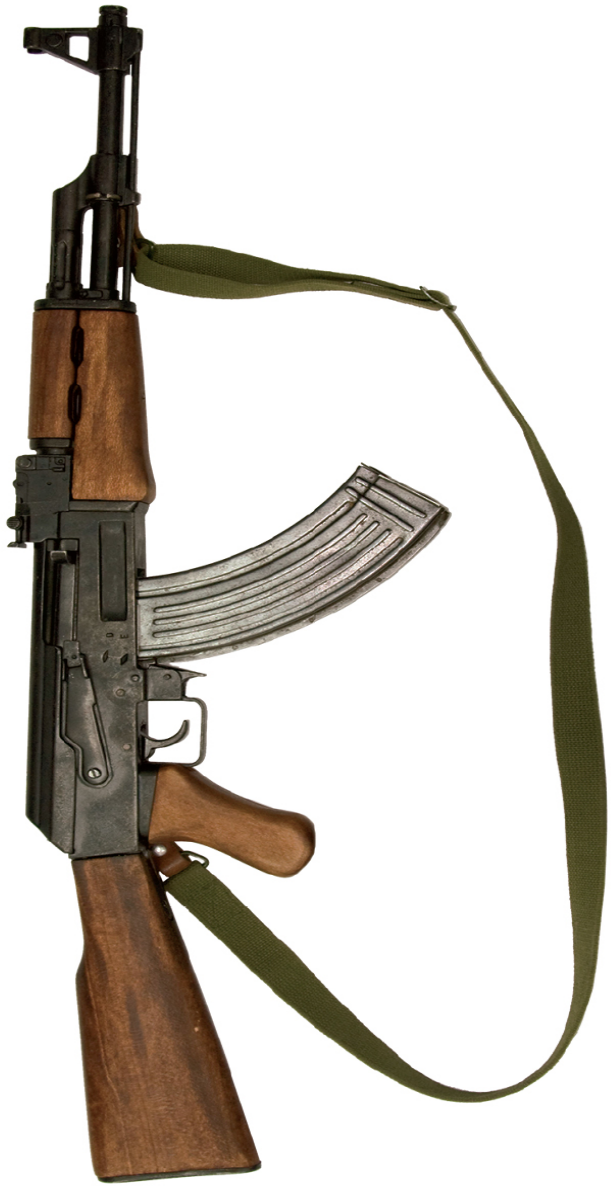
THEORY OF THE PARTISAN



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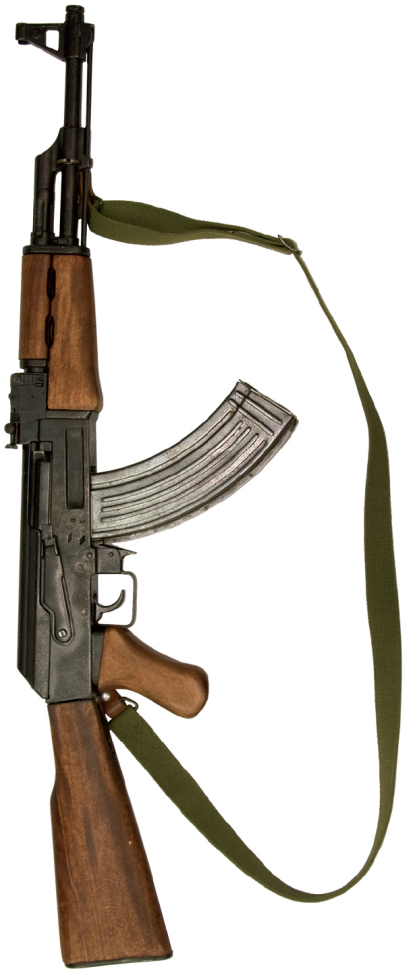

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An Interjection to the Concept of the Political

BY

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Antelope Hill Publishing

First printing 2020

Originally published in German, 1962.
Translated into English by C. J. Miller, 2020.
Cover art by Anita Hudojnik

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FOREWORD

The present treatise on the theory of the partisan originates from two lectures I gave in the spring of 1962, on 15 March in Pamplona, at the invitation of the Estudio General de Navarra, and on 17 March in the University of Zaragoza, in the context of the events of the *Cátedra Palafox*, at the invitation of its director, Professor Luis García Arias. The lecture was printed in the *Cátedra's* publications at the end of 1962.

The subtitle *An Interjection to the Concept of the Political* explains the concrete moment of the publication. The publisher is currently making the text of my writing from 1932 accessible again. In the last decades various corollaries on the subject have emerged. The present treatise is not such a corollary, but an independent work, albeit only sketchy, whose subject inevitably leads to the problem of the distinction between friend and enemy. Thus I would like to present this elaboration of my lectures of the spring of 1962 in the unassuming form of an interjection and in this way make it accessible to all those who have thus far followed the difficult discussion of the concept of the political.

Carl Schmitt, February 1963

INTRODUCTION

A Look at the Situation in 1808/1813

The starting point for our reflections on the problem of the partisan is the guerrilla war waged by the Spanish people between 1808 and 1813 against the army of a foreign conqueror. In this war, for the first time, the people—pre-bourgeois, pre-industrial, pre-conventional people—faced a modern, well-organized, regular army, born of the experience of the French Revolution. This opened up new spaces of war, developed new concepts of warfare, and gave rise to a new doctrine of war and politics.

The partisan fights irregularly. But the difference between regular and irregular warfare lies in the precision of the regular, and it is only in modern forms of organization, which emerged from the wars of the French Revolution, that it finds its concrete opposition, and thus its conception. In all ages of mankind and its many wars and battles, there have been rules of war and combat, and consequently, transgressions and disregard of the rules. In particular, in all times of dissolution, e.g. during the Thirty Years' War on German soil (1618-48), as well as in all civil wars and all colonial wars in world history, phenomena have repeatedly appeared which can be called partisan. But it must be noted that, for a theory of the partisan as a whole, the force and significance of his irregularity is determined by the force and significance of the regularity that he challenges. It is precisely this regularity of both the state and the army that receives a new, precise determination in both the French state and the French army through Napoleon. The countless Indian wars of the white conquerors against the American redskins from the 17th to the 19th century, but also the methods of the riflemen in the American war of independence against the regular English army (1774-83), and the civil war in the Vendée between Chouans and Jacobins (1793-96) all still belong to the pre-Napoleonic stage. The new art of war Napoleon's regular armies had emerged from the new, revolutionary way of fighting. To a Prussian officer of that time, Napoleon's entire 1806 campaign against Prussia seemed like nothing more than “large-scale partisanship.”[1]

The partisan of the Spanish guerrilla war of 1808 was the first who dared to fight irregularly against the first modern regular armies. In autumn 1808, Napoleon had defeated the regular Spanish army; the actual Spanish

guerrilla warfare only started after this defeat of the regular army. There is still no complete, documented history of the Spanish partisan war.[2] Such a history is necessary, as Fernando Solano Costa says (in his essay *Los Guerrilleros*, quoted in the note), but also very difficult, because the entire Spanish guerrilla warfare consists of approximately two hundred regional wars in Asturia, Aragon, Catalonia, Navarre, Castile, etc., led by numerous fighters whose names are shrouded in myths and legends, including Juan Martín Díez, who became a terror to the French known as the *Empecinado* and made the roads from Madrid to Zaragoza unsafe.[3] This partisan war was conducted with the most horrible cruelty on both sides, and it is no wonder that more contemporary historical material was printed by the educated *Afrancesados*, the Francophiles who wrote books and memoirs, than by the guerrillas. But however myth and legend on the one side and documented history on the other side may behave here, our starting position is clear in any case. According to Clausewitz, half of the entire French army often stood in Spain and half of it, namely 250-260,000 men, were held up by guerrillas, whose number is estimated by Gomez de Arteche at 50,000, and much lower by others.

The unique aspect of the situation of the Spanish partisan of 1808 is that he took the risk of fighting on his own home soil, while his own king and his royal family did not yet know exactly who the real enemy was. In this respect, the legitimate authorities in Spain at that time behaved no differently than in Germany. It is also pertinent to the Spanish situation that the educated classes of the nobility, high clergy, and bourgeoisie were largely *Afrancesados*, i.e. sympathetic to the foreign conquerors. In this respect, too, there are parallels with Germany, where the great German poet Goethe composed hymns to the glory of Napoleon, and German education was never fully clear where it's allegiance actually lay. In Spain, the *guerrillero* dared the hopeless fight, a poor devil, the first archetypal case of the irregular cannon fodder of international political disputes. All this is an overture towards a theory of the partisan.

A spark flew at that time from Spain to the north. It did not ignite the same fire there that gave the Spanish guerrilla war its historical significance. But it did trigger an effect there whose continuation today, in the second half of the 20th century, is changing the face of the earth and its inhabitants. It brought about a *theory* of war and enmity that logically culminated in the theory of the partisan.

In 1809, during the brief war that the Austrian Empire waged against Napoleon, the first systematic attempt was made to imitate the Spanish model. The Austrian government in Vienna staged a national propaganda campaign against Napoleon with the help of famous publicists, including Friedrich Gentz and Friedrich Schlegel. Spanish writings were distributed in German.[4] Heinrich von Kleist hastened to continue the anti-French propaganda in Berlin after this Austrian war of 1809. During these years, until his death in November 1811, he became the true poet of the national resistance against the foreign conqueror. His drama *Die Hermannsschlacht* is the greatest partisan poetry of all time. He also wrote a poem, *An Palafox*, in which he mentions the defender of Saragossa in the same breath as the likes of Leonidas, Arminius, and Wilhelm Tell.[5] The fact that the reformers in the Prussian general staff, especially Gneisenau and Scharnhorst, were deeply impressed and influenced by the Spanish example is well known and will be discussed further. In the world of thought of these Prussian general staff officers from 1808-1813 lies the seed of the book *Vom Kriege* (On War), through which the name Clausewitz has acquired an almost mythical status. His formula of war as the continuation of politics already is the theory of the partisan in a nutshell, which has been taken to its logical conclusion by Lenin and Mao Zedong, as we shall show later.

A true popular guerrilla war, which should be mentioned in connection with our partisan question, only took place in Tyrol, where Andreas Hofer, Speckbacher and the Capuchin Father Haspinger were active. The Tyroleans “became a powerful torch,” as Clausewitz put it.[6] That aside, this episode of 1809 was quickly over. No more did the rest of Germany experience a partisan war against the French. The strong national impulse, which manifested in isolated uprisings and bands of skirmishers, was channeled very quickly and completely into the thrust of the regular war. The battles of the spring and summer of 1813 took place on the battlefield, and were decided in open battle in October 1813 near Leipzig.

The Congress of Vienna of 1814/15, in the framework of a general restoration, also restored the concepts of European martial law.[7] This was one of the most astounding restorations in the history of the world. It had such enormous success that this martial law of contained continental land warfare still governed the European practice of land warfare in World War I in 1914-18. Even today this right is called *classical* martial law, and it deserves this name, for it knows clear distinctions, especially those of war

and peace, of combatants and non-combatants, and of enemy and criminal. The war is fought between states as a war of regular state armies, between sovereign bearers of a *jus belli*, who respect each other as enemies even in war and do not discriminate against each other as criminals, so that a peace agreement is possible and even remains the normal, self-evident end of the war. In view of such a classical regularity—as long as it had real validity—the partisan could only be a peripheral figure, as indeed he was during the entire First World War (1914-18).

Scope of Study

If I occasionally speak of modern theories of the partisan, I must emphasize, in order to clarify the subject, that actually there are no *old* theories of the partisan in contrast to the modern ones. There is no place in the classic rules of war for the partisan in the modern sense of the word under the previous European international law. He is either—as in the Cabinet Wars of the 18th century—a kind of light, especially mobile, but regular troop, or he simply stands outside the law as a particularly heinous criminal and is *hors la loi*. As long as war still contained something of the idea of an armed duel and chivalry, it could not be otherwise.

With the introduction of universal military service, however, all wars of ideas become people's wars, and soon situations arise which are difficult and often even impossible for the classical rules of war, such as the more or less improvised *levée en masse* (mass levy), or the *Freikorps* (volunteer corps) and the *Franctireurs* (sharpshooters). This will be discussed later. Fundamentally, war is still contained, and the partisan is outside of this containment. Indeed, it becomes part of his nature and existence that he is outside of any containment. The modern partisan expects neither justice nor mercy from the enemy. He has turned away from the conventional enmity of the tamed, contained war, and entered the realm of another, a true enmity, which increases through terror and counter-terror and culminates in annihilation.

Two types of war are particularly important in the context of partisanship, and in a certain sense even related to it: civil war and colonial war. In the partisanship of the present, this connection is virtually its defining characteristic. Classical European international law marginalized these two dangerous manifestations of war and enmity. The war of the *jus publicum*

Europaeum was a war between states waged by one regular state army against another. Open civil war was considered an armed uprising, which was suppressed by the police and regular army troops with the help of a declaration of a state of siege, unless it led to the recognition of the insurgents as a warring party. The colonial war was not out of sight of the military science of European nations such as England, France and Spain. But all this did not call into question the regular war between states as a classical model.[8]

Russia must be mentioned here in particular. The Russian army fought many wars with Asiatic mountain peoples throughout the 19th century and never limited itself to regular army war as the Prussian-German army did. Moreover, in Russia the autochthonous partisan fight against the Napoleonic army is part of Russian history. In the summer of 1812, Russian partisans under military leadership harassed and disturbed the French army on its advance towards Moscow; in the autumn and winter of the same year, Russian peasants killed the freezing and starving French on their retreat. The whole thing did not last much more than half a year, but it was enough to become a historical event of great impact, albeit more through its political myth and its various interpretations than through its paradigmatic effect on military theory. We must mention here at least two different, even opposite, interpretations of this Russian guerrilla war of 1812: an anarchist one, founded by Bakunin and Kropotkin and made world-famous by descriptions in Tolstoy's novel *War and Peace*, and the Bolshevik application through Stalin's tactics and strategy of revolutionary war.

Tolstoy was not an anarchist in the same vein as Bakunin or Kropotkin, but his literary impact was the greater for it. His epic *War and Peace* contains more myth-forming power than any political doctrine or documented history. Tolstoy holds up the Russian partisan of 1812 as the bearer of the elemental powers of the Russian soil, which shakes off the famous emperor Napoleon and his brilliant army like a pesky vermin. Tolstoy's uneducated, illiterate *Muzhik* is not only stronger but also more intelligent than all strategists and tacticians, more intelligent above all than the great commander Napoleon himself, who becomes a marionette in the hands of historical events. Stalin seized on this myth of indigenous national partisanship in the Second World War against Germany and put it very concretely at the service of his communist world politics. This represents an

essentially new stage of partisanship, at the beginning of which stands the name Mao Zedong.

For thirty years now, hard partisan fighting has been taking place in large areas of the world. It began as early as 1927, before the Second World War, in China and other Asian countries, which later fought against the Japanese invasion of 1932 to 1945. During the Second World War, Russia, Poland, the Balkans, France, Albania, Greece and other areas became the scene of such wars. After the Second World War, partisan struggle continued in Indochina, where it was most effectively organized by the Vietnamese communist leader Ho Chi-Minh and the victor of Dien Bien Phu, General Vo Nguyen Giap, against the French colonial army, as well as in Malaya, the Philippines and Algeria, in Cyprus under Colonel Griwas, and in Cuba under Fidel Castro and Che Guevara. At present, in 1962, the Indo-Chinese countries of Laos and Vietnam are areas of partisan warfare, where new methods of overcoming and outwitting the enemy develop on a daily basis. Modern technology provides ever more powerful weapons and means of destruction, ever more perfect means of transport and methods of communication, both for the partisan and for the regular troops fighting him. In the vicious cycle of terror and counter-terror, the fight against the partisan is often only a reflection of the partisan struggle itself, and the old saying, which is usually quoted as an order given by Napoleon to General Lefevre on September 12, 1813, is always correct: with partisans one must fight as a partisan; *il faut opérer en partisan par tout ou il y a des partisans*.

Some special questions of legal and international standardization will be dealt with later. The basic principles are self-evident; their application to concrete situations of rapid development is controversial. From these last years has appeared an impressive document of the will to total resistance, and not only of the will, but also of the detailed instructions for its concrete implementation: the Swiss *Kleinkriegsanleitung fur jedermann* (Manual of Low-intensity Warfare for Everyone), published by the Swiss Junior Officers' Association under the title *Der totale Widerstand* (Total Resistance) and written by Captain H. von Dach (2nd edition, Biel, 1958). Throughout more than 180 pages, it provides instructions for passive and active resistance against a foreign invasion, with precise instructions for sabotage, going underground, caching weapons, organizing ambushes, fighting informers, etc. The experiences of the last decades are carefully utilized. This modern warfare manual for everyone is headed by a statement

that their “resistance to the end” must comply with the Hague Convention on the Laws and Customs of War on Land and the Four Geneva Conventions of 1949. That goes without saying. It is also not difficult to calculate how a normal regular army would react to the practical handling of this instruction for small-scale warfare (e.g. p. 43: silent dispatching of sentries with an axe) as long as it did not feel defeated.

The Word and Concept of the Partisan

This short enumeration of some well-known names and events with which we have attempted an initial outline of our scope of study shows the immense wealth of material and problems. It is therefore advisable to specify some characteristics and criteria so that the discussion does not become abstract and open-ended. The first such characteristic was mentioned at the very beginning of our exposition when we assumed that the partisan was an *irregular* fighter. The regular character is manifested in the uniform of the soldier, which is more than a work uniform, because it demonstrates a mastery of the public sphere, and with the uniform, the weapon is also openly and demonstratively displayed. The enemy soldier in uniform is the real target of the modern partisan.

As a further characteristic, the intensive political commitment that sets the partisan apart from other fighters imposes itself on us. The partisan's intensely political character must be maintained, because he must be distinguished from the common thief and violent criminal whose motives are aimed at private enrichment. This conceptual criterion of *political* character has the same structure (in exact reversal) as that of the pirate in maritime law, to whose concept appertains the *apolitical* character of his evil deeds, which are directed towards private theft and profit. The pirate has, as the lawyers say, the *animus furandi* (intent to steal). The partisan is fighting on a political front, and it is the political character of his actions which brings again to the fore the original meaning of the word *partisan*. The word comes from party and refers to the attachment to a party or group that is somehow involved in fighting, warfare, or is politically active. Such ties to a party become particularly strong in revolutionary times.

In revolutionary war, belonging to a revolutionary party implies nothing less than total absorption. Other groups and associations, especially the

present state, are not able to integrate their members and adherents as completely as a revolutionary fighting party integrates its active fighters. In the extensive discussion about the so-called total state, it has not yet been recognized that today it is not the *state* as such but the revolutionary *party* as such which is the real and essentially only totalitarian organization.[9] From a purely organizational point of view, in the sense of the strict functioning of command and obedience, it must even be said that some revolutionary organizations are superior to many regular troops in this respect, and that a certain confusion must arise in the international rules of war if organization as such is made a criterion of regularity, as happened in the Geneva Conventions of 12 August 1949 (see below).

