

The Theory of the Partisan

A Commentary/Remark on the Concept of the Political

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Dedicated to Ernst Forsthoff on his 60th Birthday, 13 September 1962

[7] PREFATORY NOTE

This treatise on *The Theory of the Partisan* has its origin in two lectures given in spring 1962, on 15 March in Pamplona at the invitation of Estudio General de Navarra, and on 17 March at the University of Saragossa, in the context of the events of the *Cátedra Palafox*, on the invitation of its director, Professor Luis García Arias. The lecture appeared in the publications of the *Cátedra* in late 1962.

The subtitle, *A Commentary/Remark on the Concept of the Political*, is explained by the specific date of the publication. The publishers are making the text of my essay of 1932 accessible again at this time. In recent

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decades several corollaries to this theme have emerged. The present treatment of the subject is not one of these, but a free-standing work which—though only in a sketchy way—issues unavoidably in the problem of the distinction between friend and enemy. I, therefore, want to bring out this elaboration of my lectures of early 1962 in the unassuming form of an intervention, with the idea of making it accessible to all of those who have been following so far the difficult earlier discussion of the concept of the political.

February 1963, *Carl Schmitt*

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[11] INTRODUCTION

A Look at the Situation in 1808/13

The point of departure for our reflections on the problem of the partisan is the guerrilla war that the Spanish people conducted in the years 1808 to 1813 against the army of a foreign conqueror. In this war, for the first time, a people—a pre-bourgeois, pre-industrial, and pre-conventional people—clashed with a modern army. New spaces of/for war emerged in the process, and new concepts of warfare were developed along with a new doctrine of war and politics.

The partisan fights irregularly. But the distinction between regular and irregular battle depends on the degree of regularity [*Präzision des Regulären*]. Only in modern forms of organization—stemming from the wars of the French Revolution—does this distinction find its concrete manifestation and with it also its conception. In all ages of mankind and its many wars and battles there have been rules of battle and war, and of course disregard and transgression of these rules. Especially in times of general dissolution, as during the Thirty Years' War (1618–48) in Germany, as well as in all civil and colonial wars in world history, there have been occurrences that could be called partisan. It has to be taken into account, however, 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 regular that is challenged by him. It is in this respect that this regularity of the state [*dieses Reguläre des Staates*] and of the military in Napoleonic France receive a new and exact determinateness. The innumerable Indian Wars conducted by white conquerors against American redskins [*Rothhäute*] from the seventeenth to the nineteenth [12] 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), still belong all to the pre-Napoleonic stage. The new art of war arose in Napoleon's regular army as a response to new, revolutionary ways of fighting. To a Prussian officer of the period, the whole Napoleonic campaign against Prussia in 1806 appeared to be a case of "partisanship on a large scale" [*eine Parteigängerei im Großen*].¹

The partisan of the Spanish Guerrilla War of 1808 was the first who dared to wage irregular war against the first regular modern army. In autumn 1808, Napoleon had defeated the regular Spanish army; the real Spanish Guerrilla War began only after the defeat of the regular army. There is still no complete, documented history of the Spanish Partisan War.² Such a history is, as Fernando Solano Costa says in his [13] essay *Los Guerrilleros* (as cited), necessary but also very difficult because the collective Spanish Guerrilla War consisted of nearly two hundred regional conflicts in Asturia, Aragon, Catalonia, Navarra, Castile &c. under the leadership of countless combatants, around whose names are woven many myths and legends, among them Juan Martín Díez who, known as *Empecinado*, was a terror to the French, rendering the road from Madrid to Saragossa unsafe.³ This partisan war was conducted with the utmost cruelty on both sides; and it comes as no surprise that there is more contemporary documentation from the hands of the *Afrancesados*, educated Francophiles who wrote books and memoirs, than were printed by the guerrillas. But however myth and legend on the one side and documented history on the other side may stand here, the starting point of our investigation is plain enough. According to Clausewitz, as many as half of all French forces were active in Spain, and half of those, some 250,000 to 260,000 men, were held up by [*gebunden*] *guerrilleros*, whose number was estimated by Gomez de Arteché to be 50,000, though other sources believe there were even fewer.

[14] The salient point of the Spanish partisan's situation in 1808 was that he took the risk of fighting on his home soil [*Heimatboden*], while his own king and the royal family hadn't yet decided who the real enemy was. In this respect the legitimate government of Spain behaved much as it did in Germany. A second point of the Spanish situation was that the educated strata of the aristocracy, the higher clergy, and the bourgeoisie were mostly *afrancesados* who sympathized with the foreign conqueror. Here too there are German parallels: The great German poet Goethe wrote hymns to the glory of Napoleon, and German education was never clear about where its allegiances actually lay. In Spain, the Spanish *guerrillero* was a poor devil who waged battle without any prospects—a first, typical case of the

irregular cannon fodder of international political conflict. All of this constitutes the overture to a theory of the partisan.

A spark flew north from Spain at that time. It did not kindle the same flame that gave the Spanish Guerrilla War its world-historical significance. But it started something whose continuance today in the second half of the twentieth century changed the face of the earth and its inhabitants. It produced a *theory* of war and of enmity that culminates in the theory of the partisan.

It was in 1809, during the brief war conducted by the Austrian empire against Napoleon, that a deliberate effort to imitate the Spanish prototype was first made. The Austrian regime in Vienna, assisted by famous publishers, among them Friedrich Gentz and Friedrich Schlegel, unleashed a campaign of propaganda against Napoleon. German translations of Spanish writing were circulated.⁴ Heinrich von Kleist rallied to the cause and put [15] out anti-French propaganda in Berlin in the wake of the Austrian war of 1809. Until his death in November 1811 he was *the* writer of national resistance to the foreign conqueror. His drama *Die Hermannsschlacht* is the greatest partisan work of all time. He also wrote a poem, “An Palifox,” comparing the defender of Saragossa with [such popular heroes as] Leonidas, Arminius, and William Tell.⁵ The fact that reformers on the Prussian general staff, especially Gneisenau and Scharnhorst, were profoundly impressed and influenced by the Spanish example is very well known and will have to be discussed in the following in more detail. In the realm of thought of these Prussian general staff officers of 1808 to 1813 there also lies the seed of the book *Vom Kriege* [*On War*], a book through which the name Clausewitz achieved a nearly mythical status. Its formula of/for “war as the continuation of politics” is the theory of the partisan in a nutshell. This logic would be taken to its limit by Lenin and Mao Tse-tung—something we still have to show later on.

