Political Community in Carl Schmitt’s International Legal Thinking

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Abstract:

A distinctive feature of Carl Schmitt’s legal thinking is the pivotal role that he grants political community. Against the background of Schmitt’s particular conception of political community and the importance placed on its protection in a domestic law setting; this text highlights the imperative role of political community in Schmitt’s thinking on questions of international law. By consistently relating Schmitt’s work on international law to his own time but also stretching it into our own, the text argues that while Schmitt’s insistence on political community may come across as parochial in present times of globalization, increasing traction of various universalisms and the liberal rule of law; we have not by any means overcome the force of political community in international law.

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A distinctive feature of Carl Schmitt’s legal thinking is the pivotal role that he grants political community. Against the background of Schmitt’s particular conception of political community and the importance placed on its protection in a domestic setting; this text highlights the role of political community in Schmitt’s international legal thinking.

We may have little reason to study – and even less reason to follow – Schmitt’s assessment of the legacy of European international law, questions of self-defence, imperialism and partisan warfare were it not for the fact that political community remains a significant force in international law. Accordingly, the text makes a case for the relevance of Schmitt’s thinking today, particularly for understanding questions related to the use of force in international affairs.

Schmitt on the Protection of Political Community in Domestic Law

Political community, for Schmitt, concerns the establishment of a ‘boundary that secures the existential survival of a particular way of life’ or Lebensform (Kennedy 2008: xvi). This is a conception of political community premised on the friend-enemy distinction:

The specific political distinction to which political actions and motives can be reduced is that between friend and enemy … The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation. (Schmitt 2007a: 26)

Both ‘union’ (Verbindung) and ‘association’ (Assoziation) denote the action of joining separate elements so as to form a whole or a body, or the condition
resulting from such action. In his *Three Types of Juristic Thought* Schmitt commits himself to ‘concrete order’ thinking. (Schmitt 2004). Here we may note that, as with ‘unity’ and ‘association’, the adjective ‘concrete’, stemming from *concrescere*, implies to grow together, coalesce, or in other words to form a whole or body. Similarly, ‘constitution’ (*Verfassung*), which is the fundamental concept underwriting Schmitt’s *Constitutional Theory*, is the arrangement or combination of different parts or elements that determines the nature and character of a specific whole. According to this meaning, Schmitt maintains, ‘everything, each man and thing, every business and association, is somehow included in a “constitution”’ (Schmitt 2008: 59). If this meaning is limited to the constitution of the state, we arrive at ‘the concrete, collective condition of political unity and social order of a particular state.’ (Schmitt 2008: 59) In the same work Schmitt describes the constitution as a ‘political being’ (singular) (Schmitt 2008: 125).

The contemporary Italian theorist of community Roberto Esposito have noted that once community is identified with a property, be it with a people, a territory, or an essence (or a combination thereof), ‘the community is walled in within itself and thus separated from the outside.’ (Esposito 2010: 16) Schmitt presents an exemplary case of such turning of community into it’s opposite; the turning of the condition of being in relation to the other and the outside into dissociation and defence, or, as Esposito would have it, community into immunity (Esposito 2008, 2010, 2011, 2013).

Schmitt’s thoughts about how the protection of political community is to be achieved in a domestic law setting appear to have developed over time.

The first sentence of Schmitt’s 1922 *Political Theology* reads: ‘Sovereign is he who decides on the exception’ (Schmitt 1985: 5). And, as Étienne Balibar puts it: ‘what the sovereign decides on is the necessity of public safety and order: where and when it is in danger, and what means are to be used to preserve it.’ (Balibar 2004: 136). This has been read as Schmitt committing to sovereign protection through Hobbesian decisionism. When sovereignty is exercised in this extra-legal monarchical mode it reveals how the sovereign, in Schmitt’s words, ‘stands outside the normally valid legal system [and] nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety.’ (Schmitt 1985: 7) In her contribution to the present volume Leila Brännström argues against this reading of *Political Theology* in which the sovereign decision is an extra-legal order-creating decision *ex nihilo* highlighting instead how the sovereign decision is a legally authorized decision defending and maintaining the prevailing social order or political community (Brännström 2015).