In German, partisan means party member, one who belongs to a party, and what that means in concrete terms is very different at different times, both in terms of the party or front that he supports, and in terms of his going along, running along, fighting alongside, and possibly also being captured together with them. There are warring parties, but there are also parties of the judicial process, parties of parliamentary democracy, parties of opinion and action, etc. In Romance languages, the word can be used both substantively and adjectivally: in French one even speaks of a *partisan* of any opinion; in short, a very general, ambiguous term suddenly becomes a highly political word. The linguistic parallel with a common word like *status*, which can suddenly mean state, is obvious. In times of dissolution, such as in the 17th century at the time of the Thirty Years' War, the irregular soldier becomes closer to highwaymen and vagrants; he wages war on his own account and becomes a figure of the picaresque novel, like the Spanish *Pícaro* Estebanillo Gonzales, who was involved in the Battle of Nordlingen (1635) and told all about it in the manner of Soldier Švejk, or as can be read in the *Simplizius Simplizissimus* of Grimmelshausen and seen in the engravings and etchings of Jacques Callot. In the 18th century, the partisan was associated with Pandurs, Hussars, and other types of light troops, who, as a mobile troop, “sparred individually” and waged the so-called *guerrilla* (lit. “small war”), in contrast to the slower large-scale war of the line troops. Here the distinction between regular and irregular is purely military-technical and in no way equivalent to legal and illegal in the sense of international law and constitutional law. Among today's partisans, the two pairs of opposites—regular-irregular and legal-illegal—usually blur and intersect.

Agility, speed, and surprising alternation of attack and retreat—in a word, increased mobility—is still characteristic of the partisan today, and this is even further increased by mechanization and motorization. But both opposites are dissolved by revolutionary war, and numerous semi- and para-regular groups and formations emerge. The armed partisan always remains dependent on cooperation with a regular organization. Fidel Castro's fellow campaigner in Cuba, Ernesto Che Guevara, is very emphatic about this.[10] As a result, the cooperation of regular and irregular alone gives rise to some intermediate stages, even in the cases where a government that is by no means revolutionary calls for the defense of the nation's land against a foreign conqueror. People's war and small-scale war merge into one another here. In the regulations for this type of mustering-to-arms, the term *partisan*[11] has been used since the 16th century. We will learn about two more important examples of a formal regulation of people's war and of *Landsturm* (militia), which sought to settle guerrilla warfare. On the other hand, the foreign conqueror also issues regulations for fighting enemy partisans. All such rules are faced with the difficult problem of a regulation of the irregular, i.e. valid for both sides under international law, with regard to the recognition of the partisan as a combatant and his treatment as a prisoner of war, and on the other hand with the respect of the rights of the military occupying power. We have already indicated that some legal controversies arise here, and will return to the dispute about the *franctireurs* of the Franco-Prussian War of 1870/71 after we have taken a look at the situation under international law.

The tendency to change or even dissolve the traditional concepts—the classical concepts, as people like to say today—is common and, in view of the rapid changes in the world, only too understandable.[12] The “classical” concept of the partisan, if one can call it that, is also affected by this. In a book by Rolf Schroers published in 1961, *Der Partisan* which is very important for our topic, the illegal resistance fighter and underground activist is made the prototype of the partisan.[13] This is a conceptual change that is mainly oriented towards certain intra-German situations of the Hitler era and as such is remarkable. Irregularity is replaced by illegality, military struggle by resistance. This indicates, it seems to me, a far-reaching reinterpretation of the partisan of the national war of independence and fails to recognize that even the revolutionization of war has not broken the military connection between the regular army and the irregular militant.

In some cases the reinterpretation goes as far as a general symbolization and dissolution of concepts. Then, finally, any loner or non-conformist can be called a partisan, regardless of whether he or she is even thinking of taking up arms.[14] As a metaphor, this need not be inadmissible; I myself have used it to identify figures and situations in intellectual history.[15] In a figurative sense, “to be a human being means to be a fighter,” and the consistent individualist fights on his own account and, if he is courageous, also at his own risk. He then becomes his own partisan. Such conceptual dissolutions are noteworthy signs of the times, which deserve their own investigation.[16] For a theory of the partisan, as it is meant here, however, some criteria must be kept in mind so that the subject does not dissolve into abstract generality. Such criteria are: irregularity, increased mobility of active struggle, and increased intensity of political engagement.

I would like to hold to another, fourth characteristic of the true partisan, which Jover Zamora called the *tellurian* character. This is important for the essentially defensive situation of the partisan—despite his tactical mobility—who changes his nature when he identifies with the absolute aggressiveness of a world revolutionary or technicist ideology. Two particularly interesting treatments of the subject for us, the book by Rolf Schroers (note 13) and the dissertation by Jürg. H. Schmid on the partisan's status under international law (p. 36-37), basically agree with this criterion. Its foundation on the tellurian character seems to me necessary in order to make the defensive (i.e. the limitation of enmity) spatially evident, and to protect it from the absolutism of abstract justice.

For the partisans who fought in Spain, Tyrol and Russia in 1808/13, this is obvious. But the partisan battles of the Second World War and the years that followed it in Indochina and other countries, which are sufficiently characterized by the names Mao Zedong, Ho Chi Minh, and Fidel Castro, also show that the connection with the soil, with the autochthonous population and the geographical characteristics of the country—mountains, forest, jungle or desert—remains as relevant as ever. The partisan is and remains separated not only from the pirate, but also from the corsair, just as land and sea remain separate as different elementary spaces of human activity and conflict between peoples. Land and sea have developed not only different vehicles of warfare and not only different theatres of war, but also different concepts of war, the enemy and booty.[17] The partisan will continue to represent a specifically terrestrial type of active fighter at least

as long as anti-colonial wars are possible on our planet.[18] The tellurian character of the partisan will be further clarified in the following by comparing it with typical figures of maritime law and by discussing the spatial aspect (p. 71).

However, even the autochthonous partisan of agrarian origin is drawn into the force field of irresistible, technical-industrial progress. His mobility is increased by motorization to such an extent that he is in danger of being completely cut off from his local connection. In Cold War situations he becomes a technician of invisible combat, a saboteur and spy. Already in the Second World War there were sabotage troops with partisan training. Such a motorized partisan loses his tellurian character and is only the transportable and interchangeable tool of a powerful, geopolitical headquarters, which uses him in open or invisible warfare and shuts him down again as the situation demands. This possibility also pertains to his present existence and must not be disregarded in a theory of the partisan.

With these four criteria—irregularity, increased mobility, intensity of political commitment, and tellurian character, and with reference to the possible effects of further mechanization, industrialization, and de-agrarisation—we have, conceptually speaking, circumscribed the scope of our inquiry. It extends from the *guerrillero* of the Napoleonic era to the well-equipped partisan of the present day, from the *Empecinado* of Mao Zedong and Ho Chi Minh to Fidel Castro. This is a vast area in which historiography and the science of war have produced a vast amount of material that is growing day by day. We will use it as far as it is accessible to us and try to gain some insights for a theory of the partisan.

A Look at the Position of International Law

The partisan fights irregularly. But a few categories of irregular fighters are treated as equal to regular forces and enjoy the rights and privileges of regular combatants. This means that their fighting is not illegal, and if they fall into the hands of their enemies, they are entitled to special treatment as prisoners of war or wounded. The legal position was summarized in the Hague Convention of War on Land of 18 October 1907, which is now recognized as universally applicable. After the Second World War, developments continued with four Geneva Conventions of 12 August 1949,

two of which govern the fate of the wounded and sick in land and naval warfare, a third the treatment of prisoners of war, and the fourth the protection of civilians in wartime. Numerous states of both the Western world and the Eastern bloc have ratified them; the new American military manual of land warfare of July 18th, 1956 has also been adapted to their formulations.

The Hague Convention of 18 October 1907 had, under certain conditions, treated militias, volunteers, and fellow combatants of spontaneous popular uprisings as equal to regular armed forces. Later, in discussing the Prussian misconception of partisanship, we shall mention some difficulties and ambiguities of this regulation. The development which led to the Geneva Conventions of 1949 is characterized by the fact that it recognizes ever more far-reaching loosening of what was previously purely statist European international law. Ever more categories of participants in war are now considered combatants. Even civilians in the territory militarily occupied by the enemy—i.e., the proper combat area of partisans fighting behind enemy lines—now enjoy greater legal protection than under the 1907 Land Warfare Act. Many fellow combatants who were previously considered partisans are now treated as equal to regular combatants and enjoy their rights and privileges. They can indeed no longer be called partisans. But the terms are still unclear and ambiguous.

The formulations of the Geneva Conventions have the European experience in mind, but not Mao Zedong's partisan wars and the later development of modern partisan warfare. In the first years after 1945, it had not yet become clear what an expert such as Hermann Foertsch recognized and formulated as follows: that the military actions after 1945 took on a partisan character because the owners of atomic bombs shied away from using them out of humanitarian reservations, and the non-owners could count on these reservations—an unexpected effect of both the atomic bomb and the humanitarian considerations. The terms of the Geneva Conventions, which are important for the partisan problem, are abstracted from certain situations. They are (as stated in the authoritative Commentary of the International Red Cross, Vol. III, 1958, p. 65, headed by Jean S. Pictet) a precise reference to the resistance movements of the Second World War of 1939-45.

A fundamental change of the Hague Convention of 1907 was not intended. Even the four classical conditions for equal treatment as regular

troops (responsible superiors, fixed and visible insignia, open carrying of weapons, observance of the rules and usage of martial law) are basically maintained. The Convention for the protection of the civilian population was supposed to apply not only to wars between states, but to all international armed conflicts, including civil wars, insurrections, etc. However, it is only intended to provide a legal basis for humanitarian interventions by the International Committee of the Red Cross (and other impartial organizations). *Inter arma caritas* (In war, charity). Article 3(4) of the Convention expressly emphasizes that the legal status, *le statut juridique*, of the parties to the conflict is not affected (Pictet, a. a. 0., III, 1955, p. 39/40). In wars between states, the occupying power of the militarily occupied territory retains the right to order the local police of that territory to maintain order and suppress irregular fighting, including the persecution of partisans, “regardless of what ideas they may be inspired by” (Pictet IV, 1956, p. 330).

Accordingly, the distinction between partisans—in the sense of irregular combatants who are *not* equal to regular troops—is still maintained in principle. The partisan in this sense does *not* have the rights and privileges of a combatant; he is a criminal under common law, and may be rendered harmless by summary punishment and repressive measures. This has also been recognized in principle in the war crimes trials after the Second World War, namely in the Nürnberg verdicts against German generals (Jodl, Leeb, List), whereby it goes without saying that all atrocities, terror measures, collective punishments, or even participation in genocide which go beyond the necessary partisan fighting remain war crimes.

The Geneva Conventions broaden the circle of persons treated as regular combatants, in particular by treating members of an organized resistance movement as equal to members of militias and volunteer corps, thus granting them the rights and privileges of regular combatants. Not even a military organization is required (Art. 13 of the Convention for the Wounded, Art. 4 of the Prisoners of War Convention). The Convention for the Protection of Civilian Persons treats “international conflicts” fought by force of arms in the same way as wars between states under classical European international law, and thus touches the core of a legal institution typical of the previous law of war, the *occupatio bellica* (military occupation). To such expansions and relaxations, which can only be hinted at here, for example, are added the great changes and alterations which

result from the development of modern weapons technology and which have an even more intensive effect with regard to partisan warfare. What does, for example, the regulation that weapons must be “openly carried” mean for a resistance fighter, who is instructed by the above quoted low-intensity warfare manual of the Swiss Junior Officers' Association (p. 33): “Move only at night and rest in the woods by day!” Or what does the requirement of an insignia visible from afar mean in night combat or in the battle of the long-range weapons of modern warfare technology? Many such questions would arise if the investigation were considered from the point of view of the partisan problem and the aspects of spatial change and technical-industrial development shown below were not disregarded.

The protection of the civilian population in militarily occupied territory is protection on different fronts. The occupying power has an interest in peace and order in the militarily occupied area. It should be noted that the population of the occupied territory is not obliged to be loyal, but to obey the orders of the occupying power, which are permitted under martial law. The officials—even the police—should continue to work correctly and be treated accordingly by the occupying power. The whole thing is a painstakingly balanced, difficult compromise between the interests of the occupying power and those of its opponent in the war. The partisan disrupts this kind of order in the occupied territory in a dangerous way. Not only because his real battlefield is the area behind the enemy front where he disrupts transport and supplies, but also because he is more or less supported and hidden by the population of that area. “The population is your greatest friend,” according to the above quoted “Manual of Low-Intensity Warfare for Everyone” (p. 28). The protection of such a population is then potentially also a protection of the partisan. Thus it can be explained that in the history of the development of martial law, a typical grouping repeatedly occurred during the deliberations of the Hague Convention of War on Land and its further development: the great military powers, i.e. the potential occupying powers, demanded strict safeguarding of order in the militarily occupied territory, while the smaller states, which feared being militarily occupied—Belgium, Switzerland, Luxembourg—sought to enforce the widest possible protection of the resistance fighters and the civilian population. In this respect, too, the developments since the Second World War have led to new insights, and the aspect of the destruction of social structures shown below suggests the question whether

there may not also be cases in which the population needs protection from the partisan.

The Geneva Conventions of 1949 brought about changes within the classic legal institution of *occupatio bellica*, which was precisely regulated by the Hague Convention of War on Land. Resistance fighters, who were formerly treated as partisans, are now treated as equal to regular fighters, provided they be *organized*. In contrast to the interests of the occupying power, the interests of the population of the occupied territory are so strongly emphasized that it has become possible—at least in theory—to consider any resistance against the occupying power, even that of the partisan, insofar as it has only honorable motives, as *not illegal*. On the other hand, the occupying power is supposed to remain entitled to repressive measures. In this situation, a partisan would not actually act legally, but also not actually illegally, rather only at his own risk.

If one uses a word like risk and risky in a general, non-precise sense, then one must conclude that in a territory militarily occupied by the enemy and penetrated by partisans, it is by no means only the partisan who risks his life. In the general sense of insecurity and danger, the whole population of the area is at great risk. Officials who want to continue to work correctly in accordance with the Hague Convention of War on Land run an additional risk for their acts and omissions, and police officers in particular find themselves at the intersection of conflicting dangerous demands: the enemy occupying power demands obedience from him in maintaining security and order, which is being disrupted by the partisan; his own national State demands loyalty from him and will hold him responsible after the war; the population to which he belongs expects a loyalty and solidarity which, in relation to the activity of the police officer, can lead to completely contrary practical consequences if the police officer does not decide to become a partisan himself; and finally, the partisan, like his combatant, will quickly push him into the vicious cycle of their reprisals and anti-reprisals. Generally speaking, risky action (or omission) is not a specific characteristic of the partisan.

The word 'risky' is given a more concise meaning by the fact that the risk-taker acts at his own risk and consciously accepts the negative consequences of his actions or omissions, so that he cannot complain about injustice when the negative consequences affect him. On the other hand, unless the act is illegal, he has the possibility of compensating for the risk

by taking out an insurance policy. The legal home of the concept of *risk*, its legal *topos*, is insurance law. People live under many different kinds of danger and uncertainty, and to confer, with juristic consciousness, the term *risk* on a danger or uncertainty means to make it and the person concerned insurable. In the case of the partisan, this would probably fail because of the irregularity and illegality of his actions, even if, incidentally, one were prepared to protect him actuarially from too great a risk by classifying him in the highest risk category.

For situations of war and the initiation of hostility, a reflection on the concept of risk is necessary. In Germany the word was introduced into the international legal doctrine of war by Josef L. Kunz's book *Kriegsrecht und Neutralitätsrecht* (1935, pp. 146, 274). But there it does not refer to land warfare and certainly not to the partisan. It does not belong there either. If we disregard insurance law as the legal home of the concept of risk and leave aside imprecise uses of the word—e.g. the comparison with the escaped prisoner who “risks” being shot—it becomes clear that in J. Kunz's work, the use of the term “risk” specifically in the context of martial law is only concerned with naval law and the figures and situations typical to it. The naval war is to a large extent a commercial war; compared to land war, it has its own space and its own concepts of enmity and spoils. Even the improvement of the lot of the wounded has led to two conventions, separated into land and sea, in the Geneva Convention of August 1949.

In this specific sense, two participants in naval warfare are risk-taking: the neutral blockade breaker and the neutral contraband smuggler. With respect to them, the word risk is precise and poignant. Both types of participants in the war often embark on a “very profitable but risky commercial adventure” (J. Kunz p. 277): they risk ship and cargo in the case that they are caught. They do not even have an enemy, even if they are treated as an enemy in the sense of maritime law. Their social ideal is good business. Their field is the open sea. They do not think of defending house and hearth and home against a foreign invader, as is the archetype of the autochthonous partisan. They also take out insurance policies to balance out their risk, with correspondingly high risk tariffs and adapted to changing risk factors, e.g. sinking by submarines: very risky, but highly insured.

One should not take such an apt word as *risky* out of the conceptual field of maritime law and dissolve it into a general term that blurs everything. For those of us who hold fast to the partisan's tellurian character, this is

especially important. If I once called the freebooters and pirates of the early days of capitalism “partisans of the sea” (Der Nomos der Erde, p. 145), I would like to correct this today as a terminological inaccuracy. The partisan has an enemy and “risks” something quite different from the blockade-breaker and the contraband-runner. He is not only risking his life, like any regular combatant. He knows—and takes his chances with the fact—that the enemy places him outside of justice, law, and honor.

Yet so does the revolutionary fighter who declares the enemy a criminal and all the enemy's concepts of law and justice and honor an ideological deception. In spite of all the connections and mingling of the two types of partisan that was characteristic of the Second World War and its post-war period up to the present day—the defensive-autochthonous defender of the homeland, and the aggressive, revolutionary activist—the distinction remains. This distinction is based, as we shall see, on fundamentally different concepts of war and enmity, which are realized in different types of partisans. Where the war on both sides is conducted as a non-discriminatory war between states, the partisan is a marginal figure who does not go beyond the scope of the war and does not change the overall structure of the political process. However, if the war is fought by criminalizing the enemy as a whole, for example, if the war is waged as a civil war between class enemies, or when its main objective is to eliminate the government of the enemy state, then the explosively revolutionary act of criminalizing the enemy will have the effect of making the partisan the true hero of the war. He carries out the death sentence on the criminal and risks being treated as a criminal or a pest. This is the logic of a *justa causa* without recognition of a *justus hostis*. Through this the revolutionary partisan becomes the real central figure of the war.

The problem of the partisan, however, becomes the best touchstone. The various types of guerrilla warfare may be mixed and intermingled in the practice of today's warfare, yet no matter how much they are mixed and intermingled, their fundamental preconditions remain so different that the criterion of friend-enemy grouping is put to the test on them. We have just previously recalled the typical grouping that emerged during the preparation of the Hague Convention of War on Land: the great military powers versus the small neutral countries. During the deliberations of the Geneva Conventions of 1949, a compromise formula was reached with a great deal of effort by putting the organized resistance movement on an equal footing

with the volunteer corps. Here too, the typical grouping was repeated when it was a question of translating the experience of the Second World War into norms of international law. This time too, the great military powers, the potential occupiers, stood in opposition to the small states fearing an occupation, but this time with a modification that was as striking as it was symptomatic: the world's largest land power, by far the strongest potential occupier, the Soviet Union, was now on the side of the small states.

