



**Centre for Contemporary
Middle East Studies
University of
Southern Denmark**

Working Paper No. 3
August 2005

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In the Name of Freedom

The War on Terror as the Return of Just War

[U.S. Security Policy as an Area Study: Conceptual History
and the Study of U.S. Security Policy after the Cold War]

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Spreading liberty for the sake of peace is the cause of all mankind. This approach not only reduces a danger to free peoples; it honors the dignity of all peoples, by placing human rights and human freedom at the center of our agenda.

George W. Bush, February 21, 2005, in Brussels

Introduction

From a historical perspective the 20th century is a unique period, because the international community went to great lengths to ban war.¹ This ban must be viewed in the light of two world wars. Due to the encouragement of the Americans, the peace settlements of the First World War led to the formation of the League of Nations, the clear purpose of which was to end war, and the Kellogg-Briand Pact of 1928 which denounced war. These efforts failed, and rather than world peace the Second World War broke out, the end of which led to new attempts, through the UN, at limiting war by banning wars of aggression as well as formulating a set of international rules stipulating the *exceptional* circumstances under which war can be legitimized through the mandate of the Security Council. The UN mandate which was given to a “coalition of the willing” after the Iraqi invasion of Kuwait in 1990 for the purpose of using military force to expel Iraq from Kuwait constitutes an example of this.

The UN Charter was based on the notion of the sovereignty of states and of the international community as a *system of states*. The history of Europe from the Peace of Westphalia to the First World War constituted the background for the development of the concept of the state. Yet it was not this classic state which served to stabilize the international balance during the Cold War, but rather the relationship between two very different federations of states, namely the Soviet Union and the United States of America. Both unions were established, plainly and explicitly, in opposition to and in rejection of the classic European state system. In opposition to the latter, which in matters of international relations prioritized law over values and consequently remained neutral with respect to the fundamental values of other states, the export of values was constitutive for the Soviet Union, as it was and remains today for the United States. The security of each of these

¹ This paper is written to the First Global International Studies Conference in Istanbul at Bilgi University, 24 – 27 August 2005 Organized by World International Studies Committee and given as a guest lecture at College of Arts and Sciences, Qatar University, March 26, 2005. I would like to thank Lea Pedersen for her diligent work and help with the translation of the paper.

federations was perceived to be guaranteed by the maintenance of similar fundamental values in nearby states. The object for the Soviet Union was the creation of buffer zones consisting of communist states, whereas the US endeavored to bind together the North American continent in a union or alliance of liberal states, and, to the greatest possible extent, to support the development of liberal states in South America. In this manner, the two states which dominated the 20th century were characterized by the way in which their national security policies, and with these their understandings of international politics, combined territorial issues with issues of fundamental values. It is this constitutive correlation of fundamental values and territory which we define as *Order*. The establishment of an order presupposes its ability to define itself in opposition to that which it is *not*; that which could be termed *the Other*. The Christian monoculture of the Middle Ages, which in this article we call the Catholic Order, was based on the opposition between the Christian and the non-Christian world, while the European Order from 1648 to the First World War was determined by the opposition between European civilization, characterized by well-defined geographical boundaries, and anything not European, which was considered to exist in a permanent state of exemption.² It was possible to maintain this order because the states of which it consisted, namely the European states, as far as international relations were concerned did not consider fundamental values and territory to be related issues. This was a necessity for the bringing to an end, by means of the Peace of Westphalia, the great wars of religion which ravaged Europe after the collapse of the Catholic Order. International law aimed solely at regulating the relationship between states *within* the European Order; it possessed no validity beyond Europe, no authority over the *Other*.

Nevertheless, this state of law is universalized with the UN Charter. Meanwhile the two dominant states, the Soviet Union and the United States, maintain their own understanding of national security according to which fundamental values and territory are interdependent. This situation gives rise to a number of issues: If it is the case that order consists of a constitutive correlation between fundamental values and territory the UN system cannot be said to constitute an order, let alone a world order. Regime change by means of wars of aggressions certainly is not permissible according to the UN system, which means that the propagation of fundamental values does not constitute a legitimate reason to wage war. Yet the Soviet Union reserved this right and under George W. Bush the United States has turned it into a national security strategy. This in and of itself means that the US cannot be considered a classic European state. Rather, it must be

² Schmitt uses sometimes the Hobbesian phrase state of nature (Schmitt 2003, pp93), but this should be reserved to the Atlantic beyond the line from the time of discovery to the American Revolution.

considered to be analogous to the Christian empire of the Middle Ages, only holding the global ambition of making the world safe for democracy, which accurately characterizes that which we term the American Order. This entails that the analysis and interpretation of the role of the United States of America in international politics must be carried out on the basis of a historical study of the establishment of American national security policies dating back to the formation of the Union at the end of the 18th and the beginning of the 19th century. Furthermore, certain questions become pertinent: What, in universal and global terms, constitutes the American Order? If the propagation of the American Order is being carried out in the name of humanity, which status can be ascribed to the opponents of this order: are they monsters rather than human beings? This article addresses these issues through a discussion of the consequences of the globalization of the American Order. We are well aware that by analyzing a concept such as the American Order we risk presenting the foreign and national security policies of the United States as an unambiguous unity in respect to which a consensus exists within American society. This is of course not the case. On the one hand we firmly believe that the joining of territory and fundamental values as interdependent issues is a constitutive characteristic of American national security policy which stands in opposition to the European tradition, and, on the other hand, that the interpretation of its potential strategic and geographical or geopolitical consequences has been and still remains the object of heated discussion within the American political community.³ In our attempt to clarify the issues at hand, in this article we have chosen not to include these important differences and their attendant arguments.

The World Must Be Made Safe for Democracy

The war in Iraq in 2003 most significantly constituted a manifest indication of the fact that *the European Order*, which characterized international politics from the time of the Peace of Westphalia in 1648 until the First World War, had long been a thing of the past. The most notable incident marking the end of the European Order was the speech given by the American president Woodrow Wilson on April 2, 1917, in which he, based upon the following reasoning, declared war on Germany, thereby entering the United States of America into the World War: “Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth ensure the observance of those principles. ... We are at the beginning of an age in which it will be insisted that the same standards of conduct

³ cf. Kissinger (1994) chapter 2: “The Hinge: Theodore Roosevelt or Woodrow Wilson”; Andersen & Aagaard (2005) chapter 1: “In the name of Civilization – U.S. Middle East Policy from Reagan to W”

and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states. ... The world must be made safe for democracy.”⁴

The policy of the balancing of power, which since the ravages of the religious wars had controlled the wars in Europe, with the Peace of Westphalia and which, in a different form, was later confirmed at the Congress of Vienna 1814-15, irrevocably passed into history with the advent of the US into the European theatre, which constituted the beginning of the realization of *the American Order* as personified by Wilson’s very presence at the peace negotiations after the World War. As a result, the international political agenda was no longer determined by the effort to secure a balance between sovereign states, whether the states in question were the dynastic principalities of the period stretching from 1648 to the French Revolution, or the nation states of the period stretching from the Napoleonic Wars through to the First World War. This balance was sought through a system of treaties, in accordance with which the legitimate territorial claims of the states were guaranteed by an international legal system: under the European Order, the legitimacy of the sovereign states was secured through international legality. In international relations legality *was* legitimacy, neither more nor less. When the New World, with Wilson, returned to old Europe, it brought with it a new agenda, according to which legitimacy was to be based on the securing of the liberal opportunities of the free individual to pursue his happiness in a democratic society, a society subjected to the dynamics of unregulated economic market mechanisms. This vision of course echoes the opening lines of the American Declaration of Independence from 1776: “We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.”⁵ And the echo sounded again when the recently re-elected American president in February of 2005 went to old Europe with the purpose of persuading those European governments, which mentally and politically had either not yet grasped or accepted the significance of Wilson’s visit to Europe at the beginning of the previous century, to join the American Order by committing themselves to the rebuilding of Iraq as a democratic republic after the war in 2003.

The fact that, at the opening of the 21st century, certain European governments still remained which had not understood or accepted that the entry of the US into the First World War

⁴ Wilson (1983) pp. 23-25. The author wishes to express his gratitude to Professor Niels Bjerre-Poulsen, Copenhagen Business School, and Professor Ole Wæver, University of Copenhagen, for their insightful commentaries which, though they have not fully been worked into the present article, we will nonetheless keep in mind.

⁵ Nash, Jeffrey et al. (2003), p. 964

also constituted the dismantling of the European Order, might well be connected with the way in which the event was obscured, partly by the establishment of the League of Nations, followed by the UN, and the fact that the Cold War period was characterized by the semblance of an order though it actually was not one – because there was not a clear correlation between values and territory. That the League of Nations of the interwar years did not contribute to the establishment of a new order is borne out by several factors. Not only did the United States never join the League of Nations, and the Soviet Union take several years before joining. But, more significantly, the territorial borders of the day, with the exception of the Danish-German one in the South of Jutland and Åland, were by no means in accordance with the proud intentions and idealistic principles prescribed by Wilson's famous Fourteen Points. Rather, they merely reflected the power interests of the victorious yet faltering Great Powers of Europe. This is confirmed especially by the drawing of the borders in the new region of the Middle East, where neither ethnic nor religious conditions were taken into consideration. What was considered was solely the distribution of economic and political interests between England and France in particular and, to a lesser degree Italy. This led to what some have referred to as an artificial state system under which individual states are subject to the pressure of both the demands of the international community and of heterogeneous populations whose loyalties lie with transnational developments (pan-Arabism, Islamism, ethnicity, etc.) rather than with the state which they, more or less incidentally, inhabit.⁶

Neither did the UN system establish a new world order, rather it, too, reflected the constellation of the power interests of the victorious Great Powers through the universalizing, codifying and refinement of the principles of the system of power balance which were dominant under the European Order. Despite having worked reasonably well for 350 years, this system had revealed its shortcomings exactly by *not* being able to prevent the outbreak of the First World War. The UN had likely not been established if not for the fact that the US, at the end of the Second World War, lacked a better solution to the problem of handling the Stalinist Soviet Union, which, with its idealistic adherence to the world view of communist ideology presented an increasing threat to the American Order.⁷ Though some like to refer to the Cold War as a bipolar world order, as will we for practical purposes, it may be useful to point out that, in fact, no territorial – or spatial – order, based on mutually recognized borders, existed. Rather the state of affairs consisted of two rivaling global Great Powers, who agreed on the rejection of legality in the form of international law as the most significant bearer of legitimacy, as had been the case under the European Order.

⁶ Hinnebusch (2003)

⁷ Gaddis (2004), pp. 51ff

They chose to engage in a competition to create a basis for legitimacy in two fundamentally different, ideologically founded world views; Soviet communism against liberal humanism, to the extent that this latter term can be said to correctly characterize the American Order. This competition was characterized by a so-called balance of terror, emphatically not by being an order, which was made abundantly clear by the ending of the Cold War, in part by the extensive recaulking of the global geography which immediately followed and in part by the continuing demands for a thorough revision of the UN system, based on the claim that it is obsolete – which it has actually always been.

