first glance seems similar to the Athenians’: “State is a stable rule over a people and Reason of State is the knowledge of the means by which such a dominion may be founded, preserved, and extended” (3). However, while the Athenians are concerned with the question of territory, Botero does not show such a concern. In their capacity as masters of the sea, the Athenians are eager to inscribe the islanders and their islands within the rubric of sea territory, hence under their legitimate rule; by contrast, Botero believes that the State coincides with its people, not with its domain, whether maritime or terrestrial. The question becomes, then, what defines a people (and obviously the answer cannot be related to the specific space inhabited by the people in question).

This standpoint sows the seed of an epochal crop, inaugurating a new sort of balance and interaction between sea and land powers, which usually precedes the political adaptation to the new order, that is the newly implemented set of constraints, boundaries, prohibitions, and permissions. In all evidence, although he devoted a great deal of work to the topic, Schmitt at first failed to notice the emergence of this determination in the history of the juridical status of sea and land, or, if he did notice it, he downplayed what I contend was a groundbreaking event, probably because of its regional, non-global character, unfit to justify the institution of a new planetary order. In so doing, Schmitt overlooked the customary rule according to which a precedent makes jurisprudence and can be therefore extended to similar cases. On the contrary, he maintained that the juridical divide between land and sea occurred only when the Imperial star of Great Britain rose in the seventeenth century. In chapter XVI of *Land und Meer* (published in 1942), Schmitt stated that the opposition between sea and land has always been emphasized by the difference between *sea war* and *land war*: hence, the juxtaposition was a technical matter and an unavoidable strategic necessity.

When the British Empire (that is, a world sea empire) came into being, the opposition of the two elements became also juridical, because it concerned a change of *Nomos*. Schmitt wrote: “as the British were taking possession of the seas [...] the fundamental line of the first, planetary space order was set, which consists in the separation of land from sea” (1997, 46). The conquest of the sea and the establishment of this fundamental line – a “fundamental line” about which the German scholar says little – of a new planetary order separated land and sea culturally and legally. Apparently, the change materialized as a switch in the targets of war: while the battle on the land involved only those who were fighting (regular or irregular army),

the naval wars were based on the idea of the necessity of treating the enemy’s trade and economy as one. Hence the enemy was no longer the opponent in arms alone, but every inhabitant of the enemy nation, and ultimately, every neutral country that had economic links with the enemy (47).

According to Schmitt, this is the thumbprint of “two different worlds” (48) as far as *Nomos* is concerned.

What Schmitt was pointing out seems actually to be more expedient and contingent to his theoretical point than truthful. Schmitt was merely supporting the idea of the global war that Germany was conducting, and the mere economic side of this theory will not hold through time, not even for the German scholar himself, as Schmitt will keep reworking his own body of ideas. In order to argue that Schmitt often tended to harmonize world history *ex-post facto*, I will first place Schmitt’s drafting of *Sea and Land* in the historical context of the Second World War—a context crucial in many respects and for many peoples and states but especially so for Germany and the Germans. I will then analyze the

conceptual developments the binary of sea and land would undergo in Schmitt's major work, *Der Nomos der Erde*, published eight years later, in 1950.⁷

4. Schmitt's state of mind

According to Franco Volpi,

Quando nel 1942 Schmitt pubblica *Terra e mare* [...] ha abbandonato l'attualità politica, le sue aspettative e le sue illusioni. È nel pieno di una crisi. Forse nel profondo di una disperazione. [...] Guarda al fondamentale, all'originario, all'elementare (Volpi, 116-117).

Volpi's opinion might not be inaccurate, as far as the personal life of Schmitt is concerned; however, it seems quite incorrect vis-à-vis his interest or disinterest in the political developments of his troubled time, at least according to one of his biographers, Gopal Balakrishnan. In *The Enemy: An Intellectual Portrait of Carl Schmitt* (2000), Balakrishnan peruses every phase of the protracted, prolific, and controversial theoretical production of the German scholar.⁸ Making clear from the very first lines how challenging it is to scrutinize Schmitt's fluctuating ideas ("The writings of Carl Schmitt form what is arguably the most disconcerting, original and yet still unfamiliar body of twentieth-century political thought," 1), Balakrishnan further acknowledged that Schmitt's incongruous viewpoints were also determined precisely by the unstable political situation, to which he always paid painstaking attention:

the protean quality of Schmitt's political habitus reflected precisely the intellectual disorientation which he attributed to the absence of any hegemonic centre of gravity in politics: the constant shifts of conceptual focus, the terminological instability, contradictory attitudes about political institutions – all linked, perhaps, by the unarticulated premisses of a system which never materializes (136-7).

Hence, although we can agree with Volpi's assertion that Schmitt was rather depressed in these years, yet it is also true that he was wrong affirming that the German scholar was abandoning politics. On the contrary, he was trying to interpret a new possible world scenario, after Hitler and Germany, predominantly, had strained to change the old one, making even its narrating code obsolete and inadequate.

The first German annexations (Austria in 1938, Czechoslovakia in 1939) provoked Schmitt's re-evaluation of his political model, prompting him to

⁷ On this issue, Gopal Balakrishnan states that "According to Schmitt, it was only the historical fact that in the seventeenth century the English state was becoming the pre-eminent maritime power of the world which explains the seemingly counterintuitive selection of the Leviathan as the mythic name given to the European state in the century of its genesis [...] To put it another way: 'Leviathan' was the name of a failed attempt at a totalization of the ultimately contradictory elements of state and society, symbolized by land and sea" (Balakrishnan, 218, 219).

⁸ Due to its length and richness of details, Balakrishnan's work is my foremost source, although not the only one, as far as Schmitt's life is concerned.

conceive concepts such as *Großraum* (“large space”) to better define the rapidly and dramatically changing world of international politics. While reshaping his political model and reconsidering his conceptual frame, Schmitt was looking not solely at the European current situation and past history: in fact, his inspiration came mostly from the Monroe Doctrine, pronounced more than a century earlier (in 1823) by James Monroe, then president of the United States. To schematize, through his “doctrine” Monroe warned the European powers that America, in its entirety (that is, Southern, Central, and Northern areas of the New World), would no longer be land of conquest or colonization, and that the USA would consider as hostile actions any attempts to increase the area under European influence in the overseas continent. In so doing, the US established a sort of protectorate well outside its geographical borders which stretched along the American continent forever modifying the *geopolitical* dimension of the planet as well as the *juridical* one. As a matter of fact, if universally accepted, the Monroe doctrine would thoroughly modify the question of sovereignty: thereafter, sovereignty would coincide neither with the land or sea (sovereignty over territory) nor with their inhabitants (sovereignty over people), ruling out both Athenians’ and Botero’s theory about the political-juridical concept. The complexity of Monroe’s idea of sovereignty, as opposed to the ancient models, obviously mirrored the intricacy of the modern political landscape.