A true guerrilla people’s war [*Guerilla-Volkskrieg*]⁶—one that would have to find mention in the context of our concern of the partisan—came to pass only in the Tirol, where Andreas Hofer, Speckbacher, and the Capucin Father Haspinger were active. These Tirolians became “a mighty torch,” as Clausewitz put it.⁶ But this episode of 1809 was soon over. Just as little did a

partisan war against the French come to pass in Germany. The strong national impulse evident in isolated rebellions and raiding parties [16] was quickly and completely channeled into regular warfare. The battles of the spring and summer of 1813 took place on the battlefield, and the decisive encounter occurred in open battle [*Feldschlacht*] in October 1813 near Leipzig.

The Congress of Vienna (1814/15) re-established also, in the framework of a general restoration, existing concepts of European martial law.⁷ It was one of the most astonishing restorations in all of world history. It was so immensely successful that this code of law of the contained [*gehegten*] continental land warfare still governed the European conduct of the continental land war in World War I (1914–18). It is still called *classical* martial law, and it has earned this name. For it recognizes clear distinctions, above all between war and peace, combatants and non-combatants, enemy and criminal. War is conducted between states by regular armies of states, between standard-bearers of a *jus belli* who respect each other at war as enemies and do not treat one another as criminals, so that a peace treaty becomes possible and even remains the normal, mutually accepted end of war. Faced with this classical regularity, and so long as it possessed actual force, the partisan could only be a marginal figure, and so he [17] remained throughout World War I (1914–18).

SCOPE OF INQUIRY

If I speak on occasion of *modern* theories of the partisan, I must make it clear that there really are no *older* partisan theories of the kind in point of contrast. There is no place in the classical martial law of the existing European international law for the partisan, in the modern sense of the word. He is either—as in the Ministerial War [*Kabinettskrieg*] of the eighteenth century—a sort of *light*, especially mobile, but regular troop; or he represents an especially abhorrent criminal, who stands outside the law and is, thus, *hors la loi*. So long as war retained a whiff of chivalry, of dueling with pistols, it could hardly be otherwise.

With the advent of universal military service, however, all wars become people's wars in principle, and soon situations arise that are difficult, even

insoluble for classical martial law, like the more or less improvised *levée en masse*, or the so-called volunteer corps [*Freikorps*] and the sharpshooters [*Franktireurs*]. We will be speaking of them later. But in general, war remains essentially *contained*, and the partisan was outside these defined containments. Indeed, his very being and existence are now defined by his standing outside any containment. The modern partisan expects neither justice nor mercy from his enemy. He has turned away from the conventional enmity of the contained war and given himself up to an other—the real—enmity that rises through terror and counter-terror, up to annihilation.

Two kinds of war are particularly important and in a sense even related to partisanship: civil war and colonial war. In the partisanship of our own time, this context is almost its specific characteristic. Classical European international law marginalized these two dangerous [18] forms of war and enmity. The war of the *jus publicum Europaeum* was a war between *states*, conducted by one regular state army against another. Open civil war counted as an armed uprising, which was suppressed with the help of a state of siege [*Belagerungszustand*] by the police and the troops of the regular army, if it did not lead to the recognition of the insurgents as a warring party. The colonial war wasn't out of sight of the military science of European nations such as England, France, and Spain. All this, however, in no way compromised the status of regular state war as the classical model.⁸

Russia must be mentioned specifically. The Russian army conducted many wars in the course of the nineteenth century with Asiatic mountain people, never confining itself so exclusively to regular army war as the Prussian-German army did. Russian history, furthermore, knows autochthonous partisan war against the Napoleonic army. In the summer of 1812, Russian partisans under military direction harassed and disturbed the French army on its advance on Moscow; in the autumn and winter of the same year Russian peasants slaughtered the frozen and hungry French troops in retreat. The whole episode lasted not much more than six months, but it was enough to supply an immensely effective historical precedent—admittedly more through its political myth and its various interpretations than through its paradigmatic effect on military theory. Two distinct and

even opposed interpretations of this Russian partisan war of 1812 must be mentioned here: the anarchist interpretation founded by Bakunin and Kropotkin, and made world-famous by Tolstoy's *War and Peace*, and the bolshevist employment via Stalin's tactic and strategy of revolutionary war.

[19] Tolstoy was no anarchist of the stripe of Bakunin or Kropotkin, but his literary effect was the greater for it. His epic *War and Peace* disposes of more mythic power than any political doctrine or documented history. Tolstoy elevates the Russian partisan of 1812 as bearer of the elementary forces of the Russian soil which shook off the great Kaiser Napoleon together with his illustrious army like a pesky insect. The uneducated, illiterate Muschik is in Tolstoy not only stronger but also more intelligent than all strategists and tacticians, more intelligent above all even than the great field marshal Napoleon himself, who is reduced to a marionette in the hands of historical becoming. Stalin seized on this myth of indigenous national partisanship in World War II against Germany, turning it very concretely to the service of his communist world politics. This represents an essentially new stage of partisanship, one at whose beginning we find the name of Mao Tse-tung.

