Reading Schmitt from the Sea: Tracing Constitutive Outsiders and Displacing the Conceptual Order (and Ordering) of the Political[*]
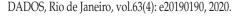
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INTRODUCTION

Carl Schmitt (2005:36) opens the third chapter of *Political Theology*, precisely entitled "Political theology", with the famous affirmation that "[a]ll significant concepts of the modern theory of the state are secularized theological concepts". Schmitt exemplifies[1] by pointing out that the exception in legal thought is analogous to the miracle in theology. Most importantly, he explains that those are secularized theological concepts not only because of their particular historical development, that is, not only because of the way, for instance, the omnipotent lawgiver came to historically substitute the omnipotent God, "but also because of their *systematic structure*" (Schmitt, 2005:36, emphasis added). According to him, the recognition of such a systematic structure was crucial for a sociological analysis of those concepts, including sovereignty, the sociology of which he was offering therein. Indeed, few pages later, when differentiating a problem of the sociology of a concept from a sociological problem[2], Schmitt explains that the sociology of concepts he is advancing in his *Four Chapters on the Concept of Sovereignty* transcends a form of conceptualization oriented towards immediate practical interest, aiming, instead, "to discover the basic, radically systematic structure and to compare this conceptual structure with the conceptually represented social structure of a certain epoch" (Schmitt, 2005:45).

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Having emphasized the importance of a sociology of legal concepts for such a conceptual sociological exercise, Schmitt affirmed that a sociology of the concept of sovereignty takes place when the juridical construction of a historical-political reality finds "a concept whose structure is in accord with the structure of metaphysical concepts" (Schmitt, 2005:45-46). Metaphysics being "the most intensive and the clearest expression of an epoch" (Schmitt, 2005:46), it is the metaphysical, conceptual systematic structure that enables the (inter-)epochal analogy between, for instance, the miracle and the exception, the omnipotent God and the omnipotent lawgiver, monarchy and democracy[3]. It is precisely in this context that Schmitt states that "[t]he metaphysical image that a definite epoch forges of the world has the same structure as what the world immediately understands to be appropriate as a form of its political organization" (Schmitt, 2005:46).

In this article, I engage with Schmitt's metaphysical image of a specific epoch and the way it forges a particular construction of the world. This construction analogously reveals architectonic traces of a normative framing which authorizes and legitimizes a particular way of conceiving the appropriate form of the political organization of the world. Following his own commentaries on the sociology of concepts, I am particularly interested in the way Schmitt articulates a systematic conceptual structure, that is, a conceptual order and ordering of the political, through which he enables, while also polemically assuming and reifying, a specific normative framing and understanding of the world. Most specifically, adopting a poststructuralist, deconstructionist strategy, I question a particular way Schmitt conceptually (self-)authorizes his conceptual order and ordering, conceptually identifying some spaces, actions, and categories of subjects as being unpolitical. Negatively, I argue, these non-political constructions conceptually authorize the line which is the condition of possibility for conceiving and identifying the political. Hence, I name them constitutive outsiders. By tracing them within his own work, I offer in this article a displacement of Schmitt's conceptual order of the political.

Speculating about the relationship between the normativity intrinsic to the form of the world's political organization and the systematic structure of metaphysical concepts, I suggest, inspired by Charlotte Epstein (2013), that Schmitt's sociology of concepts harbors a conception of language as *logos-nomos* (Epstein, 2013:509). According to Epstein, this conception of language would involve classical notions

of *nomos* as the law or ordering principle undergirding the possibility of rule-making, and of *logos* as reason, the quintessentially human attribute. *Logos-nomos*, thus, marks "the site of the original conjoining of language and the law" (Epstein, 2013:509).

Moreover, and considering the epochal, systematic and structural terms of Schmitt's "The Age of Neutralizations and Depoliticizations" (2007b), *Land and Sea* (2015a), and, most particularly, *The Nomos of the Earth* (2003), the point here is not only to suggest the foundational relationship between law and language (Onuf, 2013; Derrida, 1992; Yamato, 2014), *nomos* and *logos* (Derrida, 2016), normativity and conceptual systematic structure (Schmitt, 2003, 2007a; Lindahl, 2013), but also the constitutive relationship between *logos-nomos* (language-and-law) and the world; that is, the relationship between normative conceptual systematic structures and world ordering and orientation (Schmitt, 2003; Derrida, 2016; Walker, 2010; 2016; Foucault, 2008; Onuf, 2018).

In his famous 1932 piece, Schmitt (2007a) argued that all political concepts are characterized by a polemical nature. Hence, when mobilized within a concrete and specific conflict situation, political concepts   most especially the very concept of the political   enable the formation and (potential) escalation of antagonistic friend/enemy relations. A year later, in 1933, *Forms of Modern Imperialism in International Law* (Schmitt, 2011e) made the realist, structuralist point according to which power and ruling involved being able to determine not only the meanings of individual words and concepts, but also, and most crucially, the grammar and conceptual order within which any and all particular words and concepts gain their meanings. The sovereign emperor rules "over grammar as well" (Schmitt, 2011e:44). Writing in the interwar context, and reacting against the Versailles *diktat* and the Anglo-Saxon attempts to criminalize war and the (German) enemy, Schmitt opposed the abstract, universalist turn associated with the League of Nations, strategically reminding (Germans) that imperial rule also involves the power "to determine the content of political and legal concepts" (Schmitt, 2011e:44-45). Indeed, in *The Concept of the Political*, Schmitt (2007a:54) had already famously denounced the invoking of "humanity" as a polemical form of cheating, ideologically instrumentalized for imperialist reasons.

Few years later, in 1939-1941, Schmitt's *The GroBraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers* correlated the genuine political power of a great nation with its capability

to determine "the ways of speaking and even the ways of thinking, the vocabulary, the terminology, and the concepts of other nations on its own terms" (Schmitt, 2011e:225, footnote 232). For him, there was an "unavoidable link between ways of thinking about international law and a certain kind of political existence" (Schmitt, 2011e:95). As referred to above, he considered words, concepts and languages to be inherently polemical and hence political. For instance, when discussing the concept of *Reich* in international law, before the Second World War was over, and before he was imprisoned and almost brought to justice in Nuremberg, Schmitt (polemically) remarked that the argument surrounding words like state and sovereignty were marks of deep-seated political debates and confrontations, and that "the victor not only wrote the history but also determined the vocabulary and the terminology" (Schmitt, 2011e:102-103).

Relatedly, few years before the Second World War, Schmitt (2011d) critically engaged with what he perceived to be a fundamental transformation of the concept of war, from a non-discriminatory concept into a discriminating one. In his analysis, the transformation of the individual concept of war, *per se*, was not the most relevant phenomenon taking place. For him, the most important events were the much deeper, systemic and structural transformations of which the turning towards a discriminating concept of war was only a symptomatic trace. Thus, in his 1937 piece, *The Turn to the Discriminating Concept of War*, Schmitt polemically diagnosed that such a turn implied a foundational transformation of "the entire structure" of the modern international legal order (Schmitt, 2011d:73). Critically observing certain tectonic movements and polemically analyzing specific conceptual transformations, Schmitt (2011d) was interested in the conceptual structure and systematic (re)structuring then occurring. Most importantly, in engaging with the structural conceptual implications of the transformations of the concept of war, he observed that "the consistency, and persuasiveness of a concept in international law is determined not only through the content of its isolated conception, but also fundamentally through the *position* of the concept in a *conceptual system*" (Schmitt, 2011d:36, emphases added).