Balakrishnan maintains that “[a]s American power expanded over the course of the nineteenth century, this doctrine acquired all the authentic features of a *Großraum* principle: a planetary conception of political spaces delineated by a strategic vision, as interpreted by a guardian power” (238). The way in which the Monroe Doctrine sought to override existing political entities provoked ongoing political and theoretical discussion. According to Balakrishnan, the clash between a future European (German-led) *Großraum* and the American model during the Second World War, killed Schmitt’s geopolitical dream and, further, exacerbated his despair, as Volpi pointed out. Schmitt once said to Nicolaus Sombart:

Aus der Perspektive der angelsächsischen Seeherrschaft sind wir Piraten – *hostes generis humani*, Feinde der Menschheit. Pirat, *das weißt du jetzt schon*, ist nicht der einzelne *Seeräuber*, sondern das Schiff und seine ganze Mannschaft, vom Kapitän bis zum letzten Kajütenjungen. Wird das Schiff gekapert, werden alle aufgehängt – mitgefangen, mitgehungen – mit Ausnahme der in den Ketten liegenden Gefangenen. Pardon wird da nicht gegeben... (Sombart, 266)

From an Anglo-Saxon perspective we are pirates – the enemy of humanity. Pirate – that means not the individual [*pirate*], but the ship and its entire crew, from captain to the ship hand. If the ship is captured, everyone will be hanged: captured together, hanged

together, with the exception of those in chains. Pardon will not be given (Balakrishnan, 240)].⁹

Indirectly agreeing with Volpi's opinion, Balakrishnan interpreted the quotation above both as evidence of Schmitt's intellectual and personal crisis and as a sign of his awareness concerning the disastrous end that Hitler's war strategy was preparing for Germany and the Reich. The return to the elementary concepts of sea and land (and the reflection on the *Nomos* that such a return to the Origin implied) appears to be the most reassuring decision, theoretically and personally, which he could take during war time, as an intellectual and an individual who was deeply involved in the cultural and political destiny of his country during the preceding decades. As peculiar a thinker as he was, it is simply expectable that what he was pondering in those conflicted and conflicting years could represent only a starting point for new philosophical achievements. The years – and works – to come would confirm this.

5. *The new Nomos of the Earth*

In the last section of *Land and Sea*, Schmitt maintained that “two objective findings become evident and certain” (1997, 58). One is the transformation of the concept of space (which he labels the second spatial revolution, whereas the first took place with the advent of the modern science); the other, more directly relevant to my point,

is linked to the elemental relation between land and sea.

Nowadays, the sea is no longer the element which it was during the age of the whale hunters and privateers. Modern transportation and telecommunication technologies have transformed the relationship into space, in the present sense of the word (59).

According to Schmitt, the “present sense of the word” *space* was yet to be known in its entirety, precisely because its essential core, the *Nomos*, was still beyond reach. “That explains why many people see but absurd chaos there where a new meaning seeks to impress itself. [...] The fiercest confrontation between the old and the new forces may as well generate just standards and criteria and forge new dimensions loaded with meaning” (59).

These words on the last page of *Land and Sea* constituted the natural bridge to Schmitt's ideas to come concerning the *Nomos*, with which he would thoroughly engage in *The Nomos of the Earth*. In this work, he “addressed the question of the collapse of the old world order long before a new one became a topic of public debate” (as Schmitt's translator, G. L. Ulmen, stated in his “Introduction” to Schmitt 2003, 9). While discussing this collapse, Schmitt pointed out that, historically, the sea had known two different legal statuses: at first, “On the sea, there was no law [in ancient times]. Only when the great sea empires, maritime nations, or, to use a Greek expression, *thalassocracies*, arose was security and order established on the sea” (2003, 44). Schmitt posited that only when the British empire took control of the sea, after all the earth had been

⁹ Sombart's book is not translated in English. I am using the translation that Balakrishnan gives in his work, albeit it is missing the parts I italicized in the original.

“measured,” was an order that set apart the two elements implemented. In other words, after the age of discovery and conquest, the sea was no longer the vast, unknown, and immeasurable element that had once discouraged people, as the ancient Mediterranean poets used to think. Gone were the times in which the sea was understood as threatening and not imagined in terms of possible political and economic endeavors. Schmitt wrote: “Many peoples kept to the mountains, far from the coasts, and never lost the old, pious fear of the sea” (43). Because of the great discoveries and consequent colonization, the *Nomos* of Hesiod and Virgil was definitely over.

What had happened, in sum? Schmitt’s brief survey on the concept of *Nomos* can provide the answer. Schmitt emphasized that the original meaning of *Nomos* was not a mere fact of juridical production, but concerned spatial distribution (i.e. land-appropriation), measurement, and orientation: “*Nomos* is the *measure* by which the land in a particular order is divided and situated; it is also the form of political, social, and religious order determined by this process. Here, measure, order, and form constitute a spatially concrete unity” (70).

In other words, *Nomos* was not merely a notion concerning functional human relationships; it was a constellation of different concepts that contributed to forming and ruling a political domain. Its translation with ‘law’ (as often occurred in ancient Greek in later centuries) simply made it a practical tool in daily legal life, by means of an extreme reduction of its complexity. By contrast, being initially “order and orientation” (42) at the same time (with orientation meaning both “social and religious order” that belonged to the sphere of influence considered), *Nomos* profoundly pervaded the *entire* domain in which it was enforced. That is why, according to Schmitt, a new *Nomos* emerged after the age of the British colonization: the sea, as legalized territory, finally entered into the world political picture: “Originally, before the birth of great sea powers, the axiom “freedom of the sea” meant something very simple, that the sea was a zone free for booty” (43).

In the modern age, on the contrary, the sea became a sort of neutral territory to be used as a safe corridor for fishing, trading, or waging war, and any activity in contrast with those was considered illegal. Piracy and maritime war, hence, entered the penal code, ushered in by dint of their relevance for the political destiny of all the countries involved. The new *Nomos* of the earth was no longer the *Nomos* of mere land: the free sea fell under its rule, too.

This balance between the ordered land and the free sea came to an end in the twentieth century, as the World Wars shredded it to pieces. The ferocious clash of world powers emphasized, as never before, the significant role that violence played in causing both the fall and the establishment of the *Nomos*, a role that Schmitt’s use of mythic language smoothed somehow, as though the reference to biblical figures (Leviathan, Behemoth) or an odd mix of offhand messianic fatalism and hope could diminish its unwieldy magnitude, as he stated that:

today, it is conceivable that [...] men will transform their planet into a combination of produce warehouse and aircraft carrier. Then, new amity lines will be drawn, beyond which atomic and

hydrogen bombs will fall. Nevertheless, we cling to the hope that we will find the normative order of the earth” (49).

Some decades before these words were published, another important German scholar devoted some thoughts to the connection between violence and law, without hesitating to emphasize the importance of the former term in its interconnection with the latter: I am obviously speaking of Walter Benjamin and of his “Critique of Violence.”

1. Walter Benjamin and Carl Schmitt: Violence and *Nomos*

In his 1921 essay, Benjamin analyzed the nature of violence, and its connection with concepts such as law and justice. The importance of this essay for the development of Schmitt’s ideas is underlined by Agamben: “As an avid reader of and contributor to the *Archiv* [the journal in which Benjamin’s essay was first published], Schmitt could not easily have missed a text like “Critique of Violence,” which [...] touched upon issues that were essential for him” (2005, 53). With his usual compelling intelligence and uncommon knowledge, Benjamin formulated the theory of a manifold violence, when bestowed with political goals: “All violence as a means is either lawmaking or law-preserving. [...] it follows [...] that all violence as a means, even in the most favorable case, is implicated in the problematic nature of law itself” (1996, 243).

