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Europe and the New World Order: Lessons from Alexandre Kojève's Engagement with Schmitt's 'Nomos der Erde'

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Abstract

The received wisdom of the times is that a wide gulf has opened up between 'Europe' and 'America' – or at least has finally become visible. A commitment to a certain vision of international law is presented as a European trait that divides Europe from the United States. 'European' international law premises perpetual peace on rules that protect state sovereignty and sustain a world divided into territorial states, and it is at odds with the US preparedness to wage 'total war' in the name of some purportedly universal ideal, such as 'human rights' or 'democracy'. This conception of 'European', territorially based international law versus US (or Anglo-Saxon) universalism is articulated most forcefully by the extreme-right legal and political theorist Carl Schmitt in his 1950 work, *Der Nomos der Erde*, and related essays; Schmitt, realizing that the state had met its demise with the fall of the Nazi project that he supported, now conceived of a world divided into *Grossraume* rather than states. Schmitt's conception was challenged by the Marxist-Hegelian philosopher Alexandre Kojève, both in correspondence with Schmitt and in a public lecture that Kojève gave in Düsseldorf at Schmitt's invitation in the 1950s. Kojève articulated an alternative view of global order and Europe's place in it – a view that accepted global Anglo-American military supremacy while advocating a distinctive place for Latin or continental Europe in the building of global justice and prosperity through economic and legal integration and the construction of a just relationship in trade and finance with the developing world. This essay evaluates the debate between Schmitt and Kojève and draws lessons for contemporary discussion of the place of Europe in a one-superpower world.

Key words

Grossraum; Alexandre Kojève; Carl Schmitt; Leo Strauss; Universal and Homogenous State; world state

1. Introduction

The received wisdom of the times is that a wide gulf has opened up between 'Europe' and 'America' – or at least has finally become visible. The proposition is shared between intellectuals on both sides of the Atlantic, and from divergent philosophical and political perspectives; it is equally argued by neoconservative pundits such as Robert Kagan, who in his notorious *Policy Review* article suggested that Europeans and Americans were from different planets in their approach to international order,[1] and by Old World philosophers like Jürgen Habermas and Jacques Derrida, who put aside

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1. R. Kagan, 'Power and Weakness', *Policy Review*, June 2002.

many theoretical differences to write a common manifesto calling for a new Europe whose internal and foreign policies would be a counterweight to US hegemony.[2] According to Habermas and Derrida,

> In this world, a hardening of relations over an equally stupid and costly choice between war and peace could never be afforded. Europe must add its weight to the scales on the international level and within the United Nations and it must be a counterweight to the hegemonic unilateralism of the United States. At the summits on the global economy and in the institutions of the World Trade Organization, the World Bank and the International Monetary Fund, Europe must be able to influence the form that will be given to the world's domestic policies.[3]

Struck by this chorus of opinion on the Europe–United States divide, one could easily forget that, at present, the very concept of 'Europe' is deeply contested; this contestability is reflected most obviously in the difficulties of the constitutional exercise in Europe and the increasing salience of the debate over the limits of what is 'Europe' and 'European', a debate that concerns the relationship of Russia, as well as that of Islam (Turkey), with 'Europe'. It is also a debate about the welfare state and to what extent a set of social rights form part of the core status of 'European' citizenship. Defining European-ness in opposition to what is 'American' provides a tempting polemical shortcut to adequate deliberation about the meaning of 'European-ness' itself, and could thus serve any number of partisan agendas, whether on the left or the right.

As Martti Koskenniemi has observed,[4] a commitment to a certain vision of international law is presented as a European trait that divides Europe from the United States. 'European' international law premises perpetual peace on rules that protect state sovereignty and sustain a world divided into territorial states, and it is at odds with the US preparedness to wage 'total war' in the name of some purportedly universal ideal, such as 'human rights' or 'democracy'.