Serious partisan battles have been raging in large(-scale) areas of the world for thirty years now. They began already in 1927, before World War II, in China and other Asian countries that would later take up arms against the Japanese invasion of 1932–45. During World War II, Russia, Poland, the Balkans, France, Albania, Greece, and other regions became arenas for this kind of war. After it the partisan struggle continued in Indochina, where the Vietnamese communist leader Ho Chi Minh, and the victor of Dien Bien Phu, General Vo Nguyen Giap, were particularly effective against the French colonial army. Farther afield [there was partisan activity in] the Philippines and in Algeria, on Cyprus under Commander Griwas, and in Cuba under Fidel Castro and Che Guevara. To this very day, in 1962, the Indochinese countries of Laos and Vietnam are areas of partisan warfare, where new methods evolve daily for overwhelming and outwitting the enemy. Modern technology produces ever stronger weapons and means of annihilation, ever better means of transport and methods of communication, both for the partisans and for the regular troops who fight them. In the

vicious [20] circle of terror and counter-terror, the combat of the partisan is often simply a mirror-image of the partisan battle itself. The old saying attributed to a command of Napoleon to General Lefèvre on 12 September 1813 remains valid: you have to fight like a partisan wherever there are partisans—*il faut opérer en partisan partout où il y a des partisans*.

Special questions of international juridical rule [*Normierung*] will be treated later. Even if the basic story is clear enough, its (ready) application to the concrete situations of a rapid development remains controversial. An impressive document of the will to total resistance, and not only of the will but the detailed instruction in the means to accomplish it, has appeared in the past few years: the Swiss *Kleinkriegsanleitung für jedermann* [*Manual for Low-Intensity Warfare for Everyone*], issued by the Swiss Junior Officers' Club under the title *Der totale Widerstand* [*Total Resistance*] and written by Captain H. von Dach (2d ed. Biel, 1958). Its 180 pages provide instructions for passive as well as active resistance against any foreign invasion, with tips for sabotage, going underground, concealing weapons, the organization of surprise attacks, the combat of spies &c. The experiences of the last few decades are carefully utilized. These modern martial instructions for everyone are headed with the notice that its "resistance to the end" [*Widerstand bis zum äußersten*] must respect the terms of the Hague Treaty on the Laws and Usages of National War and the Geneva Accords of 1949. *This goes without saying*. It is also not hard to imagine how a normal regular army would react to handling instructions of this kind (e.g., silent dispatching of sentries with axes, p. 43) so long as it did not feel defeated.

The Word and the Concept of the Partisan

This enumeration of a few well-known names and events, by way of circumscribing the scope of our inquiry for the first time, gives some idea of the immensity of the associated material and [21] its problems. It is therefore recommended to provide a few touchstones and criteria at the outset that keep the discussion from becoming too abstract and oceanic [*uferlos*]. A first touchstone was already mentioned at the very beginning of our investigation when we spoke of the partisan as an *irregular* fighter. The

regular character manifests itself in the soldier's uniform, which is more than a work uniform/suit. It is a sign of his sway over the public sphere, and with the uniform he also displays his weapon. The enemy soldier in uniform is the real target of the modern partisan.

A further touchstone that imposes itself on us in present times is the intense political commitment which sets the partisan apart from other fighters. The intensely political character of the partisan is crucial since he has to be distinguished from the common thief and criminal, whose motives aim at private enrichment. This conceptual criterion of his *political* character possesses—in its exact inversion—the very same structure as the case of pirates in maritime law, whose concept is based on the *unpolitical* character of his bad deed which aim at private theft and profit. The pirate is possessed of what jurisprudence knows as *animus furandi* [felonious intent]. The partisan, by contrast, fights on a political front, and it is precisely the political character of his action that brings to the fore again the original sense of the word *partisan*. The word is derived from *Partei* [party] and refers to the relation to some kind of fighting, warring, or politically active party or group. Such connections to a party are particularly strong in revolutionary times.

In revolutionary war, adherence to a revolutionary party implies nothing less than total integration [*Erfassung*]. Other groups and associations, and in particular the state in its current form, are no longer able to integrate their members and adherents so totally as a revolutionary party does its active fighters. In the wide-ranging discussions about the so-called total state, it has not been noticed yet that it is not the *state* as such today, but the revolutionary *party* as such that represents [22] the proper and ultimately only totalitarian organization.⁹ Purely organizationally, in terms of the strict function of command and obedience, it must even be said that in this regard many revolutionary organizations must be considered superior to many regular troops, and that a certain confusion in international martial law has to arise when organization as such becomes the criterion of regularity as happened in the Geneva Conventions of 12 August 1949 (v. *infra* p. 31).

In German, partisan means party adherent [*Parteigänger*]: someone who adheres to a party, and what that means concretely is very different at

different times, both in regard to the party or front he supports and to the extent of his collaboration, cooperation, and even his possible capture [*Mitgehen, Mitlaufen, Mitkämpfen und eventuell auch Mitgefangenwerden*]. There are warring parties as well as judicial parties, parties of parliamentary democracy, parties of opinion, parties of action [*Aktionsparteien*] &c. In Romance languages the word is employed both as a substantive and as an adjective; in French they even speak of a *partisan* of whatever opinion. In short, an entirely common polysemous term becomes, all of a sudden, a politically highly charged word. The linguistic parallel with a common word like *status*, which came at a certain moment to signify *state*, suggests itself here. In times of dissolution, as in the seventeenth century during the Thirty Years' War, the irregular soldier comes dangerously close to highwaymen and tramps. He conducts war on his own account and becomes a figure of the rogue's tale, as in the case of the Spanish *Pícaro des Estebanillo Gonzales*, who was involved in the battle of Nördlingen (1635) and who told all about it in the manner of Soldier Schwejk, or as we can see in Grimmelshausen's *Simplizius Simplizissimus* and in the engravings and etchings of Jacques Callot. In the eighteenth century the partisan [*Parteigänger*] was associated with marauders and hussars and like formations of lightly armed troops that, as a mobile unit, "fend individually" [*einzelnen fechten*] and conduct what is called low-intensity war [*Kleinen Krieg*], in [23] contrast to the much slower large-scale war of the line troops [*Großen Krieg der Linientruppen*]. The distinction between regular and irregular is of a military-technical nature here, and is in no way synonymous with legal and illegal in the juridical sense of international law and of constitutional law. For the modern partisan today, the binaries regular-irregular and legal-illegal often blur and cross over each other.