This structural conceptual cartographic imagination inspires and provokes this article. In these lines, I develop a Derridean rereading of Schmitt's "systematic conceptual geography" (Schmitt, 2011d:36), offering a displacement of his conceptual order (and ordering) of the politi-

cal. As Epstein remembers, for Derrida, "a structure without a centre represents the figure of the unthinkable itself" (Derrida *apud* Epstein, 2013:500). In this sense, I here offer a decentering and, hence, a rethinking of Schmitt's thought. In doing so, I am inspired by Carlo Galli's methodological device and advisement regarding the importance of distinguishing Schmitt's "'doctrine' from his '*thought*'" (Galli, 2015:xlv, emphasis added). According to Galli, Schmitt's work is marked by "a polemical impulse and an existential positioning that is targeted and militant", that is, by an "ideological side", that "should be set apart from his theoretical capacity to radically touch upon the *deep structure* of the Modern" (Galli, 2015:xlv, emphases added). For Galli, Schmitt's work is complex, and its "complexity is internal to the complexity of the modern epoch" (Galli, 2015:xlvii), Schmitt's thought offering nothing less than a political theory of the nexus between "origin" and "form", as well as "an antiprogressive epochal theory of modern history as secularization (political theology) and an antiuniversalist theory of political space as *nomos*" (Galli, 2015:xlvii). In Galli's reading, it is with-in the displacement "from ideology to concept and origin that we find the genealogical elements of the '*system*' that supports Schmitt's otherwise nonsystematic works" (Galli, 2015:xlvi, emphasis added). In this article, I am interested in engaging with and decentering the "system" and that "deep structure" supporting (and being supported by) Schmitt's thought.

For this purpose, I am also inspired by Jef Huysmans's observation about Schmitt's definition of the political being not as simple as it is sometimes assumed or presented, implying "finer aspects" which involved different conceptual distinctions (Huysmans, 2008:169, footnote 6). In this regard, I am particularly interested in how he moves conceptually; that is, in how he mobilizes and distinguishes different forms of enmity and war, legitimizing a conceptual order of the political which arbitrarily, if not imperially, self-authorizes itself as the (supposedly) concrete, sovereign form grounding the *nomos* of the earth (Schmitt, 2003).

Indeed, as Hannah Arendt would insistently denounce in her meticulous, annotated reading of his *The Nomos of the Earth*, Schmitt's conceptual order of the political is not only geopolitically Eurocentric, but inherently colonial (Jurkevics, 2015). Indeed, this is a point which was recently corroborated by Andreas Kalyvas (2018) in his engagement with Schmitt's postcolonial imagination. Exposing the colonial

foundations of the modern international system, Kalyvas shows "the centrality that the concept of the colony enjoys in [Schmitt's] ambitious historical narrative of the rise and fall of the first global *nomos*" (Kalyvas, 2018:35). Thus, questioning his postcolonial imaginary, I displace the conceptual order of the political towards the outer limits of the "global lines" demarcating the *intra*-European space of public law and order from the *extra*-European space of lawlessness and asymmetric relations of violence, (supposedly) free and open to European appropriation and civilization, that is, colonization (Schmitt, 2003; Kalyvas, 2018; Yamato, 2019).

In so doing, I follow Schmitt himself. It is widely known that he was the one not only defining sovereignty in terms of the power to decide on exception, but insistently affirming that "[t]he exception is more interesting than the rule" (Schmitt, 2005:15). The exception would prove everything, just as the constitutive outside would negatively authorize and structure the conceptual order of the political. Hence, following Schmitt's own insistent advice, this article moves away from the – *telluric* (Schmitt, 2007b) – interstate order of regular enmity and war in form, sailing towards the characterless space of the sea and the pirate's unpolitical character and outlawed form of enmity (Schmitt, 2003, 2011b,2015a)[4].

In the last two or three decades, an enormous number of studies have returned to Schmitt. Most especially after September 11, 2001, they have (critically) engaged with his work, dedicating especial attention to his conceptions of the "political", "exception", "sovereignty", "enmity" and "war", as well as to different aspects of his international political thought. In this context, displacing the attention traditionally given to the friend/enemy conceptual pair, some studies have been (re)turning to some other, abnormal figures within Schmitt's conceptual order of the political, such as the *foe* (Schwab, 1987; Ulmen, 1987, 1996, 2007b; Prozorov, 2006), the *partisan* (Behnke, 2004; Slomp, 2005, 2009), and the *pirate* (Heller-Roazen, 2009, 2011; Policante, 2015; Rech, 2012; Yamato, 2019). In this article, I aim to contribute to this debate on Schmitt's more unconventional figures. However, instead of focusing individually on any *one* of these different categories, I am interested in looking at certain conceptual *relations* and *differentiations* between them. In doing so, the article contributes also to a better understanding of the way in which Schmitt draws consequential political boundaries through different "practices of conceptualization" (Walker, 2016:2-3).

In part, this engagement with Schmitt follows Derrida's suggestion that a critical rereading of Schmitt's conceptual distinctions of (interstate, civil, partisan) wars would be an important starting point for rethinking political thought and understanding contemporary political events in the aftermath of September 11, 2001 (Derrida, 2003)[5]. In following Derrida's suggestion, I also follow a certain aspect of his rereading of Saussure's structuralist conception of language (Derrida, 2016:3-101). As Judith Butler explains, Saussure proposes a definition of language as a system of signs, in which signification works and any individual sign gains specific meaning "through *differentiation*" (Butler, 2016:xii, emphasis added); that is, every sign being distinguished from and thus related to others within the system, signification takes place through the *relational* differentiation between them. However, if for Saussure language is structurally conceived as "a totality" (Butler, 2016:xii), for Derrida language is an open, radicalized "system of differences" (Derrida, 2002:354). As Butler explains, Derrida enters and moves towards the limits of Saussure's conception of language, questioning its structurality; that is, *de*-limiting and *de*-centering it (Butler, 2016:xii; Derrida, 2002:354).

Most interestingly, my reading here is also provoked by Schmitt's own (structuralist) commentary according to which "all linguistic and, therefore, all juridical concepts are determined through the conceptual field and coexist and grow in turn with their conceptual neighbors" (Schmitt, 2011e:119). Importantly in this regard, Schmitt explains that this was (already then) not a new point for the "linguistic sciences", referring to Saussure, among others, in a footnote (Schmitt, 2011e:119-120, 229-230). In this article, I follow Schmitt's own suggestive observation about the "mutual determination of concepts through their systematic conceptual connection" being "most illuminating" (Schmitt, 2011e:120). However, reading Schmitt with Derrida aims to displace his conceptual order (and ordering) of the political.

DISPLACING SCHMITT, READING WITH DERRIDA

In 2001, few weeks after the attacks of September 11, Derrida participated in a dialogue with Giovanna Borradori. Responding to Borradori's questions concerning the role of philosophy before what had happened, Derrida promptly affirmed that such an "event" called for a philosophical response that would call into question "the most deep-seated conceptual presuppositions in philosophical discourse"

(Derrida, 2003:100). He questioned the concepts then used to describe the event, protesting that the prevailing discourse relied too rapidly on received concepts. For him, the event called for a rethinking of political philosophy and its inherited conceptual order. And for this purpose Derrida suggested a critical rereading of Schmitt (Derrida, 2003:101). In this article I respond to Derrida, drawing on his work in order to read Schmitt. In the next few paragraphs, I briefly present the Derridean position spectrally informing my (previous and) subsequent engagement with Schmitt and his conceptual order of the political.