This conception of 'European', territorially based international law versus US (or Anglo-Saxon) universalism is articulated most forcefully by Carl Schmitt in his 1950 work *Der Nomos der Erde*, and related essays.[5] Ironically, however, Schmitt wrote these works as a lament for the passing of territorial and statist European international law, which he viewed as no longer sustainable, certainly not after the Second World War, given the fact of US global military superiority, rivalled only by Soviet power. Thus, in the works that centre on the idea of 'Nomos der Erde', when Schmitt looks to the future he seeks a new, alternative conception of balance, equilibrium, or division in the world, which would prevent the triumph of US liberal universalism; for the time being, only Sovietism, which Schmitt regarded as spiritually empty, sustained

2. 'February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe', 10 (3) *Constellations* 291.
3. Ibid., at 291.
4. 'International Law as Political Theology: How To Read *Nomos der Erde*', forthcoming, *Constellations*. Although I do not share Koskenniemi's view that there are external theological foundations to Schmitt's position I have been influenced greatly by Koskenniemi's articulation of the position itself, and am grateful for conversations and e-mail correspondence with him.
5. Published in English translation by G. L. Ulmen as *The Nomos of the Earth in the International Law of the* Jus Publicum Europaeum (2003). All further references are to this edition.

a balance.[6] Here, in articulating the alternative, Schmitt faltered; he honestly had no answer.

He expressed a hope that 'destruction' would bring forth some new beginning, a new 'Nomos der Erde', and he counselled against 'despair', but true to the consistent realist, anti-idealist aspiration of his thought, he could not articulate such a nomos, given the overwhelming technological and military facts of the post-war era, and the extent to which they looked without favour on any territorially based Eurocentric concept of global order. Is it not exactly this same difficulty that burdens the recent attempts of intellectuals such as Habermas and Derrida to articulate persuasively a concept of world order where Europe would actually be able to counterbalance US power and constrain US unilateralism? If the problem is the United States' power, and the United States' willingness to use it unilaterally, the appeal to a 'European' concept of territorial-sovereignty-based international law may be good for polemics and lip-smacking moralism, but is hardy credible as a real counterweight.[7]

Alexandre Kojève, the Franco-Russian philosopher who created left-wing Hegelianism in France through a famous serious of lectures in the 1930s (attended by illustrious figures such as Lacan and Merleau-Ponty), was also interested in a balance or counterweight to Americanism in the post-Second World War world.[8] Kojève, whose ideas of the End of History and of the ultimate replacement of the political with a Universal and Homogenous State based on law would seem to be Schmitt's worst nightmares, nevertheless shared important common ground with Schmitt: Kojève's reading of Hegel gave primacy to violent struggle – struggle to the death, the risking of one's life in combat against an enemy – as the origin or source of humanity.

Kojève would go on to argue, however, that after the French Revolution and Napoleon there is no longer a rational necessity for violent struggle, because the principle of recognition – of equal rights of citizens – has been established beyond the possibility of philosophical attack. With the conceptual triumph of the regime of rights, in principle, the recognition of each individual's humanity can be achieved adequately through work and citizenship in a just *Rechtstaat*. This does not mean that violence is not fated to continue for a long while, including 'political' violence, but this violence is post-historical – it is an unfortunate consequence of the need to eliminate anachronistic classes and forces that stand in the way of the attainment of the state of actualized universal recognition.

In his *Outline of a Phenomenology of Right*, Kojève articulates the notion of universal recognition as tending towards a legal order beyond the (nation-) state, through explicitly accepting and then 'reversing' the Schmittean concept of friend/enemy.[9]

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6. This comes out most clearly in 'Nomos–Nahme–Name', published in 1955.
7. And this is aside from the fact that, while in the case of Iraq, European public opinion seemed to support a territorial-sovereignty-based system of legal restraints against US 'universalism', in other cases the European public, or a large part of it, was willing to place universal values (human rights) beyond those restraints, e.g. Kosovo.
8. See especially Kojève's memorandum of advice to Charles de Gaulle, 'Outline of a Doctrine of French Policy', trans. E. de Vries, *Policy Review*, Aug./Sept. 2004. See also my interpretative essay on Kojève's 'Latin Empire' in the same issue of *Policy Review*, on which I draw freely in this paper.
9. A. Kojève, *Outline of a Phenomenology of Right*, ed. B. P. Frost, trans. B. P. Frost and R. Howse (2000).