The conception of law underpinning such legally authorized decision-making in the context of liberal constitutional states is developed furthest in Schmitt’s 1928 *Constitutional Theory*. In this text Schmitt notes that what characterizes the liberal constitutional state is the suppression of extra-legal sovereign power for the benefit of a supposedly all-encompassing rule of law, creating its very own

Reading Constitutional Theory legal theorist and former judge of the German Constitutional Court Ernst-Wolfgang Böckenförde describes the telos of constitutional law as to facilitate, preserve, and support the state as a political order and unity and to deal with politics in the immediate sense of addressing the existence, form and action of political community (Böckenförde 1997: 8). Lars Vinx refers to how Schmitt privileges a purely political form of constitutional guardianship (Vinx 2015). This is a deformatted law that is more responsive to demands for the protection of the very political community that is its ‘political existence’ and only reason for being. The guiding principle of this conception of law is that the existential self-preservation of political community – the ‘constitution’ in a Schmittian sense – is the ultimate arbiter: ‘the protection of the constitution in the positive and substantial sense’ must not be ‘sacrificed to the protection of the constitutional provision in the formal and relative sense.’ (Schmitt 2008: 80) Rather, the latter must be made responsive to the demands of the former.

One way of accounting for this constitutional jurisdiction qua political jurisdiction is by way of a kind of zero-sum-relation according to which the liberal constitutional state, in permanently closing the ‘safety-valve’ that the sovereign decision on the exception constitutes, forces the extra-legal powers necessary to maintain political community to find other means of expression. What comes to mind is Schmitt’s assertion of how the liberal insistence on an all-encompassing rule of law cannot suppress sovereignty but rather can only leave the question of sovereign authority ‘unclear’, and how ‘for the inevitable sovereign actions, a method for apocryphal acts of sovereignty develops.’ (Schmitt 2008: 155)

Schmitt’s Eulogy for the Era of European International Law

During the Second World War Schmitt’s thoughts turned from questions of sovereignty and constitutional law to international affairs. This turn to international law has been described in terms of an attempt to justify Nazi-expansionism (Vinx 2010) but also as an interest in the question of the foundations of international law and the international legal order (Rasch 2005). While there may be truth in both of these statements I think Schmitt’s international legal thinking reveal a keen interest in the role of international law for the protection of political community. As we will see, his assessments of historical periods but also a number of substantive issues of international law hinges on precisely this issue.

Schmitt sees the First World War in which US President Wilson had intervened as a watershed. It began as a conventional war among states along the lines of European international law, and ended as a global civil war (Schmitt 2007b: 95). This transformation can be seen in the guilt placed with the German Kaiser after the war for the jus ad bellum ‘crime of war’ as distinct from jus in bello ‘war crimes’. In the logic of European international law the first is an unthinkable
crime because war was at the disposal of sovereign equals; because heads of state did not pursue war personally but by the state as Justus hostis; and, finally, because of the principle of *par in parem non habet jurisdictionem* (Schmitt 2006: 262).

One aspect of Schmitt’s regret about this shift concerns the consequences of substituting equality for hierarchy in inter-state relations. If European international law was fundamentally characterised by an equality that bound (European) states together and bracketed war between them, with the resurgence of hierarchical relations and war as the suppression of illiberal rebellion, the notion of *justus hostis* and a public concept of enmity was in retreat. This in turn implied ‘the intensification of the means of destruction and the disorientation of theaters of war.’ (Schmitt 2006: 321) Instead of the bracketed ‘war-as-duel’ characteristic of European international law, war was put back in pre-Westphalian ‘just war’, or, conceived differently, the entire world is placed beyond the line in the New World. More fundamentally perhaps, Schmitt’s appreciation of the era of European international law (and regret about its demise) is grounded in its sanctioning of the boundary that secures the existential survival of a particular way of life, or, as Esposito would prefer, the immunity it afforded to (European) political community.

Schmitt’s *The Nomos of the Earth* (Schmitt 2006) is first and foremost a eulogy for the international legal order that was established through the peace of Westphalia. Schmitt noted that European international law had clear implications for the protection of political community: It forestalled internecine struggle by means of establishing a domestic jurisdiction in which the political was monopolized. It secured the independence to make the distinction between friend and enemy or to remain neutral in foreign affairs (Hooker 2009: 19).