In *Of Grammatology*, Derrida comments that one could call "*play* the absence of the transcendental signified as limitlessness of play, that is to say as the destruction of onto-theology and the metaphysics of presence" (Derrida, 1997:50). Although making use of the Heideggerian term "destruction", he is here referring to what he has called the de-construction of the transcendental signified, and, hence, of "logocentrism and the metaphysics of presence as the exigent, powerful, systematic, and irrepressible desire for such a signified" (Derrida, 1997:49). As he explains in an endnote of *Rogues*, his deconstruction is distinct from Heidegger's (*Destruktion*), among other reasons, because "it has always been, and has always acknowledged itself to be, inscribed, undertaken, and understood in the very element of the language it calls into question" (Derrida, 2005b:174). As a form of immanent critique, deconstruction does not destroy structures from the outside, but rather proceeds from within (Derrida, 1997)[6].

In his rereading of Saussure in *Différance*, Derrida writes that "[i]n a language, in the *system* of language, there are only differences" (Derrida, 1982:11, his emphasis). For him, such differences both play and are themselves effects, *différance* dis-jointly being "the playing movement that 'produces'… these differences, these effects of difference" (Derrida, 1982:11, his emphases). Moreover, in his interview with Julia Kristeva, he explains:

> Différance is the systematic play of differences, of traces of related to each other. This spacing is the simultaneously active and passive (the a of différance indicates this indecision as concerns activity and passivity, that which cannot be governed differences, of the spacing by means of which elements are by or distributed between the terms of this opposition) production of the intervals without which the "full" terms would not signify, would not function (Derrida, 1981:27, endnote excluded).

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Always already differing and deferring, *différance* guarantees that the production of the meaning of each "full" term, sign, or signifier is the effect of an "economy of traces" (Derrida, 1981 :29), there being no absolutely full and present meaning in itself; that is, no transcendental or "pure signified" (Derrida, 1981:31). Moreover, as the systematic play of differences, *différance* is "the opening of a spacing which belongs neither to time nor to space, and which dislocates, while producing it, any presence of the present" (Derrida, 1982:133). However, if, as Derrida explains, "without a trace retaining the other as other in the same, no difference would do its work and no meaning would appear", then, *différance* is not only the pure movement which produces differences, but also the "*(pure) trace*" (Derrida, 1997:62).

The process of signification involves a formal play of differences, which means that nothing, no element (word, signifier, or category) within this system, "is anywhere ever simply present or absent" (Derrida, 1981:26). In other words, conceptualization and signification are enabled by a "relational and differential tissue" (Derrida, 1981:32); that is, by a general textuality and articulation (Derrida, 1997). It is with this tissue in mind that, following those suggestions from Huysmans concerning the importance of certain conceptual differentiations within Schmitt, I want to play with the latter and his categories. In so doing, I adopt a deconstructionist style (Derrida, 2002:250), closely reading some of Schmitt's texts and engaging with some of his conceptual constructions.

Différance's traces are aporetic and undecidable, always already within the movement of the connective *and* (Derrida, 2000). Hence, within the differential and deferential movement of such a relational tissue, there can be no transcendental signified, for, as Derrida affirms in his *Speech and Phenomena*, "the thing itself always escapes" (Derrida, 1973: 104). As shown in his reading of the problem of the sign in Husserl, and most especially in relation to the Husserlian concept of auto-affection, at issue here is nothing less than the deconstruction of "the zero-point of the subjective origin, the *I*, the *here*, the *now*" (Derrida, 1973: 94). In other words, what is at stake is the deconstruction of the *sovereign* onto-theology of the metaphysics of presence, the *aporetic* point being, as Maja Zehfuss (2009:142) tells us, that "*différance* illustrates why nothing ever simply 'is'".

Displacing the sovereign onto-theology of the absolute, monadic *point* which is (supposedly) fully present in itself (as the here, the now, or the modern subject), *différance* seems to illustrate the fearful sphere

of Pascal described by Borges in *Labyrinths*: "a fearful sphere, whose center is everywhere and whose circumference is nowhere" (Pascal *apud* Borges, 2000:227). And it is closer to Borges and Pascal that I read Derrida's rereading of Austin in *Signature Event Context*, most particularly when he affirms that "there are only contexts without any center or absolute anchoring" (Derrida, 1988:12). With Derrida (Borges and Pascal), I read deconstruction as this *de*-centering and *de*-anchoring of any (supposedly) sovereign center or absolute anchoring.

Conversely, the logocentrism of such (desire for) closure produced by sovereign, heroic practices (Ashley, 1995) supports the monadic "determination of the being of the entity as presence" (Derrida, 1997:12). It implies that that which is (supposedly) outside and other than such a present being is determined as absence; that is, that the other as other within the same is eliminated, and the absolute sameness of the same is (supposedly) founded and identified (Derrida, 1997). The logocentric procedure or operation "at once differentiates one term from another, prefers one to the other, and arranges them hierarchically, displacing the subordinate term beyond the boundary of what is significant and desirable in context" (Gregory, 1989:xvi). Hence, positioning this article in a certain deconstructionist style, I adopt the strategy which Derrida describes in his interview with Jean-Louis Houdebine and Guy Scarpetta: the "double gesture" of reversing the binary oppositions of metaphysics *and* displacing the metaphysical system within which such oppositions work (Derrida, 1981:39-47).

In *Positions*, Derrida (1981) explains that he has attempted to pursue a kind of general strategy in order to avoid both simply neutralizing metaphysical binaries and simply residing within their closed system. In order to do so, he says, he attempts to proceed by using a double gesture. On the one hand, this gesture requires a phase of overturning or reversal which, notwithstanding the conflictive and subordinating structure of opposition within which one of the two terms of a binary governs the other, recognizes the violent hierarchy inherent to metaphysical binaries. On the other hand, the doubling of the gesture requires "disorganizing the entire inherited order and invading the entire field" (Derrida, 1981:42). As he further explains in *Signature Event Context*, deconstruction puts into practice "a *reversal* of the classical opposition *and* a general *displacement* of the system" (Derrida, 1988:21):

> Every concept, moreover, belongs to a systematic chain and constitutes in itself a system of predicates. There is no concept that is metaphysical in itself. There is a labor – metaphysical or not – performed on conceptual systems. Deconstruction does not consist in moving from one concept to another, but in reversing and displacing a conceptual order as well as the nonconceptual order with which it is articulated" (Derrida, 1988:21).

In this article, I engage with Schmitt and his categories inspired by these commentaries of Derrida. Thus, the aim here is to reverse Schmitt's oppositions and decenter his conceptual order while following the traces of some of his own conceptual distinctions and differentiations. In what follows, then, I do not intend to simply move "from one concept to another", but rather to displace Schmitt's conceptual order of the political. For this purpose, moving away from the traditional Schmittian friend/enemy dualism and its telluric grounding, I position my reading from the sea.

DISPLACING THE ENEMY: THE SEA AND THE SPECTERS OF THE FOE AND THE PIRATE

Schmitt (2003) begins his *The Nomos of The Earth* emphasizing the foundational relationship between the earth and law. According to his mythological narrative, the earth became known as the mother of law. Synonymous of terrestrial land, the Schmittian earth is represented as fertile and just, its soil workable and delimited by human hands, and its solid ground delineated by boundaries and other human constructs. Hence, the earth enables, being the material condition of possibility for, the emergence of a concrete order and orientation of human social life.