As long as the world is divided into states in potential or actual relations of enmity with one another, justice remains 'political' – contingent on the interests of the particular state, and its governing elite, in relation to other states; justice is not truly impartial and disinterested, as implied, according to Kojève, by the very idea of *droit*. The 'political' is the hard constraint against which the universalist aspiration of law must falter, unless, and this is Kojève's departure from Schmitt, the realization of this aspiration itself is capable of overcoming the 'political'. According to Kojève, through the increasing integration, mutual recognition, and harmonization of laws and legal judgments between 'states' – the regulators and jurists of the different states – the political is ultimately replaced by the juridical as the basis of resolving differences between 'states'. Once this process reaches a certain point, it becomes unthinkable that these states would ever revert to war in order to resolve their differences among themselves. Whatever the differences, they are subsumed within a universal concept of justice (which is what has in fact allowed the integration); thus the differences can be resolved administratively by civil servants and lawyers, without the Schmittean political. According to Kojève,

> As a political entity, the State tends to propagate itself by conquest; it tries to absorb purely and simply foreign States. But as a juridical entity, the State limits itself to imposing abroad its domestic *Droit*. In other words it tends to create a *Federation* of States or a federal State by becoming itself one of the federated States, the Federation having for a base and a result the existence of a unique *Droit*, common to all the federated States, and implying – in its 'public *Droit*' aspect – an element of 'federal *Droit*', regulating the relations of the federated States among themselves, [and] in particular the federal organization of justice. If the Federation is not universal – if it has enemies-States outside, it will have to organize itself into a (federal) State properly so-called. Its integral elements – the federated States – will also have enemies; they will therefore be *States*. But they will always have common enemies and will only be able to be reconciled with them in common: they will therefore not be sovereign States but federated States. However, the Federation will have a tendency to propagate itself as much as possible. At the limit it will encompass the whole of humanity. Then it will cease being a State in the proper sense of the word, no longer having enemies outside. And the federated States as well will consequently cease to be genuine States. The Federation will then become a simple, worldwide juridical Union (at least in its juridical aspect, which is not the only one).[10]

Yet the concept of justice on which the ultimately worldwide juridical Union is based is a complex one. It contains both an idea of equal opportunity in the marketplace (the ability to be compensated for one's labour at its exchange value) and a notion of substantive equality, or equality of status – which means social rights, the welfare state, and so forth.[11] The concrete legal and economic institutions that achieve a balance or synthesis of these aspects of justice do not spontaneously emerge at a global or universal level but rather in particular social and cultural contexts.

Kojève suggests that the ultimate synthesis of market *equivalence* and socialist *egalité* will privilege humanized leisure, or intelligent play (art, love, literature). The

10. Kojève, *supra* note 9, at 327.
11. Ibid., and see the interpretative essay by Howse and Frost in the same volume.

achievement of recognition in the end-state will maximize the possibility for those activities that make men happy (once, that is, they no longer feel that they have to struggle in order to be adequately recognized).

At the end of the Second World War Kojève predicted that the Soviet system would not be able to reform itself so as to allow the required 'market' elements recognition; instead, it was more likely that capitalism would be increasingly open to 'socialist' equality of status, that is, to a compromise based on the redistributive welfare state. However, the Anglo-US variant of mixed social economy was seen by Kojève as quite different from the continental European variant; this difference had its origin in different spiritual sensibilities. Not only were continental Europeans relatively more willing to entertain redistribution, but European 'Latinity', as Kojève called it, was less materialistic, more inclined to put a premium on taking advantage of prosperity to reduce work and enhance leisure. Kojève also saw 'Latin' Europe as having greater affinity with and sensitivity to the Third World, and suggested the incipient existence of a kind of common Mediterranean sensibility, including both Mediterranean Europe and much of the Islamic world.

For these reasons, Kojève considered (Latin or continental) Europe, not the United States, to be the vanguard of the universal and homogeneous state, the state where recognition would be achieved on terms most consistent with man's happiness, his quality of life, the state where he fulfils himself as 'human', that is, is universally recognized, but also as a natural being who seeks pleasure, albeit pleasure in humanized forms that deploy his intelligence and creativity.