In this framework the border that is sanctioned by European international law represents the protective boundary that deactivates communal exposure, affording identity, security, or, if we follow Esposito, immunity. In fact, Schmitt borrows explicitly from the biomedical sphere in considering the timeless significance of the border: ‘often in world history, peoples and empires have sought to isolate themselves from the rest of the world and to protect themselves from an infection by a defensive line.’ (Schmitt 2006: 295)

European international law was, as the name suggests, Eurocentric. It was the mutually binding law between European sovereigns and ‘this European core determined the nomos of the rest of the earth’ (Schmitt 2006: 126). This determination of the nomos of the rest of the world proceeded along the lines of a clear distinction between the Old World of Europe and the New World with regard to territorial rights. As has been stressed by Jennifer Beard, in remaining silent about the territorial rights of the peoples of the ‘New World’ and their territories, the peace of Westphalia enabled European legal theorists to carry forward the older claims of the legitimate rule of the Holy Roman Empire and the Catholic Church into new theories sanctioning pan-European land-appropriation, conquest and colonialism (Beard 2010: 18). Schmitt even suggests that the
freedom of European states in the ‘New World’ was indispensable for the order of Central Europe:

the designation of a conflict zone at once freed the area on this side of the line – a sphere of peace and order ruled by European public law – from the immediate threat of those events ‘beyond the line,’ which would not have been the case had there been no such zone. (Schmitt 2006: 97)

Reading these passages in Schmitt’s *The Nomos of the Earth*, Rasch notes that the pacification of Europe is achieved at the expense of the non-European world, against which holy wars – that is, total wars – are directed as a form of release or discharge (Schmitt speaks of Entlastung, ‘unburdening’) of unwanted violence. Europe imports relative peace and prosperity, as it were, by exporting violence (Rasch 2005: 181). Characteristically, Schmitt claims that the proper way to understand this state of affairs is not as an ethical but as a legal problem. He writes that this restriction of law to the land has been

characterized sociologically as ‘landlocked morality.’ In my view, it is simply a matter of the age-old maxim: ‘all law is law only in a particular location.’ … Then the idea of amity lines and of an area designated as free of law easily becomes understandable as an antithesis to law in the Old World, i.e., to an old law in a particular location. (Schmitt 2006: 98)

Gerry Simpson has showed that there is a case to be made for a certain continuity of claims of legalised hegemony in international law, all the way from the demarcation between Christian/non-Christian, subsequently European/non-European to the unequal distribution of equal rights between Great Powers and outlaw states in the present era of formal sovereign equality (Simpson 2004). This is particularly so in debates in which the territorial integrity and political independence of outlaw states is diminished, resulting in highly permissive environments in which great powers may legally intervene (Simpson 2004: 325), what Stuart Elden calls ‘contingent sovereignty’ (Elden 2009).

Although this particular aspect of European international law may still be with us it is not difficult to see that other aspects of this international legal order has changed drastically since. Accordingly, it is difficult to describe states today as unified, impermeable and self-contained, and exceedingly difficult to describe war as a “duel”. However, Schmitt’s writing on international law not only eulogises European international law but also provides a number of important perspectives for thinking about the question of protection of political community in what might be termed a post-Westphalian international legal order.

*The Ban on War and the Self-defence Exception in International Law*

In *The Concept of the Political* Schmitt stated that the 1928 Kellogg-Briand Pact’s ban on war could not and in fact did not prohibit ‘a people which exists in the sphere of the political in case of need … determin[ing] by itself the friend-enemy distinction.’ (Schmitt 2007a: 50) Schmitt continues:
Such a declaration is subject, first of all, to specific reservations which are explicitly or implicitly self-understood as, for example, the reservation regarding the autonomous existence of the state and its self-defense, the reservation regarding existing treaties, the right of a continuing free and independent existence, and so on. Second, these reservations are, according to their logical structure, no mere exceptions to the norm, but altogether give the norm its concrete content. They are not peripheral but essential exceptions; they give the treaty its real content in dubious cases. Third, as long as a sovereign state exists, this state decides for itself, by virtue of its independence, whether or not such a reservation (self-defense, enemy aggression, violation of existing treaties including the Kellogg Pact and so on) is or is not given in the concrete case. (Schmitt 2007a: 50-1)

After the Second World War, the ban on war was articulated in United Nations Charter article 2(4), which proscribed ‘the threat or use of force against the territorial integrity or political independence of any state.’ Applying Schmitt’s analysis of the Kellogg-Briand pact to the international legal order under the UN charter, one would however be forced to recognise the significance of the exception in article 51 or the ‘inherent right of self-defense’. In this way, Samuel Weber has argued that Schmitt’s definition of sovereignty under the UN Charter can be translated as ‘the nation state able to decide what constitutes a threat to its survival and thus a situation of self-defense.’ (Weber 2008: 109)