Agility, speed, and the sudden change of surprise attack and retreat—increased mobility, in a word—are even today a hallmark of the partisan, and this has only increased with mechanization and motorization. But both binaries are collapsed in revolutionary war when numerous semi- and para-regular groups and formations emerge. The armed partisan remains always dependent on the collaboration with a regular organization; Fidel Castro's Cuban comrade Ernesto Che Guevara emphasizes this explicitly.¹⁰ As a

consequence, from the simple collaboration of regular with irregular troops, intermediate stages evolve, even in those cases in which a government that is in no way revolutionary calls for the defense of the nation against a foreign conqueror. The difference between a people's war and a low-intensity war is elided in the process. The terms of calls to arms in such cases refer to the word *partisan* as far back as the sixteenth century.¹¹ We will have occasion to consider two further important examples of a formal regulation of people's war and *Landsturm* which tried to regulate guerrilla warfare. On the other side, the foreign conqueror too issued decrees for combating enemy partisans. All such [24] rules [*Normierungen*] face the difficult problem of a regulation of the irregular under the international law, i.e., one that obtains on both sides, in regard to the recognition of the partisan as a combatant and his treatment as prisoner of war, and conversely in respect to the rights of the military occupying power. As I have already indicated, much juridical controversy surrounds these points, and we will be returning to the controversy over the sharpshooters during the Franco-Prussian War (1870/71) after a look at the international position.

The tendency to modify or even dissolve the traditional concepts given to us—classical concepts, as we today like to call them—is general, and in view of the rapid change of the world it is entirely understandable.¹² The—if you will—“classical” concept of the partisan is also affected by this development. In a book that is very important for our topic, published under the title *Der Partisan* (1961), Rolf Schroers makes the illegal resistance fighter and underground activist the prototype of the partisan.¹³ This change of conception mainly comes about because of particular intra-German situations of the Hitler period, and as such it is remarkable. Irregularity is substituted by illegality, and military battle by resistance. As I see it, this involves a fundamental re-interpretation of the partisan of the national wars of independence, which misunderstands that even the revolutionizing of war does not disrupt the military connection between regular army and irregular fighters.

[25] In many cases the re-interpretation goes as far as a general symbolization and the dissolution of concepts. Any loner or non-conformist can now be called a partisan, whether or not he ever even considers taking up

arms.¹⁴ It is permissible as a metaphor; I have used it myself in order to characterize historically influential figures and situations.¹⁵ In this metaphorical sense, to be human means nothing else than to fight, and the self-consistent individualist fights on his own account and—if he has the courage—also at his own risk. He then simply becomes his own party adherent/partisan [*Parteigänger*]. Such conceptual changes are notable signs of the time which deserve much more consideration.¹⁶ For [26] a theory of the partisan in the sense intended here, however, a few criteria must be kept in sight so that the theme does not dissolve into abstract generality. Such criteria are irregularity, increased mobility of the active combat, and a heightened intensity of political commitment.

I want to insist on a fourth criterion of the genuine partisan, one that Jover Zamora has called his *tellurian* character. It is significant for the essentially defensive situation of the partisan—despite his tactical mobility—whose nature changes when he identifies with the absolute aggressiveness of a world-revolutionary or technologizing ideology. Two especially interesting treatments of this theme, the book by Rolf Schroers (n. 13) and the dissertation by Jürg. H. Schmid on the international legal position of the partisan (v. *infra* pp. 36–37), agree fundamentally on this criterion. His grounding in the tellurian character seems necessary to me in order to make spatially evident the defensive character, i.e., the limitation of enmity, and in order to preserve it from the absolutism of an abstract justice.

For the partisans who fought in 1808/13 in Spain, the Tirol, and Russia, this (the tellurian feature) is clear enough. But also the partisan battles of World War II, and what followed in Indochina and other countries that are well characterized by the names of Mao Tse-tung, Ho Chi Minh, and Fidel Castro, lead us to understand that the relation to the soil [*Boden*], together with the autochthonous population and the geographical specificity of the country—mountains, forest, jungle, or desert—remains undiminished to this day. The partisan is, and remains, [27] different not only from the pirate, but also from the corsair in the way that land and sea are distinguished as (two different) elemental spaces [*Elementarräume*] of human activity and martial engagement between peoples. Land and sea have developed not only different vehicles of warfare, and not only distinctive

theaters of war [*Kriegsschauplätze*], but they have also developed separate concepts of war, peace, and spoils.¹⁷ The partisan will present a specifically terrestrial type of the active fighter for at least as long as anticolonial wars are possible on our planet.¹⁸ Through comparison with typical figures of maritime law (p. 34f) and a discussion of the aspect of space (p. 71), the tellurian character of the partisan will be further elaborated in what follows.

However, even the autochthonous partisan of agrarian origin is drawn into the force-field of irresistible technical-industrial progress. His mobility is so enhanced by motorization that he runs the risk of complete dislocation. In Cold War situations, he becomes the technician of an invisible battle, a saboteur, and a spy. Already in World War II there were saboteurs with partisan training. A motorized partisan loses his tellurian character. All that's left is [28] a transportable, replaceable cog in the wheel of a powerful world-political machine [*Weltpolitik treibenden Zentrale*] that puts him in the open or invisible war and then, depending on how things are developing, switches him off again [*abschaltet*]. This too belongs to his present-day existence and cannot be neglected in a theory of the partisan.

With these four criteria—irregularity, increased mobility, intensity of political commitment, and the tellurian character—along with the aside on possible consequences of further technological development, industrialization, and agrarian disaggregation, the conceptual scope of the inquiry has been circumscribed. It reaches from the *guerrillero* of Napoleonic times to the well-armed partisan of the present, from the great *Empecinado* by way of Mao Tse-tung and Ho Chi Minh to Fidel Castro. It is a vast field, one on which historiography and military science have elaborated a powerful, daily growing material. We will be making use of this material insofar as it is accessible, trying to gain from it some understanding for a theory of the partisan.