At the same time Kojève accepted as an unmoveable given the global military supremacy of the Anglo-US Empire, which, once Sovietism collapsed, would prove unchallengeable by another group of countries. But the time had long passed where military force was decisive for human destiny; now, the use of force might advance the march of history in some very backward places, sweeping away 'obstacles' to change, and keeping in check 'reactionaries' (ethnic nationalist guerrillas, and such), but what was fundamental to the shape of the human future was the way in which legal and economic institutions synthesized market and socialist aspects of equality, and harmonized globally, with a view to the achievement of the Universal and Homogeneous State. This latter process was driven not by military struggle (at least not fundamentally) but by a combination of peaceful competition and co-operation among states and groups of states with different approaches to the mixed economy, and by the relations between these states or groupings of them with the developing world. Anglo-US military or even technological supremacy does not translate into the domination of an Anglo-US style of mixed economy.

2. Kojève's confrontation with Schmitt

Kojève's confrontation of his own vision of global order, and Europe's place in it,[12] with Schmitt's prediction of a new 'Nomos der Erde' occurs in correspondence

12. Jan-Werner Müller, in his fine book on Schmitt's intellectual legacy in Europe, has also addressed this exchange between Schmitt and Kojève, and I am in his debt; my own reading does not really challenge or

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between Kojève and Schmitt between 1955 and 1957.[13] It culminates in a lecture that Kojève gave in Düsseldorf at Schmitt's invitation, where he publicly airs his differences with Schmitt, and articulates his conception of a world state based on a 'peaceful, democratic' modification of capitalism in favour of redistribution, including between the developed and developing countries.

The starting point of the correspondence is Kojève's reaction to Schmitt's essay 'Appropriation/Distribution/Production: An Attempt to Determine from Nomos the Basic Questions of Every Social and Economic Order'. In this essay Schmitt claims that 'in every economic order, in every period of legal history until now, things have been appropriated, distributed, and produced'.[14] Schmitt argues that appropriation – which he identifies with the political acts of war, occupation, and colonization as well as migrations and discoveries – takes 'fundamental precedence' over distribution and production. Something cannot be distributed until it has been in the first place 'taken', according to Schmitt, and it cannot be used for production until it is distributed. By contrast, liberals and socialists believe (respectively) that production and distribution once perfected make appropriation irrelevant or unnecessary. They are forgetful of the dependence of production and distribution on appropriation. First, against both the liberal capitalist and moral or idealistic socialists, Schmitt repeats Marx's argument that an increase in (capitalist) production will actually make distribution more difficult (pauperization); that is, Schmitt attacks the belief that increasing the size of the pie allows for distribution to succeed without the necessity of 'appropriation' or 'reappropriation', or taking or taking back the means of production by violent political struggle. Then he purports to find the continuing subsistence of 'appropriation' in the practice of 'imperialism'. Schmitt appears to suggest that it is naive, overall, to think that either capitalism or socialism can supply a solution to the problem of economic and legal order that dispenses with the need for 'appropriation' (and therewith, implicitly, the need for politics in the Schmittean sense, violent or potentially violent struggle between 'enemies'). Schmitt ends his essay with a series of questions: 'Has humanity today actually "appropriated" the earth as a unity, so that there is nothing more to be appropriated? Has appropriation really ceased? Is there now only division and distribution? Or does only production remain?' Read in the light of the essay as a whole, these questions have a certain rhetorical tenor – they are not meant to be answered with the words 'it cannot be so'; Schmitt would have failed in his purpose if the careful reader were to answer 'yes' to each of them with certainty. Then there is the final question: 'Who is the great appropriator, the great divider and distributor of our planet, the manager and planner of unified world production?'

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contradict in any important respect that of Müller, but for my own purposes I place the emphasis somewhat differently. See J.-W. Müller, *A Dangerous Mind: Carl Schmitt in Post-war European Thought* (2003); I am also grateful for illuminating conversation and e-mail exchanges with Müller.

13. Throughout this section I refer to Erik de Vries's excellent translation of the correspondence and Kojève's Düsseldorf lecture, 'Alexandre Kojève–Carl Schmitt Correspondence and Alexandre Kojève, "Colonialism from a European Perspective"', (2001) 29 *Interpretation* 91.
14. Ibid., at 327.