The ending of the Cold War decisively showed that no order had been in place since the First World War. Yet it also signaled the effort on the part of the US to resume Wilson's plan to implement an American Order based on the ideas of liberal humanism. Wilson had been forced to give up on this plan because the United States in 1920 did not yet consider itself a global power, but, rather, a continental one which was safe from all threats. The attack on Pearl Harbor in 1941 and the final relinquishing by the US of its neutrality with regard to global politics entirely changed this perception, and from then on it was obvious that the safety of America had to be considered in global terms.⁸ Yet only with the dissolution of the Soviet Union did the US achieve the freedom necessary to realize its goal of universalizing the American Order: The answer to the dismantling of the Soviet Union was swift, taking the form of George Bush's announcement of the New World Order on September 11, 1990. This is the order which, at least in the American view, must replace the European Order and make up for that absence of a world order which had characterized the period from the First World War through 1989.

Though George H. W. Bush was the one to proclaim the New World Order, both he and his National Security Advisors were entirely grounded in the way national security was construed during the Cold War period. Therefore the policies which were in fact pursued were not fundamentally aligned with the ambition to bring about the American Order. The handling of the conflict with Iraq in 1990-91 was exemplary, in the sense that it was not motivated by a wish to change the immediate conditions in the Persian Gulf region but was merely an attempt to restore the status quo from before the Iraqi invasion of Kuwait in 1990.⁹ As soon as Iraq had been expelled from Kuwait, the focus of Bush and the chairman of the Joint Chiefs of Staff Colin Powell became the effort to “bring the boys home before the 4th of July”, leaving everything the way it had been

⁸ Gaddis (2004), pp. 58ff

⁹ George Bush & Brent Scowcroft (1998), pp. 369f

before Saddam Hussein had sent his troops into Kuwait.¹⁰ There *was* some talk on the subject of the need for the initiation of reform processes in Kuwait and Saudi Arabia, but apart from a few drops of democratic perfume in the form of an irrelevant advisory council within the Saudi kingdom nothing in fact happened. Though the Middle Eastern peace process, which was initiated in Madrid in November of 1991, must be considered to be one derivative effect of the Gulf conflict, in the Gulf region itself nothing had changed – which was exactly the desired outcome of the “liberation of Kuwait”. Characteristically, the most adamant opponents of the war against Iraq in 2003 were former members of Bush’s staff and belonged to the same moderate grouping within the Republican Party. It is equally characteristic that this exact group of formerly very influential politicians within Washington’s national security establishment increasingly find themselves being relegated to the role of spectators with regard to the decision-making processes and discussions inside the beltway, at best being given the opportunity to communicate their findings and interpretations as political commentators working with the major news media. Disconcerting as it may be, and however it may cause some to long for the good old days during the Cold War when the identity of the enemy was a given, the hard truth remains that they represent a dying breed within American politics - perhaps this is exactly the reason why they, at the beginning of the new millennium, are awarded abundant amounts of sympathy and respect, which they certainly did not consistently enjoy while their actual Cold War policies were being criticized by liberal European analysts.

Clinton and his aides had a much better understanding of the possibilities of resuming Wilson’s project. This was obvious in the national security strategy of the Clinton administration, which clearly aspired to supporting and securing the development of liberal democracies as part of the new world order, in terms which were reminiscent of the metaphysical ruminations of Francis Fukuyama regarding *The End of History*.¹¹ But despite the fact that Clinton on several occasions obstructed the UN system, notably on the question of Israeli settlements in Palestine, and circumvented the UN in connection with several military operations and strikes, as for instance in Iraq in 1996 and 1998, in Sudan and Afghanistan likewise in 1998, and in Kosovo in 1999, he remained hesitant as far as unilaterally realizing the American Order was concerned. Again the Persian Gulf region serves as an example; Clinton on the one hand subjected Iran to heavy sanctions, but neglected to be consistent in following through on these punitive measures as he allowed it to be surmised that the sanctions which, according to the 1996 Iran-Libya Act,¹² could be

¹⁰ Graham-Brown (1999), p. 26

¹¹ Fukuyama (1989)

¹² Katzman (1999), pp. 46ff

enforced on countries investing more than \$40 US dollars in Iran, would in fact not be implemented – which they might actually have been when French companies decided to invest heavily in the Iranian oil industry. Had the US subjected France to sanctions on the basis of economic interests in the Islamic Republic held by French companies, one can easily imagine the result being a trans-Atlantic crisis similar to that which resulted from the war in Iraq in 2003. Clinton also hesitated on the question of Iraq: when the United States, supported by Great Britain, in 1998 carried out a military attack on Iraq, the bombings were halted after four days though no objectives seemed to have been achieved, other than the punishing of Saddam Hussein for his failure to cooperate with UN weapons inspectors. At this point, Clinton would have received a great deal more support from the international community had he decided to “proceed all the way to Baghdad” than George W. Bush was able to muster in 2003, but he chose not to do so and instead relied on the UN process, despite the fact that it was quite clear at the time that it held no prospect of success.¹³ Yet in the light of the trans-Atlantic crisis following the war in Iraq in 2003, it is worth noting that already during the presidency of Bill Clinton, who otherwise enjoyed great popularity in Europe, the US was being criticized for acting unilaterally within the sphere of international politics. One might say that Clinton was torn between the national security thinking of the Cold War period and the steadily more convincing idea of a new American world order based on principles of liberal humanism.

It is our claim that the George W. Bush administration followed through on making what George H. W. Bush had named the New World Order, which we choose to call the American Order, an overriding strategic goal of national security policy.¹⁴ This only came to pass, though, after the terrorist attacks on New York and Washington on September 11, 2001, and while these events immediately resulted in dramatic policy changes, the new policy was first formulated in the speech given by George W. Bush to an audience of cadets at West Point on June 1, 2002, and developed into an actual strategic concept in the national security strategy of the Bush administration, which was presented to Congress on September 15, 2002. Until September 11, 2001, the national security policy of the new Bush administration had not yet been formulated, but there was a sense of a return to the politics of the balancing of power of the Cold War period, only now with China emerging as the replacement for the late Soviet Union in a new bipolar world order. Through the construction of an advanced missile defense, the US would prepare for a new, future balance with China constituting the opposite pole, while the humanitarian interventions initiated during the Clinton administration were to be scaled back or, at best, discontinued. Interestingly,

¹³ Pollack (2002), pp. 94ff

¹⁴ Daalder & Lindsey (2003)

when the two presidential candidates, Al Gore and George W. Bush, faced each other in the second televised debate in October of 2000, Bush opposed Gore by consistently arguing that it was not the job of the US to involve itself in nation-building projects around the world: the immediate need was for Americans to concentrate on their own society, and leave the rest of the world alone as long as no imminent threat existed. As for the future, the US was to prepare itself for the challenge presented by the emerging Chinese superpower. This was also the content of the speech on the policies of the new administration which National Security Advisor Condoleezza Rice was supposed to give on September 11 2001, a speech which for obvious reasons she never gave.¹⁵ In April 2004, at a congressional hearing held by the 9/11 Commission which investigated the circumstances surrounding the terrorist attacks, she instead got the opportunity to explain that the attacks yielded the administration's new organizational principle in the form of the national security strategy, which included the reorganization of the intelligence agencies: "And just as World War II led to a fundamental reorganization of our national defense structure, so has September 11th made possible sweeping changes in the ways we protect our homeland"¹⁶. After September 11 the American security strategy came to be based on three underlying principles, namely *unilateralism*, *preemptive strikes*, and *the propagation of freedom and democracy*. *Unilateralism* of course does not mean, that the US consistently has to refuse to participate in alliances, coalitions or the UN, but that the US must and will carry out initiatives, including military operations, which are considered vital to national security, regardless of whether international support for these can be achieved or not. *Preemptive strikes* means that threats against American security must be eliminated before they materialize in the shape of attacks on American interests, attacks like the ones that took place on September 11. *The propagation of freedom and democracy* is a concept implicitly based on the theory of the German philosopher Immanuel Kant that democracies do not make war on each other, and therefore international law must be based on a "federation of free states."¹⁷ This also means, however, that not only do states which are not free constitute a threat against the free states, but also that the free states, in the name of freedom, can be *impelled* to wage war on those states which are not free. The propagation of freedom, potentially through war, is, according to this way of thinking, the best method for securing strategic safety. The kind of freedom which is aimed at, as seen from an American perspective, is of course the civic rights of the individual as described in the US

¹⁵ "Rice Speech for 9/11 Cited Need for Missile Defense"; "Excerpts From Rice's Speeches", *The Washington Post*, April 1, 2004

¹⁶ Strasser (2004), p. 216

¹⁷ Kant (1995)

Constitution, and which are best secured within a republican state based on a democratic constitution and a liberal market economy. The philosophical and ideological basis for the American Order, which here describes the intent of the American national security strategy as it was formulated by the Bush administration in September 2002, is, in other words, liberal and humanistic: American national security and the global freedom of mankind are in fact two sides of the same coin. Our second claim, then, is that as the philosophical basis for the neoconservative vision of a new world order, the American Order, is liberal and humanistic, it does not differ significantly from the visions that have been formulated by liberal thinkers such as Jürgen Habermas, Jacques Derrida and, in the United States, Richard Rorty¹⁸ or, for that matter, by American Democratic politicians like Senator John Kerry and former President Bill Clinton. The differences which certainly do exist mainly concern the matter of *how and by what means* the American Order should be established as the new world order. We suggest that the American liberal tradition, rooted in the intellectual communities of the East Coast, which supplies the theoretical inspiration for Democratic policymakers' understanding of international politics, has much more in common with the neoconservative vision of a new world order which is based in the American South, than with the containment policies of the Cold War, the political base of which is to be found in the moderate parts of the Republican Party and which theoretically are founded on the tradition of the European Order's concept of the just enemy.