The materially rich and well-documented work of Jürg H. Schmid, *Die völkerrechtliche Stellung der Partisanen im Kriege* (Zürcher Studien zum Internationalen Recht Nr. 23, Polygraphischer Verlag AG. Zürich, 1956) places “guerrilla warfare by civilians”—which specifically refers to Stalin's partisans (pp. 97, 157)—“under the shield of law.” materia sees in this “the quintessence of the partisan problem” and the legislation-generating achievement of the Geneva Conventions. Schmid would like to eliminate “certain reservations about occupation law” which have remained from the previous view of the occupying power, especially, as he says, the “much-acclaimed duty to obey.” To this end, he makes use of the doctrine of the legal but risky act of war, which he re-accentuates as a risky but not illegal act of war. In this way he reduces the risk of the partisan, to whom he grants as many rights and privileges as possible at the expense of the occupying power. I do not see how he intends to escape the logic of terror and counter-terror, unless he simply criminalizes the partisan's enemy in war. The whole thing is a highly interesting crossing of two different *statuts juridiques*, namely combatant and civilian, with two different types of modern war, namely hot war and cold war between the population and the occupying power, in which Schmid's partisan (following Mao) participates *à deux mains*. The only thing that is astonishing, and a true conceptual breakdown, that this decriminalization of the Stalinist partisan at the expense of classical international law is at the same time connected with the return to the pure state war of the Rousseau-Portalis doctrine, which Schmid claims only forbade civilians to commit hostilities “in its inception”(p. 157). Thus the partisan becomes insurable.

The four Geneva Conventions of 12 August 1949 are the work of a humane conscience, and a humanitarian development that deserves admiration. While they give the enemy not only humanity but also justice in the sense of recognition, they remain based on classical international law and its tradition, without which such a work of humanitarianism would be

unlikely. Their basis remains warfare between states and a movement of war based on it, with its clear distinctions between war and peace, military and civil, enemy and criminal, state war and civil war. But by loosening or even questioning these essential distinctions, they open the door for a kind of war that deliberately destroys those clear divisions. Then some cautiously formulated standards of compromise appears only as the thin bridge over an abyss that conceals a momentous transformation of the concepts of war, the enemy, and the partisan.

Prussian Misconceptions of Partisanship

In Prussia, the leading military power of Germany, the uprising against Napoleon in early 1813 was supported by a strong national feeling. The great moment passed quickly, but it remains so essential in the history of partisanship that we must give it special treatment later.

First of all, we have to consider the undeniable historical fact that the Prussian and Prussian-led German army from 1813 until the Second World War provided the classic example of an army organization that had radically suppressed the idea of partisanship. The thirty years of German colonial rule in Africa (1885-1915) were not militarily important enough to lead the outstanding theorists of the Prussian General Staff to seriously consider the problem. The Austro-Hungarian army knew about partisan warfare from the Balkans and had regulations for small-scale warfare. The Prussian-German army, on the other hand, invaded Russia during the Second World War on 22 June 1941 without thinking of a partisan war. It began its campaign against Stalin with the maxim: the troops fight the enemy; marauders are rendered harmless by the police. It was not until October 1941 that the first special instructions on combatting partisans; in May 1944, barely a year before the end of the four-year war, the first complete set of regulations was issued by the High Command of the Wehrmacht.[19]

In the 19th century the Prussian-German army became the most famous and exemplary military organization in the Eurocentric world of the time. But it owed this fame exclusively to military victories over other regular European armies, especially France and Austria. It had only been confronted with irregular warfare during the Franco-Prussian War of 1870/71 in France, in the guise of the so-called *Franctireurs*, who were known to the Germans as sharpshooters and were treated without mercy under martial law, as any regular army would probably have done. The more strictly a regular army is disciplined, the more precisely it distinguishes between military and civilian and considers only the uniformed opponent as the enemy, the more sensitive and nervous it becomes when, on the other hand, a non-uniformed civilian population takes part in the battle. The army then reacts with harsh reprisals, shootings, hostage-taking, and destruction of villages, and considers it fair self-defense

against deceit and treachery. The more the regular, uniformed opponent is respected as an enemy, and even in the bloodiest battle not mistaken for a criminal, the more harshly the irregular fighter is treated as a criminal. All this follows from the logic of classical European martial law, which distinguishes between military and civilian, combatants and non-combatants, and which contains the rare moral not to declare the enemy as such a criminal.

The German soldier got to know the *Franctireur* in France, in the autumn of 1870 and the following winter of 1870/71, after the great victory he had won over the regular army of the Emperor Napoleon III at Sedan on 2 September. Had it been according to the rules of classical, regular army warfare, one would have expected that after such a victory the war would have ended and peace would have been made. Instead, the defeated imperial government was deposed. The new republican government under Léon Gambetta proclaimed national resistance against the foreign invader, a war "*à outrance.*" In great haste, it raised ever-new armies and threw ever-new masses of poorly trained soldiers onto the battlefield. In November 1870 it even had a military success on the Loire with them. The position of the German armies was threatened, and the foreign policy situation of Germany endangered, because a long war had not been anticipated. The French population was caught up in a passion of patriotism and took part in the fight against the Germans in various forms. In response, the Germans took dignitaries and so-called notables as hostages, shot any sharpshooters they caught red-handed, and imposed reprisals of all kinds on the populace. This was the starting point for more than half a century of dispute between jurists of international law and public propaganda on both sides for and against the *franctireur* sharpshooter. The controversies were renewed in the First World War as the Belgian-German sharpshooter battle flared up. Whole libraries were written on this question, and still in recent years, from 1958-60, a committee of distinguished German and Belgian historians at least one has attempted to clarify and settle at least one point of contention from this complex, the Belgian sharpshooter controversy of 1914.[20]

All this is revealing for the problem of the partisan, because it shows that a normative regulation—if it is supposed to grasp the facts of the case and not just deliver a *glissando* of value judgements and general clauses—is legally impossible. Since the 18th century, the traditional European containment of war between states has been based on certain concepts

which, although interrupted by the French Revolution, were confirmed all the more effectively by the restoration work of the Congress of Vienna. These ideas of the contained war and of the just enemy, which originated in the age of the Monarchy, can only be legalized between states if the belligerent states on both sides adhere to them in the same way both within and between states; that is, if their concepts of regularity and irregularity, legality and illegality, both within and between states, coincide in content or are at least somewhat homogeneous in their structure. Otherwise, instead of promoting peace, standardization between states only succeeds in providing pretexts and slogans for mutual recriminations. This simple truth has gradually come to be recognized since the First World War. Yet the façade of the outdated conceptual inventory is ideologically still very strong. For practical reasons, the states have an interest in the use of so-called classical concepts, even if they are thrown aside in other cases as old-fashioned and reactionary. Moreover, the lawyers of European international law have stubbornly suppressed from their consciousness the image of a new reality that has been discernible since 1900.[21]

If all this generally applies for the difference between the old-style European war between states and a democratic people's war, then it applies even more for an improvised national people's war *à outrance*, such as the one Gambetta proclaimed in September 1870. The Hague Convention of 1907—not unlike all its precursors in the 19th century—attempted a compromise with regard to the civilian sharpshooter. It requires certain conditions for the improvised warrior in improvised uniform to be recognized as a combatant in the sense of international law: responsible superiors, fixed insignia visible from afar and, above all, open carrying of weapons. The conceptual ambiguity of the Hague- and Geneva Conventions is great and confuses the problem.[22] The partisan is precisely he who avoids openly carrying his weapon, who fights from ambushes, who uses the enemy's uniform as well as fixed or loose insignia and any kind of civilian clothing as camouflage. Secrecy and darkness are his strongest weapons; he honestly cannot do without them without also losing the space of irregularity, that is, without ceasing to be a partisan.

The military standpoint of the regular Prussian army was by no means based on a lack of intelligence or ignorance of the significance of guerrilla warfare. This can be seen in the interesting book by a typical Prussian general staff officer who knew about the *Franctireur* War of 1870/71 and

published his view in 1877 under the title *Leon Gambetta und seine Armeen*. The author, Colmar Freiherr von der Goltz, died in the First World War as leader of a Turkish army under the name Pasha Goltz. In all objectivity, and with the greatest precision, the young Prussian officer recognizes the decisive error of Republican warfare and states “Gambetta wanted to fight the large-scale war, and he fought it, unfortunately for him, because a small-scale war, a guerrilla war, would have been much more dangerous for the German armies in France at that time.”[23]

The Prussian-German army leadership finally came to understand partisan warfare, albeit belatedly. On May 6, 1944, the High Command of the German Wehrmacht issued the aforementioned general guidelines for the fight against partisans. Thus the German army before finally correctly recognized the partisan just before its end. The guidelines of May 1944 have since been recognized as an excellent regulation, even by an enemy of Germany. The English Brigadier Dixon, who published a book on the partisan after the Second World War together with Otto Heilbrunn, prints the German guidelines *in extenso* as a prime example of correct counter-partisan fighting, and the English General Sir Reginald F. S. Denning remarks in his preface to Dixon Heilbrunn that the value of the German Partisan Regulations of 1944 is not diminished by the fact that they are German Army guidelines for fighting Russian partisans.[24]

Two phenomena of the end of the German war in 1944/45 cannot be attributed to the German Wehrmacht, but can rather be explained in contrast to it: the German Volkssturm and the so-called *Werwölfe* (werewolves). The Volkssturm was called up by a decree of September 25 1944 as a territorial militia for national defense, whose members were considered soldiers in the sense of the military law and combatants under the Hague Convention during their deployment. Their organization, equipment, deployment, fighting spirit, and losses are described in the recently published paper by Major General Hans Kissel, who was Chief of the German Volkssturm command staff from November 1944. Kissel informs that the Volkssturm was recognized by the Allies as a fighting force in the West, while the Russians treated them as a partisan organization and shot the prisoners. In contrast to this territorial militia, the werewolf was intended as a partisan organization for the youth. The book by Dixon and Heilbrunn reports on the result: “A few prospective werewolves were picked up by the Allies and

that was the end of it." The werewolf was labeled an "attempt to unleash a child sniper war."[25] In any case, there's no need to go further into that here.

After the First World War, the victors of the time dissolved the German General Staff and prohibited its restoration in any form in Article 160 of the Treaty of Versailles of 28 June 1919. It is historically and legally logical in the sense of international law that the victors of the Second World War, above all the USA and the Soviet Union, who in the meantime had outlawed the duel-war of classical European international law, after their joint victory over Germany also outlawed and destroyed the Prussian state. Law 46 of the Allied Control Council of 25 February 1947 decreed:

> The Prussian State which from early days has been a bearer of militarism and reaction in Germany has de facto ceased to exist.
>
> Guided by the interests of preservation of peace and security of peoples and with the desire to assure further reconstruction of the political life of Germany on a democratic basis, the Control Council enacts as follows:
>
> Article I. The Prussian State together with its central government and all its agencies are abolished.

The Partisan as the Prussian Ideal in 1813 and the Turn to Theory

It was neither a Prussian soldier nor a reform-minded regular officer of the Prussian General Staff, but a Prussian Prime Minister, Bismarck, who in 1866, against the Habsburg Monarchy and Bonapartist France, wished to "resort to every weapon that the unleashed national movement could offer, not only in Germany but also in Hungary and Bohemia" in order not to be defeated. Bismarck was determined to set the Acheron in motion. He liked to use the classic quotation *Acheronta movere*, but of course he always blamed his inner political opponents. Acherontian plans were far from the minds of both the Prussian King Wilhelm I and the chief of the Prussian general staff, Moltke; such things must have seemed uncanny and also un-Prussian to them. The word Acherontian would probably also be too strong for the weak revolutionary attempts of the German government and general staff during World War I. However, Lenin's journey from Switzerland to Russia in 1917 also belongs to this context. But everything that the Germans might have thought and planned at that time in organizing Lenin's journey has been so tremendously surpassed and overrun by the historical

effects of this attempt at revolution that our thesis of Prussian misconception of partisanship is thereby confirmed rather than refuted.[26]

Nevertheless, the Prussian military state had an Acherontian moment once in its history. It was in the winter and spring of 1812/13, when an elite of general staff officers sought to unleash and control the forces of national enmity against Napoleon. The German war against Napoleon was not a partisan war. It can hardly be called a people's war; all that makes it so, as Ernst Forsthoff rightly says, is “a legend with a political background.”[27] It was possible to quickly direct those elementary forces into the fixed framework of state order and regular combat against the French armies. Nevertheless, this brief revolutionary moment retains an unheard-of significance for the theory of partisanship.

One will immediately think of a famous masterpiece of war science, the book *Vom Kriege* (On War) by the Prussian General von Clausewitz. And rightly so. But Clausewitz was then still the pupil next to his teachers and masters Scharnhorst and Gneisenau, and his book was only published after his death, after 1832. On the other hand, there is another manifesto of enmity against Napoleon, dating directly from the spring of 1813, which is one of the most amazing documents in the entire history of partisanship: the Prussian edict on the *Landsturm* (national levy) of 21 April 1813, an edict signed by the King of Prussia, which was formally published in the Prussian Compendium of Laws. The influence of the model of the Spanish *Reglamento de Partidas y Cuadrillas* of 28 December 1808 and the decree of 17 April 1809 known as *Corso Terrestre* is unmistakable. But these are not signed by the monarch himself.[28] It is astonishing to see the name of the legitimate king under such a call for partisan warfare. These ten pages of the Prussian Compendium of Laws of 1813 (pp. 79-89) are certainly among the most unusual pages of all the law gazettes in the world.

According to the Royal Prussian Edict of April 1813, every citizen is obliged to resist the invading enemy with weapons of all kinds. Hatchets, pitchforks, scythes and shotguns are expressly recommended. Every Prussian is obliged not to obey any order of the enemy, but to harm him with all means available. Even if the enemy wants to restore public order, no one may obey him, because this will facilitate the enemy's military operations. It is expressly stated that “dissipation of unrestrained servants is less harmful than a situation in which the enemy can freely dispose of all his troops. Reprisals and terror in defense of the partisan are assured, and

the enemy is threatened with them. In short, this is a kind of Magna Carta of partisanism. At three points—in the introduction and in paragraphs 8 and 52—explicit reference is made to Spain and its guerrilla warfare as a "model and example." The fight is justified as a fight of self-defense, "which justifies all means" (§ 7), even the unleashing of total disorder.

As I have already said, no partisan war against Napoleon came about. The *Landsturm* edict itself was amended three months later, on 17 July 1813, and was purged of all partisan danger, of all Acherontian dynamics. Everything that followed took place in battles of the regular armies, even if the dynamics of the national impulse permeated the regular troops. Napoleon could boast that in the many years of French occupation on German soil, no German civilian had fired a shot at a French uniform.

So what is the special significance of that short-lived Prussian decree of 1813? That it is the official document of a legitimization of the partisan for national defense, a special legitimization, namely one from a spirit and a philosophy which reigned in the Prussian capital Berlin of that time. The Spanish guerrilla war against Napoleon, the Tyrolean uprising of 1809 and the Russian partisan war of 1812 were elemental, autochthonous movements of a pious Catholic or Orthodox people, whose religious tradition was untouched by the philosophical spirit of revolutionary France and which was therefore underdeveloped. Napoleon, in an angry letter to his Hamburg governor-general Davout (dated December 2, 1811), called the Spanish in particular a treacherously murderous, superstitious people, misled by 300, 000 monks, who should not be compared with the industrious, hard-working, and sensible Germans. The Berlin of the years 1808-1813, on the other hand, was shaped by a spirit that was quite familiar with the philosophy of the French Enlightenment, so familiar that it could feel equal, if not superior to it.

Johann Gottlieb Fichte, a great philosopher; highly educated and ingenious military men such as Scharnhorst, Gneisenau and Clausewitz; a poet such as the aforementioned Heinrich von Kleist, who died in November 1811; these characterize the enormous intellectual potential of a Prussian intelligentsia that was ready to act at the critical moment. The nationalism of this Berlin intelligentsia was a matter of the educated and not of the simple or even illiterate people. In such an atmosphere, in which an excited national feeling was combined with philosophical education, the partisan was philosophically discovered and his theory became historically

possible. That a doctrine of war also pertains to this alliance is shown by the letter that Clausewitz, as an “unnamed military man,” wrote in 1809 from Königsberg to Fichte as “the author of an essay on Machiavelli.” In it, the Prussian officer, with all due respect, instructs the famous philosopher that Machiavelli's doctrine of war is too dependent on antiquity and that today “one wins infinitely more through the invigoration of individual forces than through artful form.” The new weapons and masses, Clausewitz writes in this letter, were entirely in keeping with this principle, and the courage of the individual to engage in close combat is decisive in the end, “especially in the most beautiful of all wars, waged by a people on its own soil for freedom and independence.”

The young Clausewitz was familiar with the partisan from the Prussian insurrection plans of 1808/13, and from 1810 to 1811 he lectured on small-scale warfare at the General War College in Berlin, where he was not only one of the most important military experts on small-scale warfare in the technical sense of using light, mobile troops; for him, as for the other reformers of his circle, guerrilla warfare became “primarily a political matter in the highest sense of the word of an almost revolutionary character. Commitment to arming the people, insurrection, revolutionary war, resistance and uprising against the existing order, even if it is embodied by a foreign occupation regime—this is a novelty for Prussia, something “dangerous,” which, as it were, can draw from the sphere of the legal state.” With these words, Werner Hahlweg touches on the core that is essential for us. But he immediately adds: “The revolutionary war against Napoleon, as the Prussian reformers had it in mind, has certainly not been waged. It only came to a “semi-insurrectional war,” as Friedrich Engels called it. Nevertheless, the famous confessional memorandum of February 1812 remains important for the “innermost drives” (Rothfels) of the reformers; Clausewitz composed it with the help of Gneisenau and Boyen before he went over to the Russians. It is a “document of sober, militarily precise political analysis” referring to the experiences of the Spanish People's War, and aims to calmly “return cruelty with cruelty, violence with violence.” Here the Prussian *Landsturm* Edict of April 1813 is already clearly recognizable.[29]

It must have severely disappointed Clausewitz that everything he had hoped for from the insurrection “fell through.”[30] He recognized people's war and partisans—“*Parteigänger*” as Clausewitz says—as an essential part

of the “forces exploding in war” and incorporated them into the system of his doctrine of war. Especially in the 6th book of his doctrine of war (Extent of the Means of Defense) and in the famous chapter 6 B of the 8th book (War as an Instrument of Politics) he also acknowledged the new “potency.” Moreover, one finds in his work astonishing, enigmatic individual remarks, such as the passage on civil war in the Vendée: that sometimes a few individual partisans can even “claim the name of an army.”[31] Yet he remains the reform-minded professional officer of a regular army of his age, who was not able to develop the germs that are becoming visible here to their logical conclusion. As we shall see, this only happened much later, and for this an active professional revolutionary was needed. Clausewitz himself still thought too much in classical categories when, in the “wonderful trinity of war,” he attributed to the people only the “blind natural drive” of hatred and enmity, to the commander and his army “courage and talent” as a free activity of the soul, and to the government the purely rational management of war as an instrument of politics.