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Kojève's reaction to Schmitt's concept of 'Nomos der Erde' comes initially in his Hegelian answers to these questions.[15] 'In itself', Kojève answers, since Napoleon there has been no 'taking'. This is simply a reformulation of the position that war and conquest are no longer acts that are in themselves of intrinsic historical significance (even if they may look the same as before, they do not prove anything of necessary importance to humanity). Kojève's second answer is less obvious: '"For us" (i.e. for "absolute knowledge") there is now only "producing"'. This has to be understood in close connection with this third answer: 'but – "for consciousness itself" (for instance US/USSR) there is also "division"'. What Kojève means, I would suggest, is something like this: of the three processes described by Schmitt, only 'producing' leads to rational recognition in itself, and has an intrinsic value acknowledged by the sage or wise man. But the problem for (actual or contemporary) consciousness is how to redistribute resources and opportunities so that for all, regardless of place and class, there is the possibility of achieving recognition through producing. While men consciously deliberate and disagree over the principles and means of redistribution, 'distributing' does not have an intrinsic human value, but only an instrumental one. Instrumental questions are always burdened by contingency and empirical indeterminacy; rigorous, 'absolute' knowledge does not yield concrete answers to the distributional questions. Redistribution is implied by the concept of rational recognition in the Universal Homogeneous State, to be sure, but that concept does not in itself determine how it should be done.

This leads Kojève to his final remark to Schmitt in this letter. Kojève claims that both the Soviet and the capitalist systems share the same fundamental ideal or goal of 'homogeneous distribution' – prosperity for everyone, including people in the developing world. According to Kojève, Soviet development initiatives in the socialist world dirigisme are able to be distributed more quickly than US assistance; on the other hand, in the 'worldly world' (the profane world of capitalism) there is '*more* to distribute'. Absolute Knowledge does not yield an answer to the question of which system is better or more perfect from the perspective of distribution. This must be judged non-ideologically, based on the apparent economic and other facts as they emerge.

In his essay Schmitt had sought to use socialist critique against liberal capitalist focus on production, and then to use against socialist utopianism Marxist arguments about the inherent tension between increasing production on the one hand and the wider distribution of wealth on the other. All this, it would seem, in order to reopen the issue of appropriation, from which Marxists, liberals, and socialist utopians had all hoped to escape.

In a few bold strokes Kojève undoes Schmitt's rhetorical strategy. The differences between socialists and capitalists are not really about fundamental alternatives but concern the best way to achieve a common goal. If neither capitalism nor socialism has an a-priori superior claim to attaining the common goal, and each displays both strengths and weaknesses in its own approach to that goal, the answer is not

15. Ibid., letter of 2 May 1955.

necessarily to reject both or put in question the goal, but to consider possibilities of synthesis or reform of each in the light of the other.

As Kojève will emphasize in his next letter to Schmitt, this means that the differences between socialism and capitalism and their internal tensions do not give rise to any 'political' struggle in the Schmittean sense. The fundamental challenge of choosing and fine-tuning the exact set of legal and economic institutions that will eventually lead to prosperity for everyone is the work not of politician/warriors but of bureaucrats and technicians. In France (here Kojève draws directly on his experience as a civil servant), there are, to be sure, parties or groupings with parliamentary representation, but these tend to balance one another, leaving the detailed institutional choices more or less in the hands of an expert bureaucracy.

Schmitt's response is to be found in his letter to Kojève of 7 June 1955. Schmitt concedes that 'It is all over with the "state"', that is, at the national level one is left only with administrations or bureaucracies, not with true politics. But this condition is merely the prolegomena to a great new struggle to be conducted by 'greater men' at the global level, or some level beyond that of the 'state'. The struggle is no longer over the 'state' but rather over *Grossraum*. This is a notion of larger spaces of social and economic organization suited to 'the dimensions of today's and tomorrow's technology'. The idea of *Grossraum*, while different from that of the state, nevertheless opposes itself to the 'unity of the world'; there is a plurality and this is enough to establish 'meaningful enmity', implicitly the kind of enmity that constitutes the political and guarantees its permanence. Schmitt foresees a 'tremendous, reciprocal "match of powers"'.