Developing further the perspectives raised in the above, we will firstly argue that the neoconservative vision of a new world order is solidly based in the American tradition and in the ideas which guided the establishment of American national security policy by the Founding Fathers and their successors, in the period following the formation of the American union at the beginning of the 19th century, reformulated, however, to reflect a *global* context. Secondly, we argue that this order reintroduces the concept of *just war* as a guiding philosophical principle in the development of national security policy, in humanistic terms, however, rather than the religious terms of the Catholic Order, which here refers to the Christian monoculture of the Middle Ages. Thirdly, we argue that the concept of just war was absent from the European Order during the period from the Peace of Westphalia to the outbreak of the First World War, during which time it was replaced with the concept of the *just enemy*. Fourthly, we furthermore argue that the implementation of the *boundary* – or the dividing line – was crucial and constitutive for the maintenance of the Catholic as well as the European Order, and that it will be of equal importance to the establishment of the

¹⁸ Derrida (1995); Rorty (1995)

American Order. Under the Catholic Order, the boundary marked the difference between Christians and non-Christians, and, under the European Order, between the European space and the lawless state of exemption outside of it. These conceptions made it possible to uphold the prevailing order, whereas under the American Order it is the dividing line between humanity and that which by definition is inhuman that constitutes the new world order. While the two previous types of boundaries arranged the world into geographic and regional compartments and, as such, were concrete, the dividing line between the human and the inhuman is purely conceptual. This, on the one hand, means that the world becomes one large, global space as seen from the perspective of the world order, while on the other hand it means that wars between the carrier of this order, the US, and those identified as enemies of the American Order by definition will be global civil wars. *We suggest, then, that the war on terror is in fact a global civil war.*¹⁹ Because the war on terror is conducted in the name of humanity it cannot be delimited or controlled, because this would presuppose the possibility of clearly identifying the boundary between the human and the inhuman within humanity itself. The establishment of a world order which relies on an ethical interpretation of humanity embodied in the concept of human liberty is, then, dependent upon the ability to delimit the inhumane – often referred to as *evil* – within humanity itself. The dividing line between those who are a part of the free world and those who are its enemies, cannot, in the terms of a world order, be identified along the lines of a physical, spatial, territorial or geographic separation between friend and foe, but depends on an ethical understanding of the opposition between the good and the evil, according to which the evil by definition stand outside of the human order. This implies that they are enemies who do not possess *the rights* to which the free individual is entitled, exactly because they are dehumanized. Interestingly, the dehumanization of the enemy is central, too, to the way in which the Islamic Jihad movements legitimize mass murder, such as that which took place on September 11, 2001. The true world of the Islamists and the free world of the American Order are thus, each in its own way, based on a dehumanized zone, a permanent state of exemption or “state of nature” which is not spatially and territorially defined, but solely possesses a conceptual reality in the human world. The universalizing of freedom, whether it is carried out in the name of religion or in the name of humanism, thus constitutes the unending generation of the dehumanized enemy as the boundary which enables that vision of the free world we choose to call the American Order. This issue, which might be called the aporia of humanism, constitutes the most serious challenge to the American Order, because it threatens to undermine from within the very

¹⁹ cf. Rasch (2003)

freedom which this order endeavors to secure. The cruel reality of Guantanamo and Abu Ghraib symbolize this basic aporia of the humanist vision of a world order based on a “federation of free states.” Whereas the breakdown of the Catholic Order throughout the Reformation and the Renaissance led to the European wars of religion, which were brought to an end only with the adoption of the *Cuius regio, eius religio*²⁰ principle (meaning that he who possesses the temporal control of a region also determines the official religion of the area) at the Peace of Augsburg in 1555, the breakdown of the European Order led to what some have called wars of civilization, which are now waged under the designation the War on Terror. The basic question left unanswered is this: which principle can be adopted, within the context of a liberal, humanistic world order, to ensure that the War on Terror does not develop into an endless global civil war, which risks undermining the very freedom which constitutes the proud and noble purpose of the war?

The Concept of Order in International Politics. A Grotian Perspective

Since George H. W. Bush gave his famous speech on September 11 1990, the world order concept has been taken on prominence in discussions on international politics. The deluge of books and articles on the subject of the new world order, especially as considered in an American context, is endless. In contrast, before as well as after Bush’s speech, surprisingly few studies have been presented which systematically examine the changing meanings of the concept through history, going back to the time of the first theories on international order, or which interpret the changes in international relations throughout world history from a world order perspective. The groundbreaking work *The Anarchial Society. A Study Of Order in World Politics* from 1977 by Australian historian and political scientist Hedley Bull still stands out as a pioneering work and a standard reference in the effort to interpret the meaning of order in international politics. Bull’s original contribution to the study of international relations is simply this: that such a thing as an international order exists, which both transcends and encompasses more than a system of states. Thus relations between states are not controlled solely by the relative strength of nations measured in terms of military strength and resources, such as the realistic theory of the Hobbesian tradition teaches us, but also by values, norms and rules which combine to control a *community of states* with common interests. It is this political community which with its institutions, laws, agreements and treaties constitutes an international community which amounts to something of much higher significance than a mere mechanical system or structure, namely an order which has been created,

²⁰ Jespersen (1992), pp. 124ff

and therefore can be altered, by history. Through the perspective offered by Bull, the respective significance of rules and norms, values and international laws, institutions and diplomacy becomes an important area of study for the interpretation of wars, because wars not only reflect struggles for dominance within a system of power balance but also serve to maintain, dismantle or establish a particular order. This order, in the context of an international community, aims at securing three elementary goals or basic values which Bull designate as being constitutive for any community: life, truth, and property. In the introduction to his book, Bull accordingly defines order by referring to these three, basic values: "First, all societies seek to ensure that life will be in some measure secure against violence resulting in death or bodily harm. Second, all societies seek to ensure that promises, once made, will be kept, or that agreement, once undertaken, will be carried out. Third all societies pursue the goal of ensuring that the possession of things will remain stable to some degree, and will not be subject to challenges that are constant and without limit. *By order in social life I mean a pattern of human activity that sustains elementary, primary or universal goals of social life such as these*"²¹ (italics added). What is of interest to us is that, as an elaboration on Bull's concept, order can be considered a political commonality (of understanding), which is established between individuals, groups, communities and states for the purpose of securing some fundamental human necessities: The need to avoid random violence, the need for the contracts we enter into with each other and the law which regulates the community to be upheld and respected, and the need to prevent that the land which we inhabit, cultivate and develop can be suddenly taken away from us.

In this sense, the concept of order is relatively easy to grasp, at least when considering relatively small communities. It becomes more difficult, however, when we want to examine the extent to which a specific order can be applied to larger communities, and it becomes even more difficult when considering the international level between states and other kinds of political bodies. In his book, Bull refers to three different European theoretical traditions dealing with the subject of order in international politics.²² Firstly, the tradition of Thomas Hobbes, according to which order ends at the outer borders of the state: above state level and internationally, anarchy alone rules: "The only rules or principles which, for those in the Hobbesian tradition, may be said to limit or circumscribe the behaviour of states in their relations with one another are rules of prudence or expediency. Thus agreements may be kept if it is expedient to keep them, but may be broken if it is not."²³ According to this tradition, order between states is in principle absent because contracts and

²¹ Bull (1995), p. 4

²² Bull draws on Wight (1967)

²³ Bull (1995) p. 24

standards only retain validity to the extent that elite states can exploit them in a struggle for power. Opposing this theory is the Kantian tradition, which represents a universalistic outlook in terms of its perspective on order, in the sense that rather than referring to the struggle for power between competing states it bases its analysis on a universal conception of humanity. From the Kantian perspective order is not perceived of as a set of rules and laws which facilitate cooperation and co-existence between states, but as a cosmopolitical realization of the world community: founded in reason, humanity historically moves beyond the system of states toward the community of mankind, where perpetual peace is realized with the formation of a federation of free, i.e. rational republics: "The community of mankind, on the Kantian view, is not only the central reality in international politics, in the sense that the forces able to bring it into being are present; it is also the end or object of the highest moral endeavour. *The rules that sustain coexistence and social intercourse among states should be ignored if the imperatives of this higher morality requires it. Good faith with heretics has no meaning, except in terms of tactical convenience; between the elect and the damned, the liberators and the oppressed, the question of mutual acceptance of rights to sovereignty or independence does not arise*"²⁴ (italics added). It is worth noting that both traditions, basing themselves on entirely different fundamental assumptions, find that wars can be rationally legitimized, and that international treaties can justifiably be suspended on the basis of power interests or for the sake of the greater good. In the first case, war and the suspension of international law is motivated by the *absence of order*, because any pretence at order finally is subject to the power struggle between states, and, in the second case, war is waged in suspension of international law in the name of mankind, i.e. in the service of a greater good, for the purpose of bringing about the global order of humanity.²⁵ This difference regarding perspective and reliance on order or the lack thereof can be seen as the result of the two different historical contexts to which Hobbes and Kant belonged. While Hobbes wrote under the influence of the breakdown of the Catholic Order, i.e. of the Christian monoculture of the Middle Ages, and the resulting wars of religion, Kant's historical circumstances were the popular revolutions, the Enlightenment and the confidence in the power of reason to further progress for the good of mankind. In the first case the Christian imperial order is ending and the secular territorial state is being established as the privileged unit within the international European system, and in the second case, Kant anticipates the breakdown of this state

²⁴ Bull (1995) p.25

²⁵ Here one easily recognizes the contemporary discussion between the views of Samuel P. Huntington, as presented in Huntington (1996), which by virtue of its relativism joins the Hobbesian tradition, and Fukuyama's theory of the "End of History" (Fukuyama 1989), which is Kantian universalist.

system and the transformation of the state into other, larger political communities with the community of mankind as the ultimate objective²⁶ – though, as it turned out, the detour of the age of the nation states after the Napoleonic Wars would have to be traversed.

Placing itself between the position of Hobbesian relativism – or realism, as Bull calls it – and that of Kantian universalism, the Grotian tradition, according to Bull, interprets international relations in terms of the notion of order based on a community of states which is not merely regulated by the distribution of power and strength but also by institutions, rules, shared interests and international law. The Hobbesian tradition is criticized for being reductionist, while the Kantian tradition is faulted for its idealistic and utopian universalist perspective. The Grotian tradition presents a compromise: on the one hand, an order exists which involves a morality which is more encompassing than the Hobbesian state system, while, on the other hand, this morality does not claim to be universal: "As against the view of the Hobbesians, states in Grotian's view are bound not only by rules of prudence or expediency but also by imperatives of morality and law. But, as against the view of the universalists, what these imperatives enjoin is not the overthrow of the system of states and the replacement by a universal community of mankind, but rather acceptance of the requirements of coexistence and co-operation in a society of states."²⁷ Bull prefers the Grotian tradition, which also provides the setting, in terms of the history of ideas, for the so-called English school of international politics, of which Bull is considered one of the foremost representatives. Although we are happy to adopt his arrangement of the three traditions of the interpretation of order in international politics and find his analyses in *The Anarchial Society* most inspiring, his study does leave a number of questions which, especially from our perspective, are indeed relevant. Stanley Hoffman, an American professor of international politics who provided the second edition of Bull's monograph with an illuminating preface, accurately brings out some of the problems with Bull's effort: "Bull is not explicit enough in analysing the relations between power and the common rules and institutions of international society (although his rather merciless discussion of order versus justice, and particularly of human rights, contains tentative answers). Nor does he go beyond the fuzzy notion of common interests: where do they come from (external imperatives? domestic pressures?) and how do they become binding? Above all, in this book, he did not tell us enough about the formation of international society. We need to know more about its

²⁶ The European Order, that is, the system of power balance between dynastic principalities established with the Peace of Westphalia in 1648, was subjected to great pressure in the late 18th century from among other things the French Revolution. The system was re-established at the Congress of Vienna in 1815 after the Napoleonic Wars as a system of nation states. In this form the system existed until the beginning of the First World War.