In that short-lived Prussian *Landsturm* Edict of April 1813 the moment is consolidated in which the partisan appeared for the first time in a new, decisive role, as a new, hitherto unrecognized figure of the world spirit. It was not the will to resistance of a brave, warlike people, but education and intelligence that opened this door for the partisan and gave him legitimacy on a philosophical basis. Here he was, if I may say so, philosophically accredited and made presentable. Previously he had not been. In the 17th century he had sunk to the level of a figure in a picaresque novel; in the 18th century, at the time of Maria Theresa and Frederick the Great, he was *Pandur* and *Hussar*. But now, in the Berlin of the years 1808 to 1813, he was discovered and appreciated not only militarily, but also philosophically. At least for a moment he received a historical rank and a spiritual consecration. This was a process he could never forget. For our subject this is decisive. We speak of the theory of the partisan. Now, a political *theory* of the partisan that goes beyond military classifications actually only became possible through this accreditation in Berlin. The spark that flew north from Spain in 1808 found a theoretical form in Berlin that made it possible to preserve its embers and pass it on to other hands.

At first, however, the traditional piety of the people even in Berlin was no more threatened than the political unity of king and people. It even seemed to be strengthened rather than threatened by the invocation and glorification

of the partisan. The Acheron that had been unleashed immediately returned to the channels of state order. After the wars of liberation, Hegel's philosophy dominated in Prussia. It attempted a systematic mediation of revolution and tradition.[32] It could be considered conservative, and was. But it also conserved the revolutionary spark and, through its philosophy of history, provided the continuing revolution with a dangerous ideological weapon, more dangerous than Rousseau's philosophy in the hands of the Jacobins. This historical-philosophical weapon fell into the hands of Karl Marx and Friedrich Engels. But the two German revolutionaries were more thinkers than activists of the revolutionary war. It was only through a Russian professional revolutionary, through Lenin, that Marxism as a doctrine became the world-historical power it represents today.

From Clausewitz to Lenin

Hans Schomerus, whom we have already cited as an expert on partisanship, gives the title to a section of his explanations (which has been made available to me in the manuscript): *From Empecinado to Budjonny*. That means: from the partisan of the Spanish guerrilla war against Napoleon to the organizer of the Soviet cavalry, the equestrian leader of the 1920 Bolshevik war. In such a headline an interesting military-scientific line of development shines out. However, for those of us who have the theory of the partisan in mind, it draws too much attention to militarily technical questions of tactics and strategy of mobile warfare. We must keep an eye on the development of the concept of the political, which is taking a radical turn here. The classical concept of the political, which was fixed in the 18th/19th century, was based on the *state* of European international law and had turned the war of classical international law into a pure war of states under international law. Since the 20th century, this war of states and its tendencies have been eliminated and replaced by the revolutionary war. For this reason we give the following explanations the heading “From Clausewitz to Lenin.” Admittedly, there is a risk that rather than limiting ourselves to military science, we will lose ourselves in what is in a certain sense the opposite of that: historical-philosophical derivations and genealogical lineages.

The partisan is a safe point of reference here because he can protect us from such general historical-philosophical genealogies and lead us back to the reality of revolutionary development. Karl Marx and Friedrich Engels had already recognized that the revolutionary war today is not a barricade war of the old sort. Engels in particular, who wrote many military-scientific treatises, emphasized this again and again. But he thought it possible that bourgeois democracy would give the proletariat a majority in parliament by means of universal suffrage and thus legally transform the bourgeois social order into a classless society. As a result, even a completely non-partisan revisionism could invoke the names of Marx and Engels. On the other hand, it was Lenin who recognized the inevitability of violence and bloody revolutionary civil wars as well as wars between states, and therefore also affirmed partisan warfare as a necessary ingredient of the overall revolutionary process. Lenin was the first to conceive of the partisan with full consciousness as an important figure in national and international civil war and to try to transform him into an effective instrument of the central communist party leadership. This, as far as I can see, happened for the first time in an essay entitled “The Partisan Struggle” which appeared in the Russian magazine “The Proletarian” on 30 September 1906.[33] It is a clear continuation of the recognition of enemy and enmity that begins in 1902 in the essay “What to do,” above all with the turn against Struve's *objectivism*. “The professional revolutionary followed logically”[34] from it.

Lenin's essay on the partisan concerns the tactics of the socialist civil war and opposes the view then widespread among the social democrats of the period that the proletarian revolution, as a mass movement in parliamentary countries, would achieve its goal by itself, so that the methods of direct violence would be obsolete. For Lenin, partisan warfare is part of the method of civil war and, like everything else, is a purely tactical or strategic question of the concrete situation. Partisan war is, as Lenin says, “an inevitable form of struggle,” which must be fought without dogmatism or preconceived principles, just as one must use other means and methods, legal or illegal, peaceful or violent, regular or irregular, according to the situation. The goal is the communist revolution in all countries of the world; what serves this goal is good and just. Consequently, the partisan problem is also very easy to solve: the partisans controlled by the communist centre are freedom fighters and glorious heroes; partisans who evade this control are anarchist rabble-rousers and enemies of humanity.

Lenin was a great connoisseur and admirer of Clausewitz. He intensively studied the book *On War* during the first world war in 1915 and entered excerpts from it in German, marginal notes in Russian, with underlines and exclamation marks in his notebook, the *Tetradka*. In this way he created one of the greatest documents in the history of world- and intellectual history. From a thorough study of these extracts, marginalia, underlines, and exclamation marks, the new theory of absolute war and absolute enmity can be developed, which determines the age of revolutionary war and the methods of the modern cold war.[35] What Lenin was able to learn from Clausewitz—and he learned thoroughly—is not only the famous formula of war as the continuation of politics. It is the further realization that the distinction between friend and enemy is the primary factor in the age of revolution and determines both war and politics. Only the revolutionary war is real war for Lenin because it springs from absolute enmity. Everything else is a conventional game.

The distinction between war (*Woina*) and play (*Igra*) is particularly emphasized by Lenin himself in a marginal note to a passage in the 23rd chapter of Book II ("Keys to the Country"). Its logic entails the decisive step which tears down the limitations that the state wars of continental European international law had managed to establish in the 18th century, and which the Congress of Vienna in 1814/15 had so successfully restored up to the First World War, and which even Clausewitz had not really thought of eliminating. In comparison to a war of absolute enmity, the contained war of classical European international law, which is waged according to recognized rules, is little more than a duel between cavaliers seeking their own satisfaction. To a communist like Lenin, who was inspired by absolute enmity, this kind of war must have seemed like a mere game, in which he played along as the situation demanded, in order to mislead the enemy, but which he basically despised and found ridiculous.[36]

The war of absolute enmity knows no containment. The consequent implementation of absolute enmity provides its meaning and justice. So the question is only this: is there an absolute enemy, and who is it *in concreto*? For Lenin the answer was never in doubt for a moment, and his superiority over all other socialists and Marxists was consisted in taking absolute enmity seriously. His concrete absolute enemy was the class enemy, the bourgeois, the Western capitalist and his social order in every country where it ruled. Knowledge of the enemy was the secret of Lenin's

formidable power. His understanding of the partisan was based on the fact that the modern partisan was the irregular proper, and thus the strongest negation of the existing capitalist order, and was appointed as the actual executor of enmity.

The irregularity of the partisan today does not only refer to a military “line,” as it did in the 18th century, when the partisan was merely a “light troop,” nor does it any longer refer to the proudly displayed uniform of a regular troop. The irregularity of the class struggle calls into question not only the military line, but the whole edifice of political and social order. In the Russian professional revolutionary Lenin, this new reality was raised to philosophical consciousness. The alliance of philosophy with the partisan established by Lenin unexpectedly unleashed new, explosive forces. It brought about nothing less than the blowing up of the whole Eurocentric world, which Napoleon had hoped to save and which the Congress of Vienna had hoped to restore.

The containment of regular war between states and the taming of internal civil war had become so natural to the European 18th century that even clever people of the *Ancien Régime* could not imagine the destruction of this kind of regularity, not even after the experiences of the French Revolution of 1789 and 1793. All they found to express it was the language of general horror and inadequate, basically childish comparisons. A great and courageous thinker of the *Ancien Régime*, Joseph de Maistre, foresaw with clairvoyance what it was all about. In a letter from the summer of 1811,[37] he declared Russia ripe for revolution, but he hoped it would be a natural revolution, as he called it, and not an Enlightenment European one like the French. What he feared most was an academic Pugachev. This was his way of expressing himself in order to illustrate what he knew to be dangerous, namely an alliance of philosophy with the elementary forces of insurrection. Who was Pugachev? The leader of a peasant and Cossack uprising against the Tsarina Catherine II, who was executed in Moscow in 1775 and pretended to be the Tsarina's deceased husband. An academic Pugachev would be the Russian who “started a revolution in the European way.” That would be a series of horrific wars, and if once it came to that, “I would lack the words to tell you what you would have to fear.”

The vision of the wise aristocrat is astonishing, as much in what he saw, namely the possibility and danger of a connection of Western intelligence with Russian rebellion, as in what he did not see. The date and place—St.

Petersburg in the summer of 1811—place it in the closest neighborhood of the Prussian Army Reformers. But it does not notice its own proximity to the reformist professional officers of the Prussian General Staff, whose contacts with the Imperial Court in St. Petersburg were extensive enough indeed. It suspects nothing of Scharnhorst, Gneisenau and Clausewitz; linking their names with Pugachev's would fatally miss the point. The profundity of a significant vision is lost, and all that remains is a *bon mot* in the style of Voltaire or, for all I care, Rivarol. If one then considers the alliance between Hegelian philosophy of history and unleashed mass forces, as the Marxist professional revolutionary Lenin consciously brought about, then the formulation of the ingenious de Maistre evaporates into a small echo in the rooms or anterooms of the *Ancien Régime*. The language and conceptual world of the contained war and measured enmity were no longer a match for the outbreak of absolute enmity.

From Lenin to Mao Zedong

During the Second World War the Russian partisans diverted about twenty German divisions to themselves, according to the estimation of experts, thus contributing significantly to the outcome of the war. The official Soviet historiography—according to the book by Boris Semenovich Telpuchovsky about the Great Patriotic War 1941/45—describes the glorious Partisans, who disrupt the hinterland of the enemy armies. In the vast spaces of Russia and on the endless fronts of thousands of miles, each division was irreplaceable for the German war effort. Stalin's basic conception of the partisan was that he must always fight behind enemy lines, according to the well-known maxim: partisans at the back, fraternization at the front.

Stalin succeeded in combining the strong potential of national and local resistance—i.e. the essentially defensive, tellurian power of patriotic self-defense against a foreign conqueror—with the aggressiveness of the international communist world revolution. The combination of these two heterogeneous great forces dominates today's partisan struggle all over the world. The communist element has so far mostly been at an advantage because of its determination and its backing from Moscow or Peking. The Polish partisans who fought against the Germans during the Second World War were cruelly sacrificed by Stalin. The partisan battles in Yugoslavia in

1941/45 were not only common national defense against the foreign conquerors, but equally brutal internal fights between the communist and monarchist partisans. In this brother war, the communist partisan leader Tito defeated and destroyed his internal Yugoslavian enemy, the English-backed General Mihailovich, with Stalin's and England's help.

The greatest practitioner of the revolutionary war of the present became at the same time its most famous theoretician: Mao Zedong. Some of his writings are “compulsory reading today at western military academies” (Hans Henle). He had been gaining experience in communist action since 1927, and then used the Japanese invasion of 1932 to systematically develop all modern methods of national and international civil war. The “long march,” from South China to the Mongolian border, beginning in November 1934, over 12,000 km with enormous losses, was a series of partisan achievements and partisan experiences, as a result of which the Communist Party of China was consolidated as a peasant and soldier party, with the partisan as its core. It is a significant coincidence that Mao Zedong wrote his most important writings in the years 1936-38, the same years in which Spain fought off the grip of international communism in a national liberation war. The partisan did not play a significant role in this Spanish civil war. Mao Zedong, on the other hand, owes the victory over his national opponents, the Kuomintang and General Chiang Kai-Shek, exclusively to the experiences of the Chinese Partisan war against the Japanese and the Kuomintang.

Mao Zedong's most important formulations for our topic can be found in a 1938 paper entitled “Strategy of Partisan Warfare against the Japanese Invasion.” Yet Mao's other writings must also be consulted to complete the picture of the doctrine of war of this new Clausewitz.[38] These were indeed a consistent and systematic continuation of the concepts of the Prussian general staff officer. But Clausewitz, the contemporary of Napoleon I, could not yet suspect the degree of totality that today is taken for granted in the revolutionary war of the Chinese communists. The characteristic picture of Mao Zedong results from the following comparison: “In our wars, the armed populace and partisan warfare on the one hand, and the Red Army on the other, can be compared with the two arms of a man; or, to put it more practically: the morale of the population is the morale of the nation in arms. And that is what the enemy is afraid of.”

The “nation armed”: this was, as is well known, also the byword of the professional officers of the Prussian general staff who organized the war against Napoleon. Clausewitz was one of them. We have seen that at that time the strong national energies of a certain educated class were absorbed by the regular army. Even the most radical military thinkers of the time made a distinction between war and peace, and regarded war as a state of exception that was clearly distinguishable from peace. Even Clausewitz, from his existence as a professional officer in a regular army, could not have carried partisanship to its logical conclusion as systematically as Lenin and Mao were able to do from their existence as professional revolutionaries. However, with regards to partisanship, there was one concrete aspect in which Mao got closer to the innermost heart of the matter than Lenin, and which gives him the possibility of the highest conceptual completion. To put it in a word: Mao's revolution is more tellurically grounded than Lenin's. The Bolshevik avant-garde that seized power in Russia in October 1917 under Lenin's leadership shows great differences from the Chinese Communists who took control of China in 1949 after a war that lasted more than 20 years, differences both in the internal group structure and in the relationship to the land and people they seized. The ideological controversy over whether Mao taught genuine Marxism or Leninism becomes, given the immense reality determined by tellurian partisanship, almost as secondary as the question of whether ancient Chinese philosophers have not expressed many similar things to Mao. It is about a concrete “red elite” that is shaped by the partisan struggle. Ruth Fischer has clarified the essential point by pointing out that in 1917 the Russian Bolsheviks were, from the national point of view, a minority “led by a group of theorists, the majority of whom were emigrants”; the Chinese Communists under Mao and his friends had fought for two decades in 1949 on their own national soil with a national enemy, the Kuomintang, on the basis of a monstrous partisan war. They may have been urban proletarians by origin, similar to the Russian Bolsheviks of Petersburg and Moscow, but when they came to power they brought with them the formative experience of grave defeats and the organizational ability to “transplant their principles into a peasant milieu and develop them there in a new, unforeseen way.[39] Here lies the deepest germ of the “ideological” differences between Soviet Russian and Chinese communism. But there is also an internal contradiction in the situation of Mao itself, which combines a spaceless, global-universal,

absolute world enemy, the Marxist class enemy, with a territorially limitable, real enemy of the Chinese-Asian defense against capitalist colonialism. It is the opposition of the One World, of a political unity of the earth and its humanity, versus a multiplicity of regions that are reasonably balanced in themselves and among themselves. Mao expressed the pluralistic idea of a new *nomos* of the earth in a poem, *Kunlun*, which says:

> Could I but draw my sword o'er topping heaven,
> I'd cleave you in three:
> One piece for Europe,
> One for America,
> One to keep in the East.
> Peace would then reign over the world,
> The same warmth and cold throughout the globe.

In Mao's concrete situation, different kinds of enmity come together, which increase to an absolute enmity. Racial enmity against the white colonial exploiter; class enmity against the capitalist bourgeoisie; national enmity against the Japanese intruder of the same race; enmity against their own national brothers, grown through long, bitter civil wars—all these did not paralyze or relativize each other as could be imagined, but were rather confirmed and intensified in the concrete situation. During the Second World War, Stalin succeeded in connecting the tellurian partisanship of the national native soil with class enmity of international communism. Mao had already preceded him in this by many years. In his theoretical consciousness he surpassed even Lenin in his application of the formula of war as the continuation of politics by other means.

The mental operation on which it is based is as simple as it is powerful. War has its purpose in enmity. Because it is the continuation of politics, politics, at least as far as possible, always contains an element of enmity; and if peace contains the possibility of war—which is unfortunately what experience shows to be the case—then it also contains a moment of potential enmity. The question is only whether the enmity can be contained and regulated, that is, whether it is relative or absolute enmity. Only the combatant can decide this at his own risk. For Mao, who thinks in terms of partisans, today's peace is only the manifestation of real enmity. It does not stop even in the so-called Cold War. The Cold War is therefore not half war and half peace, but a manifestation of real enmity adapted to the situation,

with means other than overt violence. Only weaklings and illusionists could deceive themselves about it.

Practically speaking, the question arises about what the quantitative proportion the action of the regular army in open warfare should be to the other methods of class struggle that are not openly military. Mao finds a clear number for this: nine tenths of the revolutionary war is open, non-regular war, and one tenth is open military war. A German general, Helmut Staedke, has taken a definition of the partisan from this: the partisan is the fighter of the aforementioned nine-tenths of warfare that leaves only the last tenth to the regular forces.[40] Mao Zedong by no means overlooks that this last tenth is decisive for the end of the war. However, as a European of the old tradition, one must be careful not to fall back into the conventional classical concepts of war and peace, which, when they speak of war and peace, assume the European contained war of the 19th century and thus not an absolute, but rather a relative and containable enmity.

The regular Red Army only makes its appearance when the situation is ripe for a communist regime. Only then will the country be openly militarily occupied. Of course, this is not aimed at a peace agreement in the sense of classic international law. The practical significance of such a doctrine has been demonstrated most emphatically since 1945 by the division of Germany. On 8 May 1945 the military war against defeated Germany ended; Germany surrendered unconditionally at that time. As of 1963, the Allied victors had not yet made peace with Germany, but the border between the East and the West ran exactly along the lines along which the American and Soviet regular troops had demarcated their occupation zones eighteen years ago.

Both the relationship between cold and open military war (which is calculated at 9:1) and the deeper, global political symptomatology of the division of Germany since 1945 are only examples for us to illustrate Mao's political theory. Its core lies in partisanship, the characteristic feature of which today is real enmity. The Bolshevik theory of Lenin recognized and acknowledged the partisan. Compared to the concrete tellurian reality of the Chinese partisan, Lenin has something abstractly intellectual in the determination of the enemy. The ideological conflict between Moscow and Beijing, which became increasingly apparent after 1962, has its deepest origin in this concretely different reality of a genuine partisanship. Here too,

the theory of the partisan proves to be the key to understanding the political reality.