A Look at the International Legal Position

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. Which means that their martial activities are not illegal,

and if they fall into the hands of the enemy, they have claim to treatment as prisoners of war and injured parties. The legal position is summarized in the Hague Ground War Provision of 18 October 1907, which is now universally recognized as authoritative. After World War II this development was continued by the four Geneva Conventions of 12 August 1949, two of which govern the treatment of injured parties and the sick in ground war and war at sea, a third the treatment of prisoners of war, and the fourth the protection of civilians in wartime. Many states, both of the western world and of the [29] Eastern bloc, have ratified them; the new U.S. military handbook for ground war, of 18 July 1956, is geared to their formulations.

Under certain conditions, the Hague Ground War Provision of 18 October 1907 treated militias, volunteer corps, and co-combatants of spontaneous popular uprisings as equal to the regular fighting forces. Some of the difficulties and ambiguities of this regulation will be mentioned later in connection with the Prussian mistreatment of partisanship. The development that led to the Geneva Conventions of 1949 is characterized by progressive relaxations of what was previously a purely statist European international law. More and more categories of war participants are now counted as combatants. Even civilians in an area occupied by the enemy—i.e., the combat space proper of the partisan who fights in the rear of the enemy forces—now enjoy greater legal protection than they did in the Ground War Provision of 1907. Many co-combatants who had formerly passed as partisans are treated as equal to regular soldiers and have the associated rights and privileges. These can no longer really be called partisans. But the concepts are still ambiguous and uncertain.

The formulations of the Geneva conventions have European experiences in mind, but not the partisan wars of Mao Tse-tung and the later development of modern partisan warfare. In the early years post-1945 it was not yet recognized what an expert like Hermann Foertsch saw and formulated in the following way: that military actions post-1945 had assumed a partisan character because the possessors of atom bombs shied away from employing them on humanitarian grounds, and those who did not possess them could rely on such reservations—an unexpected effect of both the atom bomb, and of the humanitarian considerations. The concepts of the

Geneva Conventions, so important for the partisan problem, are abstracted from particular historical situations. They refer directly (as it says in the decisive commentary of the International Red Cross, conducted by Jean S. Pictet, 1958, III, 65: [30] *une référence précise*) to the resistance movements of World War II, 1939/45.

A fundamental alteration of the Hague Ground War Provision of 1907, however, was not intended. Even the four classical conditions for treatment equal to that of regular troops (responsible officers, clearly visible insignias, openly borne weapons, observance of the rules and usages of martial law) were in principle respected. The convention for the protection of the civilian population, however, was supposed to obtain not only for wars between states but for all armed international conflicts, including civil wars, uprisings &c. But it was only supposed to provide the legal basis for humanitarian interventions by the International Committee of the Red Cross (and other neutral organizations). *Inter arma caritas* [*Charity in the midst of arms*]. It is explicitly emphasized in Art. 3 Clause 4 of the convention that the juridical status [*le statut juridique*] of the parties to conflict is not affected by it (Pictet III, 1955, 39/40). In a war between states, the occupying power of the military occupation area still reserves the right to instruct the local police of this area to keep public order and suppress irregular fighting, and thus to make them persecute partisans “regardless of the ideas which may have inspired them” (Pictet IV, 1956, 330).

Accordingly, the distinction of partisans—as irregular fighters who are *not* equal to regular troops—has been in principle retained to this day. The partisan in this sense does *not* have the rights and privileges of combatants; he is a criminal in common law, and may be rendered harmless by summary punishments and repressive measures. This was also in principle recognized in the war crime trials after World War II, specifically in the Nürnberg verdicts against German generals (Jodl, Leeb, List), in which it goes without saying that anything above and beyond the strictly necessary combat of the partisan—cruelty, measurements of terror, collective punishment, and even participation in genocide—remains a war crime.

[31] The Geneva Conventions expand the circle of parties to be treated as equal to regular fighters above all by equating members of an “organized

resistance movement” to members of militias and volunteer corps, and conferring on them in this way the rights and privileges of regular combatants. It does not even have to be a military organization (Art. 12 of the Injured Party convention, Art. 4 of the Prisoner of War convention). The convention for the protection of the civilian population treats “international conflicts” conducted with armed force as equal to the wars between states which are recognized in classic European international law; this goes to the heart of a typical juridical institution of previous martial law, the *occupatio bellica* [military occupation]. To such expansions and relaxations, which can be indicated by only a few examples here, are added the great transformations and modifications stemming from the development of modern weapons technology itself, which in regard to partisan warfare have even more intensive effects. What does the rule mean for a resistance fighter, for instance, that weapons must be “borne openly,” when he is advised by the above cited (*Manual for a Low-Intensity War for Everyone*, edited by the Swiss Junior Officers’ Club: “Move only by night, and rest during the day in the woods!” (p. 33). Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war? Many such questions impose themselves if the investigation is approached from the point of view of the partisan problem, and if the aspects of spatial modification and technical-industrial development are taken into account as *infra*.

The protection of the civilian population in a military occupation area is protection from different directions. It is in the interest of the military occupying power that law and order [*Ruhe und Ordnung*] are maintained in the area that they hold. It is fair to assume that the population of the occupied zone is obliged to respect, by duty if not by loyalty, the ordinances of martial law imposed by the occupying power. Even the civil servants—and even the police—are [32] supposed to remain on the job and to be treated accordingly by the occupying power. The whole thing is a carefully balanced, difficult compromise between the interests of the occupying power and those of its (war) opponents. The partisan disturbs this order in the occupied area in a dangerous way. Not only because his real space of combat is in the rear of the enemy’s front line, where he harasses the

transportation and supplies, but also because he is more or less protected and concealed by the local people in the occupied zone. “The population is your greatest friend” is how the *Manual for Low-Intensity War for Everyone* puts it (p. 28). The protection of such a population potentially means also the protection of the partisan. This explains why in the history of the development of martial law, in the councils of the Hague Ground War Provision and its further development, one typical configuration recurred: the large military powers, the potential occupying powers, demanded a strict security provision in the military occupation zone, while the smaller states, which feared such occupation—Belgium, Switzerland, Luxemburg—sought to extend as much protection as possible to resistance fighters and civilians. In this respect, too, the development since World War II has led to new recognitions, and the salient aspect of the shattering of social structures discussed *infra* (p. 75) leads to the question of whether there are not cases in which civilians require protection from the partisan.