Schmitt contrasts these *terrestrial* corollaries to the sea. According to him, the "sea knows no such apparent unity of space and law, of order and orientation" (Schmitt, 2003:42). The sea cannot be delimited by firm lines and, hence, divided and appropriated. Without "*character*"[7], the sea knows "no limits, no boundaries, no consecrated sites, no sacred orientations, no law, and no property" (Schmitt, 2003: 43). Thus, the sea inspired pious fear. Outside law, illimitable, improper, and inspiring fear, the sea is portrayed in the beginning of *The Nomos of the Earth* as the space of anarchy, the state of exception (Agamben, 2005; Balibar, 2004; Minca e Rowan, 2016), thus *elementally* different from and diametrically opposed to the land, the mother of law. In other words, the sea conceptually – and structurally – works as a constitutive outsider.

In many ways, this is no surprise. After all, as Martti Koskenniemi (2004:496) reminds us, Schmitt is the legal-political thinker who, opposing normativism and decisionism, conceptualizes law as a concrete order. In his (re)construction of the history of the European order and its public law, which would have grounded the *nomos* of the earth from the late 15th to the late 19th century, Schmitt structurally articulates his conceptions of the "concrete order", the "occupation of land", and "statehood". So if, on the one hand, *land*-appropriation is "the primeval act in founding law" (Schmitt, 2003:45), on the other hand, the *state* is "the political form that regulated the occupation and administration of land inside and outside Europe" (Koskenniemi, 2004:496).

In this context, it is important to remember, as Koskenniemi does, the line with which Schmitt opens *The Concept of the Political*: "[t]he concept of the state presupposes the concept of the political" (Schmitt, 2007a:19)[8]. Moreover, in Schmitt's geopolitical "ontological framing" (Chandler, 2008:47), the world cannot be One, it cannot be a universe, but, following the political logic and presuppositions, has to be a "pluriverse" (Schmitt, 2007a:53). In these terms, Schmitt's ontological framing is fundamentally close to Hedley Bull's pluralist conception of international society (Bull, 2002). More precisely, in what regards the fundamental ontological framework of Schmitt's conception of "the relations between law and politics at the *international* level" (Chandler, 2008:45, my emphasis), they both seem to share the same Vattelian conception of the modern international order[9].

Therefore, when Bull writes about the constitutional normative principle of world politics, that is, "the supreme normative principal of the political organization of mankind" (Bull, 2002:65), he seems to be suggesting something along the general, global lines of Schmitt's *nomos* of the earth (Schmitt, 2003)[10]. Considering Schmitt's pluralist, inter*statist* ontological framing, it seems that he himself could have written something along the lines of Bull's statement according to which "[t]he society of states embraces all mankind and all the earth" (Bull, 2002:62).[11] Thus, considering the fundamental articulation of the concepts of statehood, concrete order, and land occupation within Schmitt's *international* political-juridical ontology, I wonder if focusing on the terrestrial space of the earth would not be the same as focusing on Schmittian *rule*   and *not* his exception.

In moving towards the maritime space of exception, I am aware that the anarchical sea played an important part in the geopolitical equilibrium since the Peace of Utrecht (Koskenniemi, 2004). As Chandler reminds us, it was integral to the management of inter-imperialist disputes, and thus to "the bigger picture of global order between Great Powers" (Chandler, 2008:46). Nonetheless, it is the sea's negativity "[o]n the sea, there was no law" (Schmitt, 2003:44) that attracts my attention in this article, for it systemically points to an *anomic*, constitutive outside (Walker, 2010, 2016; Balibar, 2016).

As normally reiterated, the enemy is central to Schmitt's conception of the political. The distinction between friend and enemy marks the political as an autonomous sphere, distinct from the legal, the economical, the ethical, among others. According to him, a conceptual order of the political could never start with anthropological optimism, for, in such a case, the possibility of enmity would dissolve, and, with it, "every specific political consequence" (Schmitt, 2007a:64). This, however, does not mean that any conception of enmity would go with Schmitt's conception of the political. So, in a translator's footnote, George Schwab explains that "[s]ince Schmitt identified himself with the epoch of the national sovereign state with its *jus publicum Europaeum*, he used the term *Feind* in the enemy and not the foe sense" (Schmitt, 2007a:26).

The category of the foe displaces the friend/enemy dualism, suggesting an-*other* conceptual differentiation *within* enmity. In *The Challenge of the Exception*, George Schwab explains that "[i]n the Middle Ages the public 'foe' on an emotional level was, as a rule, equated with the devil, and in fighting him no quarter was given" (Schwab, 1970:53). Conceived as "an adversary in deadly *feud* or mortal combat" (Schwab, 1970:53, footnote 37), the foe represented an extreme form of enmity and war, to be *differentiated* from that of the enemy Schmitt opposes to the friend. In this particular regard, Gary Ulmen, who translated Schmitt's *Theory of the Partisan* into English, explains:

> The German language makes no distinction between enemy (Feind), i.e., a legitimate opponent, whom one fights according to recognized rules and whom one does not discriminate against as a criminal, and a foe, i.e., a lawless opponent, whom one must fight to the death and destroy. For this reason, Schmitt was forced to distinguish between the "real enemy" and the "absolute enemy" (Ulmen *apud* Schmitt, 2007b:89, footnote 90).

Conceptually speaking, the enmity dualism of enemy/foe is constitutive of the distinction between the "real enemy" and the "absolute enemy", being quite fundamental to Schmitt's theory of the partisan. Schmitt used the German term *Feind* to refer to the category of enmity that, in English, is identified with the enemy — and *not* the foe. Indeed, (normatively) identifying himself with the interstatist epoch of the modern international system of modern sovereign states, Schmitt argued that the "ability to recognize a *justus hostis* [just enemy] is the beginning of all international law" (Schmitt, 2003:51-52). Schmitt (quite obsessively) insists in *The Nomos of the Earth* that the enemy should be understood as *hostis*, the meaning of which arises from the way Roman law distinguished the enemy (*hostis*) from the thief or criminal (Schmitt, 2003:51). More pointedly, Schmitt identifies the enemy with "the concept of *justus hostis*" (Schmitt, 2003:150).

For Schmitt, the enemy is a *public* enemy, and not a private one (Schmitt, 2007a:28-29, footnote 9). As Ellen Kennedy explains, as *hostis*, and not as *inimicus*, the enemy must be conceived as "a real threat to the continued existence of a concrete people" (Kennedy, 1998:101), there being no private enemies in the political sphere (Kennedy, 1998). A constituent member of the pluriverse of sovereign nation-states, the enemy is inherently public and just. Indeed, the non-discriminatory conception of war was developed out of "the concept of a just enemy recognized by both sides" (Schmitt, 2003:153). The concept of *justus hostis* structurally implies an ontological framing that formally recognizes *symmetrical* relations and equality between sovereign states[12]. After all, the enemy is a brother:

> Friend and Enemy. The friend is he who affirms and confirms me. The enemy is he who challenges me. Who can challenge me? Basically, only myself. The enemy is he who defines me (Nuremburg 1947). That means in concreto: only my brother can challenge me and only my brother can be my enemy" (Schmitt, 2007b:85, footnote 89).

The enemy is part of the family of the European public order of sovereign states. The enemy is an-other friend. One may have differences with one's brother, one may discuss and enter in conflict with one's brother, but one does not hate one's brother mortally, nor does one desire or will to annihilate one's own brother. Thus, the public enemy, the *justus hostis*, the brother, cannot be a foe. He is not (morally) evil,

nor (aesthetically) ugly, nor to be hated (Schmitt, 2007a:28-29, footnote 9; Schwab, 1970:51; Kennedy, 1998). "The enemy is on the same level as am I" (Schmitt, 2007b:85).