Benjamin found the role of violence in governing and determining human relationships highly relevant and yet hard to comprehend, maintaining that “law [...] appears [...] in so ambiguous a moral light that the question poses itself whether there are no other than violent means for regulating conflicting human interests” (243). Rather than distinguish between piracy, colonization, or other sorts of violent intercourse as does Schmitt, Benjamin analyzes its inherent features, which, as Agamben has noticed, were to be taken on by Schmitt as well.

The absence of the opposition of sea and land in “Critique of Violence” does not mean that the two scholars merely shared an intellectual albeit generic interest in the concept of law and its system of production. In particular, although the specific code they used was different, and their respective positions appear distant from each other, Benjamin tackled the questions of *space* and *order* too, before Schmitt wrote about order and orientation within the large spatial and conceptual frame of *Nomos*, and in correlation with war and politics. For example, considering the implications of violence in the conception of constitutional law, Benjamin wrote:

in this sphere the establishing of frontiers, the task of “peace” after all the wars of the mythic age, is the primal phenomenon of all lawmaking violence. Here we see most clearly that power, more than the most extravagant gain in property, is what is guaranteed by all lawmaking violence. Where frontiers are decided, the adversary is not simply annihilated; indeed, he is accorded rights even when the victor’s superiority in power is complete. And these are, in a demonically ambiguous way, “equal” rights: for both parties to the treaty, it is the same line that may not be crossed (248-9).

Benjamin's passage strikes the reader as an accurate comment on the Melian Conference narrated by Thucydides.¹⁰ However, it may also be assessed as a subtle reference to all sorts of peace treaties struck in the history of diplomacy.¹¹ I will focus on two significant aspects of Benjamin's thinking: first, among the things that political institutions can acquire by means of violence, power is more securely guaranteed than material goods (and the Athenians knew very well how effective would be the role of the "good example," when they pointed out that other islanders could thrive on the possible Melians' diplomatic success); second, and directly consequent from the first point, lawmaking violence binds both the assailant and the assailed and their reciprocal movements, although in a "demonic" way – that is, I think, in a precarious way that will last as long as the newly-imposed balance of power will withstand. Insofar as Benjamin's stance was independent from the spatial dimension, and directly focused on people – hence, one could say that Botero's theory of sovereignty still held true, at least for some thinkers – his assessment of the roles of myth and history in the development of questions of law was fundamentally different from Schmitt's. However, the former inspired the latter in other respects, as I will soon show.

Schmitt's idea of myth was influenced by Vico's *New Science*. In *The Nomos of the Earth*, Schmitt praised the Neapolitan "legal philosopher" recalling that "The first law, said Giambattista Vico, was received by men from heroes in the form of the first agrarian laws [...] the division and demarcation of soil [being ...] one of the four primeval elements of all human law and all human history" (2003, 47). The emphasis here should be put on "the division and the demarcation of soil" rather than on law, division and demarcation that can come about only through acts of aggression and conquest, depending on the legal status of the land that is to be possessed. Here, I believe that to a remarkable extent Schmitt was just acknowledging Benjamin's point, while rephrasing it according to his own philosophical code. Similarly, Agamben says that "[w]hile the strategy of "Critique of Violence" was aimed at ensuring the existence of a pure and anomic violence, Schmitt instead seeks to lead such a violence back to a juridical context" (2005, 54). Further, the Italian philosopher later states that ultimately "[Benjamin's] pure violence exposes and severs the nexus between law and violence and can thus appear in the end not as violence that governs or executes (*die schaltende*) but as violence that purely acts and manifests (*die waltende*)" (62).

However, I contend that Agamben's interpretation, albeit not incorrect, is slightly misleading, as far as Benjamin's theory is concerned. Agamben appears

¹⁰ I do not know whether it was meant to be such, since the Greek historian's name is nowhere to be found in the volume by Benjamin that I am quoting. However, Benjamin is also known for having had the ideal goal of composing his fundamental book entirely out of quotations without quotation marks, a longing shared – and partly realized – by coeval German-speaking intellectual, Karl Kraus, in his *Die letzten Tage der Menschheit*.

¹¹ For example, one might argue whether Benjamin was thinking of the Treaty of Cateau-Cambresis (1559) that sanctioned the end of the Sacred Roman Empire led by Charles V, in which, for the first time and secretly, the establishment of "amity lines" were laid out, as Schmitt notes in his *Nomos*, p. 92. On this issue, I will say more later.

to overlook, in his reading of Benjamin, both the question of violence in history as Benjamin sees it, and the overarching meaning of what Benjamin calls “divine violence” in his philosophy of history, which is represented with messianic stripes: although there are moments in which the knot between violence and law is cut, the German philosopher also mentions an “expiatory power of violence” (1996, 252) that purifies “divine violence, which is myth bastardized with law. [...] Divine violence, which is the sign and seal but never the means of sacred dispatch, may be called “sovereign” violence” (252). Benjamin’s divine, sovereign violence interrupts the dialectics between lawmaking and law-preserving mythic violence, an alternation that:

lasts until either new forces or those earlier suppressed triumph over the hitherto lawmaking violence and thus found a new law, destined in its turn to decay. On the breaking of this cycle maintained by mythic forms of law, [...] a new historical epoch is founded (251-252).

This new epoch, which is distinguished by the emergence of divine, sovereign violence, appears to define some new legal domains as well, an aspect that Agamben is unwilling to admit.¹² The impression is confirmed when “Critique of Violence” is compared to words and ideas by Benjamin’s antagonist. Quite similar concepts resonate in Schmitt’s later works, in fact. Schmitt appears to have a vision of the effects that violence exerts as a history-changing – and, hence, law-imposing – force very akin to Benjamin’s, in particular if one compares “Critique of Violence” with *The Nomos of the Earth* rather than with *Political Theology* (which is, instead, the term of comparison Agamben used for his juxtaposition). As I recalled earlier, not only does *Nomos* determine the legal situation of the land upon which it is imposed, but it also provides the land’s social, religious, and political *measure*, which is, as we know, the defining concept in Schmitt’s thinking and one which unites these terms. In sum, a new *Nomos* is the essence of a new world order and therefore, as Benjamin suggests too, signals the foundation of a new historical epoch.

These two concepts – the *Nomos* and the *measure*, that is – are the foremost marks of the distinction between Benjamin’s writings of the 1920s and Schmitt’s reckoning with the fall of the Reich in the aftermath of the Second World War. In particular, Benjamin showed no fascination with regard to myth and mythic violence when he underlined its perniciousness: “Divine violence may manifest itself in a true war exactly as it does in the crowd’s divine judgment on a criminal. But all mythic, lawmaking violence, which we may call “executive,” is pernicious. Pernicious, too, is the law-preserving, “administrative” violence that serves it” (1996, 252).¹³

¹² The Italian philosopher is speculating around the idea of a “void” in the legal and political systems, in which something ambiguous and hard to come by as a *state of exception* can manifest itself. Hence, Benjamin’s alleged *anomic violence* fulfills a theoretical need, and its “existence” allows the comparison between the two German philosophers on this issue.