²⁷ Bull (1995), pp. 25f

origins. These can be both patterns of interdependence, and state of war, which often led to the coercive inclusion into the network of rules and institutions of entities previously left out. We need to know more about the mechanisms of international society: since the diffusion of ideas, technology and goods operates through the units, one must study particularly the effects (and different styles) of hegemonic power. We need to know more about the respective roles of common emphasis on cultural cohesion, but historically it often turned out to be brittle and easily destroyed by the ‘state of war.’”²⁸ Hoffman’s accurate objections, which Bull in part does direct attention to in his book, can be reduced to two questions: what constitutes international order? And which part does the state and hegemonic power play with regard to the constitution of order? Bull and his followers would be likely to point out the fact that the latter question is actually the subject of his entire book, and emphasize the impressive analysis of the Cold War from a Grotian perspective which the book provides. It is true that, under the heading “Alternative Paths to World Order”, Bull thematizes the very issue of the dissolution, and possibly obsolete nature, of the state system. In the historical introductory chapter, he also correctly points out that the first theoreticians on international law (Vitoria, Suarez, Gentili, Grotius) actually did not use the concept of the territorial state as a primary point of reference for their analyses of international order.²⁹ In other words, Bull is very well aware that the concept of the state which provides the basis for his analysis of order as a “community of states” is a product of history which is first established during the 17th century, and which is subject to severe pressure throughout the 20th century, a pressure which is further increased after the Cold War. The ahistorical structural analysis of international politics which characterizes the Hobbesian tradition, including realist and neorealist theory, and which is based on an entirely abstract conception of the state across history and civilization, can thus be rediscovered, at least as an inclination, in Bull, despite his otherwise quite evident historical sensitivity. To the extent that the Hobbesian notion of a system of states possesses a measure of reality with respect to the

²⁸ Hoffmann (1995) p. x. Hoffmann (1995) p. X. Professor Ole Wæver has pointed out that Hoffmann’s criticism is not entirely fair, as Bull and others of the English School have responded to these points in a number of works. While this is undoubtedly true, we see the criticism as relevant as far as *The Anarchial Society* is concerned. However, in our forthcoming paper we intend to draw on relevant texts of the English School to a greater extent.

²⁹ Bull (1995), p. 28: “Second, theorists of this period provided no clear guidance as to who the members of international society were; no fundamental constitutive principle or criterion of membership was clearly enunciated. When the conception of the state as the common political form of all the Kingdom, duchies, principalities and republics of modern Europe was itself not yet established, the idea of a society made up principally or exclusively of a single kind of political entity called ‘states’ could not take shape. In the writings of Vitoria and Suarez, and even of Grotius, the political units which are bound by the law of nations are referred to not only by the term *civitas* but also by terms such as *principes*, *regni*, *gentes*, *respublicae*. The doctrine of natural law, on which all the internationalists of this period rested their conception of the rules binding princes and the communities over which they ruled, treated individual men, rather than the groupings of them as states, as the ultimate bearers of rights and duties”.

regulation and limitation of war in Europe from 1648 to 1914, it is of course relevant to the study of the national security and foreign policies and the wars of this region during this period. However, its potential in terms of analytical interpretation of other regions and time periods is of course quite limited. This is evident in connection with the study of American national security policy from the time of its establishment after the American Revolution up to the present day, simply because the United States of America is not a state in the European sense, but a union or rather a federation of republics, the order of which is constituted on a very different foundation from that of the European territorial state. For this very reason, the questions concerning what constitutes order, the roles played by states, regions, civilizations and political commonalities of understanding in this process, and the possible significance these aspects might hold in terms of the understanding of the concept of world order, including the American Order, are highly relevant.

The Concept of the Political

An attempt at answering the two questions which have here been directed at Bull's *The Anarchial Society* can be found in another – we are tempted to say *the* other – methodical work on the meaning of order in international politics, namely in Carl Schmitt's equally classic but much less well-known work *Der Nomos der Erde im Völkerrecht des jus Publicum Europaeum* from 1950³⁰. There are several reasons for the relative obscurity of Schmitt's book compared to Bull's, the most significant ones probably being Schmitt's membership of the German Nazi Party and the part he played as *Staatsrat* up until 1936. These, in a German but certainly also in an international context, make him highly controversial, both as a person and a thinker. At the end of the Second World War, Schmitt was detained in connection with the Nuremberg Trials on charges of anti-Semitism and of being the foremost state theoretician of the Nazi state. Certain of Schmitt's texts may be said to indicate a leaning towards actual anti-Semitism, but he has personally denied it, as shown by the interrogation transcripts which have since been made available to the public.³¹ That does certainly not rule out the possibility that he had anti-Semitic leanings. It is an irrefutable fact that he remained a member of the party until the end of the war, which made him highly controversial as a theoretician, especially in post-war Germany. His consistent critique of liberalism and the liberal state combined with his concept of *Grossraum* and the transformation of the state system, which

³⁰ This paper draws on the English translation, which, apart from being a very thorough work of translation, also corrects a number of errors and bibliographical omissions in the German edition. Written in 1942 to 1945, access to sources and libraries were of course severely curtailed. Working with Carl Schmitt, the translator, G.L. Ulmen, a scholar of the works of Carl Schmitt, has filled in the gaps, as noted in his introduction; Schmitt (2003); Ulmen (2004)

³¹ Bendersky (1987); "Interrogation" (1987); Schmitt (1987)

expresses his view of the significance of the sovereign territorial state as being considerably weakened from the 20th century on, have contributed to the impression of him as a theoretician defending totalitarian ideology. This, however, is incorrect. The misconception is caused largely by ideological misreadings of his work, intended to taboo his theories, as has been pointed out in connection with the growing interest his work has attracted in Great Britain, France, the US and, to some extent, in Germany since the 1980's. In this article we will not enter into a discussion of the way in which Schmitt's thinking relates to Nazism, thereby steering clear of a discussion which has also influenced the reception of the work of one of Schmitt's contemporaries, Martin Heidegger. Suffice it to say that by reading and being inspired by Schmitt, we in no way intend to be spokesmen for anything even remotely resembling Nazi ideology, which we of course altogether denounce. We find, nevertheless, that, as a critic of liberalism and of the attempts at creating a universally based world order of which both the League of Nations and the UN can be seen as results, Schmitt is an acute observer of some of the weaknesses associated with the thinking on order on the basis of universal humanism. Precisely because Schmitt regrets the dissolution of the European Order and the resulting dissolution of the international system as being based on the sovereign territorial state, his analyses of international order contribute a clear diagnosis of the problems we face today, concerning the establishment of the American Order and the ongoing war on terror. This does not mean that Schmitt provides us with a recipe for solving these problems in a workable and decent way. In our reading of Schmitt we thus entirely agree with the view which is stated in the Danish translation of Schmitt's most famous work, *The Concept of the Political* from 1936 (Danish translation: *Det politiskes begreb*, 2002): Schmitt's membership of the NSDAP has, as previously mentioned, often been used as an argument against reading his work. This, however, is absurd, as Schmitt's thinking holds obvious qualities. His thinking on politics and the state provides food for thought, and as the 'enemy' of liberalism and traditional democracy he, better than any other, is able to point out the weaknesses of liberalism as well as of democracy. Rejecting Schmitt on the basis of his Nazi affiliations would be like saying that we should not read thinkers like for instance Plato, as he periodically supported a tyrant³² - or - we might add - Søren Kierkegaard, who was an outspoken opponent of democracy and modern egalitarian thought.³³ What we find interesting about Schmitt is that in spite of, or perhaps because of, his high regard for the system of international law which, from the end of the 17th century controlled and limited and, significantly, *civilized* warfare based on a concept of the sovereign territorial state, he accurately

³² Kaspersen (2002), p. 24f

³³ Kierkegaard (1963)

diagnoses the dissolution in the 20th century of this political unity and also the consequences it will entail with regard to the international rule of law. These concerns are already present in *The Concept of the Political*, which must otherwise be considered a spirited argument in favor of precisely the sovereign state. The original contribution to the understanding of international order, which provoked legal positivist thinkers who, led by Hans Kelsen, represented the dominant theory of the day, is formulated in the first lines of the book: "The concept of the state presupposes the concept of the political. According to modern linguistic usage, the state is the political status of an organized people in an enclosed territorial unit. This is nothing more than a general paraphrase, not a definition of the state", and he goes on, "in its literal and in its historical appearance the state is a specific entity of a people. Vis-à-vis the many conceivable kinds of entities, it is in the decisive case the ultimate authority. More need not be said at this moment. All characteristics of this image of entity and people receive their meaning from the further distinctive trait of the political and become incomprehensible when the nature of the political is misunderstood."³⁴ In order to understand the concept of the state, then, it does not suffice to consult international law and its stipulations; it is necessary to pose more fundamental questions concerning what constitutes the state as state, and this constitution is, according to Schmitt, political, which necessitates a fundamental definition of the political. This definition in the book takes the form of the famous and infamous formulation about the political as a friend-enemy contrast: "The specific political distinction to which political actions and motives can be reduced is that between friend and enemy. This provides a definition in the sense of a criterion and not as an exhaustive definition or one indicative of substantial content."³⁵ (italics in the original). Just as it is the contrast between good and evil which constitutes the criterion within the moral realm, and the contrast between the beautiful and the ugly which does so in aesthetics, it is the contrast between friend and enemy, which denotes "the utmost degree of intensity of a union or separation, of an association or dissociation." Schmitt carefully emphasizes that the criterion carries no given description of its content, due to the fact that the friend-enemy contrast constitutes the prerequisite for determining how the two concepts by themselves can be understood, formulated and regulated, in the same way that the good-evil contrast constitutes the criterion, or basis, for determining the content or definition of goodness and evil. This definition of the political as a friend-enemy relation, it seems, is clearly inspired by the work of at least two

³⁴ Schmitt (1996), pp. 19-20

³⁵ Schmitt (1996), p. 26

other thinkers, namely Thomas Hobbes' thinking on the state and G. W. F. Hegel's analysis of the dialectics of recognition in *Phänomenologie des Geistes*.³⁶

According to the Hobbesian tradition, the state is formed as a political unit on the basis of and in a *state of exemption* – the state of nature – in which no rules, norms or laws apply, other than the principle of *bellum omnium contra omnes* (war of everyone against everyone). The formation of the state results from the actions and decisions of a sovereign, a sovereign best understood as an abstract principle rather than an actual person or prince, as in the case of the political philosophy of Immanuel Kant.³⁷ The formation of the sovereign state thus provides an internal order and an external balance, meaning a boundary dividing the internal safety of the state, which protects people against violence and the theft of property, from the external security of the state, which protects the state against external enemies. This entails three things. Firstly, it is the state of exemption which constitutes the state as a political unit and thereby guarantees the order which applies within it. Secondly, the relationship with other states, i.e. foreign and national security policy, is the concern solely of the sovereign state. And thirdly, the enemy of the friend-enemy relation is a public enemy; thus a distinction exists between private and public enemies. This then means that according to Schmitt's analysis, it is not the business of the state to interfere with private matters i.e. the internal affairs of society, just as it is not the business of the society to interfere with matters of external security, as both types of interference would cause a blurring of the friend-enemy relation. According to Smith, any confusion of state and society leads to a weakening of the sovereignty of the state because a number of sectors ranging from the religious, the moral or the economic will weigh in and thereby weaken or blur the criterion for the political, which further undermines the order which it is the primary purpose of the state to guarantee. The sovereignty of the state can in this manner be weakened from within, which provides the basis for the critique of the liberal welfare state as well as of the totalitarian state whether it be based on Nazism or Communism. Yet the sovereignty of the state is also threatened from the outside, if the political relationship with other states is blurred by religious, ethical or economic circumstances. This was the problem with the Treaty of Versailles after the First World War, which constituted an attempt to base the international rule of law on ethical and humanistic values instead of on political concepts. According to Schmitt, the problem was not with the desire for peace and security – quite

³⁶ Generally speaking, Hobbes and Hegel are great sources of inspiration for Schmitt, as can be ascertained from the many approving references in his work. Schmitt also footnotes Hegel for the criticism of the idea of a world state in the chapter "The World is not a Political Universe, but a Political Pluriverse", Schmitt (2002), pp. 93ff.