As Derrida points out in *The Politics of Friendship*, Schmitt belongs to "the German tradition of the doctrine of the State in its Hegelian form" (Derrida, 2005a:120). Hence, if, on the one hand, the concept of the state presupposes the concept of the political, then, on the other hand, the conceptualization of the political and its friend/enemy dualism can only privilege "the State form of this configuration – in other words, the friend or enemy *qua* citizen" (Derrida, 2005a:120). The friend and the enemy are intermediated by the figure of the brother. Hence, a (gendered) familial brotherhood grounds such an – *inter-state-national* – politics of friendship (Derrida, 2005a).

Moreover, friend and enemy are beyond good/evil and just/unjust dualisms. They belong to a certain order of formal juridical categories which contributed to the divorcement of the problem of just war from that of *justa causa*, thus enabling the "detheologization of public life and the neutralization of the antitheses of creedal civil wars" (Schmitt, 2003:140-141). For Schmitt, the concept of *justus hostis* was fundamental to the formation of the detheologized, European interstate order and its non-discriminatory form of war. In fact, it was a corollary of Schmitt's pluralist ontology of the political. The just enemy was conceptually intrinsic to the war in form which he considered "analogous to a duel" (Schmitt, 2003:141). Schmitt explains what is at stake here:

> Compared to the brutality of religious and factional wars, which by nature are wars of annihilations wherein the enemy is treated as a criminal and a pirate, and compared to colonial wars, which are pursued against "wild" peoples, European "war in form" signified the strongest possible rationalization and humanization of war (Schmitt, 2003:142).

And here, in a Derridean but also Schmittian move, I would like to draw attention to and focus on a supposedly supplementary conceptual figure being mobilized in this passage: the pirate. I read the pirate here as a Derridean trace. Most specifically, I read its specter in this passage as a trace of the criminalization of enmity, which would also mean the retheologization of war and the return of the foe or absolute enemy (Yamato, 2019; Ulmen, 1987; Schwab, 1987). For, as Schmitt knew all too well, the concept of the pirate historically and structur-

ally referred to an exceptional conception of enmity: that of the enemy of the human race (*hostis humani generis*), or the outlaw of humanity (Schmitt, 2007a, 2003, 2011b, 2011c, 2011d, 2011e, 2015b; Yamato, 2019; Heller-Roazen, 2009, 2011; Rech, 2012).

Indeed, as Carlo Galli points out, in the 1930s Schmitt already understood that the pirate was not "an obsolete subject" (Galli, 2015:106). Quite the contrary: since he knew that characterizing the enemy as a pirate meant (re)constructing them as "an irregular figure who could be criminalized as the enemy of all humanity", Schmitt soon understood that the mobilization of the concept of the pirate by Anglo-Saxon powers in the interwar context "signaled a historico-political tendency to remove all of the limits that hitherto had restrained conflict and to criminalize the supposed 'piratic' German concept of total war" (Galli, 2015:106). Schmitt understood the structural (geo)politics being (re)articulated with-in that concept and reacted polemically (Schmitt, 2011b)[13]. Let me then follow the specters of the pirate and the foe, tracing such constitutive outsiders.

TRACING CONSTITUTIVE OUTSIDERS, SAILING THE POLITICAL/ UNPOLITICAL LINE

The initial point to be made here is that the criminalization, outlawing, or "becoming pirate" of the *hostis* means the transformation of the enemy into an exceptional figure which not only is conceptually closer to the foe, but which negatively legitimizes an immensely intensified and enlarged antagonism at the *outer limits* of humanity and the political world (Yamato, 2019; Walker, 2010, 2016, 2017). Hence, conceived as the outlaw of humanity, the concept of the pirate is not only diametrically opposed to the just enemy, but may be read, as I do here (and elsewhere), as the *constitutive outsider* of the modern international system of sovereign states Schmitt so insistently identified with the Archimedean conceptual point of the *justus hostis* (Yamato, 2019).

The concept of the pirate points to the "identification of enemy and criminal" (Schmitt, 2003:171), as expressed, for instance, in Immanuel Kant's category of the *hostis injustus* or unjust enemy (Schmitt, 2003:168-171)[14]. And, according to Schmitt, the Kantian unjust enemy is "a concept whose discriminatory power to divide goes even deeper than does that of just war and *justa causa*" (Schmitt, 2003:171). Thus, and not for an insignificant reason, most especially considering its

political appeal and dehumanizing consequences, Schmitt's polemical engagements with the return of the pirate in the 20th century (Schmitt, 2003, 2011b, 2011c, 2011d, 2011e, 2015b; Yamato, 2019; Heller-Roazen, 2009, 2011; Rech, 2012; Galli, 2010, 2015).

Relatedly, Schmitt's (1987) last published work, *The Legal World Revolution*, critically questions the emergence of humanity as a political subject in enlightened modernity. Approvingly referring to Reinhart Koselleck's (2004) work on asymmetric counterconcepts, Schmitt (1987) was concerned with the legitimization of a discriminatory construction of the enemy as a result of the mobilization of humanity as an asymmetric counterconcept. The enemy/foe dualism speaks precisely to this qualitative difference between a *symmetric* (friend/enemy) and an *asymmetric* (humanity/outlaw of humanity) structure of counterconcepts (Yamato, 2019; Koselleck, 2004; Schmitt, 1987). In a much intensified and enlarged "scalar politics of divided subjectivities" (Walker, 2017:12), the (enemy of humanity) pirate (re)actualizes the foe's absolute enmity at the outer limits of the modern international political world (Yamato, 2019). Hence, the specters of the foe and the pirate haunt the *political/unpolitical* line (Yamato, 2019; Viriasova, 2016; Agamben, 1998).

At least in part, Schmitt's *Theory of the Partisan* was written as a response to such spectral figures of absolute intensification and exception and as a corrective to the conceptual confusion between enemy and foe as originally found in the ambiguous German word *Feind* (Schmitt, 2007b:89, footnote 90; Schwab, 1970, 1987; Ulmen, 1987; Slomp, 2005, 2009; Shapiro, 2008). Indeed, the partisan is conceptually constructed by Schmitt as an *intermediate* category between those two diametrically opposed categories of enmity (enemy/foe). Remaining *within* the bounds of the political sphere, despite its irregular character, the partisan conceptually demarcates the *inner* limits of the political/unpolitical line, articulating and differentiating symmetric and asymmetric antagonistic relations (Yamato, 2019; Schmitt, 2007b; Koselleck, 2004; Viriasova, 2016).

Schmitt broadly defines the partisan as the one who "follows a party" (Schmitt, 2007b:15). More specifically, he defines the partisan by identifying four conceptual elements: (i) irregularity; (ii) increased intensity of political engagement; (iii) increased mobility of active combat; and (iv) telluric character, that is, the partisan's relationship to the land (Schmitt, 2007b:3-22). With this "classical" conception of the partisan,

he opposes the Leninist version which, according to him, radicalizes the partisan into an aggressive revolutionary, transforming them into an "*absolute* enemy" (Schmitt, 2007b:89). According to Schmitt, such an absolutization would mean a regrettable and dangerous return to the structure of just wars and, hence, to total wars or wars of annihilation (Schmitt, 2007b:30). In what follows, I closely read *how* Schmitt conceptualizes the partisan in relation to each of those four conceptual elements, drawing particular attention to the way in which he mobilizes the concept of the pirate as a constitutive outsider in order to draw such conceptual lines and boundaries[15].