Armed conflicts in the 20th Century would appear to confirm Oscar Schachter’s critical note that ‘despite the apparent agreement that self-defense is governed by law, the meaning and validity of that proposition remain open to question.’ (Schachter 1989: 259) Despite the steps taken since the days of the League of Nations (particularly the mandate of the United Nations Security Council to assert jurisdiction over questions of international peace and security and a few judgments of the International Court of Justice) much as anticipated by Schmitt, the problem still seems to be one of auto-interpretation or self-judging. Accordingly, a Schmittian conception of sovereignty and primacy of the protection of political community continues to haunt the international law of self-defence. A look at doctrinal debates on Article 51 of the UN Charter and the right to self-defense ‘if an armed attack occurs’ and the substantial disagreement with regard to if this encompasses the protection of nationals abroad, defensive measures against small-scale or ‘imminent’ attacks, military actions against states engaged in ‘indirect aggression’ etcetera, is not reassuring. Neither are disagreements with regard to the relationship between article 51 and the prohibition on the use of force 2(4) and the relationship between article 51 and the customary right of self-defence (See e.g. Ruys 2010).

Greater Space assertions of Political Community and Spaceless Imperialism in International Law

A tendency that caused a strain in the spatial order of European international law: the definition of spheres of interest of a particular state and the resulting ‘space for exceeding the boundaries of the state proper’ in the name of self-defence. (Schmitt 2006: 281) The prime example that Schmitt refers to with
regard to such a claim for *Großraum* – literally ‘great space’ but perhaps more appropriately ‘sphere of influence’ or ‘geopolitical space’ (Elden 2011: 93) – is the American Monroe doctrine, articulated in an address by President Monroe in 1823. Schmitt claims that it contains ‘three simple thoughts’: ‘independence of states in the Americas; non-colonization in this space; non-interference of extra-American powers in this space, coupled with non-interference of America in non-American space.’ (Schmitt 2011b: 46) Hence, as it was originally conceived, the Monroe doctrine was a specifically Western-hemispheric and purely defensive form of regionalism, defensive, that is, in relation to European nations, because from the right to exclude other powers from the Western hemisphere followed the right of the US to intervene militarily within that territory (Vagts 2001: 846).

Schmitt embraces the original Monroe doctrine as a greater-space assertion of political community and at the beginning of World War II he argues for the appropriateness of its application in relation to the *German Reich* and ‘the East European space’, which he referred to as a *völkischer Großraum* (Schmitt 2011a: 99). This was corroborated by a self-incriminating reference to the declaration by Adolf Hitler in the German parliament on February 20, 1938 that there ‘existed a German right of protection for German national groups of foreign state citizenship, all on the foundation of our National Socialist national idea.’ The ‘völkischness’ of this Großraum is corroborated through an equally self-incriminating racist argument about the ‘political idea for the Central and East European space in which there live many nations and national groups that are, however, not – apart from the Jews – racially alien from one another’ (Schmitt 2011a: 99).

The original idea of the Monroe Doctrine would be turned into something very different in the hands of US Presidents Theodor Roosevelt and Woodrow Wilson. Schmitt writes that Wilson’s announcement in 1917 of what subsequently would become known as Wilsonianism had the meaning of applying the Monroe Doctrine to the entire world: ‘In this way he sought a justification for his massive interference in non-European areas completely foreign to him and in military conflicts between the European powers’ (Schmitt 2011b: 47). This transformation of the Monroe Doctrine was made possible ‘by the fact that Wilson substituted for the original and true Monroe Principle the ideological idea of liberal democracy and its associated images, especially those of “free” world trade and [a] “free” world market’ (Schmitt 2011b: 48).

Schmitt’s embrace of the original Monroe Doctrine and his contempt for its Wilsonian universalization can be understood in terms of his commitment to political community. While the original Monroe doctrine can be understood as a greater-space assertion of political community, Wilsonianism represents the detachment of the friend and enemy distinction from any concrete form of political existence and its application along the lines of abstract liberal values or the world economy – it replaces a greater-space assertion of political community with spaceless imperialism. Because of the primacy of political community in Schmitt’s thinking he embraced the former, but thought the latter reprehensible.
Both these forms of imperialism remain crucial tendencies in the international politics of today.