From Mao Zedong to Raoul Salan

The reputation of Mao Zedong as the most modern teacher of warfare was brought back from Asia to Europe by French professional officers. In Indochina, the old-style colonial war clashed with the revolutionary war of the present. There they experienced first-hand the power of the well conceived methods of subversive warfare, psychological mass terror, and its connection with partisan warfare. From their experiences, they developed a doctrine of psychological, subversive and insurrectional warfare, about which an extensive literature is available.[41]

It is tempting to see in this the typical product of the mindset of professional officers, indeed of colonels. This assignment to the colonel need not be further debated here, although it might be interesting to ask the question whether a figure like Clausewitz corresponds more to the intellectual type of the colonels than to that of the general. For us it is a question of the theory of the partisan and its logical development, and this is embodied in a strikingly concrete case in recent years by a general rather than a colonel, namely in the fate of General Raoul Salan. He is—more than the other generals Jouhaud, Challe or Zeller—the most important figure in this context for us. In the exposed position of the general, an existential conflict has revealed itself, the conflict which is decisive for the recognition of the partisan problem, the conflict which must occur if the regular soldier is to survive this type of war—not only occasional, but constant struggle with a fundamentally revolutionary and irregular enemy.

Salan had already been familiarized with the colonial war in Indochina as a young officer. During the World War in 1940-44 he was assigned to the General Staff of the Colonies and posted to Africa in this capacity. In 1948, he came to Indochina as commander of French troops; in 1951, he became High Commissioner of the French Republic in North Vietnam; supervised the investigation of the defeat at Dien-Bien-Phu in 1954; and in November 1958, he was appointed Supreme Commander of the French Armed Forces in Algeria. Up until then, he could be counted politically on the left, and as late as January 1957, an opaque organization, whose name might be translated as “Fehme,” made a life-threatening assassination attempt on him. But the lessons of the war in Indochina and the experience of Algerian

partisan warfare caused him to succumb to the relentless logic of partisan warfare. Pflimlin, the head of the Parisian government at the time, had given him full powers of authority. But on May 15, 1958, at the decisive moment, he helped General de Gaulle to power by shouting “Vive de Gaulle!” Soon, though, he was bitterly disappointed in his expectation that de Gaulle would unconditionally defend France's territorial sovereignty over Algeria, guaranteed by the Constitution. In 1960, open hostility against de Gaulle began. In January 1961, some of his friends founded the OAS (Organisation d'Armée Secrète), of which Salan became the declared chief when he rushed to Algeria on 23 April to join the officers' coup. When this coup collapsed as early as 25 April 1961, the OAS attempted premeditated terrorist actions against the Algerian enemy as well as against the civilian population in Algeria and the population of France itself—premeditated in the sense of the methods of so-called psychological warfare of modern mass terror. The terror enterprise suffered the decisive blow in April 1962, with the arrest of Salan by the French police. The trial before the High Military Tribunal in Paris began on 15 May and ended on 23 May 1962. The charge was based on the attempt to overthrow the legal regime by force and on the acts of terror committed by the OAS, i.e. it covered only the period from April 1961 to April 1962. The sentence was not death, but life imprisonment (*détention criminelle à perpétuité*), because the court granted the accused mitigating circumstances.

I have quickly recalled some dates for the German reader here. There is not yet any history of Salan and the OAS, and it is not for us to interfere in such a deep, internal conflict of the French nation by taking positions and passing judgements. We can only draw some lines from the material as far as it is published[42] to clarify our objective question. Many parallels concerning partisanship are evident here. We will return to one of them, for purely heuristic reasons and with all due caution. The analogy between the Prussian general staff officers of 1808/13, influenced by the Spanish guerrilla warfare, and the French general staff officers of 1950/60, who had experienced modern partisan warfare in Indochina and Algeria, is striking. The great differences are also obvious and need not be explained at length. There is a relation in the core situation and in many individual fates. But this must not be exaggerated in the abstract, as though all the theories and constructions of defeated militaries in world history could now be identified with one another. That would be nonsense. Even the case of the Prussian

General Ludendorff is in many essential points different from the case of the Left-Republican Salan. What concerns us is only a clarification of the partisan theory.

During the hearing at the military high court, Salan kept silent. At the beginning of the trial he made a longer statement, the first sentences of which were: "J*e suis le chef de l'OAS." Ma responsabilité est donc entière.*" (I am the head of the OAS. I take complete responsibility for this.) In the statement, he protested that witnesses he had named—including the President de Gaulle—were not questioned, and that the subject matter of the trial had been limited to the period from April 1961 (coup d'état in Algeria) to April 1962 (Salan's arrest), thus blurring his actual motives and isolating major historical events, reducing them to the formulae and facts of a normal criminal code and encapsulating them as such. He described the acts of violence committed by the OAS as a mere response to the most hateful of all acts of violence, which consists in taking away the nation from people who do not want to lose their nation. The declaration concludes with the words: "I am accountable only to those who suffer and die for believing in a broken word and a betrayed duty. From now on I will not speak."

Salan did indeed maintain his silence throughout the trial, even in the face of several strongly insistent questions from the prosecutor, who declared this silence to be a mere tactic. After a brief reference to the "illogical" nature of such a silence, the President of the High Military Tribunal finally, if not respected, then at least tolerated the defendant's behavior and did not treat it as contempt of court. At the end of the trial, Salan replied to the judge's question as to whether he had anything to add in his defense: "I will only open my mouth to shout *Vive la France*! And to the prosecutor I'll simply respond: *que Dieu me garde!* (God help me!)[43]

The first part of Salan's concluding remarks is addressed to the President of the Military High Court and addresses the application of the death sentence. In this situation, at the moment of execution, Salan would cry out *Vive la France*! The second part is addressed to the representative of the prosecution and sounds somewhat oracular. But it can be understood by the fact that the prosecutor, unusually for the public prosecutor of a secular state, had suddenly become religious. He had not only denounced Salan's silence as arrogance and lack of penitence in order to plead against the granting of extenuating circumstances; he suddenly spoke, as he expressly said, as "a Christian to a Christian," *un chrétien qui s'adresse à un chrétien*,

and reproached the accused that through his lack of repentance he had forfeited the grace of the benevolent Christian God and had committed himself to eternal damnation. It was to this that Salan said "*que Dieu me garde*!" One can see the abysses over which the astuteness and rhetoric of a political trial takes place. Yet the problem of political justice is not our concern here.[44] We are only interested in shedding light on a complex of questions that have been thrown into serious confusion by buzzwords such as total war, psychological war, subversive war, insurrectional war, invisible war, all of which obfuscate the problem of modern partisanship.

The war in Indochina in 1946-54 was the "prime example of a fully developed modern revolutionary war" (Th. Arnold, p. 186). Salan became familiar with modern partisan warfare in the forests, jungles and rice paddies of Indochina. He witnessed that Indo-Chinese rice growers were able to rout a battalion of first-class French soldiers. He saw the plight of the refugees, and got to know the underground organization organized by Ho Chi Minh, which eclipsed and outplayed the legal French administration. With the exactness and precision of a general staff officer, he set about observing and testing the new, more or less terrorist warfare. In the process, he soon came across what he and his comrades called "psychological" warfare, which is part of modern warfare along with military action. Here Salan could easily adopt Mao's system of thought; but it is known that he also delved into the literature about the Spanish guerrilla war against Napoleon. In Algeria, he found himself in the middle of a situation in which 400, 000 well-equipped French soldiers were fighting against 20, 000 Algerian partisans, with the result that France renounced its sovereignty over Algeria. The loss of life was ten to twenty times greater for the Algerian population as a whole than for the French, but the material costs of the French were ten to twenty times greater than for the Algerians. In short, Salan, with his whole existence as a Frenchman and a soldier, was really faced with an *étrange paradoxe*, within a logic of insanity that embittered a courageous and intelligent man and drove him to seek retaliation.[45]

In the labyrinth of such a situation, typical for modern partisan warfare, we will try to distinguish four different aspects in order to gain some clear concepts: the spatial aspect, then the disintegration of social structures, then the integration into the geopolitical context, and finally the technical-industrial aspect. This order can change depending on relevance. It goes without saying that in concrete reality there are not four isolated, independent areas, but only their intensive interactions, their mutual functional dependencies form the overall picture, so that every discussion of one aspect always contains references to and implications for the other three aspects, and finally all of them are included in the force field of technical-industrial development.

The Spatial Aspect

Completely independent of the good or ill will of mankind, of peaceful or warlike purposes and aims, every increase in human technology produces new spaces and unforeseeable changes in the traditional spatial structures. This applies not only to the external, conspicuous space expansions of cosmic space travel, but also to our old earthly living, working, ritual, and play spaces. The sentence “the home is inviolable” today, in the age of electric lighting, gas supply, telephone, radio and television, brings about a completely different kind of containment than in the time of King John and the Magna Carta of 1215, when the lord of the castle could raise the drawbridge. The technical increase in human efficiency has shattered entire systems of standards such as the maritime law of the 19th century. From the unclaimed sea bed emerges the space off the coast, the so-called continental shelf, as a new sphere of human activity. In the untamed depths of the Pacific Ocean, bunkers for nuclear waste are being built. The industrial-technical progress changes the spatial structures as well as spatial order. For law is the unity of order and orientation, and the problem of the partisan is the problem of the relationship between regular and irregular battle.

A modern soldier may be personally optimistic or pessimistic about progress. For our problem, this would not be so important either. In terms of weapons technology, every general staffer thinks in a practical and rational

way. On the other hand, due to the war, the spatial aspect is also theoretically obvious to him. The structural difference between the so-called theatres of war in land warfare and naval warfare is an old topic. Since the First World War, air space has been added as a new dimension, which at the same time has changed the spatial structures of the previous theatres of land and sea.[46] In partisan combat, a complexly structured new space of action is created because the partisan is not fighting on an open battlefield and not on the same level of open frontal warfare. Instead, he forces his enemy into another space. Thus he adds another, darker dimension to the surface of the regular, conventional theatre of war, a dimension of depth,[47] in which the displayed uniform becomes deadly. In this way, he provides an unexpected —but no less effective—terrestrial analogy to the submarine, which also added an unexpected dimension of depth to the surface of the sea where the old-style naval warfare took place. From beneath he disturbs the conventional, regular play on the open stage. He changes, by way of his irregularity, the dimensions of not only tactical but also strategic operations of the regular armies. Relatively small groups of partisans can tie up large masses of regular troops by exploiting ground conditions. Thus the aforementioned “paradox” of Algeria. Clausewitz already recognized it clearly and described it succinctly in a statement already cited above), saying that a few partisans who dominate a space “can claim the name of an army.”

For the sake of the concrete conceptual clarity, we hold fast to the partisan's tellurian character and do not designate or even define him as a corsair on land. The irregularity of the pirate lacks any relation to a regularity. The corsair, on the other hand, takes spoils of war at sea and is equipped with an authorizing “letter” from a state government; his kind of irregularity does not therefore lack any relationship to regularity, and so he was able to be a legally recognized figure in European international law until the Treaty of Paris of 1856. In this respect, both the corsair of naval warfare and the partisan of land warfare can be compared with each other. A strong similarity and even equality is apparent above all in the fact that the saying “Against partisans, one must fight like a partisan,” and the other saying “*à corsaire, corsaire et demi*” (against the corsair, a corsair and a half) say basically the same thing. Nevertheless, today's partisan is something other than a corsair of land warfare. The elementary contrast between land and sea remains too great for that. It may be that the

traditional differences between war and enemy and booty, which have hitherto been the basis of the contrast of land and sea under international law, will one day simply dissolve in the melting pot of industrial-technical progress. But for the time being the partisan still signifies a piece of real soil; he is one of the last posts on earth as an element of world history which has not yet been completely destroyed.

By the time of the Spanish guerrilla war against Napoleon, already things could only be fully illuminated by the great spatial aspect of this contrast of land and sea. England supported the Spanish partisans. A maritime power used the irregular fighters of the land war for its great martial ventures to defeat the continental enemy. In the end Napoleon was brought down not by England, but by the land powers of Spain, Russia, Prussia and Austria. The partisan's irregular, typically tellurian way of fighting entered into the service of a typically maritime world policy, which for its part in the field of naval warfare relentlessly disqualified and criminalized any irregularity at sea. In the contrast between land and sea, different types of irregularity become concrete, and only if we keep in mind the concrete peculiarities of the spatial aspects characterized by land and sea in the specific forms of their conceptualization are analogies permissible and fruitful. This applies first and foremost to the analogy that we depend on here for an understanding of the spatial aspect. In the same way that the naval power England used the indigenous Spanish partisan in its war against the continental power France, which changed the scene of the land war by creating an irregular dimension, later in World War I the land power Germany used the submarine as a weapon against the naval power England, which added an unexpected dimension to the previous space of naval warfare. The masters of the sea's surface at that time immediately tried to discriminate the new type of combat as an irregular, even criminal and piratical weapon. Today, in the age of submarines with Polaris missiles, everyone can see that both Napoleon's indignation against the Spanish *guerrillero* and England's indignation against the German submarine were on the same intellectual level, namely on the level of indignant condemnations against unaccounted-for changes in space.

Disintegration of Social Structures

The French experienced a monstrous example of the disintegration of social structures in Indochina from 1946 to 1956, when their colonial rule there collapsed. We already mentioned the organization of the partisan struggle by Ho Chi Minh in Vietnam and Laos. Here the communists also made us of the apolitical civilian population. They even commanded the domestic staff of French officers and officials and the auxiliary workers of the French army supply. They collected taxes from the civilian population and carried out terrorist acts of all kinds to induce the French to counter-terrorism against the local population, thus fueling their hatred of the French even more. In short, the modern form of revolutionary warfare leads to many new sub-conventional means and methods, the detailed description of which would go beyond the scope of our presentation. A polity exists as *res publica*, as a public sphere, and is called into question when a non-public space is formed within it which effectively disavows this public sphere. Perhaps this indication is enough to make us aware that the partisan, whom the specialist military consciousness of the 19th century had repressed, suddenly became the centre of a new kind of warfare whose purpose and aim was the destruction of the existing social order.

In the modified praxis of hostage-taking this becomes palpably visible. In the Franco-Prussian War of 1870-71, German troops took hostage the notables of a place—mayors, priests, doctors and notaries—as protection against *franctireurs*. Respect for such notables and dignitaries could be used to put pressure on the whole population, because the social standing of such typical bourgeois classes was practically beyond doubt. It is precisely this bourgeois class that became the real enemy in the revolutionary civil war of communism. Whoever uses such dignitaries as hostages works, as things stand, for the communist side. Such hostage-taking can be so useful to the communist that he can provoke it if necessary, either to exterminate a certain bourgeois class or to drive it to the communist side. This new reality is well recognized in a book on the partisan, which has already been mentioned. In partisan warfare, it tells us, effective hostage-taking is possible only against partisans themselves or their closest collaborators. Otherwise, one only creates new partisans. Conversely, for the partisan, every soldier in the regular army, every uniform wearer is a hostage. “Every uniform,” says Rolf Schroers, “should feel threatened, and with it everything it stands for.”[48]

One must only think this logic of terror and counter-terror through to the end and then apply it to any kind of civil war to see the shattering of social structures at work today. A few terrorists are enough to put great masses under pressure. The narrower space of open terror is joined by the wider spaces of insecurity, fear, and general distrust, a “landscape of betrayal” described by Margret Boveri in a series of four exciting books.[49] All the peoples of the European continent—with a few slight exceptions—have experienced this for themselves as a new reality in the course of two world wars and two post-war periods.

Geopolitical Context

Our third aspect, the interdependence in geopolitical fronts and contexts, has likewise long since penetrated the general consciousness. The autochthonous defenders of their native soil, who died *pro aris et focis* (for altar and hearth), the national and patriotic heroes who went into the forest, everything that was the reaction of an elementary, tellurian force against foreign invasion, has meanwhile come under an international and supranational central control, which helps and supports, but only in the interest of its own, quite different, world-aggressive goals, and which, depending on the circumstances, protects or abandons. The partisan then ceases to be essentially defensive. He becomes a manipulated tool of world revolutionary aggression. He is simply burned and cheated of everything for which he took up the fight and in which the tellurian character, the legitimacy of his partisan irregularity, was rooted.

In one way or another the partisan as an irregular fighter is always dependent on the help of a regular power. This aspect of the matter was always present and even recognized. The Spanish *guerrillero* found his legitimacy in his defensive posture and in his conformity with kingship and nation; he defended his native soil against a foreign conqueror. But Wellington also pertains to the Spanish guerrilla war, and the fight against Napoleon was fought with English help. Full of ire, Napoleon often recalled that England was the real instigator and also the real beneficiary of the Spanish guerrilla war. Today the connection is even more obvious, because the continuous increase in the technical means of warfare makes the partisan dependent on the constant help of an ally who is technically and

industrially capable of supplying him with the latest weapons and machines, and indeed of developing them.

If various interested third parties compete with each other, the partisan has leeway for his own politics. That was Tito's situation in the last years of the world war. In the partisan struggles that are being fought in Vietnam and Laos, the situation is complicated by the fact that within communism itself the opposition between Russian and Chinese politics has become acute. With the support of Peking, more partisans could be smuggled into North Vietnam via Laos; that would effectively be a stronger aid to Vietnamese communism than the support from Moscow. The leader of the war of liberation against France, Ho Chi Minh, was a supporter of Moscow. The stronger assistance will be the deciding factor, be it for the choice between Moscow and Peking or other alternatives that arise in the situation.

For such highly politicized contexts, Rolf Schroers' previously cited book on the partisan has found an apt formula; it speaks of the interested third party. This is a good expression. This interested third party is not just any banal figure, like the proverbial laughing third party. Rather, he pertains essentially to the situation of the partisan and therefore to his theory. The powerful third party not only supplies weapons and ammunition, money, material aid, and medicines of all kinds; he also provides the kind of political recognition that the irregularly fighting partisan needs in order not to sink into the non-political, that is to say, into crime, as the robber and the pirate do. In the long run, the irregular has to legitimize itself by the regular; and for this it has only two possibilities: the recognition by an existing regular, or the enforcement of a new regularity by its own efforts. This is a difficult choice.

To the extent that he becomes motorized, he loses his connection to the soil and grows dependent on the technical-industrial means he needs for his struggle. In this way the power of the interested third party also grows, so that it eventually reaches planetary dimensions. All the aspects under which we have considered contemporary partisanship so far seem to be subsumed in this way in the all-important technical aspect.

Technical Aspect

The partisan also participates in development, in progress, in modern technology and its science. The old partisan, whom the Prussian

Landsturmedikt of 1813 wanted to press into taking up the pitchfork, would cut a comical figure today. The modern partisan fights with submachine guns, hand grenades, plastic explosives, and perhaps soon with tactical nuclear weapons. He is motorized and connected to an intelligence network, with secret transmitters and radar. He is provisioned by air with weapons and food by airplanes. But he is also, as in Vietnam in 1962, attacked with helicopters and starved out. Both he himself and his opponents keep pace with the rapid development of modern technology and its form of science.