According to Schmitt, the *irregularity* of the partisan should be understood in opposition to the regularity of the sovereign soldier, as such a lawful enemy is defined by the international law regulating war. Although irregular, the partisan is still a political category which remains within "the political sphere" (Schmitt, 2007b:91). Most importantly, the irregularity of the partisan   and, with it, the regularity of the enemy   is delimited through their *different* conceptual differentiations from two sea-related categories: the "privateer" (or "corsair")[16] and the "pirate". On the one hand, the irregularity of the partisan is considered similar to the "regular" irregularity of the privateer or corsair: "both the corsair of sea war and the partisan of land war could be compared with each other" (Schmitt, 2007b:70). On the other hand, they is conceived as radically dissimilar to the "irregular" irregularity of the pirate: "[t]he irregularity of the pirate lacks any relation to regularity" (Schmitt, 2007b:70). Hence, Schmitt brings the partisan and the privateer conceptually close to each other while differentiating both from the pirate. Thus, he constructs the privateer, the "partisan of the sea", as the intermediate conceptual point between the sovereign state and the pirate. And in doing so he draws the line not only between regularity and irregularity, but, most importantly, between a regular irregularity and an absolute irregularity[17].

In elaborating on the partisan's element of *increased intensity of political engagement*, Schmitt once again mobilizes the counterconcept of the pirate (and its absolute irregularity):

> The intense political character of the partisan must be kept in mind, because he must be distinguished from the ordinary thief and violent criminal, whose motives are directed toward private enrichment. This conceptual criterion of the political character [of the partisan] has (in exact inversion)

the same structure as does the pirate in the law of sea war. The concept of [the pirate] has the unpolitical character of his evil deeds, which are focused on private robbery and profit. The pirate has, as the jurists say, animus furandi [evil intent] (Schmitt, 2007b:14-15).

There are a couple of very important points here. However, considering the purpose of this article, I want to draw attention to only two or three of them. The first is the conceptual differentiation between the partisan (and their political character) and the ordinary thief or violent criminal (and their private motives). Second, I want to draw attention to the opposition between the partisan's *political* character and the pirate's *unpolitical* character, to their respective relations to land and sea, and to the public and the private spheres. However, there is an important caveat here, and this is the third point I want to make: despite having an "unpolitical character" and focusing "on private robbery and profit", the pirate in this concept not only has their intent and deeds qualified as "evil", but has their meaning related to and arising from "the law of sea war". More pointedly, what I want to suggest here is that the Schmittian pirate is an ambiguous, aporetic alterity: the pirate is *unpolitical* in character, *evil* in intent and deeds, *private* in their motivations, but, nonetheless, related to the *public* interstate law of sea war.

Moving on to another element of the Schmittian definition of the partisan, one can once again find such contrast with the concept of the pirate. In what regards the partisan's element of *increased mobility of active combat*, Schmitt opposes the absolute irregularity of the pirate to the regular irregularity of the partisan in order to stress the fact that the partisan *depends* on the relation with the state and its sovereign regularity. According to Schmitt, the armed partisan remains dependent on cooperation with a regular organization, for what is at stake here is "the regulation of the irregular" (Schmitt, 2007b:17). It involved, among other things, the recognition of the partisan as a lawful combatant and their treatment as a prisoner of war.

So if, on the one hand, the Declaration of Paris of 1856 abolished privateering[18], and, with it, the lawfulness of the regular irregularity of the privateer, then, on the other hand, this did not mean that the *partisan*'s regular irregularity was abolished, nor that the category of the *partisan* was proscribed and abandoned to the past (Schmitt, 2007b; Dinstein, 2004). The theory of the partisan speaks precisely to such a regulation of the irregular. And at issue here is nothing less than the irregular

combatant's right to be treated as a prisoner of war when captured and imprisoned   a topic enormously important in the context post September 11, 2001, Guantanamo Bay, and Abu Ghraib (Scheuerman, 2006).

In what regards the last, *telluric* element of the definition of the partisan, Schmitt once more opposes them to the pirate. On the one hand, the partisan's relation to the soil is positively associated with a *limited* hostility. On the other hand, this telluric element is opposed to the universal, *unlimited* hostility of the absolute enemy, such as the *outlaw of humanity* pirate (Yamato, 2019; Heller-Roazen, 2009, 2011; Rech, 2012). What's more, such constitutive relation with the soil serves to differentiate the partisan of the *land* from those categories of the *sea*: "[t]he partisan is and remains distinct, not only from the pirate, but likewise from the corsair [or privateer], even as land and sea, as different elemental spaces of human labor and military struggle between nations, remain distinct" (Schmitt, 2007b:21). Hence, differentiating, while articulating, the telluric partisan and the maritime categories of the privateer and the pirate, Schmitt draws the conceptual lines and boundaries between the *political* sphere and its *unpolitical* outside(r) (Yamato, 2019).

In *Mercenaries, Pirates, and Sovereigns*, Janice Thomson (1994) develops an international historical sociological study on sovereignty and the building of the modern state. Her argument is that sovereigns have built their own sovereign states by making use of mercenaries and privateers, on the one hand, and selectively punishing pirates, on the other. Through such selective deployment of extraterritorial violence, sovereigns legitimized their own authority and sovereignty. Hence, pirates and privateers were an extraterritorial problem to the international historical-sociological consolidation of the modern sovereign state and its monopoly of the legitimate use of violence, for both sea-related categories implied the use of violence by private individuals, that is, by *non*-state actors, *outside* of the territory of the state.

More specifically, in what regards the pirate/privateer differentiation, Thomson (1994:140) stresses that, *technically*, "pirates were clearly distinguishable from privateers", but, *in practice*, their distinction was arbitrary and dependent on the interested will of sovereigns. I wouldn't disagree. The sovereign could identify   and, indeed, historically instrumentally identified   one as a "pirate", just to arbitrarily rename him or her as a "privateer" the next moment. My point here,

nonetheless, is that the technical distinction between the pirate and the privateer enables the very sovereign (re)naming game in practice. In other words, the *conceptual* differentiation between the pirate and the privateer is the very condition of possibility of the instrumental, arbitrary empirical play sovereigns used to play, selectively authorizing privateers and punishing pirates.

As previously suggested, Schmitt knew the polemical and political power which words, concepts, and language have. He not only recognized that "[w]ords are politics" (Koskenniemi, 2009:395), but also understood the conceptual order – within which individual words gain meaning   as political. He thus knew all too well the power of the concept of the pirate, but, most significantly, its exceptional, *systemically* liminal position within the normative conceptual order of international law (Schmitt, 2011a, 2011b, 2011c, 2011d, 2011e; Heller-Roazen, 2009, 2011; Yamato, 2019; Rech, 2012).

According to Thomson, the affirmation of the state as the modern sovereign form of public authority required the effort of expanding and enforcing its control over individuals and their use of violence inside   *and* outside   the state's territorial jurisdiction. Such process of monopolization of legitimate and lawful use of violence required sovereign states (individually) and the public international order of sovereign states (collectively) to deal with the problem of defining and suppressing piracy territorially and extraterritorially. As she explains, only with "the universalization of the metanorm against individual violence on the high seas were the areas of the globe not subject to sovereignty converted from a state of nature into a realm of orderly interstate relations" (Thomson, 1994:140).