³⁷ Jacobsen (1995)

the contrary – but that the weakening of the political – *the depoliticizing*, as Schmitt called it – led to a change in the conception of the enemy, who changed from being an opponent of equal standing to being a criminalized and depraved villain or a bad guy, as George W. Bush likes to characterize the opponents of the American Order. If the friend-enemy contrast is constitutive for the determination of the political, the difference between the two words in the English language for the concept of ‘enemy’, *enemy* and *foe*, comes to express the difference between a political and a moral enemy: the friend-enemy contrast is characterized by a mutuality within which both parties retain certain rights, negotiation is possible and a peace treaty can therefore end a war and reinstate an order, under which both parties continue to exist under circumstances of mutual respect. This mutuality is also the prerequisite for neutrality: as long as the conflict is political and does not constitute a strategic threat to a third party, this third party has cause for nothing other than to remain neutral, which in and of itself serves to limit wars. If, on the other hand, the enemy is considered a foe, instead of mutuality a fundamental *asymmetry* is established, which makes the delimitation and extent of the war very difficult to identify, just as its moral nature by definition makes it impossible to maintain neutrality, cf. Bush’s famous wording in his speech to the American congress on September 20, 2001: “Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, and drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. *Either you are with us, or you are with the terrorists.* From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.”³⁸(italics added).

Although Schmitt, when *The Concept of the Political* was published in 1932, obviously was aware of the pressure to which the strong state was subjected from internal forces as well as from the external force of the international system which the Treaty of Versailles sought to establish, which was why his book was a warning, in part against the confusion of society and state which characterized both the liberal and, to an even greater extent, the totalitarian state, and in part against an international rule of law based on a set of fundamental moral values, his book can be seen as defending the sovereign territorial state and therefore as an expression of hope for the

³⁸ Bush (2001)

reestablishment of the European Order or, in other words, as defending the *jus publicum Europaeum* (European public law). In his work *The Nomos of the Earth* this hope was gone, replaced with a melancholy awareness that this order was undergoing an irrevocable dissolution, and that a new order was being established, though he never quite grasped the nature of this future order. Two things were clear, though; the new order would come from the New World, the United States of America, and it would be based on ethical humanism and in this way it would entail a weakening of the significance of the political and a rebirth of Just War theory. The return of the Middle Ages was imminent, only in the 20th century not regionally confined but globally configured, and with its center of power not in European Rome but in the capital of the western hemisphere, Washington. Yet the most significant effect would be that the boundaries, which had been constitutive for the Catholic as well as the European Order, dividing the world up into geographical compartments and regions, were being transformed from being concrete “global lines” drawn onto maps of the Earth into being purely conceptual entities: the transition from the European to the American Order at the same time meant the transition from a regionalization of the global space to a spaceless universalism, which means that the wars waged by the new center of power will be in the nature of global civil wars. Under those circumstances the sovereign territorial state will have entirely played out its role in history, but what, then, serves as the political unit in the new order, and how is this order constituted? These are the questions posed in Schmitt’s work on *Nomos* from 1950 which are still relevant as well as of immediate interest.

Nomos

The underlying and pervasive idea of Schmitt’s analysis in the book on *Nomos* is that order historically, at least up to 1917, has always been related to the distribution of land and, since the Age of Discovery, also of the oceans. This means that order is a spatial concept, which involves the concept of the boundary or dividing line and is consequently not merely the product of a particular way of organizing and ordering through rules, norms, institutions and laws, but always already also an orientation in space. He therefore uses the Greek word *nomos* and defines it as a unity or relation of *order and orientation*. This means that the boundary determines order, and he quite literally traces the etymological connections of the *nomos* concept to walls, fences, delimitation and fencing. The city wall surrounding the Greek *polis* or the Israeli Security Fence surrounding the Palestinian territories illustrate the concept quite well, and these examples furthermore accentuate the fact that the boundary serves to circle a specific internal order and also as a shield against external threats to

this specific order. He traces this link between order and orientation encompassed within the *nomos* concept back to pre-Socratic philosophy, but he also notes that even for the Sophists and in the political philosophy of Plato the meaning of the nature of *nomos* changes, in the sense that *nomos* increasingly is used to signify law. At this early point he thus finds the beginnings of the separation between order and orientation which culminates with the abstract and ahistorical legal positivist notion of international law. To this effect Aristotle distinguished between *politeia* as the concept of a specific order and the many individual *nomoi* (laws), this being just one example of the range of distinctions which leads to the sense of *nomos* as a contextless or floating legal code which must be universally applied: "Thus, the original meaning of *nomos* – its origin in land-appropriation – still is recognizable. The original meaning was destroyed by a series of distinctions and antitheses. Most important among them was the opposing of *nomos* and *physis*, whereby *nomos* became an imposed *ought* dissociated from an opposed *is*. As a mere norm and act, *nomos* no longer could be distinguished from *thesmos* [law or legislation], *psephisma* [plebiscite], or *rhema* [command], and from other categories whose content was not the inner measure of concrete order and orientation, but only statuses and acts."³⁹ It is important for Schmitt to bring out the original meaning of *nomos* because his thesis is that order historically and in fact is determined by its opposition, namely disorder, or at least by that which is not encompassed by the given order and which is therefore something *Other*: order is determined and constituted by the 'Otherness' of order *beyond the boundary* and it is postulated that this 'Otherness' is spatially located; it is of actual geographical or physical existence. In order to illustrate this notion we can consider the analogous notion of the French historian of systems of thought Michel Foucault, whose investigations into normality produced the book *Discipline and Punish: The Birth of the Prison* which argues that the order of normality presupposes that we are able to determine and identify that which is not normal as that which lies beyond the established norms, and this is likewise physically and spatially located, namely in the prison.⁴⁰ For Schmitt (and Foucault) order is constituted by its 'Otherness', which exactly describes the original content of meaning of *nomos*. This represents the basis for Schmitt's critique of modern legal positivism exactly because it disregards spatial orientation, the boundary, without which order cannot be established. It is this disregard which leads to a separation between the international rule of law, on the one side, which *should* be faced by a physical and spatial reality on the other side where now only an undifferentiated substratum of mere existence resides. Making an ironic reference to Auguste Comte Schmitt describes the positivist view of reality as a collection

³⁹ Schmitt (2003), p. 69

⁴⁰ Foucault (1977)

of historyless facts. Yet despite the fact that reality- or a mild caricature thereof – takes on this kind of appearance from the perspective of the legal positivist interpretation of international law, a number of specific connections may apply between *nomos* and *physis*; they are merely blurred by abstract notions of legality – as in the European Order – or universal notions of the ethically good – as in the Catholic and the American order. It is these connections which Schmitt aims to bring out and describe in his book on *nomos*.

The Catholic Order and Just War

Although Schmitt's book presents an impressive mastery of historical issues and contains an awesome number of references to international treaties and the theoretical literature dealing with these, it is not actually a historical presentation which enters into deep analyses of the changes undergone by laws and institutions, but rather constitutes a theoretical and methodical discussion on the concept of world order. Because the subject is *world* order the discussion only begins to be of interest from the time of the journeys of discovery, because it is only with the discovery the New World – in relation to old Europe – that order becomes globally orientated. In spite of the fact that the concept of *nomos* is brought up from pre-Socratic philosophy not much is made of Antiquity. The larger part of the book is reserved for an analysis of the significance of the New World for the understanding of order. We, however, direct our attention at Schmitt's more theoretical reflections in the first part of the book, as these are sufficient for the purpose of advancing our thesis postulating the return of just war in the 20th century.

Our point of departure is the Catholic Order, as we have chosen to designate the Christian European Middle Ages. According to Schmitt the Catholic Order is constituted by the *Katechon* principle. In English *Katechon* is Restrainer. It is of course the Antichrist who must be controlled and kept away from the "Christian homeland", and were we to use a modern national security concept we could translate it into the concept of containment of the Antichrist, i.e. heathenism. This containment is by definition endless, which made the war against heathenism endless. It also led to the abovementioned distinguishing between enemy and foe, between an enemy of equal standing who could be fought according to laws, rules and conventions, and bad guys who bore the Antichrist within themselves and were therefore inferior enemies of Christianity who could thus be fought as inferiors, meaning without consideration of any rules or rights. In an interesting article on conceptual history by the historian Georg Schwab this distinction is traced back to the Israelites, who distinguished between the private enemy *sonah* and the public enemy

*ojeb*⁴¹. Conflict and war with the private enemy *soneh*, one's *neighbor*, who belonged to the same order as oneself, was subject to the laws of the existing order, while no rules applied when combating the external, non-Israelite enemy. According to Schmitt, the same distinction appears in the Catholic Order in the Middle Ages, called the *respublica Christiana*: "It had definite orders and orientations. Its *nomos* was determined by the following divisions. The soil of non-Christian, heathen peoples was Christian missionary territory; it could be allocated by papal order to a Christian prince for a Christian mission...The soil of Islamic empires was considered to be enemy territory that could be conquered and annexed in crusades. Such wars *eo ipso* not only had *justa causa* [just cause], but when declared by the pope, were even holy wars."⁴² In contrast, European, Christian land was distributed according to established law and custom, which meant that wars fought between Christian princes within the Catholic Order were controlled wars which did not negate the unity of the *respublica Christiana*. Schmitt's observation is fully borne out by James Turner Johnson in his thorough conceptual historical study of the classical doctrine of just war in the book *Ideology, Reason, and the Limitation of War* from 1975. Turner shows that the doctrine draws upon two different traditions and literary contexts, namely, on the one hand, Christian theology and canon law and, on the other hand, Roman law and common law, which, on a temporal foundation formed an ideological horizon for the regulation of wars within Christian space. It is most interesting to note that the theological thinking in the discussion on just war (*Bellum Justum*) was primarily concerned with just causes of war (*jus ad bellum*) while the temporal was far more concerned with the war itself and how it was conducted (*jus in bello*).⁴³ The horizon for the dogmatic thinking was the threat of heathenism against the Catholic Order, while the temporal horizon aimed at upholding or reestablishing the internal order. As in the Israelite tradition a distinction was thus introduced between the Christian enemy who – paradoxically – was treated according to common law and Roman law on the basis of natural rights, while the infidel enemy, who was fought without consideration of *jus in bello*, which led to far more brutal and bloody wars: "The infidel who has done evil against God's honor, moreover, deserves a much harsher punishment than someone who has insulted a mere earthly prince or one of his ambassadors."⁴⁴ Hence the classical doctrine of just war as it is formulated by Thomas Aquinas and by Grotius in *Corpus Juris Canonici* did not make room for the kind of speculation regarding the conduct of war

⁴¹ This distinction parallels the Greek distinction between *echtrós* and *polémios* and the Latin distinction between *inimicus* and *hostis*.