The 2014 crisis and subsequent Russian military intervention in Ukraine may be taken as a reminder of the political currency of Großraum-thinking properly speaking. In the English translation of Schmitt's Nomos, G.L. Ulmen notes that the term Großraum gained currency after the First World War when the isolation of specific forms of energy such as electricity and gas were overcome organizationally in a Großraumwirtschaft or great-space economy (Ulmen 2003: 23). This tendency has of course only been further accentuated since. The huge dependency of Ukraine on Russian gas and Russia's use of the price of gas for political leverage in its attempt to stave off Ukrainian closer cooperation with the EU and NATO is a reminder that 'it was no accident that Großraum thinking had appeared first in economics, and that the underlying principle might be applicable to a new order of international law since the economy had become political.' (Ulmen 2003: 23) It seems to be an increasingly common opinion that a Russian relationship to the post-Soviet space in general and Ukraine in particular is determined by thinking in terms of a sphere of influence or, in other words, Großraum. The name ‘Ukraine’ in itself, from the Slavic Krajikrajin meaning ‘borderland’, captures this country’s liminal status between EU and NATO on the one hand and Russia on the other (on Ukraine as geopolitical borderland, see Tunander 1997: 20).

Michael Hardt and Antonio Negri’s argument in Empire may be used in considering the further development of what Schmitt saw as the perversion of Großraum-thinking into spaceless imperialism. They argue that in the waning years and wake of the cold war ‘the responsibility of exercising an international police power “fell” squarely on the shoulders of the United States’ (Hardt and Negri 2000: 180). Further, the first Gulf War was the first time the US could exercise this power in its full form but Haiti, Somalia and Bosnia also presented the United States as ‘the only power able to manage international justice, not as a function of its own national motives but in the name of global right.’ (Hardt and Negri 2000: 180) All of these examples of the exercise of an international police power were sanctioned by the UN Security Council which shows that legitimization of this order is not merely based on the effectiveness of sanction and the military might to impose it but through the ‘production of international juridical norms that raise up the power of the hegemonic actor in a durable and legal way’ (Hardt and Negri 2000: 180).

The Tellurian and the Dislocated Partisan in International Law

As we will see, a similar distinction between the protection of political community in a concrete sense and the fight for an abstract cause is at work in Schmitt’s embrace of the tellurian partisan, and his rejection of the displaced or globalised Partisan. We will also find in these considerations important insights about the legal asymmetry that international law maintains between the state and its non-state enemies; an asymmetry that we are reminded of in the current war against terrorism.
Theory of the Partisan from 1963 certainly has been read as a rather limited in scope genealogy of irregular warfare. However, it can also be read as a re-articulation of the concept of the political in the face of the on-going disintegration of European international law. The key to such a reading is found in the subtitle Intermediate Commentary on the Concept of the Political. The subtitle is explained in the foreword as being related to the simultaneous re-issue of Schmitt's Concept of the Political. Schmitt refers to the theory of the Partisan as ‘independent’ in relation to the concept of the political, but also stresses how it ‘unavoidably flows into the problem of the distinction between friend and enemy’ and thus into the question of political community (Schmitt 2007b: Unpaginated foreword).

The Partisan is defined by the criteria of: 1) irregularity 2) mobility and agility 3) intense political commitment and 4) tellurian character or deep-rooted attachment to a particular land and space (Slomp 2009: 66). The figure of the Partisan at the same time challenges and restores the political. Slomp explains that:

> when the state is no longer able to protect, then the partisan emerges: partisan insurgence and partisan groups are, for Schmitt, the symptoms of a ‘weak’ state: the stronger the political bond of an individual to a group or party, the weaker the state. By choosing their own enemy, partisan groups both challenge the legitimacy of the state and claim legitimacy for themselves. (Slomp 2009: 66)

One could be forgiven for assuming that the Partisan’s conviction concerning the justness of her cause would make Schmitt contemptuous towards her because ‘it was the absolute commitment to a just cause which he [Schmitt] railed against in The Nomos’, because of its devastating effects on the bracketed, public wars of European international law (Slomp 2009: 66). However, here, the tellurian element enters and with it an important distinction between different forms of partisanship is introduced (see further de Ville 2015). The tellurian character of the Partisan assures her defensiveness and ‘guard[s] it against the absolute claim of an abstract justice.’ (Schmitt 2007b: 20) While the tellurian Partisan certainly poses a challenge to any given state authority, as long as the defensiveness that the tellurian character guarantees is retained and Partisan warfare takes place in the demarcated domains of the Westphalian state system, it is still wielded in protection of political community.