An English naval expert called piracy the “pre-scientific stage” of naval warfare. In the same spirit, he would have to define the partisan as the pre-scientific stage of land warfare, and declare it the only scientific definition. But even this definition is immediately scientifically outdated, for the difference between naval warfare and land warfare is itself caught up in the vortex of technical progress and appears to the technical experts today as something pre-scientific, thus already settled. The dead ride fast, and if they are motorized, they move even faster. In any case, the partisan, whose tellurian character we hold to, becomes a nuisance for every person who thinks rationally in terms of purpose and value. He provokes an almost technocratic affect. The paradox of his existence reveals an imbalance: the industrial-technical perfection of the equipment of a modern regular army in contrast to the pre-industrial agrarian primitiveness of effectively fighting partisans. This paradox had already provoked Napoleon's fits of rage against the Spanish *guerrillero* and had to increase accordingly with the progressive development of industrial technology.

As long as the partisan was only a “light troop,” a tactically mobile hussar or marksman, his theory was a matter of military-scientific specialty. It was revolutionary war that first made him a key figure in world history. But what will become of him in the age of nuclear weapons of mass destruction? In a technically organized world, the old, feudal-agrarian forms and ideas of struggle and war and enmity disappear. This is obvious. Is that why struggle and war and enmity are disappearing generally, and are they being reduced to social conflicts? When the inner rationality and regularity of the technically organized world, immanent according to the optimistic opinion, is completely established, then the partisan may not even be a troublemaker anymore. Then he will simply disappear of his own accord in the smooth execution of technical-functionalist processes, not unlike a dog disappearing from the highway. For a technically-oriented imagination, he

is then hardly a problem for traffic police, and incidentally, neither a philosophical, nor moral, nor legal problem.

That would be one aspect, and indeed the technically optimistic aspect, of a purely technical handling of the subject. It expects a New World with a New Man. With such expectations, as is well known, Old Christianity—and two millennia later in the 19th century, socialism as the new Christianity—entered the scene. Both lacked the all-annihilating *efficiency* [English in original text] of modern technical means. But from the purely technical point of view, as always with such purely technical reflections, there is no partisan theory, but only an optimistic or pessimistic series of ambiguous value judgements. Value has, as Ernst Forsthoff aptly puts it, “its own logic.”[50] For this is the logic of worthlessness, and the destruction of the bearers of that worthlessness.

As far as the prognoses of this widespread technocratic optimism are concerned, he is not at a loss for an answer; that is, he is not at a loss about the assessments of value and worthlessness that are evident to him. He believes that an unstoppable, industrial-technical development of mankind would in and of itself raise all problems, all previous questions and answers, all previous types and situations to a completely new plane where the old questions, types, and situations would become practically as unimportant as the questions, types, and situations of the Stone Age after the transition to a higher culture. Then the partisans would become extinct, just as the Stone Age hunters became extinct, unless they succeeded in surviving and assimilating. In any case, they would become harmless and unimportant.

But what, then, if the human type who had previously comprised the manpower of the partisans, succeeds in adapting to the technical-industrial environment, in using the new means and developing a new, adapted type of partisan, let's say the industrial partisan? Is there any guarantee that the modern means of destruction will always fall into the right hands and that an irregular conflict will become unthinkable? In the shadow of the present atomic balance of the world powers, under the glass bell, so to speak, of their enormous means of destruction, a margin of limited and contained war could be delimited, with conventional weapons and even means of destruction, the degree of which the world powers could agree openly or tacitly. This would result in a war controlled by these great powers and would be something like a *dogfight* [English in original text].[51] It would be

the seemingly harmless game of a precisely controlled irregularity and an “ideal disorder,” ideal in that it could be manipulated by the great powers.

But besides that there is also a radically pessimistic *tabula rasa* solution of technical fantasy. In an area hit with modern means of annihilation everything would of course be dead, friend and foe, regular and irregular. Nevertheless, it remains technically conceivable that some people might survive the night of bombs and rockets. In view of this eventuality, it would be practical and even rationally expedient to plan for the post-nuclear situation and to train people today to immediately occupy the craters of the bomb-ravaged zone and occupy the destroyed area. Then a new type of partisan could add a new chapter to world history with a new type of conquest.

Thus our problem expands to planetary dimensions. It grows even beyond planetary, into outer space. Technological progress makes it possible to travel into cosmic spaces, and this opens up immense new challenges for political conquest. For the new spaces can and must be taken by humans. The land and sea conquests of old, familiar to the history of man, would be followed by space conquests of a new type. But taking is followed by dividing and reaping. In this respect, despite all other progress, it remains the same. Technical progress will only bring about a new intensity of the taking, dividing, and reaping, and will only increase the old questions.

Today's confrontation between East and West, and especially the gigantic race for immensely large new spaces, is all about political power on our own planet, however small it may seem by now. Only those who control the so seemingly tiny earth will take and use the new fields. As a result, these immense areas are nothing but potential battlefields, a battle for dominion on this earth. The famous astro- or cosmonauts, who up to now have only been used as propagandistic stars of the mass media, press, radio, and television, will then have the chance to transform themselves into cosmopirates and perhaps even cosmopartisans.

Legality and Legitimacy

In the development of partisanship the figure of General Salan appeared to us as a revealing, symptomatic manifestation of the final stage. In this figure, the experiences and effects of the warfare of regular armies, colonial war, civil war, and partisan struggle meet and overlap. Salan has thought all

these experiences through to its logical conclusion, with the inevitable logic of the old saying that against partisans, one must fight like a partisan. He did this logically, not only with the courage of the soldier, but also with the precision of the general staff officer and the exactness of the technocrat. The result was that he turned himself into a partisan and finally declared civil war on his own supreme commander and his government.

What is the innermost core of such a fate? Salan's main defender, Maître Tixier-Vignancourt, in his grand summation of 23 May 1962, found a formulation that contained the answer to our question. He remarked on Salan's activity as head of the OAS: “I must say that if an old militant Communist had been at the head of the organization instead of a great military leader, he would have achieved a different action from that of General Salan” (p. 530 of the trial report). This is the crucial point: a professional revolutionary would have done it differently. He would have had a different position than Salan not only with regard to the interested third party.

The development of partisan theory from Clausewitz to Lenin to Mao has been driven forward by the dialectic of regular and irregular, of professional officer and professional revolutionary. Through the doctrine of psychological warfare, which French officers of the Indochina War took over from Mao, the development has not returned to its beginning and origin in a kind of *ricorso.* Here there is no return to the beginning. The partisan can put on a uniform and transform himself into a good regular fighter, even into a particularly brave regular fighter, similar perhaps to the saying that a poacher could make a particularly capable forest ranger. But this is all abstract. The implementation of Mao's teachings by those French professional officers does indeed have something abstract and, as it was once called in Salan's trial, something of the *esprit géometrique* about it.

The partisan can easily turn into a good uniform bearer; for the good professional officer, however, the uniform is more than a costume. The regular can become an institutionalized profession, the irregular cannot. The career officer can transform himself into the founder of a great order, like Saint Ignatius of Loyola. The transformation into the pre- or sub-conventional means something else. To disappear in the dark is one thing, but to transform the darkness into a space of combat from which the previous theatre of the Empire is destroyed and the great stage of the official public sphere is taken off its hinges—this cannot be organized with

technocratic intelligence. The Acheron does not allow itself to be reckoned and does not follow every incantation, no matter how clever it may be, and no matter how desperate the situation may be.

Our task is not to calculate what the intelligent and experienced military men of the April 1961 Algerian coup and the organizers of the OAS may have taken into account with regard to some specific questions that come to mind, particularly with regard to the impact of terrorist acts on a civilized European population or with regard to the *interested third party* mentioned above. This last question alone is significant enough as an issue. We have recalled that the partisan needs legitimacy if he wants to remain in the political sphere and not simply sink into criminality. The question is not settled with some now-commonplace cheap antithesis to legality and legitimacy. For it is precisely in this case that legality proves to be far more valid, indeed, than what it was originally for a republican, namely the rational, the progressive, the only modern—in short, the highest form of legitimacy itself.

I do not want to repeat what I have been saying for over thirty years on this still topical subject. A reference to this is part of the recognition of the situation of the Republican General Salan in 1958-61. The French Republic is a regime of the rule of law; that is its foundation, which it must not allow to be destroyed by the opposition of justice and law and by the distinction of justice as a higher authority. Neither the judiciary nor the army is above the law. There is republican legality, and that is the only form of legitimacy in the Republic. Anything else is an anti-republican sophism for the true republican. The representative of the public prosecution in the Salan trial therefore had a simple and clear position; he repeatedly invoked the "sovereignty of the law," which remains superior to any other conceivable entity or norm. There is no sovereignty of justice in relation to it. It turns the irregularity of the partisan into a fatal illegality.

Salan had no other argument against this than the reference to the fact that he himself had helped General de Gaulle on 15 May 1958 ascend to power against the legal government of that time, that he had then committed himself before his conscience, his peers, his fatherland, and before God, and that now, in 1962, he saw himself duped and cheated of everything that had been promised in May 1958 and passed off as holy (Report of the Trial, p. 85). Against the state he invoked the nation, against legalism he invoked a higher kind of legitimacy. General de Gaulle, too, had in the past often

spoken of traditional and national legitimacy and opposed it to republican legalism. Even the fact that his own legitimacy had only been established since the referendum of September 1958 did not change the fact that he had republican legality on his side at the latest since that September 1958, and Salan felt compelled to take a position that was desperate for a soldier: to invoke irregularity against regularity, and to transform his regular army into a partisan organization.

But irregularity in itself amounts to nothing. It simply becomes illegality. To be sure, a crisis of the law, and therefore of legality, is undeniable today. The classical concept of law, the observance of which is alone capable of maintaining republican legalism, is called into question by the ends and the means. In Germany, the invocation of justice, in contrast to the law itself, has become a matter of course even among lawyers, and is hardly noticed. Even non-lawyers today simply always say legitimate (and not legal) when they want to say that they are right. But the Salan case shows that even a dubious legality is stronger in a modern state than any other kind of law. This is due to the decisionist [Note: See Carl Schmitt, *Political Theology*] power of the state and its transformation of justice into law. We do not need to go into this in depth here.[52] Perhaps it will all be different when the state "dies." For the time being, legalism is the irresistible *modus operandi* of every modern state army. The legal government decides who the enemy is that the army has to fight. Those who claim to determine the enemy claim their own new legality if they do not want to submit to the determination of the previous legal government.

The Real Enemy

A declaration of war is always a declaration of enmity; this is self-explanatory; and when it comes to a declaration of civil war it goes without saying. When Salan declared civil war, he was in fact making two declarations of enmity: the continuation of the regular and irregular war on the Algerian front, and the opening of an illegal and irregular civil war on the French government. Nothing makes the hopelessness of Salan's situation more obvious than a consideration of this double declaration of enmity. Every two-front war raises the question of who the real enemy is. Is it not a sign of inner division to have more than one real enemy? The enemy

is our own question embodied. If our own form is clearly defined, where does the duality of enemies come from? The enemy is not something that must be eliminated for just any reason and destroyed for its unworthiness. The enemy is on one's own level. For this reason one must contend with him in battle to gain one's own measure, one's own limit, one's own form.

Salan regarded the Algerian partisan as the absolute enemy. Yet suddenly an enemy that was much worse and more intense for him appeared at his back, his own government, his own boss, his own brother. In his brothers of yesterday he suddenly saw a new enemy. That is the core of the Salan case. Yesterday's brother showed himself to be the more dangerous enemy. There must be a confusion in the concept of the enemy itself, which is connected with the doctrine of war and which we will now try to clarify at the end of our presentation.

A historian will find examples and parallels in world history for all historical situations. We have already hinted at parallels with events from the years 1812-13 of Prussian history. We have also shown how the partisan received his philosophical legitimization in the ideas and plans of the Prussian military reforms of 1808-13 and his historical accreditation in the Prussian *Landsturmedikt* of April 1813. Thus, it will not be quite as strange as it might seem at first glance if we take the situation of Prussian General York in the winter of 1812-13 as a counter-example in order to better elaborate the core question. First of all, of course, the enormous contrasts are striking: Salan, a Frenchman of left-republican origin and modern technocratic character, compared with a general of the Royal Prussian Army of 1812, who certainly would never have thought of declaring civil war on his king and supreme commander. In light of such differences of time and type, it seems incidental and even coincidental that York, too, fought as an officer in the colonies of the East Indies. Incidentally, it is precisely these striking contrasts that make it all the more clear that the core question is the same. For in both cases the issue was deciding who the real enemy was.

Decisionist exactness dominates the functioning of any modern organization, especially any modern regular state army. Thereby, the core question for the situation of a modern general is posed very precisely as an absolute either-or. The sharp alternative of legality and legitimacy is only a consequence of the French Revolution and its confrontation with the legitimate monarchy restored in 1815. In a pre-revolutionary legitimate monarchy like the then Kingdom of Prussia, many feudal elements of the

relationship between superior and subordinate had been preserved. Loyalty had not yet become something “irrational” and had not yet dissolved into a merely calculable functionalism. Prussia was already then a distinct type of state; its army could not deny its descent from Frederick the Great; the Prussian army reformers wanted to modernize and not return to some kind of feudalism. Nevertheless, the ambiance of the legitimate Prussian monarchy of the time may appear to the modern-day observer, even in the event of conflict, to be less sharp and incisive, less decisionist and statist. There is no need to argue about that here. It is only important that the impressions of the various period costumes do not obscure our core question, namely the question of the real enemy

In 1812 York commanded the Prussian division which, as an allied force of Napoleon, belonged to the army of the French General Macdonald. In December 1812 York went over to the enemy, the Russians, and concluded the Convention of Tauroggen with the Russian General von Diebitsch. During the negotiations and at the conclusion, Lieutenant-Colonel von Clausewitz participated on the Russian side as negotiator. The letter that York addressed to his king and supreme commander on 3 January 1813 has become a famous historical document. And rightly so. The Prussian general writes with great reverence that he expects the King to judge whether he, York, should advance “against the real enemy” or whether the King condemns the action of his general. He awaited both with the same faithful devotion, ready, in case of condemnation, “to await the bullet on the heap of sand as well as on the battlefield.”

The word “real enemy” is worthy of a Clausewitz and gets to the heart of the matter. It is indeed so in General York's letter to his king. The General's willingness to “await the bullet on the heap of sand” pertains to the soldier who takes responsibility for his actions, not unlike General Salan who was prepared to shout *Vive la France*! in the trenches of Vincennes before the firing squad. But what gives his letter its real, tragic and rebellious meaning is the fact that York, with all due respect to the King, reserves for himself the right to decide who the “real enemy” is. York was no partisan and probably never would have been. But with regard to the concept of the real enemy, the step into partisanship would have been neither absurd nor inconsistent.

Admittedly, this is only a heuristic fiction that is permissible for the brief moment when Prussian officers had elevated the partisan to an ideal, that is,

only for this turning point, which led to the *Landsturmedikt* of 13 April 1813. Just a few months later the idea that a Prussian general could become a partisan would have become grotesque and absurd, even as a heuristic fiction, and it would probably have remained so forever as long as there was a Prussian army. How was it possible that the partisan, who in the 17th century had sunk to the level of the *Pícaro* and in the 18th century belonged to the light troops, at the turn of the year 1812-13 appeared for a moment as a heroic figure, only to become a key figure in world events in our time, over a hundred years later?

The answer is that the irregularity of the partisan remains dependent on the meaning and content of a concrete regular. After the dissolution, which was characteristic of 17th century Germany, cabinet wars became a regular occurrence in the 18th century. This imposed such strong containments on the war that it could be interpreted as a game in which mobile light troops played irregularly and the enemy, as a mere conventional enemy, became the opponent of a war game. The Spanish guerrilla war began when Napoleon defeated the regular Spanish army in the autumn of 1808. This was the difference from Prussia in 1806-07, which immediately made a humiliating peace after the defeat of its regular army. The Spanish partisan restored the seriousness of the war to Napoleon, enlisting on the defensive side of the old European continental states, whose old form of regularity, reduced to convention and game, was no longer a match for the revolutionary new Napoleonic regularity. The enemy thus became the real enemy again, the war became real war again. The partisan who defends his national soil against the foreign conqueror became a hero who fought a real enemy in a real sense. That was the great process which had led Clausewitz to his theory and his doctrine of war. A hundred years later, when the martial theory of a professional revolutionary like Lenin blindly destroyed all traditional containments of war, war became absolute, and the partisan became the bearer of absolute enmity against an absolute enemy.

From the Real Enemy to the Absolute Enemy

The theory of war is always about the distinction of enmity, which gives war its meaning and character. Every attempt to contain or limit war must be based on the awareness that, in relation to the concept of war, enmity is the primary concept, and that the distinction between different types of war

is preceded by a distinction between different types of enmity. Otherwise, all efforts to maintain or limit war are only a game which cannot withstand the outbreaks of real enmity. After the Napoleonic wars, irregular war was pushed out of the general consciousness of European theologians, philosophers, and jurists. There were indeed friends of peace who saw in the abolition and proscription of the conventional war in the Hague Convention the end of war in general; and there were jurists who considered any doctrine of just war to be *eo ipso* just, because Saint Thomas Aquinas had already taught such things. No one suspected what the unleashing of irregular warfare would mean. No one considered what the victory of the civilian over the soldier would mean if one day the citizen put on the uniform while the partisan took it off to continue the fight without it.

It was this lack of concrete thinking that first completed the destructive work of the professional revolutionaries. This was a great misfortune, because with those limitations on war, European man had succeeded in something rare: the renunciation of criminalizing the wartime enemy—that is, the relativization of enmity, the negation of absolute enmity. It is really something rare, even incredibly humane, to get people to renounce discrimination and defamation of their enemies.

The partisan now seems to be calling this into question again. His criteria include the extreme intensity of his political commitment. When Guevara says “The partisan is the Jesuit of war,” he is thinking of the unconditional nature of political commitment. The life story of every famous partisan, beginning with the *Empecinado*, confirms that. In enmity the partisan without rights seeks his justice. In it he finds the meaning of the cause and the meaning of justice, when the shell of protection and obedience which he has hitherto inhabited breaks, or the web of norms of legality from which he could previously expect justice and legal protection is torn apart. Then the conventional game ends. But this cessation of legal protection need not yet be partisanship. Michael Kohlhaas, whom the sense of justice made into a robber and murderer, was not a partisan because he did not become political and fought exclusively for his own violated private law, not against a foreign conqueror and not for a revolutionary cause. In such cases, irregularity is apolitical and becomes purely criminal because it loses its positive connection with a regularity that exists somewhere. This is what distinguishes the partisan from the robber chief, whether noble or ignoble.

In discussing the geopolitical context (see above), we have emphasized that the interested third party performs an essential function when it provides the connection to the regular, which the irregularity of the partisan requires in order to remain in the realm of the political. The core of the political is not enmity per se, but the distinction between friend and enemy, and presupposes both friend and enemy. The powerful third party interested in the partisan may think and act entirely selfishly; with his interest he is still politically on the side of the partisan. This has functions as political friendship and is a kind of political recognition, even if it does not lead to public and formal recognition as a warring party or as a government. The *Empecinado* was recognized as a political entity by his people, the regular army, and the great power that was England. He was no Michael Kohlhaas nor Schinderhannes, whose interested third parties were gangs of criminal fences. Salan's political situation, on the other hand, went down in a desperate tragedy, because he became illegal in his own country, and outside, in the realm of geopolitics, not only did he not find an interested third party, but, on the contrary, he encountered the consolidated enemy front of anti-colonialism.