⁴² Schmitt (2003), p. 58

⁴³ Johnson (1975), p. 13

⁴⁴ Johnson (1975), p. 52

which later was to become a central issue of international law and the Geneva Conventions, though a hint can be traced in Thomas' criterion concerning 'righteous intent'.⁴⁵ On the general level this manifested itself in two different kinds of war, one protecting the Catholic Order against the external threat of the Antichrist, i.e. against by definition inferior, dark forces, and another, which was fought between opponents of equal standing, whose rivalry could be contained as well as negotiated and as such posed no threat to the established order: the crusade opposed to chivalry.

This synthesis, which was much more of a practical issue than a subject for theoretical consideration, could be maintained as long as the unity of Christianity remained intact, but was dissolved along with the division of the Christian church resulting from the Reformation, and in itself led to a division in the interpretation of the concept of just war. Turner refers to two very different views, one of which found expression in the formation of the concept of *holy war*, the other in the so-called Spanish School represented by Francisco de Vitoria who, with reference to Thomas Aquinas' dogma concerning just war but to an even greater extent inspired by the temporal *jus in bello* tradition, is considered one of the most important founders of modern international law. These were certainly two very different traditions, the first of which argued for war in the name of God, something which would have seemed quite outlandish to Church Fathers such as St Augustine and Thomas, who considered war a last resort and primarily a means for the protection of the Catholic Order, and the other which, with its point of departure in the medieval Law of Nations (*jus gentium*) based on common law and treaties sought to limit war through international agreements and, according to Turner, absolutely rejected the idea that war could be waged in the name of religion. English philosopher Francis Bacon was if not the only then at least a notable representative for the theory of holy war and, keeping in mind current American national security strategies, he provided a startling justification for offensive and pre-emptive war: "For him not only the actual attack against a state but the fear of subversion of the religion of a nation was sufficient cause to go to war. A war waged out of fear was not, to Bacon's mind, offensive but defensive, provided of course that the fear rose out of the proven evil designs of a potential enemy in the act of preparing to launch an attack upon one's own nation, and argued for a pre-emptive strike."⁴⁶ At the opposite

⁴⁵ Johnson (1975), pp. 33ff and 53ff

⁴⁶ Johnson (1975), p. 91. Francis Bacon in his *Considerations Touching a Warre with Spain*, in *Certain Miscellany Works* (London: I. Haviland for Humphrey Robinson 1629), pp. 20ff; quoted in Johnson (1975) p. 90: "For certainly, as long as Men are Men, (the Sonnes, as the Poets Allude, of Prometheus, and not of Epimetheus,) and as long as Reason is Reason; a just Feare will be a just Cause of a Preventive War; but especially, if it be Part of the Case, that there be a Nation, that is manifestly detected, to aspire to Monarchie, and new Acquests; Then orher States (assuredly) cannot be justly accused, for not staying the first Blow, or for not accepting Poliphemus Courtesie, to be the last that shall be eaten up".

end of the scale, Vitoria in his writings strongly criticized the Spanish *conquistadores* for their brutal treatment of the American natives of the New World, and he rejected the idea that war can be started in the name of religion. Nevertheless he insisted on the freedom of Christianity to missionize the holy message of the gospel, holding to a universal conception of man as potentially receptive to the truth. On the one hand it was perfectly legitimate and in accordance with the Thomistic doctrine of just war that the Spaniards traveled to America, established missions and Christianized the local inhabitants who, according to a universally Christian conception of mankind, were embryonic Christians. As such the natives could be likened to children, as they actually were. Through the mission they could be helped onto the true path and by becoming like to the European Christians had the chance of reaching the maturity of the adult.⁴⁷ Not only was it a Christian right to spread the message, it was a duty. Problems arose if they were not receptive to the message and resisted, as this would place them outside of the order and unity of mankind, and as a result they could not claim a humane treatment: they existed beyond the reach of the Christian message. The enemy was understood to be either someone who could become like us (the Christians, the civilized) or as a morally depraved monster, out of reach, who consequently must be eliminated or animalized as a slave. Whereas the Israelites considered the others to be inferior because they did not belong to the same tribe, and the Greeks distinguished between the citizens of the polis inside the walls and the barbarians outside them, the Christian conception of man introduced a contrast placing humanity in opposition to the inhumane: all human beings have a soul and are therefore potentially Christians, which enjoins Christianity to carry out a mission to bring those people into the fold who have not yet heard the message, which leads to the logical conclusion that if they do not receive the message, they must have no soul and are therefore by definition not a part of the human community – they are, in the words of George W. Bush, bad guys. William Rasch has accurately described the nature of the problem: "One was offered a choice, but rather than a neutral either / or, the alternatives were labeled "right" and "wrong". Those who lived in vincible ignorance of Christ – those in other words, who had heard but rejected the good news of the Gospel – committed a mortal sin and would face eternal damnation. While still on earth, such infidels could also be the targets of a "just war", a "crusade". Thus, though all peoples are members of "humanity", some – the nonbelievers – are lesser members than others, possessing fewer rights and deserving opprobrium."⁴⁸

⁴⁷ Scott (2000)

⁴⁸ Rasch (2003). Rasch's article is a keen analysis of recent liberalistic theories (Vitoria, Brown, Habermas, Rawls) based on Schmitt and the Italian philosopher Agamben, among others.

The Catholic Order worked as long as the Holy See was able to maintain its *authority* to define Christian values and thereby be the authority which mandated Christian missions. With the Reformation the Christian unity broke down and, with that, so did the synthesis within the doctrine of Just war: a deluge of religious wars culminating in the Thirty Years' War, which found their justification in the theory on holy war – thus the historical background for Francis Bacon's theory was the conflict between protestant England and Catholic Spain – were brought to an end with the Peace of Westphalia in 1648. The reasons why the outcome was a new balance of power in the shape of the European Order, guided by the temporal segment (the *jus in bello* aspect) of the theories on just war, drawing, among other material, upon the thinking of Francisco de Vitoria, are manifold. But just as the Catholic Order was constituted by the boundary between Christians and non-Christians, Schmitt sees the European Order as constituted by the boundary between Europe and the New World, i.e. the space which lies beyond the European space.

Global Lines

The dissolution of the unity of Christianity during the Reformation coincided with the discovery of new continents, which meant that the acquisition of land outside of the European space had to be regulated. This was also the case for the subdivision of the oceans. With the extensive journeys of discovery the world became global, and the 'Otherness' to European Christianity no longer encompassed only Islam, the old enemy, but to an even greater extent *the New World*. Only two years after the discovery of America the new global horizon became the subject of a papal bull namely Alexander VI's *Inter caetera divinae* (May 4, 1494).⁴⁹ The immediate purpose of the global lines, *Rayas*, which were drawn was not a separation between the Old and the New World but a distribution between the Catholic states of rights to the acquisition of land: "Pope Alexander VI's global line was consistent with the one drawn somewhat to the west of it, approximately through the middle of the Atlantic Ocean (370 miles west of Cape Verde), by the Spanish-Portuguese Treaty of Tordesillas (June 7, 1494), in which the two Catholic powers agreed that all newly discovered territories west of the line would belong to Spain and those east of the line to Portugal. This line was called *particion del mar oceano*, and was sanctioned by Pope Julius II."⁵⁰ The point of these *rayas* was to regulate the distribution of land between two principalities belonging to the same order, the Catholic Order, which were mandated by the Pope to build missions outside the European space. Nonetheless, the new lines led to the division of the world into Christian and non-Christian

⁴⁹ Schmitt (2003), p. 88

⁵⁰ Schmitt (2003), p. 89

territories, where the latter legitimately were available to the Christian princes because they were to be civilized. Despite his criticism of the actual Spanish conduct in America even Vitoria recognized the right of the Christians not only to missionize, but also to acquire land and the attendant resources. Under the provision concerning the *freedom to missionize*, i.e. to civilize the not yet saved, in this case the American natives, the conquest of land and resources in the New World fell under the doctrine of just war.⁵¹

But these *rayas* could not be maintained because of the division of Christianity and the resulting loss of authority of the Holy See which led to the drawing up of a treaty concerning new global lines, the so-called amity lines. These appeared for the first time in a secret clause of the *Treaty of Cateau-Cambresis* from 1559: "Geographically, these amity lines ran along the equator or the Tropic of Cancer in the south, along a degree of longitude drawn in the Atlantic Ocean through the Canary Islands or the Azores in the West, or a combination of both".⁵² Along these lines Europe ended and the New World began. Beyond this line was America: "In the beginning, all the world was America."⁵³ The status of this new free land is interesting, because freedom was primarily understood as the freedom of the European states to acquire land without any interference from rules and laws. Schmitt takes the reader on a *tour de force* through sources, including European treaties as well as theological speculation and philosophical literature, in order to establish that the new world beyond the boundary was understood as a *state of nature*, or, rather, as a *permanent state of exemption*: "In Hegel's lectures on the philosophy of history, America is characterized specifically as an area lacking a state, as an area of civil society. In terms of intellectual history, this was an after-effect of the 16th century practice of composing a realm of agonal freedom and civil

⁵¹ "A vignette from Vitoria illustrates how this could happen. Confronted with the question whether the Spanish might use military force to coerce the Indians into accepting Christianity, Vitoria responded with a strong negative. Yet he pursued the matter by arguing that of course Spanish missionaries had a right to preach Christianity to all who would hear, and that naturally guaranteed not only this right but also the right of free passage for them through Indian lands. If the Indians refused to let the missionaries enter, or if they made captives of the missionaries, the Spanish were justified in using military force to enforce the missionaries' rights – in effect making war on the Indians. The rights of which Vitoria spoke were conceived by him as universal, as "natural"; yet the Indians knew nothing of them. They were in fact historically derived from the customary practices of European societies. In the name of natural law Vitoria was justifying cultural imperialism. Later theoreticians made no apologies for this: the imposition of international law on the world was justified in the name of requiring civilized behaviour from the uncivilized and thus civilizing them. The law of war was presented as imposing requirements of "civilization" as recently as two decades ago. By one means or another, international law on war carried ideas from just war tradition to all parts of the world and imposed practises consistent with that law on cultures greatly removed from one in which just war tradition had its roots and in which its early systematic development took place. A case can be made, then, that in the form of agreement to the requirements of the international law of war, just war tradition has become global", quoted in Johnson (1991), p. 26

⁵² Schmitt (2003) p. 93

⁵³ Schmitt (2003), p. 97

society to the state as a realm of objective reason.”⁵⁴ Beyond the boundary anarchy ruled, and in the same way as the state of nature to Thomas Hobbes and, later on, in the philosophy of the Enlightenment, was constitutive for the secular state, the permanent state of exemption in the new world was constitutive for the European Order. Schmitt refers to another analogy, namely that of the state of exemption in English law: ”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. The English construction of a state of exemption, of so-called martial law, obviously is analogous to the idea of a designated zone of free and empty space.”⁵⁵

The European Order, understood as a zone of sovereign and rational secular states, which maintained a power balance based on international law and the concept of the just enemy, was according to Schmitt and others made possible and constituted by a *permanent state of exemption beyond the global lines*, i.e. beyond Europe. The dissolution of this order at the end of the 19th century had less to do with internal European conflicts than with the fact that the space which had been reserved for the state of exemption established its own order, the American Order, which throughout the 19th century increasingly applied itself globally, culminating with its full entry onto the global scene with Woodrow Wilson’s declaration of war on Germany in 1917. The New World’s return to old Europe was a gradual process, starting with the Monroe Doctrine and temporarily culminating with the Treaty of Versailles. While the maintenance of the European Order was dependent upon America – the space beyond the dividing line – as a permanent state of exemption, the American Order ironically established itself with Europe serving as the great Other, which served as the image of *disorder* rather than as an example to be followed. The distance between Europe and the American union is therefore not only geographically determined by the Atlantic, but constitutive: the trans-Atlantic distance is determined by the fact that the American union at the end of the 18th and the beginning of the 19th century formed itself in a conscious distancing from old Europe which, with its many conflicts and – though limited and negotiated – wars, served as the symbol of the *disorder* which threatened the federal America and from which it was important to delimit oneself.