¹³ Adolf Eichmann, as portrayed by Hannah Arendt, will represent forever, as a perennial synecdoche, the dull and insensitive officer of the German Reich during the Nazi regime, he whose “guilt came from his obedience, and obedience is praised as a virtue” (1991, 247). The

A historical materialist, Benjamin did not fail to notice that any world order would possess some ‘Kafkesque’ and overwhelming stripe that would bewilder whose rules upon, and would exact a high price: “Mythic violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of living. The first demands sacrifice; the second accepts it” (250). Schmitt would stop his analysis at the sacrificial demand.

2. Freedom of the Sea?

The Second World War and its aftermath definitely influenced the life and thought of Schmitt. His initial opposition to Hitler – before the 1932 elections, Schmitt went as far as publicly claiming that a vote for Nazis was “foolish” (Balakrishnan, 156) – was soon to be dismissed and a completely reversed opinion entered his mind: “For Schmitt, National Socialism was a movement fated to reverse this legal ‘depoliticization’ of the world set into motion by the rational state” (188-9). His epochal expectations never materialized, as Hitler was mostly interested in trivial domination than in revolutionizing the rational, godless world order. Although change of mind was recurrent in Schmitt, earth-shaking hope in world history was not: the shameful fall of the Brown Shirts prompted the return of the attention to the mythical past as opposed to the present misery.

Some continuity remained, however. While writing *Land and Sea*, Schmitt refurbished his box of theoretical tools according to the current political disorder, with the result that a “language of elemental mythology substituted for – but also concealed the erosion of – the language of historical justification” (Balakrishnan, 245) that the scholar had utilized in prior writings. The catastrophic end of the Nazi regime, which occurred three years after Schmitt published *Land and Sea*, sealed Schmitt’s expectation of being the clairvoyant witness of the implementation of a new *Nomos*, Europe-led (with Germany occupying a primary position) as well. Balakrishnan says: “As he saw it, this [Second World] war was about the redivision of the planet, the violent seizure of land, oceans and skies by powers engaged in what could be described as a historically new round of primitive accumulation” (241).

The mythic frame that Schmitt envisioned was preserved and further enriched in what had to become his most famous work, *The Nomos of the Earth*. I have already mentioned some of the main ideas that this important work entertains; now, I will focus in particular on Schmitt’s reconstruction of the destiny of the sea and its legal status throughout human history. In his chapter “Freedom of the sea,” Schmitt maintains that:

In the perspective of the *jus publicum Europaeum*, all *land* on the earth belonged either to European states or to those of equal standing, or it was land free to be occupied [...]. In the 19th century, special forms of European extraterritoriality and consular jurisdiction were developed for half-civilized or exotic countries. The *sea* remained outside any specific state spatial order: it was neither state or colonial territory nor occupiable space. It was free of any type of spatial sovereignty. The firm land was divided by

‘banal’ Eichmann made sure that the second part of Benjamin’s analysis and prediction, regarding the pernicious mythic violence, turned out to be very accurate and truthful.

clear linear borders into territorial states or areas under state domination. The sea had no borders other than coasts (2003, 172).

The above quotation describes how Schmitt viewed the opposition sea/land in the centuries dominated by the British Empire (roughly the seventeenth-nineteenth). Since “*nomos* is the immediate form in which the political and the social order of a people becomes spatially visible” (70), and the main sea powers, such as England or Holland, were encouraging free booty over sea while controlling the newly discovered world, Schmitt theorized the existence of two fundamental orders: a land order, strictly ruled and divided; and a sea order, “free of all states and open for trade, fishing, and the free pursuit of maritime wars and prize law” (70). In his introduction to *The Nomos of the Earth*, Ulmen summarizes Schmitt’s viewpoint quoted above in this way: “All things considered, the *jus publicum Europaeum* was the internal *nomos* of Europe that was projected in the external *nomos* of the earth. The relation between these two *nomoi* was essential for almost three centuries” (12).

However, this was the true depiction of the legal situation only as far as the modern age was concerned. In fact, since the formation of the *Nomos* as Schmitt envisages it implies a re-order and a re-orientation of land, and the establishment of a *measure* – a balance among all the components at play, that is – the order (not a global *Nomos* yet, as Schmitt saw it) in place in antiquity was taken over after the discovery of the new world and the emergence of the British empire; in its turn, this one was substituted when the emergence on the political stage of international, extra-European powers forced the “dissolution of the *Jus Publicum Europaeum* (1890-1918),” as one chapter of Schmitt’s work reads. The fundamental difference between ancient times and the modern era rests precisely on the emergence of the first *Nomos*: “All pre-global orders were essentially *terrestrial*, even if they encompassed sea powers and *thalassocracies*. The originally terrestrial world was altered in the Age of Discovery, when the earth first was encompassed and measured by the global consciousness of European peoples. This resulted in the first *nomos* of the earth” (49). In other words, only when the sea is charted and included within the legal system the terrestrial order becomes *Nomos*.¹⁴ The geopolitical philosophy implied in this original and unprecedented legal structure brings about at least two important consequences: firstly, the consideration that both land and sea must be taken into account for the establishment of the political order. Secondly, that this newly established order

¹⁴ The English edition of *The Nomos of the Earth* that I adopted has an appendix that features three articles published some years after the original version. In one of them, “The New *Nomos* of the Earth” (written in 1955), Schmitt partly revised his opinion about the epiphany of the first *nomos*, maintaining that “There always has been some kind of *nomos* of the earth. In all the ages of mankind, the earth has been appropriated, divided, and cultivated. But before the age of the great discoveries, before the 16th century of our system of dating, men had no global concept of the planet in which they lived. Certainly, they had a mythical image of heaven and earth, and of land and sea, but the earth still was not measured as a globe, and men still had not ventured onto the great oceans. Their world was purely terrestrial. [...] This first *nomos* of the earth was destroyed about 500 years ago, when the great oceans of the world were opened up” (2003, 351-352).

can be labeled *Nomos* because it holds a value, politically and juridically, which has global nature and therefore overcomes the sovereignty of the single state as it subsumes the totality of the countries under its rule.

Schmitt's penchant for the elemental, the mythic, determined his philosophy according to which the big fish (the *Leviathan*) eats the small one: the citizens have only to comply with the big, or small, body of which they happen to be part. The battle between the biblical beasts of Leviathan (symbolizing the sea) and Behemoth (which stands for the earth, apparently) is treated by Schmitt in *Land and Sea*. The choice emphasizes not only Schmitt's preference for myth as the principal source of his symbology; it also underlines his idea of hierarchical sovereignty as it is understood in political philosophy.