For Schmitt, the universalization of such metanorm meant the outlawing of the pirate, who, declared an enemy of the human race, was "ostracized and expelled, stripped of his rights, and made an outlaw by the rulers of the sea empires" (Schmitt, 2003:44). Hence, the pirate became historically and structurally identified as an *anomic* outsider, an outlaw (Schmitt, 2003, 2011b), literally conceived as "*outside the law*" (Ulmen, 2007b:xix). In Agamben's (1998) terms, the pirate was sovereignly abandoned as a *homo sacer*, outside both human and divine law.

However, as argued in my reading of Schmitt's conceptual construction of the partisan, the pirate is located in the *unpolitical* side of the political/unpolitical line drawn in the sea. Identified as absolutely unpolitical (Viriasova, 2016), the pirate is marked both by the characterlessness of the sea and the negativity of the state of exception. Conceptually positioned at the outer limits of the modern international legal order, the pirate negatively grounds humanity and humanity's community, law, and order, structurally working as the *constitutive outsider* of the modern international system (Yamato, 2019; Simpson, 2007; Walker, 2010, 2016). Hence, the pirate is not only a particular historical and empirical phenomenon, but also, and most importantly, a liminal conceptual position demarcating the outer limits of a normative conceptual order that gives form to, thus framing and constituting, a political ontology of the world.

As such a liminal concept, the pirate was systemically articulated to certain politics of a-legality at the fault lines of the *nomos* of the earth (Lindahl, 2013). Thus the specter of the pirate survived its historical, empirical "originary" manifestation, gaining new names in different contexts through what Koselleck has called *structural iterability* (Yamato, 2019; Koselleck, 2004). For instance, the pirate   or, more specifically, their liminal, structural position *with*-out the modern international conceptual order of the political   has been identified most recently with the name of "terrorist" (Yamato, 2019; Ulmen, 2007b; Yoo *apud* Mayer, 2005; Yoo *apud* Policante, 2015; Galli, 2010). In this regard, for instance, Galli has argued that the analogy between "pirates" and "terrorists" is significantly "profound and concrete", for, above all, both are "*hostes humani generis*, enemies of the human race" (Galli, 2010:184-185). Thus conceived, pirates and terrorists are *not* "regular enemies", but rather "common enem[ies] to all" (Galli, 2010:185). Beyond the lines of legality, regularity, and the political, the pirate, as the contemporary terrorist, names the (post)structural position of the constitutive outsider.

CONCLUSION

In this article, I offered a deconstructionist reading of Carl Schmitt, displacing his traditional friend/enemy dualism towards the sea and the conceptual (post)structural limit-position of the pirate. Inspired by Derrida's commentaries few weeks after the attacks of September 11, 2001, and by his writings more generally, I played with Schmitt and his categories, aiming to follow the author of *The Concept of the*

Political "as far as possible" within his own conceptual distinctions and differentiations. Adopting the doubled strategy of deconstruction, I positioned my reading of Schmitt's enmity dualism of enemy/foe in relation to the characterless (Schmittian) sea, tracing constitutive outsiders and sailing the political/unpolitical line.

In so doing, I argued that the differentiation between the enemy and the foe was quite central to Schmitt's conceptualization of the political, suggesting that Schmitt rearticulated such distinction within his *Theory of the Partisan*. Between the real enemy (enemy) and the absolute enemy (foe), the partisan is constructed as the intermediate category of the political. In other words, the partisan is constructed between the sovereign regularity of the soldier and the anarchical irregularity of the pirate. More specifically, I showed how Schmitt mobilizes and differentiates the sea-related categories of the pirate and the privateer in order to delimit and conceptualize his telluric partisan. I argued that with-in such conceptual differentiation, which takes place in the sea, Schmitt is able to draw the line between regular irregularity and irregular irregularity and, hence, between the political and the absolutely unpolitical.

Displacing the conceptual order of the political, I suggested that Schmitt constructs the pirate as the other conceptual point in relation to which the telluric partisan is the intermediate one. For if, on the one hand, the partisan is an irregular combatant when compared to the sovereign state soldier, then, on the other hand, the former's (regular) irregularity is not absolute as the irregular irregularity of the pirate. The sovereign soldier (the enemy) and the anarchical pirate are diametrically opposed categories: whereas the former is synonymous of real enmity, formal war and thus identified with the political, the latter is synonymous to absolute enmity, wars of annihilation, and the unpolitical. In Kosselleckian terms, the partisan of the land and the privateer of the sea intermediate such Schmittian construction of *asymmetric* counterconcepts: enemy/pirate.

Moreover, I suggested that following the trace of the unpolitical conceptual position of the pirate leads one to the traces of the enemy of the human race. At stake here, I argued, is the outlawing of the irregular, the intensification of inimical relations, and the legitimation of exceptional violence. For, as Schmitt famously warned, confiscating the word "humanity" may turn the enemy into an "outlaw of

humanity", thus leading to "the most extreme inhumanity" (Schmitt, 2007a:54). The "war on terror", Guantanamo Bay, Abu Ghraib, and the use of waterboarding and other "enhanced interrogation techniques" should be taken as recent empirical examples of the general problem being posed here.

The pirate names the exception otherwise, repositioning it at the outer limits of Schmitt's *international* political thought. Displacing the Schmittian conceptual order of the political from the sea, I argue, the pirate conceptually marks a systemic, structural limit-position, before the modern international's and humanity's constitutive outside (Yamato, 2019; Walker, 2010, 2016). Thus, I suggest, it enables us to rethink exceptional forms of othering, outlawing, and exclusion. In so doing, it provokes us to reimagine the boundaries of our cartographical political imagination, the limits of our normative conceptual language, and the ways in which the legitimation of exceptional forms of violence may be conceptually articulated, authorized, and legitimized.

NOTES

1. For the political-theological and philosophical relations between the "exception" and the "example", see Agamben (1998).

2. According to Schmitt's critical assessment, the latter would be related to a certain Weberian sociological method, which, with "a view to certain ideas and intellectual constructions, seeks the typical group of persons who arrive at certain ideological results from the peculiarity of their sociological situations". Hence, in its tracing of "a conceptual result back to a sociological carrier", it would be "psychology", involving "the determination of a certain kind of motivation of human action" (Schmitt, 2005:44).

3. Despite, of course, the problem of periodization and its relation to both sovereignty and the discrimination between distinct epistemes or regimes of truth (Davis, 2008). In this concern, see also Foucault (2008) and Onuf (2018).

4. See also Yamato (2019), Heller-Roazen (2009, 2011), Policante (2015) and Rech (2012).

5. More on this particular point hereinbelow.

6. It is for this reason, following a Derridean strategy of reading closely and immanently from within, that I insist in the citations and quotations of Schmitt throughout this article.

7. Etymologically, according to Schmitt (2003: 43), the meaning of the word "character" comes from the Greek word "*charassein*, meaning to engrave, to scratch, to imprint".

The point is that, in contrast to the lands of the terrestrial earth, the sea could not be demarcated, delimited, and thus ordered and governed. The sea is, literally, *an*-archical.

8. And not the other way around.

9. Compare Schmitt (2003:140-171) and Bull (1966).

10. See also Koskenniemi (2004) and Lindahl (2013).

11. See also Koskenniemi (2004:496).

12. "To the essence of *hostis* belongs the *aequalitas*" (Schmitt, 2003:153).

13. See also Yamato (2019), Heller-Roazen (2009, 2011) and Rech (2012).

14. See also Galli (2015:108).

15. In doing so, I am inspired by R. B. J. Walker's engagement with sovereign practices, the politics of boundaries, and, most particularly, with conceptualization as a form of political, boundary practice. See, for instance, Walker (2010, 2016).