Notably, Schmitt gives no clue as to in the name of what, and particularly what differences, this future conflict will be played out. This leads Kojève to return to a difficulty with the concept of 'taking' or 'appropriation' in Schmitt's 'Appropriation/Distribution/Production' essay; Schmitt sought to counter the liberal and socialist reduction of the problem of legal and social order to mere production and/or distribution by showing that the latter are in some way presupposed by, or dependent on, 'taking' or 'appropriation'.

But once 'taking' or 'appropriation' are understood as preconditions to, or instruments of, 'distribution' and 'production', the political character of 'taking' (in contradistinction to 'distribution' and 'production) disappears. Thus, as Kojève points out in his letter to Schmitt of 1 August 1955,

> taking is only *political* insofar as it takes place on the grounds of prestige or for prestigious ends. Otherwise surely even animals could wage war and the slave capture in Africa in the 19th century was also a war? On the other hand, Athens certainly did not have much to 'take' from Sparta (and vice versa) except for 'hegemony', i.e. precisely prestige.[16]

This leads us to Kojève's public response to Schmitt in the lecture that he delivered in Düsseldorf at Schmitt's invitation, 'Colonialism from a European Perspective'. The

16. Emphasis in original.

explicit theme of this lecture is policy towards developing countries, particularly trade policy as it was evolving at the time in GATT (General Agreement on Tariffs and Trade).

Kojève begins by describing Marx's error in his theory of 'pauperization': briefly, Marx did not foresee that the capitalists would get smart and realize that if they did not share surplus with workers, then the markets for their products would dwindle. Fordism represents a decisive innovation in the capitalism known to Marx on the basis of which he predicted capitalism's collapse. Workers are paid enough to buy the products that they make.

The challenge for capitalism in the current age, according to Kojève, is to extend this innovation to the relations between developed and developing countries. Unless developed countries share their wealth with the developing world, they will be unable to expand markets for their products in the long run, thus leading to a crisis in developed capitalism. According to Kojève this is the new 'Nomos der Erde' – 'giving' from developed to developing countries, which permits the extension globally of prosperity through the institutions of a mixed economy.

Kojève articulates a number of different mechanisms of development assistance, including commodity stabilization and direct financial assistance, emphasizing the exceptional resistance of the United States to most such mechanisms. He views regionalism as the most effective avenue for redistribution between the developed and developing countries, preferable to multilateral efforts (which have been stymied by the difficulty in obtaining agreement between the United States, Europe, and other countries) and purely bilateral efforts, because according to Kojève there are 'still, today, natural economic regions'.

Thus Kojève proposes a new 'division' or plurality of the world in the light of the new 'Nomos der Erde' – based on the regions for which different major developed powers have responsibility for ensuring that the poor countries of the region have the means of ensuring their economic development. Asia is an Anglo-US responsibility, the central Asian republics that of Russia, the Americas that of the United States, and the Mediterranean world that of Europe.

According to Kojève, the Mediterranean only ceased to be a robust and successful economic zone as a result of the 'Islamic conquest', which 'converted it into a border between two worlds, so that for centuries it no longer served commercial traffic, but became almost exclusively a theatre of military games'. A European focus on economic development in the poorer countries of the Mediterranean, Kojève appears to suggest, would have the aim of reversing the division of that world that began with the Islamic conquest. The division between Islam and Catholicism in the Mediterranean is thus, for Kojève, not a fundamental one; only its politicization, in the past, led to a breakdown of a natural economic unity.

One cannot but be struck by the brilliance of Kojève's reformulation of Schmitt's question of the new 'Nomos der Erde', and Schmitt's suggestion of *Großraum*. As the exchange of correspondence between Schmitt and Kojève demonstrates, challenged by a thinker at his own level (or better) to make sense of these concepts and give them substance, Schmitt himself ended up in a cul-de-sac, or going around in circles as it were. Schmitt's problem was that he stuck to a faith in, and hope for, a new

division of the world that would allow the kind of enmity that for him constituted the 'political'.