This view is rejected by Foucault in his "*Society Must Be Defended*" (2003), where the French philosopher states that power has a rather different configuration than the pyramid described by the sovereign model of the Leviathan (in Hobbes's famous work, the Leviathan represents the sum of the citizens and hence the total power, as is well known). Foucault states:

Rather than orienting our research into power toward the juridical edifice of sovereignty, State apparatuses, and the ideologies that accompany them, I think we should orient our analysis of power toward material operations, forms of subjugation, and the connections among the uses made of the local systems of subjugation on the one hand, and apparatuses of knowledge on the other. In short, we have to abandon the model of Leviathan, that model of an artificial man who is at once an automaton, a fabricated man, but also a unitary man who contains all real individuals whose body is made up of citizens but whose soul is sovereignty (2003, 34).

Two completely different views of political domains and their inherent composition face off here: the first one, advocated by Schmitt, is a dual complex in which two *macrosystems*, land and sea, form a hendiadys that determines in a homogeneous way identity and essence of the entire order. The hidden soul of Schmitt's system, the *arcane*, is the figure of sovereignty that represents, theoretically and figuratively, the perfect picture of the sum of each and every part that makes it up – parts that faithfully replicate it, only in minor scale. It is a continuous system in which continuity and contiguity play a major role. On the other hand, Foucault's view of power underlines the existence of a heterogeneous, discrete plan of virtually separated if enclosed compartments where power is located, exerted, and transmitted; the "land of power" appears as a diversified field where manifold *microsystems*, by means of which political and juridical relationships are displayed and put at work, lie side by side, monads ruled by disciplinary discourses and technologies. Neither sovereignty nor myth play the essential roles that Schmitt assigned them. A place for the mystic is no longer to be found.

Perhaps the most remarkable difference between the two theories consists in what the basic political unit, the State, represents in each respectively: Schmitt

sees the State as the foremost stone upon which the *supernational* concept of *Großraum* is founded, whereas Foucault believes that the State is the promoter of the discourse that techniques of discipline, utilized *intrastate*, deploy to normalize and subsequently control the population. Hence, while Schmitt moves *outward*, from the State to the all-encompassing binary “Land and Sea,” Foucault moves *inward*, from the State to the prison, the clinic, and the school, which are the smaller units that stand, one might say, for one fundamental political entity completely ignored by the German scholar: the city. I contend that it is because of its regional, local dimension that the city has a smaller (if any) role in Schmitt’s political philosophy. Because of his attention to the elemental yet global spaces of land and sea, I deduce that Schmitt overlooks the function of the city just as he disregards the role of *internal* seas, so that as the city fails to take control of large part of the globe because of its local dimension and limited power, so the Mediterranean and the Adriatic sea, despite all their historical weight and tradition (the first above all), being non universal spaces, did not determine the emergence of a global *Nomos*. By contrast, I will linger around the ancient and the new *nomos*, connecting the political relevance of Athens’s standpoint that I discuss above with the argument that I will scrutinize in the next section involving Venice and the Adriatic sea. In so doing, I will emphasize the similarities existing on the question between ancient and new events.

In reading Schmitt’s works, two critical issues which elicit my interest seem to merit our attention: 1) a survey of the temporal gap between the emergence of the multifaceted concept of *Nomos* in Greek culture and Schmitt’s application of it to the sixteenth-century international order; and 2) the evaluation of the analogy – which can appear perhaps far-fetched, but I deem accurate, between the role that Schmitt thought piracy had in the Middle Ages and afterward, and the political role of cities such as Athens (as we already saw while analyzing the Melian Conference) or Venice (which I will tackle in the next section) within Mediterranean culture and history. While the two points seem reciprocally incongruous, I believe that a contiguity of sort is in place.

To begin with, Schmitt himself had to reconsider his previously stern opinion about the non-existence of a *Nomos* during the Renaissance, before the discovery of the New World. Nonetheless, he posits, the inadequacy of human *measurement* of the entire globe prevented the establishment of a full-fledged *Nomos*. In other words, while all the components of the ancient Greek concept were already present in the cultural and political history of Europe, and of the Mediterranean in particular, they did not coalesce as *nomos* until the entire planet was known to humankind. The missing part was knowledge of the spatial whole, which cannot be overlooked if a global order has to be set and a balance imposed or restored. In fact, as soon as the earth was circumnavigated and measured, “in the 16th century [...] For the first time in human history, the antithesis of *land* and *sea* became the universal foundation of a global international law. [...] Each was universal in its own right. Each had its own concepts of enemy, war, booty, and freedom” (Schmitt 2003, 172). Because of the advancement of human knowledge of space and the necessity to establish international law which that knowledge entailed, Schmitt glossed that land and sea became two separate domains, with

separate sovereignty and different set of rules. This new order brought about the existence of a vast and unconquered, uncontrolled space, and one missing a close ruler—the *open sea*.

England became the temporary guardian of this space, and developed a system of control, direct and indirect. More precisely, England encouraged the activity of an old actor with a new script, so to speak, within the economy of the time, one actor that, because of its characteristic, has complicated the nature of old and well-defined concepts such as war, peace, friend, enemy, and others. This actor was the English freebooter.

With them [the freebooters], the sharp distinction between state and individual, public and private, even between war and peace, and war and piracy, disappeared. [...] they were able to determine the maritime side of the *jus publicum Europaeum*: the *freedom of the sea* and the *freedom of merchant traders*, whose ships were essentially non-state vessels (174, emphasis added).

Schmitt obviously knows that piracy is a long-standing activity, whose beginning traces back to myth, when Jason and the Argonauts stole the Golden Fleece. Yet, pre-modern piracy still belongs to an age where the existing *nomos*, which Schmitt reluctantly would concede, or the economic system – as modern scholars would say – was strictly regional.

The importance of the modern freebooters is a reflection of the political, historical, legal context in which they operate. It is because such a thing as a *jus publicum Europaeum* exists that the German scholar does not debase their presence to mere scum.¹⁵ In a global plan, each and every element has to be accounted for.

The freedoms (of sea and of merchant traders) in conflict would determine the burgeoning legal debate about the juridical status of the sea. Hence, the sixteenth century political scenario featured legal disputes between great financial powers with colonizing conatus and mercantile attitudes (such as England, Holland, Portugal, and Spain), sovereign lands under their own non-European rule but soon to be subjugated (Asia, the “exotic” islands of the Pacific Ocean, etc...), and the volatile factor constituted by the “non-state vessels” of the raiders of the sea – which could carve a niche in this system thanks to the benevolence of the supreme authority, England. In order to increase its power, by means of both war

¹⁵ Schmitt does not devote a great deal of attention to the economic factor of the world he describes. The legal aspect, which is incorporated in the wider concept of *nomos*, is his polar star. It is clear that he thinks that politics (i.e., power) and *nomos* are the prominent features of a world order, to detriment of other components, such as the economic system. G.L. Ulmen correctly points out that, according to Schmitt, “While the *respublica Christiana* of the Middle Ages had been a strictly European order, its successor, the *jus publicum Europaeum* [the name of the *Nomos* of the modern age], was the first global order, even if based exclusively on European sovereign states. Since this new order was international, jurists had assumed a pivotal position in its creation and maintenance” (Ulmen, in Schmitt 2003, 25). This pivotal position has been Schmitt’s lifelong goal: in a world where “only the law of the stronger applied” (94), the lawmaker hoped to be strong enough to impose his presence to the ruler, ahead of philosophers or economists.

and trade, England needed to support the monopoly of the sea, while other sea powers advocated its freedom.