16. In a footnote to *Theory of the Partisan*, Ulmen explains: "Corsair was the name given by the Mediterranean peoples to the privateers of the Barbary coast, who plundered the shipping of Christian nations. Strictly speaking, they were not pirates, since they were commissioned by their respective governments." (Ulmen, 2007b:21, footnote 31).

17. Interestingly enough, beyond and before Schmitt, such conceptual differentiation seems to have had important consequences for the laws of war — most particularly, for what concerns the differentiation between lawful and unlawful combatants. In this regard, Yoram Dinstein's chapter on "Lawful Combatancy" explains: "A civilian may convert himself into a combatant. In fact, every combatant is a former civilian: nobody is born a combatant. In the same vein, a combatant may retire [convert] and become a civilian. But a person cannot (and is not allowed to) be both a combatant and a civilian at the same time, nor can he constantly shift from one status to the other […] Whether on land, by sea or in the air, one cannot fight the enemy and remain a civilian. Interestingly, this general norm first crystallized in the law of sea warfare. Already in Article 1 of the Declaration of Paris of 1856" (Dinstein, 2004:28). Dinstein continues: "Privateers were private persons (at times known as corsairs, not to be confused with pirates) who obtained official letters of marque from a Government, allowing them to attack enemy merchant vessels. As the language of the Declaration of Paris indicates, it merely confirms the abolition of privateering as 'an already established situation' under customary international law. The law of land (and air) warfare ultimately adjusted to proscribe parallel modes of behaviour" (Dinstein, 2004:28, notes omitted). The first article of the 1856 Paris Peace Declaration Respecting Maritime Law states: "Privateering is, and remains, abolished" (Roberts and Guelff, 2000:49).

18. See note 14.

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RESUMO

Lendo Schmitt a partir do Mar: Rastreando os "Forasteiros Constitutivos" e Deslocando a Ordem Conceitual (e a Ordenação) do Político

Neste artigo, eu ofereço um deslocamento da imagem metafísica de Carl Schmitt de uma época específica e da maneira como ele forja uma construção particular do planeta, que revela traços arquitetônicos de um enquadramento normativo que autoriza e legitima um modo específico de conceber a forma apropriada de organização política do mundo. Inspirado no trabalho de Jacques Derrida, desloco o tradicional dualismo amigo/inimigo de Schmitt em direção ao mar e à posição-limite (pós-)estrutural conceitual do pirata. Adotando uma estratégia desconstrucionista derridiana, questiono o modo como Schmitt conceitualmente (auto-)autoriza sua ordem (e ordenação) conceitual, identificando alguns espaços, ações e categorias de sujeitos como *não*-políticos. Negativamente, eu argumento, essas construções *não*-políticas, esses *forasteiros constitutivos*, autorizam conceitualmente a linha que torna possível a conceitualização e identificação *do* político. Ao ler Schmitt a partir do mar, eu convido o leitor a repensar os limites de nossa imaginação política cartográfica, os limites de nossa linguagem conceitual normativa e as maneiras pelas quais formas excepcionais de violência podem ser articuladas, autorizadas e legitimadas conceitualmente.

Palavras-chave: Carl Schmitt; Jacques Derrida; pirata; forasteiros constitutivos; o político

ABSTRACT

Reading Schmitt from the Sea: Tracing Constitutive Outsiders and Displacing the Conceptual Order (and Ordering) of the Political

In this article, I offer a displacement of Carl Schmitt's metaphysical image of a specific epoch and the way it forges a particular construction of the planet, which reveals architectonic traces of a normative framing which authorizes and legitimizes, a specific way of conceiving the appropriate form of the political organization of the world. Inspired by Jacques Derrida's work, I displace Schmitt's traditional friend/enemy dualism towards the sea and the conceptual (post) structural limit-position of the pirate. Adopting a Derridean, deconstructionist strategy, I question the way Schmitt conceptually (self-) authorizes his conceptual order (and ordering), identifying some spaces, actions, and categories of subjects as *unpolitical*. Negatively, I argue, these *non*-political constructions, these *constitutive outsiders*, conceptually authorize the line which enables the conditions for conceptualizing and identifying *the* political. In reading Schmitt from the sea, I invite the reader to reimagine the boundaries of our cartographical political imagination, the limits

of our normative conceptual language, and the ways in which the legitimation of exceptional forms of violence may be conceptually articulated, authorized, and legitimized.

RÉSUMÉ

Lire Schmitt de la Mer: Retracer les Étrangers Constitutifs et Déplacer l'Ordre Conceptuel (et l'Ordre) du Politique

Dans cet article, je propose un déplacement du concept de Carl Schmitt de l'image métaphysique d'une époque spécifique et de la manière dont elle forge une construction particulière de la planète, qui révèle des traces architectoniques d'un cadrage normatif qui autorise et légitime une manière spécifique de concevoir la forme appropriée de l'organisation politique du monde. Inspiré par le travail de Jacques Derrida, je déplace le dualisme traditionnel ami / ennemi de Schmitt vers la mer et la position limite conceptuelle (post)structurelle du pirate. Adoptant une stratégie derridienne déconstructionniste, je remets en question la façon dont Schmitt (s')autorise conceptuellement son ordre(nement) conceptuel, identifiant certains espaces, actions et catégories de sujets comme non politiques. Négativement, je soutiens, ces constructions non politiques, ces étrangers constitutifs, autorisent conceptuellement la ligne qui permet les conditions de conceptualisation et d'identification du politique. En lisant Schmitt de la mer, j'invite le lecteur à repenser les limites de notre imagination politique cartographique, les limites de notre langage conceptuel normatif et les façons dont la légitimation de formes de violence exceptionnelles peut être articulée, autorisée et légitimée conceptuellement.

Mots-clés: Carl Schimitt ; Jacques Derrida ; pirate ; étrangers constituifs ; la politique

RESUMEN

Leyendo a Schmitt desde el Mar: Rastreando Extraños Constitutivos y Desplazando el Orden (y la Ordenación) Conceptual de lo Político

En este artículo, ofrezco un desplazamiento de la imagen metafísica de Carl Schmitt en una época específica y de la manera cómo forja una construcción particular del planeta, lo que revela trazos arquitectónicos de un encuadramiento normativo que autoriza y legitima un modo específico de concebir la forma apropiada de organización política del mundo. Inspirado en el trabajo de Jacques Derrida, traslado el tradicional dualismo amigo/enemigo de Schmitt en dirección al mar y a la posición limite (pos-)estructural conceptual del pirata. Adoptando una estrategia

deconstruccionista derridiana, cuestiono el modo como Schmitt conceptualmente (auto-)autoriza su orden (y ordenamiento) conceptual, identificando algunos espacios, acciones y categorías de sujetos como *no*-políticos. De forma negativa, argumento que esas construcciones *no*-políticas, esos *forasteros constitutivos*, autorizan conceptualmente la línea que posibilita las condiciones de posibilidad para la conceptualización e identificación de *lo* político. Al leer Schmitt a partir del mar, invito al lector a reimaginar los límites de nuestra imaginación política cartográfica, los límites de nuestro lenguaje conceptual normativo y las maneras por las cuales formas excepcionales de violencia pueden ser articuladas, autorizadas y legitimadas conceptualmente.

Palabras clave: Carl Schmitt; Jacques Derrida; pirata; *forasteros constitutivos*; lo político