Through the Geneva Conventions of 1949, modifications were introduced into the classical juridical institution of the *occupatio bellica*, as regulated by the Hague Ground War Provision, and the consequences remain in many ways incalculable. Resistance fighters formerly considered as partisans are now treated as equal to regular fighters, if they be *organized*. Against the interests of the occupying power, those of the civilian population of the occupied area have been so strongly emphasized that it is possible, in theory at least, to regard any resistance against the occupying power, including that of the partisan, insofar as it [33] derives from honorable motives, as *not illegal*. On the other hand, the occupying power remains entitled to repressive measures. A partisan would act in this situation neither really legally nor illegally, but on his own account and in a *risky* way.

Taking a word like *risk* or *risky* in a general, non-precise sense, it must be said that it is not only the partisan who lives at risk in a military occupation interspersed by partisans. In the word’s most common sense of insecurity and danger, the whole population of the area experiences great risk. Officials who wish to carry on working according to the terms of the Hague Ground War Provision take on additional risk for their actions and omissions. The police officer in particular is in a quandary, faced as he is with

contradictory, dangerous demands: the inimical occupying power demands his obedience in the maintenance of the very security and public order disturbed by the partisan. His own national state demands allegiance, and will hold him responsible for it after the war. The civilian population to which he belongs expects a loyalty and solidarity which can lead to entirely contradictory practical consequences in connection with his police activities if the officer does not decide to become a partisan himself. Finally, the partisan as well as his opponent soon draw the officer into the vicious circle of their reprisals and counter-reprisals. Generally, risk-taking actions (or omissions) are not a specific characteristic of the partisan.

The word *risky* assumes a more precise meaning insofar as the risk-taker acts on his own account and calculates consciously the possible consequences of his action or omission, so that he can hardly complain of injustice in the case of a bad outcome. On the other hand, it is possible for him to balance his risks, insofar as he is doing nothing against the law, by signing an insurance policy. The juridical home of the [34] concept of *risk*, its *topos* in jurisprudence, is the insurance law. Man lives with all sorts of danger and insecurity; and to confer to a danger or insecurity in accordance with the juridical consciousness the term *risk* means making them and those who are affected by them *insurable*. In the case of the partisan this procedure would probably fail because of the irregularity and illegality of his action, even if an insurance company would actually agree (it were possible) to protect him through an insurance-technical maneuver by assigning him to the highest level of insurance liability on account of his excessive risk exposure.

In situations of war and enemy activity, some reflection on the concept of risk is called for. In Germany the word was introduced into the international martial doctrine by Josef L. Kunz's book, *Kriegsrecht und Neutralitätsrecht* (1935, pp. 146, 274). But it has no bearing on land war and none at all on the partisan. It does not belong there either. If we disregard insurance law as the juridical home of the concept of *risk* and leave aside non-precise employments of the word—such as, e.g., the comparison with the escaped prisoner, who risks being shot—it turns out that the specifically martial-legal sense of the concept “risky” as employed by J. Kunz has its eye only on

maritime martial law and the figures and situations typical to it. Maritime war is largely trade war; it possesses quite distinctly from land war its own space and has its own concepts of enmity and spoils. Even the improvement of the lot of the wounded led to two separate conventions in the Geneva Regulations of August 1949, which separated land from sea.

Only two participants in maritime warfare “act risky” in this quite specific sense: the neutral blockade-breaker and the neutral transporter of contraband. In reference to them, the word “risky” is precise and pregnant. Both sorts of war participants let themselves in for a “very profitable but risky commercial adventure” (J. Kunz, p. 277): they risk ship and cargo in case they are captured. And this, although they do not even have an enemy in the undertaking, even if they are treated as enemy in the sense of the maritime martial law. Their social [35] ideal is good business. Their space of operation is the open sea. They would never think of defending house and hearth and home [*Haus und Herd und Heimat*] against any foreign intruder, as it still characterizes the archetype [*Urbild*] of the autochthonous partisan. And they take out insurance policies in order to balance their risks. The rates are correspondingly high and vary according to changing risk-factors, e.g., sinking by submarines: very risky but highly insured.

So striking a word as *risky* should not be lifted from the conceptual space of maritime martial law only to be dissolved into an obliterating general concept. This is particularly important for us as we stick to the telluric character of the partisan. If I once referred to the freebooters and pirates of the early days of capitalism as “partisans of the sea” (see *Der Nomos der Erde*, 145), I would like to correct this terminological imprecision now. The partisan has an enemy and “risks” something quite different from the blockade-breaker and the transporter of contraband. He risks not only his life, like every regular combatant. He knows, and accepts, that the enemy places him outside law, statute, and honor.

Yet, the revolutionary fighter does this too, and declares the enemy a criminal and all concepts of law, statute, and honor an ideological fraud. In spite of all connections and confusions characteristic for World War II and the postwar period right up to the present day, the contrast between the two sorts of partisans—the defensive-autochthonous defender of home,

and the aggressive international revolutionary activist—subsists. This distinction depends, as we shall see, on fundamentally different concepts of war and enmity, realizing themselves in different sorts of partisans. Where war is conducted on both sides as an indiscriminating war of state against state, the partisan is a marginal figure who does not break out of the framework of war, and who changes nothing in the larger structure of the political process. Only when the war opponents are criminalized as such, when war is conducted as in civil war as a class struggle [36], or when its main goal is the elimination of the government of the enemy state, then the criminalizing of the enemy represents a revolutionary blast that works in such a way as to make the partisan the real hero of the war. For it is he who applies the death sentence against the criminal, and risks being considered himself a criminal or pest. Such is the logic of a war of *justa causa* [just cause] in the absence of recognition of a *justa hostis* [just enemy]. The revolutionary partisan becomes the central figure of war in such cases.