The partisan then has a real enemy, but not an absolute one. This follows from his political character. Another limit of enmity follows from the partisan's tellurian character. He defends a piece of land with which he has an autochthonous relationship. His basic position remains defensive despite the increased agility of his tactics. He behaves exactly as Saint Joan of Arc specified before the ecclesiastical court. She was not a partisan and fought regularly against the English. When she was asked by the ecclesiastical judge the question—a theological trick question—of whether she wanted to claim that God hated the English, she replied: “Whether God loves or hates the English, I do not know; I only know that they must be driven out of France.” This answer would have been given by any normal partisan to the defense of the national soil. With such a fundamentally defensive stance comes the fundamental limitation of enmity. The real enemy is not declared the absolute enemy, nor the ultimate enemy of humanity in general.[53]

Lenin shifted the conceptual focus from war to politics, i.e. to the friend-enemy distinction. This was sensible and, according to Clausewitz, a logical extension of the idea of war as a continuation of politics by other means. Only Lenin, as a professional revolutionary of the world civil war, went even further and turned the real enemy into the absolute enemy. Clausewitz

spoke of total war, but still presupposed the regularity of an existing statehood. He could not yet imagine the state as an instrument of a party, and a party that commanded the state at all. With the absolutism of the party, the partisan had also become absolute and was elevated to the bearer of absolute enmity. It is not difficult today to see through the conceptual trick which brought about this change in the concept of the enemy. On the other hand, it is much more difficult today to refute another way of making the enemy absolute, because it seems to be immanent in the present reality of the nuclear age.

Technical-industrial development has increased the weapons of man into pure means of annihilation. This creates a provocative imbalance between protection and obedience: one half of mankind becomes hostage to the rulers of the other half, who is armed with nuclear weapons. Such absolute means of annihilation require absolute enmity if they are not to be absolutely inhuman. After all, it is not the means of annihilation that destroy, but humans that destroy other humans with these means. The English philosopher Thomas Hobbes grasped the core of the process as early as the 17th century (*de homine* IX, 3) and formulated it with great accuracy, although at that time (1659) the weapons were still comparatively harmless. Hobbes says: “Man is more dangerous to another man of whom he believes himself endangered than any animal, just as much as the weapons of man are more dangerous than the so-called natural weapons of animals, for example: teeth, paws, horns or poison.” And the German philosopher Hegel adds: “weapons are the very essence of the fighters themselves.”

In concrete terms this means the supra-conventional weapon supposes supra-conventional man. It does not presuppose him only as a postulate of a distant future; it rather presupposes him as an already existing reality. The ultimate danger, then, does not even lie in the presence of the means of destruction and a premeditated malice in man. It consists in the inescapability of moral compulsion. Men who use these means against other men see themselves as obliged to annihilate their victims and objects, even morally. They must declare the other side as a whole to be criminal and inhuman, to be totally worthless, otherwise they are criminal and inhuman themselves. The logic of value and unworthiness unfolds its entire destructive consequence and forces ever new, ever deeper discrimination,

criminalization and devaluation, up to the destruction of all life that is unworthy of life.

In a world in which the partners push each other into the abyss of total devaluation in this way before they physically annihilate each other, new kinds of absolute enmity must arise. The enmity will become so terrible that one may not even speak of enemy or enmity, and both may even be formally ostracized and condemned before the work of annihilation can begin. Annihilation will then become quite abstract and quite absolute. It will no longer be directed at an enemy at all, but only serve the supposedly objective enforcement of the highest values, for which, as we know, no price is too high. It is the denial of real enmity that will clear the way for the work of annihilation of an absolute enemy.

In 1914 the peoples and governments of Europe staggered into the First World War without any real enmity. The real enmity arose only from the war itself, which began as a conventional war of states under European international law and ended with a world civil war of revolutionary class enmity. Who will prevent the unexpected emergence of new types of enmity, in an analogous but still infinitely increased way, the implementation of which will cause unexpected manifestations of a new partisanship?

The theorist can do no more than preserve concepts and call things as they are. The theory of the partisan leads into the concept of the political, into the question of the real enemy and a new *nomos* of the earth.

Notes

[← 1]

Eberhard Kessel, “Die Wandlung der Kriegskunst im Zeitalter der französischen Revolution,” *Historische Zeitschrift* v. 148 (1933) 248 f. and v. 191 (1960) 397 ff. (review of Quimby, *The Background of Napoleonic Warfare*). Also Werner Hahlweg, “Preußische Reformzeit und revolutionärer Krieg,” Beiheft 18 der *Wehrwissenschaftlichen Rundschau*, Sept. 1962, 49/50: “Napoleon managed to build [from the new style of battle of the revolutionary popular army] an almost flawless complete system, his operations in the great war, his great tactics, and great strategy.” The Prussian officer and publisher Julius von Voß thought that Napoleon’s entire campaign of 1806 “could be called a case of partisanship on a large scale” (W. Hahlweg, as above, 14).

[←2]

From publications of the Cátedra *General Palafox,* University of Saragossa, see the volume *La Guerra Moderna* 1955: Fernando de Salas Lopez, “Guerrillas y quintas columnas” (II, 181–211); from the volume *La Guerra de la Independencia Española y los Sitios de Zaragoza* 1958: José Maria Jover Zamora, “La Guerra de la Independencia Española en el Marco de las Guerras Europeas de Liberacion (1808–1814),” 41–165; Fernando Solano Costa, “La Resistencia Popular en la Guerra de la Independencia: Los Guerrilleros,” 387–423; Antonio Serrano Montalvo, “El Pueblo en la Guerra de la Independencia: La Resistencia en las Ciudades,” 463–530. The two foundational essays of Luis Garcia Arias can be found in *La Guerra Moderna* I (“Sobre la Licitud de la Guerra Moderna”) and in *Defensa Nacional*, 1960, “El Nuevo Concepto de Defensa Nacional.” F. Solano Costa asserts in the conclusion of his essay that a documented history of the Spanish popular front against Napoleon was lacking up until then. His own essay, however, and that of José Jover Zamora, do represent outstanding syntheses and have to be gratefully acknowledged as important sources of our analysis. Spanish histories treat the Guerrilla War in various ways but insufficiently in regard to any contemporary interest in a satisfying overall account (Conde de Toreno, Modesto Lafuente v. 5, Rodriguez de Solis, José M. Garcia Rodriguez); most extensively, José Gomez de Arteche in v. 4, 5, 7, 9, 11, and 14 of History of the War of Independence. French, English, and German accounts are too much to take up here; see the brilliant overview provided by Fernando Solano Costa in “El Guerrillo y su Trascendencia,” in the publications of the Congreso Historico Internacional de la Guerra de la Independencia y su Epoca, of the Institucion Fernando el Catolico, Zaragoza March/April 1959; and in the same place “Aspectos Militares de la Guerra de la Independencia” (Santiago Amado Lorigo) and “La Organizacion administrativa Francesa en Espana” (Juan Mercader Riba).

[←3]

See F. Solano Costa, as cited, 387, 402, 405. Gregorio Marañon has published an excerpt on the Empecinado translated from the English of Hardman, *Peninsular Scenes and Sketches* (Edinburgh and London, 1847). José de Arteche appends a lecture on the *Empecinado* in his v. 14. Fr. Merino should be mentioned along with the *Empecinado* in this context as it is to him that the last story of the just cited *Empecinado* (ed. G. Marañon) is dedicated. The two men stood opposed/on opposing sides in 1823, when the French were marched into Spain on a charge from the Holy Alliance (the celebrated “hundred thousand sons of St. Louis”): the *Empecinado* on the side of the constitutionalists, Fr. Merino on the side of the absolutist restoration and the French.

[←4]

Peter Rassow, “Die Wirkung der Erhebung Spaniens auf die Erhebung gegen Napoleon I,” *Historische Zeitschrift* 167 (1943), 310–335, treats the pamphlet of the Spanish minister Ceballos, Ernst Moritz Arndt and Kleist’s *Katechismus der Deutschen*; further commentary by W. Hahlweg, as cited, 9, notes 9–13 (on insurrections in Germany 1807–13). Colonel von Schepeler, who later became known as the historian of the Spanish war of independence, collaborated as well from the north on Austrian plans for an armed rebellion against the French: Hans Jureschke, *El Colonel von Schepeler, Caracter y Valor informativo de su obra historiografica sobre el reinado de Fernando VII. In Revista de Estudios Politicos* Nr. 126 (special issue on the Treaty of Cadiz, 1812) 230.

[←5]

Rudolf Borchardt takes up Kleist's poem "An Palafox" in his collection *Ewiger Vorrat deutscher Poesie* (1926). But General Palafox, defender of Saragossa, was in fact no partisan, he was a regular officer, and the heroic defense of the city by its populace, men and women alike, was, as Hans Schomerus points out, not a partisan battle but regular resistance against a regular siege.

[←6]

Carl von Clausewitz, *Politische Schriften und Briefe*, ed. Dr. Hans Rothfels, Munich 1922, 217.

[←7]

Some of the restorations of the Congress of Vienna—for instance the principles of dynastic legitimacy and legitimate regency, as well as the German nobility and the Vatican in Italy, and also via the Papacy the Order of the Jesuits—are generally recognized. Less well known is the great project of the restoration of *the jus publicum Europaeum* and its containments [Hegungen] of land war conducted by sovereign states—a restoration that, in the textbooks of international law at least, has remained until today as a sort of "classical" façade. In my book *Der Nomos der Erde im jus publicum Europaeum [The Nomos of the Earth in the International Law of the Jus Publicum Europaeum]* the interruption of this principle by the wars of the French revolution and of the Napoleonic era is not treated extensively enough. Hans Wehberg was right to complain of it in his review (*Friedenswarte* Bd. 50, 1951, 305/14.) Recent researches by Roman Schnur into France's international legal ideas and practice, 1789–1815, published in part in an essay, "Land und Meer" in the periodical *Zeitschrift für Politik*,1961, 11f., fill out the picture. Swiss neutrality and its enduring situation unique belong as well to the framework of the restoration of the bearings of European war; on this see my *Nomos der Erde* 222 [The Nomos of the Earth, trans. and ann. by G. L. Ulmen (New York: Telos Press, 2003) 174].

[←8]

See, in the index of my book *Der Nomos der Erde* (Köln: 1950; since 1960 Berlin: Duncker & Humblot), the terms *Bürgerkrieg*, Feind, justa causa, and justus hostis.

[←9]

See Gloss 3 of the essay “Weiterentwicklung des totalen Staates in Deutschland” (1933), reprinted in the collection *Verfassungsrechtliche Aufsätze* (Berlin: Duncker & Humblot, 1958), 366.

[←10]

Ernesto Che Guevara, *Guerrilla Warfare*. With an Introduction by Major Harries-Clichy Peterson (New York: Praeger, 1961), 9: “It is obvious that guerrilla warfare is a preliminary step, unable to win a war all by itself.” I cite this edition because both the Spanish original and other translations were known to me only later.

[←11]

Manuel Fraga Iribarne points out in his essay “Guerra y Politica en el siglo XX” that there are French decrees on resistance against an inimical invasion as early as 1595 (in the collection *Las Relaciones Internacionales de la Era de la guerra fria* (Madrid: Instituto de Estudios Politicos, 1962, 29 n. 62). These decrees employ the words *partisan* and *parti de guerre*; cf. n. 27.

[←12]

See my paper “El orden del mundo despues de la segunda guerra mundial,” in *Revista de Estudios Politicos* 112 (Madrid, 1962), 12, and my *Verfassungsrechtliche Aufsätze* (1958), in index under “classical,” 512.

[←13]

Rolf Schroers, *Der Partisan; ein Beitrag zur politischen Anthropologie* (Köln: Kiepenheuer & Witsch, 1961). We will be returning to this important book again in due course; see n. 16, 47. Schroers correctly distinguishes the partisan from the revolutionary agent, functionary, the spy, the saboteur. He identifies him, on the other hand, with the resistance fighter in general. In contrast to him, I stay with the criteria specified in this text, and hope to have developed a clearer position which enables a fruitful exchange of discussion.

[←14]

Cf. Hans Joachim Sell, *Partisan* (Düsseldorf: Eugen Diederichs Verlag, 1962), a novel with outstanding psychologically and sociologically interesting portraits of noble and bourgeois figures in the Federal Republic of Germany in the situation of the year 1950.

[←15]

I once referred to B. Bruno Bauer and Max Stirner as “partisans of the world-spirit [des Weltgeistes],” in an essay on Lorenz von Stein, 1940 and in a lecture of 1944 about Donoso Cortés (Bibliography, nr. 49, and 283, 287). In an essay on the 250th anniversary of the death of J. J. Rousseau, in *Die Zürcher Zeitung* 26 (29 June 1962), I took the gestalt of the partisan —with reference to Rolf Schoers and H. J. Sell—in order to clarify the controversial picture we have of Rousseau. In the meantime, I had gotten to know an essay by Henri Guillemin, “J. J. Rousseau, trouble-fête,” and it appears to confirm this association. Guillemin is the editor of Rousseau’s *Lettres écrites de la Montagne* (Neuchâtel: Collection su Sablier, Editions Ides et Calendes, 1962), with a pertinent preface.

[←16]

While Schroers (see no. 13) sees in the partisan the last resistance against the nihilism of a fully technologized world [durchtechnisierten Welt], the last defender of the species and the soil [Art und Boden], and even the last man altogether, Gerhard Nebel (*Unter Partisanen und Kreuzfahrern* [Stuttgart: Ernst Klett Verlag, 1950]) sees the partisan in precisely opposite terms as a figure of modern nihilism who—as the fate of our century—takes hold of all professions and classes, the priest, the peasant, the intellectual, and ultimately also the solider. Nebel's book is the 1944–45 war diary of a German soldier in Italy and Germany, and it would be worth comparing his picture of partisanship in the Italy of the period with Schroer's analysis (243). Nebel is especially good at capturing the moment when a large regular army dissolves and, as a mob, is either exterminated by the local population or itself turns to killing and plundering, in which case both sides can be called partisans. But when Nebel, beyond his good portraits, takes these poor devils to be nihilists, it is really only a sort of seasoning with the currently fashionable metaphysical spice, much like the Pícaro of the seventeenth century with his whiff of scholastic philosophy. Ernst Jünger, in *Der Waldgang* (Frankfurt am Main: Klostermann, 1951) construes the figure of the woods-goer [Waldgänger], whom he occasionally calls partisan, as a "gestalt" in the sense of his gestalt of Arbeiter [worker] (1932). The solitary woods-goer, surrounded by machinery, does not give up the apparently hopeless game for lost, but wants to carry on by his innermost force and decides "to go into the woods" [entschließt sich zum Waldgang]. "So far as his place in the world goes, the woods are everywhere" (11). Gethsemane for instance, the Mount of Olives which we know from the Passion or our Savior is "woods" in Jünger's sense (73), and so are Socrates' daimonion (82). In the same fashion, the "professor of law and the professor of international law" are said to be incapable of putting into the woods-goer's hand "the tool that's needed. Poets and philosophers envision it already better — the project before us" (126). But only the theologian knows the true sources of power. "Any man who knows is understood as theologian . . ." (95).

[←17]

Carl Schmitt, *Land und Meer* (Reclam Universalbibliothek Nr. 7536; 1st ed. 1942, 2d ed. 1954); *Der Nomos der Erde* (Berlin: Duncker & Humblot, 1950) 143, 286; *Die geschichtliche Struktur des heutigen Weltgegensatzes von Ost und West*, 1955 (Bibliographie Tommissen 239 and 294). In the last of these essays, published concurrently in *Revista de Estudios Politicos* 81 (Madrid, 1955) I claimed that I want to develop paragraphs §§ 247/248 of Hegel's *Philosophy of Right* as the intellectual-historical nucleus [geistesgeschichtliche Keimzelle] for a recognition of the contemporary technical-industrial world as we know it in its hermeneutic plenitude, pursuant to the Marxist interpretation of the foregoing paragraphs §§ 243/46 as these bear on bourgeois society.

[←18]

In her review of Rolf Schroers's book (as cited above), Margret Boveri (Merkur 168, February 1962) extols Czeslav Milosz's book *West — und Oestliches Gelände* (Köln, 1961). The author provides a lively and sympathetic picture of his life in Lithuania, Poland, and Western Europe, especially Paris, and tells of his underground life in Warsaw during the German occupation, where he spread circulars against the Germans. He says explicitly that he was no partisan and did not want be one (276). But his love of his Lithuanian home and its woods might strengthen our belief to hold tight to the tellurian character of the genuine partisan.

[←19]

Hans Schomerus, “Partisanen,” in *Christ und Welt* 26 (1949), in particular the section “Der Wall der Tradition.” The pursuant essays by Schomerus in the same year of the journal remains of great significance for the partisan problem.

[←20]

E. Kessel, *Historische Zeitschrift* 191 (October 1960) 385–93; Franz Petri and Peter Schöller, “Zur Bereinigung des Franktireurproblems vom August 1914,” *Vierteljarheshefte für Zeitgeschichte* 9 (1961), 234–48.

[←21]

"Without being aware of it, toward the end of the 19th century European international law had lost the consciousness of the spatial structure of its former order. Instead, it had adopted an increasingly superficial notion of a universalizing process that it naïvely saw as a victory of European International law. It mistook the removal of Europe from the center of the earth in international law for Europe's rise to the center." *The Nomos of the Earth* (New York: Telos Press, Ltd., 2003), 233.

[←22]

The confusion becomes impenetrable, and this not only in political propaganda and counter-propaganda, where it has its place, nor only in the discussion of urgent controversial cases (like that of the Yugoslav citizen Lazar Vracaric, who was taken in custody by German authorities in Munich in November 1961), but regrettably, such confusion is endemic to the legal literature, too, the minute it loses sight of the concrete concepts of European international law. This is evident in the already-cited dissertation of Jürg H. Schmid, *Die völkerrechtliche Stellung der Partisanen im Kriege*. Hellmuth Rentsch, *Partisanankampf, Erfahrungen und Lehren* (Frankfurt am Main, 1961) goes amiss in several places, wishing to situate the partisans "under the aegis of international law" (204 n. 9), something the genuine partisan would gladly accept as an extra arrow in his quiver. All of this confusion is the consequence of the destruction of the *jus publicum Europaeum* and its human(e)-rational concepts of war and peace. The re-barbarizing of martial law is treated in an added chapter of the great book by F. J. P. Veale, *Advance to Barbarism* (Appleton, Wis: C. C. Nelson, 1953; German translation in 2d ed., Wiesbaden: K. H. Priester, 1962).