⁵⁴ Schmitt (2003), p. 99

⁵⁵ Schmitt (2003), p. 98

The Establishment of the American Order and Union

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness – these firmest props of the duties of men and citizens.

George Washington, Philadelphia,
September 17, 1796

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct, and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and at no distant period a great nation to give mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature

George Washington, Philadelphia,
September 17, 1796⁵⁶

The American War of Independence and Revolution took place at a time when the stability of the European Order was threatened by the emergence of nationalism. It would be an interesting subject of study to investigate the significance of developments in the western hemisphere with regard to the French Revolution. Yet after the French excesses of violence and the Napoleonic Wars the European Order was re-established by means of the peace settlements of the Congress of Vienna in 1814-15 as a balance of nation states, a balance which lasted until the end of the 19th century. Stability and balance of power, however, are relative terms, and that which in the European

⁵⁶ Both quotes: Washington (1973)

perspective was seen as stability was viewed by the American Founding Fathers as an extended series of wars and conflicts among rivaling monarchies. Europe, tainted by its bloody history and seemingly interminable wars could not serve as a role model for a free and independent America. On the contrary, Europe was the embodiment of what Americans must avoid at any cost, if the freedom of the American nation was to be ensured. Instead, republicanism, based on democracy and civic rights, would guide the formation the new union. The main problem which initially challenged the proponents of the union was determining how much territory a republic could cover while still remaining faithful to the principles of republicanism. Alexander Hamilton, James Madison and John Jay paid this problem ample attention in *the Federalist Papers*, a joint effort published under the pseudonym of Publius in 1787-1788 after the signing of the Constitution at the Constitutional Convention in 1787. The purpose of their essays, which were published in clusters in *the New York City Press*, was to convince skeptics that a federal union was the best way to ensure the liberty of Americans, in order to persuade New York to ratify the new Constitution.⁵⁷ In the decades following the ratification of the Constitution by the individual member states, the issue of the balancing of union – federation – on the one hand, and republic on the other, constituted the focal point of the policies of the federal government. This balance also constitutes the underlying theme in the description of the aims of domestic policy as well as of the development of foreign policy that were included in the 1796 farewell address of the first President of the United States, George Washington. It also permeated John Jay’s defense of the federation in the third issue of *The Federalist*, 1787, which was based on the contention that there would be fewer just causes for making war on a United America than on a disunited America: “The number of wars which happened or will happen in the world, will always be found to be in proportion to the number and weight of the causes, whether *real* or *pretended*, which *provoke* or *invite* them. If this remark be just, it becomes useful to inquire, whether so many *just* causes of war are likely to be given by *United America*, as by *disunited America*; for if it should turn out that United America will probably give the fewest, then it will follow that, in this respect, the Union tends most to preserve the people in a state of peace with other nations.”⁵⁸ One can sense the image of the disunited Europe which is understood by Jay and his fellow federalists to have brought nothing but strife. This disunited Europe presented the most significant threat to a liberal, republican America if the

⁵⁷ cf. Diamond’s fine analysis, “The Federalist” in Diamond (1987); Ball (2003)

⁵⁸ Hamilton, Madison, and Jay (2003), p. 9

Constitution, and thus the union, was not ratified and brought to reality.⁵⁹ Security, in the eyes of Jay, Hamilton and George Washington, could best be guaranteed through a federation of republics. The popular nature of the federal government, which was ensured through an intricate electoral system, was supposed to prevent the federal government from developing despotic characteristics. It is interesting to note the similarities between this discussion and the one concerning the present proposal for a European Constitutional Treaty: security was to be achieved through a process of integration which, on the one hand, would limit the number of *just causes* available to foreign powers for waging war on the American states, and which, on the other hand, would ensure republicanism as well as the autonomy and self-governance of the member states.

In the young American federation as well as in the new union of old Europe, the means of achieving such ends was a combination of economic integration, cooperation and mutual utilization of resources.⁶⁰ The union was originally conceived of as more of a moral enterprise than a political project, and the link between morally conditioned freedom – *Liberty*⁶¹ - and economics in the form of neutral trade rights was in place from the outset: politically, the union was to avoid the anarchy outside the western hemisphere; economically, it was to secure free access and neutral trade rights around the world for the American states. Neutrality, then, was supposed to strengthen the union internally as well as ensure economic expansion externally. This balance would determine considerations on national security as well as foreign policy, and it is present throughout George Washington's famous *Farewell Address*: "The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations to have with them as little political connection as possible. So far as we have already formed engagements let them be fulfilled with perfect good faith. Here let us stop. Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially

⁵⁹ cf. also John Quincy Adams: "Yet Adams considered it "indispensable" to the "common happiness" of all Americans "that they should be associated in one federal union", otherwise, "America like the rest of the earth (would) sink into common field of battle for conquerors and tyrants"", Lewis Jr. (2001), p. 51

⁶⁰ "Adams expected federal policymakers to take responsibility for strengthening the union by removing the ultimate sources of disunionism – the disparate interests of its different sections. *The best security for the union, he believed, lay in an economic and social order that balanced and distributed the manufacturing, agricultural, and commercial sectors with a national market that included a healthy currency system.* Such a "home market", as it was often called at the time, would create dependencies and connections between the different economic sectors and geographic sections. It was also expected to promote diversity by fostering locally integrated economies – of farmers, merchants, small- and medium scale manufactures, and professionals – in every section of the union. A vibrant home market would ease the pressures caused by commercial restrictions and blur the lines drawn by sectional interests, thus reducing the union's susceptibility to external pressures. A national bank, a system of roads and canals, a protective tariff, and the controlled sale of public lands all seemed essential of this more complex economy", Lewis Jr. (2001), pp. 35f (italics added)

⁶¹ The English language has two words for *freedom*, i.e. liberty and freedom. In Latin, *libertas* connotes separation and independence whereas the Indo-European roots of freedom rather refer to the right to belong to a society of free men, cf. Fischer (2005).

foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combination and collisions of her friendship or enmities...Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, caprice? It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it". As the doyen of the history of American foreign policy, John Lewis Gaddis, in 2004 pointed out in an exceedingly keen analysis,⁶² American unilateralism is a key concept in the establishment of American national security policy during what we may call the American 'saddle period'.⁶³ Washington is credited with the phrasing of the *Farewell Address*, but the sections on American exclusivity, neutrality, and dissociation from Europe were taken from a 1795 dispatch from The Hague by a young diplomat, the son of Washington's successor to the office of President, John Adams and future Secretary of State, President and Member of Congress, John Quincy Adams.⁶⁴ Quincy Adams, who received a diplomatic posting from his father at the tender age of 14, personifies the horizon of American foreign policy which guided its establishment in the first half of the 19th century. Born into the American political elite as the son of John Adams, one of the influential Founding Fathers of the new union, he received a solid classical education and a long apprenticeship in the American diplomatic corps in Europe, and was solidly based in Christian Anglo-Saxon Protestantism; John Quincy Adams personified the intellectual foundation of the formation of American national security policy. It is contested whether the common depiction of John Quincy Adams as the most successful American Secretary of State ever holds up to scrutiny; however it is indisputable that as a diplomat, Secretary and Member of Congress he played a decisive role in securing for the union commercial rights on the high seas; in phrasing the Monroe Doctrine; and in the formulation of *Manifest Destiny*,⁶⁵ a term which, having been used by New York journalist John L. O'Sullivan in 1845 to describe the American mission as the securing of the North American continent for the Christian American nation from coast to coast, denoted the God-given right of the United States of America to go west. In terms of the political evaluation of the French Revolution John Quincy Adams placed himself between the conservative criticism of

⁶² Gaddis (2004), pp. 22ff

⁶³ The concept of the saddle period originates with the German historian of ideas Reinhart Koselleck. It describes the transition to the new age (1750-1850) which entails a comprehensive change in the significances attributed to the inventory of political concepts.

⁶⁴ Lewis Jr. (2001), p. 10

⁶⁵ In addition to James E. Lewis Jr.'s biography, reference must be made to Bemis (1949), and Russell (1995) those classic studies on Quincy Adams and analyses on the establishment of American foreign policy in the first half of the 19th century. The latter study situates Adam's political analyses in the context of the history of ideas, drawing on political philosophy of the age, especially Thomas Paine and Edmund Burke.

Edmund Burke and the radicalism of Thomas Paine; this cautiousness, which on the one hand acknowledged the historical right of nations to a republican and democratic constitution based on the concept of liberty, and, on the other hand, was reluctant in its analysis of how this right was to be applied politically in an international context, especially concerning the issue of what kind of role free states were supposed to play with regard to revolutions in other countries, was also evident in his understanding of international politics. This discussion, which was carried out on a theoretical level and seemed primarily to be of philosophical and intellectual interest, was actually of decisive political importance in forming the understanding of the mission to which the young American union would dedicate itself in the sphere of international politics. Was it to dedicate itself to the active dissemination of the universalistic humanistic values on which the nation was founded, or were those values, as Washington argued in his address, to be disseminated by way of the brilliant example of the United States of America, which would guide other nations onto the path leading to liberty and freedom? The Manifest Destiny ideology limited the expansion and political mission of the United States to extend only to the coasts of the continent, which, however, in the 1840's was still an objective to be achieved militarily, with the incorporation of California as the next task. Here we can refer to Carl Schmitt's definition of *nomos* as the unity of order and orientation, which in the American context was thematized as a relation between universal values and regional areas of interest. A general consensus existed that, though the values on which the American union was built were universal, in order to ensure that they would indeed remain the basis of the union they were only to be asserted within the western hemisphere or, simply, *The Americas*. To Quincy Adams and his contemporaries – and as far as this question was concerned, to a great extent also his political opponents – this problem was solved in a pragmatic manner with the separation of economy and politics; the political commonality of understanding which was based on *liberty* was limited to the American nation, which geographically speaking meant the North American continent to which were added obvious political interests in Latin America and commercial interests which were defined as neutral and encompassed the entire globe. From a global perspective the new order was first and foremost to be an economic order, but from the outset a built in dilemma existed, between economic and political liberalism, between global economic engagement and political isolation of the western hemisphere. This duality was supposed to ensure the balance within the union between republican freedom and federal unity; from the beginning and up until the US entry into the First World War, but really until the attack on Pearl Harbor in 1941, security was defined as *continental security*: if the United States of America could