The same difficulty faces those today who seek to articulate a vision of Europe as a counterbalance to the unilateralism of US 'hard' military power. If what is meant is that Europe can be a moralistic 'naysayer' or critic, that is fine, but it hardly amounts to a 'tremendous, reciprocal 'match of powers'. The fact is that the differences between 'America' and 'Europe', even when presented with the utmost intensity, do not lead to a belief, on either side of the Atlantic, that these differences must be settled 'politically' in the Schmittean sense of the word, that is, by war or in the shadow of war. This is not just a matter of Europeans being 'realists' and unwilling to fight for a lost cause, as it were; for, equally, in the United States, the idea of punishing Europeans who disagree with US unilateralism (Iraq, etc.) by the use of force, is simply off the map. Europeans and Americans cannot imagine killing one another over their disagreements.

What Kojève appreciated, much ahead of his time, is that in a post-historical world military force, even if supreme, is not determinative; the rapidity of the path towards the regime of equal recognition in places like Iraq may be affected by the use of force – either hastened or delayed – but it ultimately depends on economic and legal transformation. As Kojève's concept of a 'Latin Empire' or *Grossraum* suggests, Europe may be far better situated than the United States, spiritually as well as economically, in facilitating such transformation in the Middle East. The empty moralism of some European powers in vainly opposing US unilateralism has actually created a situation where Europe is now less able to do what it has, arguably, a superior ability to do, which is to shape the economic and legal transformation of the Middle East through the concept of a reintegrated Mediterranean world.

But is Kojève really correct that the construction of the Latin Empire as *Grossraum* is 'post-political'? In his 'Outline of a French Policy Doctrine', Kojève suggests that the 'Latin Empire' will pose

> new problems for democratic political thought, which would finally permit it to overcome its traditional ideology, which is suited only to *national* frameworks and is consequently anachronistic. It is perhaps by determining relations within an Empire (and ultimately within Humanity) that democracy will anew have something to say to the contemporary world.[17]

In this passage, Kojève would appear to break away from his dependence on the Schmittean conception of the 'political' as constituted by violent struggle against a political enemy; nevertheless in the correspondence with Schmitt ten years later he reaffirms his agreement with Schmitt on the meaning of 'political' and of the 'state', disagreeing only on whether the political in this sense has any future.

Yet an obvious question to be posed to both Schmitt and Kojève on the basis of their correspondence is: if, as they both agree, the 'state' is finished but at the same time there remain differences between societies, and, moreover, between regions or groupings of societies that matter in terms of the new order of things, the new 'Nomos

17. Kojève, *supra* note 8, at 16 (emphasis added).

der Erde', then might there not be a shift in the meaning of the 'political'? In the correspondence Kojève avoids this question (which, as we have seen, he more or less posed himself ten years earlier) by referring to the sharing of a single goal – universal prosperity. But is it true, as he suggests in the correspondence, that the differences in approaches to achieving that goal – the differences between legal and economic institutions and policies, for instance, between the Latin and Anglo-Saxon worlds – simply boil down to technocratic issues, at most the administration of justice? It is not merely differences of expert opinion that appear to determine different choices for different societies or groupings of societies, but different spiritual or cultural sensibilities, as Kojève emphasizes in his 'Outline of a Doctrine of French Policy' – in other words, differences of value. Yet what distinguishes these differences of value from conflicts over 'goals' is that it is not rationally necessary – not in fact rational – to resort to violent struggle to attempt to resolve the differences, and so Kojève is right to understand these differences as not pointing to a new Schmittean political. Yet, on the other hand, it seems untrue to the phenomena to view the differences as purely tractable to technical, legal, or bureaucratic resolution.

This then I would venture is the new, post-Schmittean political, implied but never explicitly articulated by the final thought of Kojève: the choice of policies through democratic decision-making, including transnational democratic governance, when the choice implies value divergences that cannot be reduced to different 'scientific' judgements about means. Such choices nevertheless occur against common goals, and in the shadow of an understanding that ultimately the resort to violence to resolve disagreement is, and will permanently remain, rationally incoherent.[18]

18. This concept of a post-Schmittean political is being developed in work-in-progress by the author with Professor Kalypso Nicolaidis. He acknowledges many valuable and stimulating conversations with Nicolaidis on this question.