The partisan problem thus provides the best test. The various kinds of partisan war might mix and amalgamate to whatever degree in the practice of modern warfare; in their fundamental presupposition they remain so distinct that the criterion of the friend/enemy-grouping represents a test for them. We have already recalled the typical configuration that emerged during the preparation for the Hague Ground War Provision: large military powers versus the small, neutral countries. In the councils of the Geneva Conventions of 1949 a compromise formula was reached with great effort in which organized resistance movements were considered on a par with a volunteer corps. Here, too, the typical configuration is reproduced in connection with the effort to contain within international legal norms the experiences of World War II. The great military powers, potential occupiers, again were aligned against the smaller states that feared occupation, but this time with a modification as striking as it is symptomatic. The largest land power in the world, far and away the strongest potential occupying power, the Soviet Union, stood now on the side of the smaller state.

The well-documented and materially rich work of Jürg H. Schmid, *Die völkerrechtliche Stellung der Partisanen im Kriege* (Zürich: Zürcher Studien

zum Internationalen Recht Nr. 23, Polygraphischer Verlag, 1956) places “guerrilla warfare by civilians”—meaning implicitly the partisans of Stalin—“under the aegis of the law.” In this Schmid sees “the quintessence of the partisan problem” and the creative legal work of the Geneva Conventions. Schmid would like to do away with “certain considerations on the law of occupation,” those that remain from the previous conception of the occupying authority, and especially—as he calls it—the “much-lauded duty to obey.” To this [37] end he has recourse to the doctrine of the legal but risky War Accord, which he de-accentuates into a risky but not illegal War Accord. In this way he diminishes the risk of the partisan, to whom he attributes as many rights and privileges as possible at the expense of the occupying power. How he means to avoid the logic of terror and counter-terror I cannot see; for he is only able to do so by simply criminalizing the partisan’s enemy at war. The whole thing is a highly interesting crossing [*Kreuzung*] of two different *statuts juridiques*, namely combatant and civilian, with two different sorts of modern war, namely hot and cold war between populace and occupying power, in which Schmid’s partisan (following Mao) takes part *à deux mains*. It is astonishing, however, and a real conceptual breakdown, that this disillegalization [*Ent-Illegalisierung*] of the Stalinist partisan at the expense of classical international law is united simultaneously with the return to the pure state war of the Rousseau-Portalis Doctrine, of which Schmid asserts that only “in its inception” [*in ihren Kinderschuhen*] had it forbidden civilians the perpetration of hostilities (157). In such a way the partisan does become insurable.

The four Geneva Conventions of 12 August 1949 are the work of a humane conscience, and a humanitarian development that deserves our admiration. While they not only permit the enemy a share of humanity but even of legitimacy in the sense of recognition [*Gerechtigkeit im Sinne der Anerkennung*], they remain grounded in classical international law and its tradition without which such a work of humanity would have been unlikely. Their basis remains the statist foundation of warfare and the achieved containment of war, with their clear distinctions of war and peace, military and civil, enemy and criminal, state war and civil war. While they,

thus, relax these essential distinctions and even question them, they open the door for a kind of war that would knowingly destroy such clear divisions. At that point many carefully formulated compromise-rules [*Kompromiß-Normierung*] will look like the fragile bridges over an abyss concealing portentous metamorphoses in the concepts of war, peace, and the partisan.

[38] DEVELOPMENT OF THE THEORY

Prussian Mistreatment of Partisanship

In Prussia, the leading military power of Germany, the revolt against Napoleon in early 1813 was supported by strong national feeling. This great moment passed quickly, but it remains so essential to the history of partisanship that we will have to treat it in more detail later on.

First we have to consider the incontestable historical fact that from 1813 right through World War II, the Prussian and Prussian-led German army provides the classical example of an army organization radically repressing the very thought of partisanship. The thirty years of German colonial dominion in Africa (1885–1915) were not important enough militarily to lead the distinguished theorists on the Prussian General Staff to take the problem seriously. The Austro-Hungarian Army was familiar with partisan warfare from the Balkans and had regulations for low-intensity war. In World War II, by contrast, the Prussian-German Army marched into Russia on 22 June 1941 without giving a thought to partisan warfare. They opened their ground offensive against Stalin with the maxim: the troops fight the enemy, marauders will be disarmed by the police. Only in October 1941 were the first special instructions for partisan warfare issued; in May 1944, just a year before the end of the four-year war, the first complete regulations came out from the Supreme Command of the *Wehrmacht*.¹⁹

[39] The Prussian-German Army became in the course of the nineteenth century the most famous, prototypical military organization of the Eurocentric world of that period. But it owed its reputation entirely to its military victories over other regular European armies, in particular those of France and Austria. It had encountered irregular war only during the

Franco-Prussian War of 1870/71, in the form of the so-called sharpshooter [*Franktireurs*], whom the Germans called hedge-shooter and whom they treated without mercy according to martial law, as any regular army would probably have done. The more strictly an army is disciplined—the more decisively it distinguishes between military and civilian, considering only the uniformed opponent as the enemy—the more sensitive and nervous it becomes when an un-uniformed civilian populace joins the battle on the other side. The army then reacts with harsh reprisals, summary executions, hostage-taking, and destruction of towns, taking these to be adequate self-defensive measures against malicious ruses and treachery. The more the regular, uniformed opponent is respected as an enemy and never mistaken, even in bloodiest warfare, for a criminal, the more harshly the irregular fighter is treated as a criminal. This follows directly from the logic of classical European martial law, distinguishing as it does military from civilian, combatants from non-combatants, and managing to bring about the rare moral force not to declare the enemy as such a criminal.