keep foreign powers off of the American continent, American liberty would be ensured. This doctrine constituted the basis for Washington's address, the global economic and continental territorial expansion throughout the 19th century, the 1823 Monroe Doctrine, and the ideology of Manifest Destiny which informed the fencing-in of Oregon in 1844, as well as the acquisition of California which followed. For the Founding Fathers and their heirs (Quincy Adams and James Monroe come to mind), *The World* of the famous slogan *Make the World Safe for Democracy*, which is credited to Woodrow Wilson but which in fact has a long history reaching back to the establishment of American national security policy, actually meant the North American continent and, in principle, the western hemisphere. Beyond this boundary of American liberty lay a space of freedom, understood as economic freedom ensured through commercial rights. These commercial rights were to further the general Welfare which, according to the Preamble of the Constitution, was the very purpose of the American union project.⁶⁶ It is therefore no coincidence that the first war in which the union involved itself concerned trade rights. We have emphasized Quincy Adams solely because his views were typical of the American understanding of security during this period, and because his politics and extensive writings thus present an accurate picture of the horizon of interpretation on which the national security and foreign policy of the young nation was based. Furthermore, it was Quincy Adams who signed the 1815 Treaty of Ghent on naval rights which ended the war with England which had broken out in 1812 during the Napoleonic Wars over the American right to neutrality in navigating the high seas of the Atlantic. According to Gaddis, the war with England also meant that the concept of pre-emptive war was given a central place in the establishment of American national security policy during the saddle period. Gaddis compares the impact of the British attack on Washington in 1814, in which Capitol was burned to the ground, to the impact of the September 11 attacks in terms of the American sense of identity and the understanding of national security. Though the term *Manifest Destiny* had not yet been introduced, the newly elected President, James Monroe, and his Secretary of State, John Quincy Adams, clearly understood that only through the constant expansion of the union, which would end the presence of foreign powers on the continent, the American identity could be ensured against external threats. This formed the basis of legitimacy of pre-emptive war: the union could be expanded through the purchase of territories, or through diplomacy and treaties, but if these did not accomplish the goal of territorial expansion, pre-emptive war was a legitimate strategy. This strategy was first tested in

⁶⁶ "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States".

Spanish Florida, from which militias made incursions into the United States. In order to stop them and to put pressure on Spain Monroe ordered General Andrew Jackson to carry out a limited military action into Florida. Quincy Adams carefully instructed Jackson to carry out only a limited and basically symbolic action, intended to drag the Spanish to the negotiating table, but the general, acting on his own initiative, carried out an occupation proper. The resulting success meant that the US was able to buy Florida for \$5 million – and that pre-emptive war became a legitimate option and strategy in the constant US territorial expansion of the 19th century.⁶⁷

The Monroe Doctrine

Though the acquisition of Florida was characterized by a certain measure of hesitation on the part of the Monroe administration, the Monroe Doctrine in 1823 conceptualized the national security policy of the United States with great accuracy. At the beginning of the century the Spanish Latin American states had taken advantage of a crisis within the Spanish state, carrying out their revolutions and independence processes. When the states of the so-called Holy Alliance, particularly Spain, expressed an interest in regaining their former possessions on the South American continent, England suggested that the United States of America and its old mother country enter an alliance whereby they would mutually counter any aggressions on the part of the powers of continental Europe with military force. But James Monroe, strongly influenced by John Quincy Adams, chose to go it alone, as was formulated in a speech to Congress which later came to be known as the Monroe Doctrine: "The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare

⁶⁷ Lewis (2001), pp. 55ff

that we should consider any attempt on their part to extend their system to any portion of the hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as a manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgement of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security".⁶⁸ It is difficult to imagine a better example of the meaning of *nomos* as a unity of a specific *order*, in this case based on the American interpretation of liberty, and *orientation*, in this case established as the western hemisphere.

From the very beginning of the establishment of the American union, then, *pre-emptive war* and *unilateralism* were central concepts of national security policy, which were conceived of politically in the continental perspective with the securing of American liberty and identity in mind. The fact that this liberty, founded on universal humanistic values and based solidly in Christianity, was reserved for white Anglo-Saxon Christians and excluded African-Americans as well as Native Americans could similarly be defended on grounds of national security: the strong abolitionist leaning which was widespread within the elite of the northern East Coast had to be toned down, simply because it threatened to tear the still nascent union apart. As for the Native Americans, they were considered potential allies of foreign states and as such constituted an internal safety risk which had to be eliminated, even if this were to undermine the basic ideology of liberty. In an argument similar to Francisco de Vitoria's reflections on the Spanish conquistadores' right to wage just war against Indians, the rights of African-Americans and Native Americans as well as their belonging to the new American nation could be dismissed theoretically and philosophically, with the argument that they were not by nature part of humanity as such: enemies of humanism and liberty under the new American Order were from the outset forced into zones under the state of exemption such as reservations and other enclosures on the continent of freedom.

⁶⁸ Commager (1973), p. 236

The purpose of this analysis of the founding of American national security policy during the establishment of the American union has been twofold: firstly, to show that the basic concepts employed by the George W. Bush administration in its war on terror, pre-emptive war and unilateralism in the name of freedom have been constitutive of the American understanding of national security from the very beginning. The Bush administration's national security strategy is thus solidly based in the American tradition which was formed *in conscious opposition to Europe*. In a manner not unlike that of the Catholic Order, national and territorial security was tied in closely with a value-based ideological foundation, in contrast to the state of affairs under the European Order, where religion and ethical values were excluded from the domain of the state, in favor of a politically based conception of the balancing of power resting on a foundational friend-enemy contrast, which allowed for the concept of the just enemy. The American union, however, would be a federation of free republics, held together by shared liberal fundamental values based on universal human rights. Secondly, to show that, in a manner similar to that of the European Order, this American – and liberal – Order was regionally delimited to the western hemisphere; however, whereas the European Order's constitutive state of exemption existed beyond the European space, geographically speaking, in the New World the state of exemption existed in *zones of exemption within the order itself*. Similarly, under the Catholic Order, Antichrist was not a geographical and spatial entity but a conceptual one. It took a bloody civil war to make the American world safe for democracy. That which in geographical terms existed outside the Catholic Order only became relevant with the voyages of discovery, at which time this order was rapidly disintegrating.

Beyond the boundaries of the American Order, Monroe's conceptual universe acknowledged, other political systems existed, but as long they did not intervene on the American continent, except as economic players, they were irrelevant. In the American perspective, the only thing of relevance located beyond the regional boundary was the right to remain neutral for the purpose of economic expansion. In the 19th century, then, the continental American Order balanced between universalism and regionalism, which was sustainable as long as the union was able to defend its self-proclaimed neutral rights beyond the continent. This balance was violated by the US entry into the First World War, an entry which was caused by attacks on American commercial rights. This, in a dramatic and radical way, marked the collapse of the European Order and the globalization of the American Order. From this perspective, Woodrow Wilson's vision of a peace settlement after the First World War can appropriately be described as *the Globalization of the Monroe Doctrine*.

The Monsters of Freedom

We thus return to our point of departure, namely George Bush's speech in Brussels, February 21, 2005: the war in Iraq was a part of the war on terror, conducted in the name of freedom, in order to make the world safe for democracy. This is Manifest Destiny from a global perspective, which in principle means that the war on terror will reach its boundary and end only in the realization of the global federation of free republics, based on the understanding of *liberty* and *freedom* on the basis of which the Founding Fathers designed the Constitution of the United States of America: "... there is a value system that cannot be compromised, and that is the values that we praise. And if the values are good enough for our people, they ought to be good enough for others, not in a way to impose because these are God-given values. These aren't United States-created values. These are values of freedom and the human condition and mothers loving their children."⁶⁹ Like the establishment of the American union in the early 19th century, the war on terror at the beginning of the 21st century is a moral enterprise which has substituted continental security with world order. For the purposes of this enterprise, *law* is subordinate to *values*. This means that the enemy of the project of freedom is not a subject of law (enemy) but a perpetrator of crimes against humanity (foe). As such, he or she is not subject to the laws and rules which apply to ordinary citizens; this applies to individuals within communities as well as to states under the new world order. The war on terror as a project of freedom therefore paradoxically and ironically entails taking recourse in law in order to create a legal foundation for the *permanent state of exemption* which, with concepts such as *illegal combatant*, perpetrators of crimes against humanity, and *rogue states* – in short, *bad guys* – and places like Guantanamo and Abu Ghraib legitimizes the suspension of rights, laws, and rules in the name of freedom. The necessity of this suspension of law is today acknowledged by liberal human rights activists such as the American professor at Harvard, Michael Ignatieff, who employs the concept of *the lesser evil*: the state of exemption is a necessary and proper precaution when defending democracy against terrorist attacks.⁷⁰ As such, the war on terror constitutes the return of just war, but in a global perspective: the postmodern just war is a global civil war between the good and the evil, between the supporters and the detractors of the American Order. Carl Schmitt warned against this *spaceless universalism*, because it entails a depoliticizing and consequently a blurring of the boundaries between friend and enemy, between right and wrong and

⁶⁹ Bush (2002)

⁷⁰ Ignatieff (2004); The American professor of law David Cole has shown that the limitation of the rights of minorities has consequences for society as a whole: Cole (2003)

between law and the violation of law. The dilemma of the war on terror is this: it is waged in an boundless space defined solely by moral concepts; it is order without orientation and consequently it runs the risk of becoming an endless conflict between zones of freedom against zones under the state of exemption with no clearly defined boundaries between them. The war on terror in the name of freedom therefore threatens to undermine our own freedom as it is fought everywhere and nowhere at once. John Quincy Adams was aware of the risks of waging war in the name of freedom *without orientation*. Without providing any directions by which the dilemma can be escaped, we therefore choose to let Adams have the final word: “Wherever the standard of freedom and Independence has been or shall be unfurled, there will be heart, her (USA) heart, her benedictions and her prayers be. But she goes not abroad, in search of monsters to destroy. She is well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own. She commends the general cause by the countenance of her voice, and the benign sympathy of her example. She well knows that by once enlisting under other banners than her own, were they even banners of foreign independence, she would involve herself beyond the power of extrication, in all wars of interest and intrigue, of individual avarice, envy, and ambition, which assume the colors and usurp the standard of freedom. The fundamental maxims of her policy would insensibly change from liberty to force... She might become the dictatress of the world. She would be no longer the ruler of her own spirit”.⁷¹

The transatlantic gap between old Europe and the American Order, which became visible in earnest with the war in Iraq in 2003, is a constitutive contrast between a bygone order of law, which supported the idea of a just enemy, and a still developing order based on universal humanistic values, which sees the enemy of liberty as a bad guy, or, in the words of Quincy Adams, “search[es] for monsters to destroy”. The challenge now is to create a synthesis of freedom and legality which is not dependent upon a permanent state of exemption, but finds its boundary somewhere else than within humanity itself. The question is: where?

⁷¹ John Quincy Adams: “Warning against the Search for Monsters to Destroy”, July 4, 1821.

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