The legal dispute revolved around a juridical dilemma: was the sea *res nullius* or *res omnium*? Some thought that the sea should be free to wage war and make trade; among these was Hugo Grotius who, advocating Holland's seafaring rights in his famous *Mare Liberum* (1609), maintained: "Our purpose is shortly and clearly to demonstrate that it is lawful for the Hollanders, that is the subjects of the confederate states of the Low Countries, to sail to the Indians as they do and entertain traffic with them" (Grotius, 10). According to the Dutch philosopher, the foundation of this statement rested on two natural principles:

The first is that those things which cannot be occupied or were never occupied can be proper to none because all propriety hath his beginning from occupation. The other is that all those things which are so ordained by nature that anyone using them they may nevertheless suffice others whomsoever for the common use are at this day (and perpetually ought to be) of the same condition whereof they were when nature first discovered them (24).

Not being able to enclose and occupy the waters made it impossible to possess them as private property. Hence, sailing should not and could not be prohibited to any one country, and the natural character of the free sea is preserved. The outcome of the dispute (*nullius aut omnium*?) remains vague: at any rate, Schmitt stated that the dilemma, still based on traditional Roman law, was a sign of that legal discourse could not account for the novelty of the age of discovery. Rather:

groundbreaking with regard to the newly discovered oceans [... was] something completely different, namely the ancient, original, and elementary conviction that law and peace are oriented only to land. The concepts of Roman civil law with respect to water rights that arose in a coastal culture necessarily lost their meaning (2003, 175).

The German scholar was convinced that the presence of piracy was one of the foremost reasons to account for this loss of meaning and for the changing of water rights, which did not merely concern the meaning of Roman law, but also the balance of the powers at play. The pirate was the quintessential actor on the political stage of the sea, and an actor that had been playing his part since long before the discovery of the New World. For example, during the Christian Middle Ages,

for the order of the sea, the pirate was the enemy of the human race. [...] As long as they were consistent with historical reality, such universal and core concepts of enmity as tyrant and pirate not only obtained their meaning from, but affirmed the existence of the concrete order of the international law of an empire (65).

In other words, the existence of piracy (and tyranny) per se was the confirmation of the existence of a historically consistent *Nomos*, a legal order encompassing

and defining the broad, international political scenario and its social and religious character. Because of all these considerations, the analogy between the “non-state vessels” of the pirates and the “non-state ships” of Athens heading towards the island of Melos to claim their primacy over the sea and to sanction their mastery vis-à-vis the rest of the islanders should appear at least not as far-reaching as initially thought. In addition, one can hypothesize that in the reduced, non global space of the Mediterranean or Adriatic sea, and in the absence of the ruling presence of an overwhelming empire (such was the case of the oft-mentioned Athens, as well as of Venice, as I will show soon), smaller political units like the city had the opportunity to play the principal role and to determine the contextual *Nomos*.

In such a situation, the semiotic meaning of the sea would also be affected, so that the belief of its impossible occupation and enclosure yielded to the conviction of the possibility of governance and patrolling by means of which a legal right to rule could be claimed and enforced. This standpoint was the foundation upon which Venice based its dominion over the Adriatic sea, a case that provides a perfect, suitable example of the symbolic co-belonging of land and sea in the definition of a political domain of a city that lies by the sea.

3. The Adriatic Contest: A Lesser Story?

The spring of the year 1559 marks a notable turning-point in European history. On April 2 the Treaty of Cateau-Cambresis was signed by France and England, and on the following day by France and Spain. A great war was over. Italy had been freed from her invaders, Savoy had regained her independence, and Calais was lost to England for ever. But far more momentous changes than these were in progress (*The Cambridge Modern History*, vol. 1, 260).¹⁶

Indeed, 1559 drew the curtain over people and institutions hitherto ruling all over the world. The year before the treaty was signed, Charles V, the last of a line of world masters that traced back – albeit intermittently – to the Roman Empire, had died. As a consequence, in that time period not only did “a great war” end, but an epochal image of the world faded away lastingly as well, and no new one was yet available. Modern science was about fifty years away from its revolutionary, disruptive discoveries; the Philosopher’s authority was long gone; an Augustinian monk had shaken the most ancient and stable power still in place, the Roman Church, to which assault the latter vehemently reacted, leaving behind her debris

¹⁶ The importance of this agreement does not need to be further stressed, as it is well known how relevant it was for the subsequent history of Europe; beyond its political importance, the treaty also contains technical findings that enhanced its overall value. For example, the fact that “Amity lines first appeared (and were agreed upon only verbally) in a secret clause in the Treaty of Cateau-Cambresis (1559)” as writes Schmitt, in *The Nomos of the Earth* (92). Amity lines were an instrument to define a safe legal territory and “to establish the dimensions and demarcations of a global spatial order” (86). Their importance is underlined by the fact that “Beyond the line was an “overseas” zone in which, for want of any legal limits to war, only the law of the stronger applied” (93-94).

and smoldering stakes, but failing to heal the wound of the sacred body and regain unity nonetheless.

No “geographical expression” better than decadent Italy can represent the dismantled and crumbling state of the European affairs during XVI century, where war and devastation spread everywhere. And, within Italy, perhaps nothing better than the hostility between sacred Rome and profane Venice, can properly represent this conflicting image. The so-called second Rome, the Rome of the popes that comes after the capital of the world empire (the first Rome) stands for the perfect, ancient, land-power. It expands on the ground, counts (not exclusively) on the fascination that the divine can exert. Venice, on the other hand, was born and grown on the sea, it relies on its fleet, looks over the world and its business. Their conflict was inevitable, and their struggle over the domain of the Adriatic sea that I am going to describe is only one episode of this prolonged strife.

4. Clash of Sovereignities

In 1562-3, a trial took place in the Italian North-East, more precisely in the cities of Cormons and Udine. An unofficial report of the trial was recorded and titled *Acta conventus Cormonensis de navigatione*. The designation illustrates the importance of the event as well as what was at stake: the point at issue was, in fact, no less than the Venetian right to rule over the Adriatic sea, against the increasing eagerness of Austrians, Spaniards, and Roman Church to take it over or, at the very least, to attain freedom of navigation in its waters. The report included, among else, the entire speech by the Venetian lawyer, Giovanni Battista Chizzola, which later became the main source for Paolo Sarpi’s *Il dominio del mare Adriatico*.¹⁷ The theological counselor of Venice in the years between the end of the sixteenth and the beginning of the seventeenth century, Sarpi was asked by the *Serenissima* to support its cause against the same Austrians and the Papal state fifty years after Cormons. *Il dominio* is precisely the validation of Venice’s right on the Adriatic sea.