Schmitt considers another form of Partisan: the one that has lost the defensiveness guaranteed by the tellurian character, or, in other words, the dislocated or global Partisan. This was a development driven by ideologies of world revolution as much as by technological developments. In relation to the former, Schmitt in the early 1960s clearly has Communist world revolution in mind, invoking the writings of Ernesto ‘Che’ Guevara, among others. In relation to technological developments, Schmitt refers to ‘motorization’ but also modern weaponry. The dislocation of the partisan makes her something of a non-state equivalent of American imperialism. What unites the two is that both wage a just war against an absolute enemy with little or no regard for political community.
In his considerations of the distinctly tellurian Spanish civil war, Schmitt quotes a French commandant as saying you have to fight like a partisan wherever there are partisans, evoking the vicious circle of terror and counter-terror of partisan warfare (Schmitt 2007b: 20). Could this expression be adapted in order to capture how the dislocated Partisan and the state that it challenges might become entangled in ever-widening circles of terror and counter-terror such as we have seen with the dislocated form of partisanship that Schmitt analyzed all the way to the present and the allegedly new kind of transnational terrorism of al-Qaeda (Schmitt 2007b: 13)?

The legal relationship between the state and the Partisan is the legal hierarchy of civil war, articulated in Common article 3 of the 1949 Geneva Conventions. Ralph suggests that: ‘the intense political commitment of the partisan sets him apart from the common criminal but his actions are still unlawful.’ (Ralph 2010: 289) One feature in particular of the kind of warfare that takes place between the state and its irregular enemy is this ability of the state to invoke its monopoly on legitimate force. The sovereign state is able to adopt the simple and clear position that the law is on its side. This is for instance the stance taken by the Israeli state in the distinctly tellurian Israeli-Palestinian conflict. It is also the position taken by the US in its distinctly less tellurian conflict with al-Qaeda. This shows how the notion of post-Westphalian international law does not imply an age where nation-state sovereignty is finished or irrelevant (Brown 2010: 21). One aspect that relentlessly conditions the current war on terrorism in Israel, the US and elsewhere is the legal asymmetry that international law maintains between the state and its non-state enemy. This is so even though the lawfulness of the measures taken by the state is often called into question. For, as Schmitt maintains,

even the legality that is challenged in the modern state is stronger than any other type of right. That is a manifestation of the decisionistic power of the state and its transformation of right into law ... legality is the irresistible functional mode of every modern state army. (Schmitt 2007b: 84)

The increasingly lethal nature of counterterrorism serves as a reminder of how the legality of which Schmitt speaks is able to transform ‘the irregularity of the partisan into a deadly illegality.’ (Schmitt 2007b: 84)

_Carl Schmitt and The Force of Political Community in International Law_

This has been an attempt to highlight the imperative role of political community in Schmitt’s international legal thinking. Political community has this imperative role in Schmitt’s eulogy of the era of European international law for its shielding of (European) political community. The same is true for Schmitt’s account of the disintegration of European international law and his dismissal of early 20th century attempts to ban war as a sham that unavoidably would be determined by the self-defence exception. Further, Schmitt’s embrace of Großraum, or greater-space assertion of political community, along with his rejection of the spaceless imperialism of American Wilsonianism, can be read along the lines of a defense of political community. The same applies to Schmitt’s positive evaluation of the
tellurian partisan and his dismissal of the dislocated partisan who has drifted away from deciding on the enemy in a concrete defense of political community. In all of these examples we can see how Schmitt makes the protection of political community the ultimate arbiter – legally, politically and ethically speaking.

It is important to see that Schmitt's thinking here is not the unopposable realism that he would like us to believe. Instead Schmitt's international legal thinking builds on and privileges a conception of political community that we have good reasons to resist. At the same time we are reminded of the continued importance of the question of the protection of political community in international affairs by arguments about the inherent right to self-defence, when greater-space assertions of political community serves as reason for military intervention or when the irregularity of the present-day partisan is turned into deadly illegality in a drone attack. Even though Schmitt's insistence on political community may come across as parochial in present times of globalization, increasing traction of various universalisms and the liberal rule of law, we have not by any means overcome the force of political community in international law.
Bibliography


Brännström, L. (2015) PRESENT VOLUME


De Ville, J. 2015 PRESENT VOLUME


Vinx, L. (2015) *PRESENT VOLUME*