[←23]

Colmar Freiherr von der Goltz, *Léon Gambetta und seine Armeen* (Berlin, 1977), 36: “With the further advances of the invading army the corps become weaker while the transport becomes more ponderous... This favors the enemy’s enterprising irregulars [Freischaren]. But Gambetta wanted large-scale war. In order to justify the large-scale war before his country the war actions [Kriegstaten] of his armies should be as splendid and impressive as their numerical superiority.” Dr. J. Hadrich (Berlin), to whom I am indebted for pointing out Frh. Von der Goltz’s book, also called my attention to the fact that the Abyssinians, in their resistance to Mussolini’s Italian army in 1935/36, were only defeated because instead of a partisan war they tried to conduct a war with regular troops.

[←24]

Cited from the German edition of 1956: *Partisanen, Strategie und Taktik des Guerillakrieges*, by Brigadier C. Aubrey Dixon, O.B.E. and Otto Heilburn (Frankfurt am Main and Berlin: Verlag für Wehrwesen), XIV, 213–240.

[←25]

Hans Kissel, *Der Deutsche Volkssturm 1944/45, eine territoriale Miliz der Landesverteidigung* (Frankfurt am Main: E. S. Mittler & Sohn, 1962); for information on the different treatment in the east and west, cf. 46. The word *Kinderheckenschützenkrieg* [children's sniper war] comes from Erich F. Pruck in his review of Kissel's book in *Zeitschrift für Politik*, (n. s.) 9 (1962) 298/99. Pruck rightly observes that "the boundary between legal combat mission (in the sense of the Hague Convention) and partisanship is unclear." Dixon and Heilbrunn, op. Cit., 3.

[←26]

Otto von Bismarck, *Gedanken und Erinnerungen*, I, ch. 20; III, ch. 1 and 10, in which the locution Acheronta movebo was aimed at “imagining the worst.” Bismarck understates the affair for obvious reasons. As the modern historian Egmont Zechlin asserts, he had assembled around him a “Hungarian command force ready to action” including generals like Klapka and Türr. The officer corps of the Hungarian legion was assembled from the best of the Hungarian nobility. “But Bismarck did not scruple to include in his Headquarters the radical socialist Czech revolutionary and friend of Bakunin, Joseph Friĉ. In Colonel Oresković in Belgrade and Minister Garasanin he was dealing with important Balkan movement leaders, and through Victor Emanuel and also Klapka and Türr he was in contact with the European revolutionary hero Garibaldi.” He preferred making revolution to suffering it, as he telegraphed the conservative reactionary general of the Tsar with whom he was in contact. Compared to this forthright national revolutionary line in Bismarck’s politics, the revolutionary efforts of the German regime and general staff during World War I in Russia, in the Islamic-Israelite world and the U.S. appear weak and improvised; cf. Egmond Zechling in his series of essays on “Friedensbestrebungen und Revolutionierungsversuch” in the weekly *Das Parlament*, appendices 20, 24, and 25, May and June 1961. Gustav Adolf Rein comes to the conclusion, in his richly documented book *Die Revolution in der Politik Bismarcks* (Göttingen, 1957), that “Bismarck shined a light into the face of revolution in order to reveal its inner weakness, and he undertook awakening the old monarchy to new life” (131). Unfortunately, the concrete situation of the year 1866 is not as effectively treated in Rein’s book as the theme would deserve.

[←27]

Ernst Forsthoff, *Deutsche Verfassungsgeschichte der Neuzeit*, 2d ed. (Stuttgart, 1961), 84. The claim that the Prussian *Landwehr*, a type of troop which came closest to a kind of bourgeois ideal of a militia, played the decisive role in the victory is also considered apocryphal by Forsthoff. "The application of the *Landwehr* at the beginning of the war was really very limited. It couldn't be exposed to an attack since it was too short on moral energy and military striking power, and not exempt from confusion and panic. It grew battle-worthy only as the war progressed by being armed for a longer time. The assertion of the decisive participation of the Landwehr in the victory must be consigned to fable." Ernst Rudolf Huber treats this period (early 1813) and in particular the *Landsturm* Edict in his constitutional history v. 1 (1957) 7: 13; and in *Heer und Staat in der deutschen Geschichte* (Hamburg, 1938), 144f.

[←28]

They transpired as decrees of a *Junta Suprema* because the legitimate monarch at the time did not work out; see F. Solano Costa, as above, 415–16. The Swiss *Kleinkriegsanleitung für Jedermann* of 1958 cited above is no official regulation but a publication of the central Swiss Junior Officer's Club. It would be informative to compare its different instructions (e.g., warning to adhere to the regulations of the enemy power) with the corresponding provisions of the Prussian *Landsturm* Edict of 1813 in order to highlight on the one hand the core of the situation, and on the other hand the technical and psychological progress that has taken place.

[←29]

Werner Hahlweg, *Preußische Reformzeit und revolutionärer Krieg*, Beiheft 18 der *Wehrwissenschaftlichen Rundschau* (September 1962), 54–6. The letter from Clausewitz to Fichte is printed in Fichte's *Staatsphilosophischen Schriften*, ed. Hans Schulz and Reinhard Streckr (Leipzig 1925), 1st supp. v. 59–65. On the "three declarations," see Ernst Engelbert in the introduction to the edition of Clausewitz's *Vom Kriege* (Berlin, 1957), XLVII/L

[←30]

Letter to Marie von Clausewitz, 28 May 1813: “... but it appears that everything that was hoped for from the support of the people in the back of the enemy has also fallen through. This is the one thing so far that has not gone according to my expectations and I have to admit that thinking about it has given me some sad moments.” Karl Linnebach, *Karl und Marie von Clauswitz; ein Lebensbild in Briefen und Tagebuchblättern* (Berlin, 1916), 336.

[←31]

An army is “a fighting mass [Streitmasse] to be found in one and the same theater of war.” Although it “would be pedantic, to claim the title of army for any partisan lodging independently in a distant province, it should not go unremarked that it strikes no one as odd when we speak of the army of the Vendée in the revolutionary wars although it was often not very much stronger.” See also infra n. 45 with reference to Algeria.

[←32]

Joachim Ritter, *Hegel und die französische Revolution* (Köln und Opladen, 1957). The formulation of Reinhart Koselleck is conclusive in this context: “The sociological fact of having assembled the bourgeois intelligentsia, and the historical consciousness of Prussian civil servants in finding within spirit the full realization of their state[im Geist die Staatlichkeit ihres Staates zu finden], are one and the same phenomenon.” *Staat und Gesellschaft in Preußen* 1815 bis 1848, in the monograph series *Schriftenreihe Industrielle Welt* 1, ed. Werner Conze (Stuttgart, 1962), 90.

[←33]

W. I. Lenin, *Sämtliche Werke*, 2d ed. v. 10 (Vienna, 1930), 120, 121, here cited from the German edition of the military writings of Lenin from the Deutsche Militärverlag, Berlin (Ost) 1961, "Von Krieg, Armee und Militärwissenschaft," v. 1, 294–304. It is a significant coincidence that Georges Sorel's "Réflexion sur la violence" was published in Paris in the same year, 1906, and in the journal *Mouvement Socialiste*. Thanks are owed to Hellmuth Rentsch (203 n. 3) for his reference to the book by Michael Prawdin, *Netschajew–von Moskau verschwiegen* (Frankfurt-am-Main/Bonn, 1961), 176, according to which Lenin had spoken already in 1905 of the necessity of guerrilla war. The exact phrasing still needs to be verified.

[←34]

Peter Schreibert, “Über Lenins Anfänge,” *Historische Zeitschrift* 182 (1956): 564.

[←35]

A German edition of Lenin's *Tetradka* with remarks on Clausewitz's *Vom Kriege* was published in Berlin in 1957 by the "Institut für Marxismus-Leninismus beim Zentralkomitee der SED." By far the most significant exposition and analysis of the Tetradka is provided by Werner Hahlweg in his essay "Lenin and Clausewitz," in *Archiv für Kulturgeschichte* 36 (1954): 30–9 and 357–87. Hahlweg is also the editor of the recent edition of *Vom Kriege* (Bonn, 1952). Lenin's original achievement consists according to Hahlweg in extending Clausewitz from the (originally bourgeois) revolution of 1789 to the proletarian revolution of 1917, and in recognizing that war, in passing from state and national war to class war, supplants the economic crisis hoped for by Marx and Engels. With the assistance of Clausewitz's formula for "war as the continuation of politics by other means," Lenin clarifies "practically all of the central questions of the revolution in its struggle: the nature [Wesenserkenntnis] of the world war and associated problems like opportunism, the defense of the fatherland, the war of national liberation, the distinction between just and unjust wars, the relation of war and peace, revolution and war, the termination of imperial war through a toppling from within on the part of the working class, the revision of the Bolshevik party program" (Hahlweg, 374). Every one of these points that Hahlweg makes appears to me a touchstone of the concept of the enemy.

[←36]

Walter Grottian, *Lenins Anleitung zum Handeln, Theorie und Praxis sowjetischer Außenpolitik* (Köln und Opladen, 1962), with a good bibliography and index.

[←37]

Europa und Rußland, Texte zum Problem des westeuropäischen und russischen Selbstverständnisses, ed. Dmitrij Tschizerskij and Dieter Groh (Darmstadt, 1959), 61, letter to de Rossi of 15 (27) August 1811. On de Maistre's critique of Russia and his prognosis, see Dieter Groh, *Rußland und das Selbstverständnis Europas, ein Beitrag zur europäischen Geistesgeschichte* (Neuwied, 1961), esp. 105. The book is significant in numerous other ways in our context, too.

[←38]

Mao Tse-tung, *Ausgewählte Schriften*, 4 v (Berlin 1957); Theodor Arnold, Der revolutionäre Krieg, 2d ed., ZEBRA Schriftenreihe 7 (Pfaffenhof a. d. Ilm, 1961), 22f, 97ff; Hellmuth Rentsch, *Partisanenkampf, Erfahrungen and Lehren* (Frankfurt am Main, 1961), esp. 150–201 (the Chinese example); Klaus Mehnert, *Peking und Moskau* (Stuttgart, 1962), 567; Hans Henle, *Mao, China und die Welt von heute* (Stuttgart, 1961).

[←39]

Ruth Fischer, *Von Lenin zu Mao: Kommunismus in der Bandung-Aera* (Düßeldorf-Köln, 1956), 155; cf. H. Rentsch, 154f on the example of China and the peasant problem. Also, Klaus Mehnert, *Peking und Moskau*, 179ff (proletariat and peasants); Hans Henle, Mao, China und die Welt von heute,102 (the meaning of partisan warfare), 150ff (the red elites), 161ff (the specifically Chinese line of socialism and communism). W. W. Rostow, in collaboration with the Center for International Studies, Massachusetts Institute of Technology, *The Prospects for Communist China* (New York and London, 1954), does not go into the, for us, decisive matter of Chinese partisanship, though he pays attention to the traditionally marked character of the Chinese elites (10/11, 19/21, 136) as follows: “Peking’s leaders have a strong sense of history” (312). He remarks that the mind-set of Chinese communism since Mao’s rise is determined by “mixed political terms.” If this formulation has a patronizing undertone, something I cannot judge but could imagine, he obstructs his own way to the heart of the matter, namely the question of partisanship and the real enemy. On the controversy surrounding the Mao legend (Benjamin Schwarz and K. A. Wittfogel), see the citations in K. Mehnert, 566 n. 12.

[←40]

Helmut Staedke, in a lecture of 17 October 1956 (Arbeitsgemeinschaft für Wehrforschung). Particularly well-known in Germany are J. Hogard, “Theorie des Aufstandkrieges” [“Theory of the War of Uprising”], in Wehrkunde 4 (1957): 533–38; and Colonel C. Lacheroy, *La Campagne d’Indochine ou une leçon de guerre révolutionaire* (1954), cf. Th. Arnold, 171ff.

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For reasons of simplification, I refer the reader in a summarizing gesture to the bibliography of the above cited books by Th. Arnold and H. Rentsch. Also, Raymond Aron, *Paix et Guerre entre les nations* (Paris, 1962); Luis García Arias's collection, *La Guerra Moderna y la Organisacion Internacional* (Madrid, 1962); *Études des Phénomènes de la Guerre psychologique*, issued by the Ecole Militaire d'Administration (Montpellier, 1959), esp. v. 2, *Les formes nouvelles de la guerre* by Luis García Arias; Jacques Fauvet and Jean Planchais, La Fronde des généraux (Paris, 1961); Clause Paillat, *Dossier secret de l'Algérie* (Paris, 1962); P. Paret and John W. Shy, *Guerrillas in the 1960s* (New York, 1962), 88.

[←42]

Le Procès de Raoul Salan, compte-rendu sténographique, in the collection “Les grand procès contemporains,” ed. Maurice Garçon (Paris, 1962).

[←43]

The prosecutor attributes five occasions of a “long silence” to the accused in response to questions from the prosecution (108, 157 of proceedings). Salan’s repetition of his declaration that he would say nothing cannot be taken as interrupting his silence (89. 152, 157), nor should his expression of thanks to the earlier presiding officer, Coty, after his deposition (172). The unconventional concluding plea on the part of the prosecution, without which Salan’s last word is incomprehensible, is to be found on 480.

[←44]

See Carl Schmitt, *Verfassungsrechtliche Aufsätze* (1958), gloss 5 (109) on the modification of reality in the judicial process.

[←45]

Raymond Aron speaks of this *étrange paradoxe*. He approaches the Algerian situation in the chapter “Determinants et Nombre” of his great work *Paix et Guerre entre les nations* (Paris, 1962, 245). “Irrsinnslogik,” the expression of Hans Schomerus, has already been cited. It is drawn from his partisan narrative, *Der Wächter an der Grenze* (1948).

[←46]

See the headings “Das Raumbild des nach Land und Meer getrennten Kriegsschauplatzes” and “Wandel des Raumbildes der Kriegsschauplätze” in *Nomos der Erde* 285ff. and 290ff [The Nomos of the Earth 309 and 313]. Also, the Berlin dissertation of Ferdinand Friedensburg, Der *Kriegsschauplatz*, 1944.

[←47]

Cf. Dixon-Heilbrunn, *Partisanen*, where the view of partisan battle as a battle "in the depths of the enemy front" (199) surfaces, admittedly not in connection with the general problem of space in land war and maritime war. In connection with this general problem of space, I would refer to my study *Land und Meer* (1942, 2d ed. 1954) and my book *Der Nomos der Erde* (Berlin, 1950) 143ff [The Nomos of the Earth 172f].

[←48]

Rolf Schroers, *Der Partisan* 33f. Categorical proscription of hostage-taking, as for instance in Article 34 of the Fourth Geneva Convention, does not bear on modern methods of effective hostage-taking of entire groups; cf. 94.

[←49]

Margret Boveri, *Der Verrat im XX. Jahrhundert* (Rowohlt, 1956–60). The personnel of this book is not limited to partisans. Rather the "abysmal confusion" of a *Landschaft des Verrates* [Landscape of Treachery] "blurs hopelessly" all boundaries of legality and legitimacy so that the approximation to a common gestalt with the partisans is close. I have pointed to this in the example of J. J. Rousseau (cf. above nn. 13, 15, 16) in the article "Dem wahren Johann Jakob Rousseau" in: *Zürcher Woche* 28. Juni 1962, and 26 (29 Juni 1962). Out of this "abysmal confusion" the historian Armin Mohler draws the lesson that so far one "gets at the complex figure of the partisan only with a historical description. At a larger distance this may appear otherwise. For a long time from now any effort at mastery of this landscape within thought and poetry will still produce only enigmatic, historically symptomatic fragments" (cited in a review of the book by Rolf Schroers in *Das Historisch-Politische Buch 8* (Göttingen, 1962). This lesson of Mohler's and its implied judgment is of course related to our own attempt at a theory of the partisan, something we are conscious of. Our effort would be really finished and done with if our categories and concepts were as unreflective as what has been expressed to date by way of refutation or elimination of our concept of the political.

[←50]

Thus Ernst Forsthoff in his famous essay “Die Umbildung des Verfassungsgesetzes” (1959). The assessor always pronounces, with his value judgment, eo ipso a judgment of worthlessness; the purpose of this positing of worthlessness is the destruction of the worthless. This simple matter of fact is evident not only in practice, as verified in his 1920 essay “Die Vernichtung des lebensunwerten Lebens” (though this example should suffice by itself to make the case); it is manifest in the same period and even with the same naive incomprehension in the theoretical approach of H. Rickert, *System der Philosophiei* (1921), 117: there is no negative existence, only negative values; the reference to negation is the criterion of whether something belongs to the realm of values; negation is the act proper of valuation. See also my treatment, “Die Tyrannei der Werte,” published in *Revista de Estudios Politicos* 115 (Madrid 1961), 65–81, and the essay “Der Gegensatz von Gesellschaft und Gemeinschaft, als Beispiel einer Zweigliedrigen Unterscheidung. Betrachtungen zur Struktur und zum Schicksal solcher Antithesen,” in the Festschrift for Prof. Luis Legaz y Lacambra (Santiago de Compostela, 1960) I, 174 ff.

[←51]

“Total war generally produces, as a kind of side effect, specific methods of non-total conflict and power play. For all parties are trying above all to avoid total war, which according to its nature involves total risk. In post-war periods so-called military reprisals (the Corfu conflict in 1923, Japan-China in 1932), as well as attempts at nonmilitary economic sanctions pursuant to Article 16 of the Statutes of the League of Nations (autumn 1935, against Italy) and finally certain trials of strength on foreign soil (Spain 1936–37) emerged in a way that can be correctly interpreted only in close connection with the total character of modern war. They are transitional and temporary formations between open war and true peace; they acquire their significance against the background of the possibility of total war and a quite understandable caution dictates the staking out of certain intermediate spaces [Zwischenräume]. Only in this perspective can they also be understood according to the international law.” See Carl Schmitt, “Totaler Feind, totaler Krieg, totaler Staat,” in *Positionen und Begriffe* (1940), 236.

[←52]

The sanctity of their concept of law was familiar even to the Jacobins of the French revolution; they were politically intelligent and courageous enough to distinguish clearly between *loi* and *mesure*, law and intervention, and to openly designate the intervention as revolutionary, scorning its effacement by conceptual montages like *Maßnahmebegriff* [concept of remedy]. This origin of the republican conception of law is unfortunately mistaken by Karl Zeidler, *Maßnahmegesetz und Klassisches Gesetz* (1961), which misses the real problem; cf. *Verfassungsrechtliche Aufsätze* (1958), gloss 3 p. 347, and the entries under *Legalität* and *Legitimität* in the index, 512–13. A more substantial work by Roman Schnur is forthcoming under the title "Studien zum Begriff des Gesetzes."

[←53]

> “Such wars (as actually pass for ultimate wars of mankind) are necessarily especially intensive and inhuman because they exceed the political in treating the enemy as a sub-moral and even sub-categorical monster, one who must not only be defended against but definitively annihilated, so that he can no longer even be a demonstrably bounded enemy. The possibility of such wars suggests that it could still happen, depending entirely on the distinction of friend and enemy and the political recognition involved in it” (*Der Begriff des Politischen*, 37).