As Roberto Cessi stated in his introduction to Sarpi, “La libertà di navigazione nell’Adriatico era la pregiudiziale cara di tutti gli oppositori della politica veneziana, e diventò il tema fondamentale, sopra il quale si sbizzarrì la dottrina politica nostrana e straniera per più [sic] di cinquant’anni” (Sarpi 1945, xxx). These are the fifty years that spanned from the Cormons trial to Sarpi’s book. During the trial, the Austrian legal representative (curiously enough, and perhaps to bolster the alliance between Rome and Vienna against the *Serenissima*, a certain *bishop* Rapicio from Trieste):

postulava la libertà di navigazione degli arciducali [austriaci],
perché il mare era comune a tutti [...] Egli escludeva ogni diritto di
controllo [veneziano] e limitava l’esercizio giurisdizionale entro il

¹⁷ Sarpi worked on his *Il dominio del mare Adriatico* during 1610 and 1611; however, because it was intended to help the cause of Venice in the event of new trials intended to question its authority over the gulf, the book was published – partly – only in 1619 (see Sarpi, xxxiii).

raggio dei porti e delle coste del dominio, nel raggio cioè delle acque territoriali (xxx1).

In other words, the Austrian lawyer was trying to enforce the concept – which would gain popularity some decades later, as we saw – that the sea is *res omnium*, advocating the freedom of sailing to everyone. Chizzola, the Venetian legal representative, contradicted the interpretation that Rapicio put forward. The legal matter at issue, he said, had already been object of discussion, and a covenant had been stipulated in Bologna in 1529 to settle the dispute between Venice on the one hand, and the pope and the Austrians on the other. Cessi maintains that, according to Chizzola:

il testo bolognese sanciva parità di diritti e di doveri tra i sudditi dei due stati, vale a dire che « quello che gli uni possono in mare, possono anche in terra », e la *libertà* si estendeva egualmente alla terra e al mare, e non si poteva limitare solo all'esercizio marittimo [...] Il mare stava al diritto veneto, come la terra al diritto del sovrano (xxx1).

In other words, Chizzola was trying to establish a parallel between land and (Adriatic) sea as far as sovereignty was concerned—and he succeeded, since Sarpi was embracing his still valid interpretation some fifty years later, while helping Venice's party to ward off the stubborn Roman Church.¹⁸ His argument relied on the principle that a city built on the seashore owns the sea if no other city or state is ruling over it and, therefore, the new settlement can rightfully claim authority on the waters. Hence, since Venice was born free and the Adriatic was not under anyone's sway at the time, Venice had a natural right to control the waters, as long as the city could keep it safe and resist foreigners' attempts to sail it in spite of its will.

Sarpi rephrases Chizzola's opinion as follows: “Il mar Adriatico è il territorio di Venetia, dove ha quella stessa potestà, che ciascun Principe ha nel territorio suo: per il che ha da esercitare quelle attioni, che sono esercitate dalli Principi nelle terre di lor soggettione” (30). Chizzola seemed to have perfectly grasped the stake of the quarrel, which Sarpi would craftily lay out and further articulate in his later observations, given the persistence of the Austrian and Roman threat. Behind the economic motivation stood an astute political attempt to override Venice's sovereignty: the only reason that prodded Austrians and Romans to force a legal hearing was that they did not feel they had enough power to fight – and win – a war with Venice over the sea. While he set up the parallel sea-land, the attorney warded off any legal reason that could attempt to diminish – and, eventually, to completely deny – the control of the *Serenissima* over the

¹⁸ In his “Quarta Scrittura” of *Il dominio del mare Adriatico*, Sarpi mentions “alcuni scrittori olandesi” [sic] (35) who claim the freedom of the seas in order to justify Dutch trade without paying tribute to the Spaniards' crown. Hugo Grotius, and his *Mare liberum*, is never mentioned, but it seems obvious that he is the target of Sarpi's elusive allusion. The Venetian does not take a position: he simply denies any similarity (“Non è pari la controversia tra Spagnoli e Olandesi alla causa della Serenissima Repubblica...”, 36) between an internal sea (the Adriatic, in this case) and the oceans, so that he disentangles himself from the viscous topic.

Adriatic sea. By means of the parallel, Chizzola was quick to point out how unreasonable it would be to ask the Austrians to dismiss their sovereignty over their own domain, as they are attempting to do with Venice's "territory." Those who often transit over Austrian land might, in turn, follow the same path the archdukes are undertaking: needless to underline that these latter would readily regret their Pyrrhic victory, if such a case would occur. On the other hand, Rapicio was hoping to show that the sea had to be considered a free space where everyone could sail and trade without restrictions. Chizzola overcame the objection by linking Venice's politics and right to her Origin and proposing a parallelism between land-Austrian empire and sea-Venetian domain that could not easily be denied, in the absence of an international juridical context: the twofold violence that Benjamin would theorize centuries later was the unappealable judge, in this dispute.

At the beginning of XVII century Sarpi was dealing with the same issue, as Cessi asserts: "La storia di cinquant'anni, quanti intercorrono tra il Chizzola e il Sarpi, sta a dimostrare l'inanità degli sforzi della diplomazia, della politica, della dottrina" (Sarpi, xxxiv) to settle the Adriatic affair. Sarpi's work touches upon many questions I have been analyzing hitherto, so that a scrutiny of *Il dominio* will both summarize them and provide a definitive example of the relevance of the subject of my study. Sarpi tackles five main questions: the legitimacy of Venetian right over the gulf; the papal theory according to which Venice is exerting its right thanks to the privilege the Holy See gave it; the extension of Venetian jurisdiction, both about the territory and the legal power that falls under its sway; the rightfulness, or lack thereof, of those who question the sovereignty of Venice over the sea; and, finally, how to react vis-à-vis Ferrara's attempt to claim right over the delta of the Po river and the surrounding territory. The latter argument is in the "quinta scrittura," which was not published for strategic reasons. Says Cessi:

Si potrà osservare che l'obbiettivo precipuo della dissertazione sarpiana va ricercato non tanto nella premessa dottrinaria, analizzata nelle prime quattro scritture, quanto nella applicazione pratica al problema concreto attuale del transito fluviale padano, lungamente studiato nella quinta scrittura, stralciata nelle stampe e lungamente tenuta segreta [dai veneziani]. [...] l'inclusione del problema padano contribuisce a dare una fisionomia più organica alla dottrina del problema marittimo, che non si conclude né si esaurisce nel mare, ma si protende nei transiti fluviali come parte integrante di questo, ad esso strettamente connesso (xxxv).

Therefore, the fifth section will represent a peculiar case in point upon which it will be worth our while to linger.¹⁹

In the first section, Sarpi tackles, directly and indirectly, the fundamental questions of Origin and Nomos. As regard to the mythic and historical frame, the

¹⁹ In 2001, Alberto Miele edited a new version of *Il dominio* (Sarpi 2001). Oddly enough, in his presentation Miele does not mention his decision to publish only the first four chapters (Tullio Scovazzi, who wrote the introduction, does it).

Venetian friar shows sharp awareness of the juridical and political implications concerning the foundation of his city. If one analyzes the question by means of the semiotic code that Schmitt adopted centuries later, one can say that Sarpi's political theory presupposes that the foundation of the city constitutes, at the same time, land appropriation (sea appropriation, in this case, because of the peculiar character of the city) and, as a consequence, legal imposition of rule. As a city founded by free men ("ella nacque libera," 4) and on free, uncontrolled sea ("edificata ed instituita in mare, il qual allhora non era sotto il dominio di alcuno," 4), Venice fully embraced its specificity, and configured its political constitution as a *thalassocracy*, so that the sea, as a matter of fact, represented its domain.

In order to support this opinion, Sarpi rejected the concept that the sea was *res omnium*, as "Fernando Vasquio" (the Spanish jurist Fernando Vazquez de Menchaca) and Grotius maintained (Sarpi 1945, 35-36). As further evidence of Venice's territorial politics and its corresponding juridical viewpoint, Sarpi points out that "li banditi da Venezia sono banditi dall'Adriatico come da territorio suo et non li è permesso il semplice passaggio, transitando di terre aliene in terre aliene, et iandio in compagnia di gran Principe" (15). The last observation ushers in the subject of law and its connection with violence: once established that the sea belongs to Venice by either natural right or by appropriation, Sarpi is perfectly aware that, absent power, law is useless:

resta solo il continuar la possessione [...] opponendo la forza alli tentativi, che fossero fatti in contrario, perché, sicome le raggioni et titolo de privati sono cadaveri senza anima, quando non siano vivificati dalla forza della legge et del giudice, che danno loro il vigore, così le raggioni et titoli del Principe sono cadaveri, quando non siano animati dalla forza et dall'uso di quella, dalla quale ricevono la vita (17).

In other words, Sarpi knows that to claim natural right on the sea (or land, for that matters) does not warrant Venice the actual benefit of authority, so that the appropriation needs to be sanctioned by law *and* continuously confirmed by violence, when necessary. The correlation of law and violence as a means to achieve State ends is not impromptu; rather it is inherent, as Benjamin maintains. The Republic of Venice has obviously made use of both types of violence theorized by Benjamin, in order to attain and preserve her dominion over the sea. Chizzola and then Sarpi remind us how the *Serenissima* has imposed its authority over the sea: first, by dint of occupation of the surrounding coastlines, harbors, and cities; then, it maintained such authority, creating a "*squadra del golfo con duplice funzione militare e di polizia marittima*" (xx) as soon as the second half of the thirteenth century, a patrolling institution which emphasized Venetian control of the sea.

In this time period, the lawmaking violence seems to prevail over the law-preserving one, insofar as Venice's need to set boundaries and to assert her power is paramount. Following Benjamin's paradigm, we can maintain that Venice, too, is shaping its *constitutional law sphere*, the legal sphere where to set up frontiers and display power is the outcome of and warranted by lawmaking violence.

As noticed by Cessi in his introduction, Venice always had closer relationships to Constantinople than to Rome, so that it was almost natural for it to expand its dominion as soon as the Eastern Roman Empire began to collapse, leaving the Adriatic sea unguarded. Hence, Venice's appropriation of its "territory" is definitely peculiar. Schmitt maintains that "there are two different types of land-appropriations: those that proceed *within* a given order of international law, which readily receive the recognition of other peoples, and *others*, which uproot an existing spatial order and establish a new *nomos* of the whole spatial sphere of neighboring peoples" (2003, 82). However, the case of Venice seems to suggest a third paradigm, mainly for two reasons: precisely because the control of the space at issue – the Adriatic sea, that is – has never been subject of legal matter before, its seizure does not uproot an earlier spatial order. Furthermore, the absence of one or more dominant powers in the involved area, during the time of the rise of the Republic of Venice (IX-XIII century BC), implies the absence of an international order of law, with which it would be necessary to negotiate or to impose such an appropriation. Venice, in other words, has taken advantage both of its peculiar position (of being built on the sea) and of the weak political and juridical context wherein it could emerge as domineering force. It simply takes over when the Eastern Roman empire withdraws, and organizes its community so that this favorable state of affairs bolsters and remains consistently operative. Accordingly, one may say that the Origin of Venice is also the fundamental character that determines its role in the establishment of the *Nomos*.

After lingering on the general question of the domain of the sea, Sarpi tackles the current, specific case of the quarrel between Venice and Ferrara. In his "Scrittura quinta" he engages in the dispute sparked because Ferrara was trading along the Po river ("la Sacca") with Lombard cities and was exacting fees over the waters of the Adriatic, in spite of the Venetian dominance. Sarpi's wary approach is to reclaim Venice's authority on the basis of already existing, long-established laws that rule over the sea. New decrees might create confusion and ultimately help the Ferraresi to single out – and win – the specific case, since they could obfuscate the more general argument of the domain of the Adriatic sea. As Venice did when the Byzantine withdrew, Ferrara would claim the sovereignty over the sea, if unstopped, Sarpi warns. Hence, he suggests that, after assimilating in principle the river to the sea, Venice should

impedir questa [navigazione della Sacca], et con quella non si potrebbe usar altra ragione che dell'universale dominio del mare, non potendo pretendere cosa alcuna nel continente. [...] li vene con la giurisdittione del mare de facto di regolar la navigatione etiandio della Sacca (50).

In addition to his advice that Venice show how its authoritative presence over the waters is neither diminished nor diminishing, Sarpi sheds light on the parallel sea/land that the Ferraresi have embraced, a political position that could weaken Venice's right. In fact,

perché Ferraresi pretendono raggione nella Sacca con dire che sono patroni del continente, sarà bene considerar le raggioni che Vostra Serenità ha ancora sopra esso continente, non ad effetto di valersene per mostrar giurisdittione sopra il ridotto et sopra la navigatione, ma ad effetto di mostrar loro che il continente non se gli spetta, et però tanto meno hanno che far nell'acqua (55).

Sarpi demonstrates his strategic wisdom and sharp knowledge of the historical and political context in which the two cities brawl. In fact, he suggests that Venice should not refrain from boasting its authority precisely where Ferrara is trying to exploit its weakness: on the land. The Venetian philosopher eagerly takes on the challenge posed by the Ferraresi, and competently elevates it to a higher level, taking in account both historical and religious reasons, as he maintains that “il mare [...] imperoché non è commune altramente per natura né piú né meno di quello che sia commune la terra, la quale Dio et la natura l'hanno concessa tutta al governo humano et non l'hanno divisa” (35). As a result, the parallel sea/land assumes a well-rounded and unprecedented clarity, as Sarpi has all but discarded any mythic, mystic, or juridical value that the alleged difference between the two domains would have, while emphasizing how propitious this situation is:

Così torna a publico servitio di tutti che li mari siano resi sicuri, né mai alcuno potrà trovar ragione di questa *chimerica differenza*, che vogliono mettere tra la terra et l'acqua, anzi le istesse ragioni di occupatione, possessione, prescrizione et consuetudine, le quali danno ragione in terra, la danno parimente in acqua (35, emphasis added).

The *Nomos* of the earth in Sarpi's time was already inclusive, one in which none of the two elements of sea and land escaped human hold. As Alcaeus with Hesiod's mythic sea, so Sarpi – albeit *ante litteram* – did with Schmitt's elemental concepts, reframing them within an entirely secular and a-mythic political system where chimeras had no citizenship.