The German soldier got acquainted with the sharpshooter in France in autumn 1870 and the following winter 1870/71, after the great victory over the regular army of Napoleon III that he carried away from the battle of Sedan on 2 September. If things had gone according to the rules of classical, regular army war, it might have been expected that after such a victory the war was over and the peace was made. Instead, Napoleon's besieged regime was removed. The new republican regime under Léon Gambetta proclaimed national resistance against the foreign intruder, a "*Krieg à outrance*" [war to the bitter end]. This new regime hurriedly called up fresh armies, and [40] threw ever-new masses of poorly trained soldiers onto the fields of battle. With them, in November 1870, they even enjoyed military success in the Loire. The position [*Lage*] of the German armies was threatened and the external affairs [*außenpolitische Lage*] of Germany were in danger because a long war had not been anticipated. The French populace was patriotically aroused and participated in the most various ways in the war against the Germans. In response, French dignitaries and so-called notables were taken hostage, sharpshooters whom they caught red-handed were shot, and reprisals of every kind were imposed on the populace. Such

was the starting point for half a century of contention among jurists of international law and public propaganda on both sides for and against the sharpshooter. The controversies flashed up again in World War I as the Belgian-German sharpshooter battle. Whole libraries were written on this question, and as recently as 1958/60 a committee of reputable German and Belgian historians has tried to clarify and cleanse at least one point of contention from this complex, the so-called Belgian Sharpshooter Battle of 1914.²⁰

All of this is conclusive for the problem of the partisan because it shows normative regulation to be judicially impossible, if the regulation is really to grasp the actual facts on the ground and not just deliver a glissando of value judgments and vague strictures. The traditional European containment of war between states has proceeded since the eighteenth century from determinate concepts which, though interrupted by the French Revolution, were all the more effectively confirmed by the restoration work of the Congress of Vienna. These ideas of a contained war and a just enmity stemming from the age of monarchy can only then be legalized bilaterally when the warring states on both sides hold fast to them, both within their own states and [41] between them, that is, when their domestic as well as their interstate concepts of regularity and irregularity, legality and illegality, are in alignment or at least structurally homogeneous to some extent. Otherwise the interstate standard, instead of furthering peace, only succeeds in generating pretenses and slogans in the service of mutual recriminations. This simple truth has gradually come to consciousness since World War I. But the façade of the traditional [*überkommenen*] conceptual inventory remains strong on the level of ideology. For practical reasons, states have an interest in utilizing the so-called classical concepts, even if these have been discarded in other cases as old-fashioned and reactionary. At the same time, European jurists of international law have put stubbornly out of mind the picture of a new reality, more and more recognizable since 1900.²¹

If all of this applies in general already to the distinction between the old-fashioned European war between states and a democratic people's war, it applies at least as much in the case of a spontaneous national people's war *à outrance* of the kind proclaimed by Gambetta in September 1870. The

Hague Ground War Provision of 1907, like its nineteenth-century predecessors, tried to find a compromise for the sharpshooter. It demands certain conditions for the improvising warrior with his improvised uniform to be recognized as combatant in the international legal sense: senior officers who are responsible for what happens, clearly visible insignias, and above all, openly borne weapons. The lack of conceptual clarity in the Hague Provision and the Geneva Conventions is considerable, and it confuses the problem.²² But to be a partisan [42] is precisely to avoid carrying weapons openly, the partisan being the one who fights from ambushes, who wears the enemy uniform and whatever insignia serves his turn, as well as civilian clothing, as decoys. Secrecy and darkness are his strongest weapons; he honestly cannot do without them without abandoning his space of irregularity, which means: without ceasing to be a partisan.

The military point of view of the regular Prussian army in no way relied upon a lack of intelligence or ignorance about the meaning of guerrilla war. This can be seen in the interesting book of a typical Prussian general staff officer, who was acquainted with the Sharpshooter War of 1870/71 and published his opinion of it in 1877 under the title *Léon Gambetta und seine Armeen*. The author, Colmar Freiherr von der Goltz, died in World War I while leading a Turkish army under the name of Pasha Goltz. Objectively and with the greatest precision, the young Prussian officer recognizes the most decisive failure of the republican war leadership, asserting that “Gambetta wanted to conduct the large-scale war, and he did lead one to his own detriment; because in the France of that period low-intensity war, a guerrilla war, would have been much more dangerous for the German armies.”²³

[43] The Prussian-German command did finally, if belatedly, understand the partisan war. The Supreme Command of the German *Wehrmacht* issued the already mentioned guidelines for partisan combat on 6 May 1944. Thus, just before its own end the German Army recognized the partisan for what he was. In the meantime/By now, the guidelines of May 1944 were/are recognized by one of Germany’s enemies as an outstanding regulation [*Regelung*]. The English Brigadier Dixon, who after World War II published a substantial book on the partisan in collaboration with Otto Heilbrunn,

reprints *in extenso* the German guidelines as a model for the right way to conduct partisan combat, and the English General Sir Reginald F. S. Denning notes in his foreword to Dixon-Heilbrunn that the German Partisan Regulation of 1944 was not diminished in its value by the fact that it deals with guidelines for the German Army in its war against Russian partisans.²⁴

Two appearances at the end of the German war (1944/45) cannot be attributed to the German *Wehrmacht*, but rather are to be explained by opposition to it: the German *Volkssturm* and the so-called *Werwolf*. The *Volkssturm* was called into existence by a decree of 25 September 1944 as a territorial militia for the defense of the country whose members were considered in their deployment as soldiers in the sense of the law of military service [*Wehrgesetz*] and combatants in the sense of the Hague Ground War Provision. The recent publication by General Major Hans Kissel, who was Chief of Staff of the German *Volkssturm* from November 1944 onwards, [44] details its organization, armament, deployment, fighting spirit, and losses. Kissel notes that in the west the *Volkssturm* was recognized by the Allies as a fighting troop, while the Russians considered it a partisan organization and they shot their prisoners. In contradistinction to this territorial militia, the *Werwolf* was meant to be a partisan organization for the youth. Dixon and Heilbrunn's book tells us about the result: "A few prospective *Werwölfe* were captured by the Allies and that was the end of the matter." The *Werwolf* has been described as "an effort to unleash a children's sniper war."^{24a} In any case there is no need to go further into it here.

After World War I the victors dissolved the German General Staff and precluded its restoration in whatever form per Article 160 of the Versailles Treaty of 28 June 1919. There is a historical and international legal logic in the situation that the victors of World War II, especially the United States and Soviet Union, who in the meantime had outlawed the duel-war of classical European international law, now after their joint victory over Germany also outlawed and destroyed the Prussian state. Item 46 of the Allied Military Authority (25 February 1947) decreed that

The Prussian state, which was the perennial organ/bearer of militarism and reaction in Germany, has *de facto* ceased to exist. In the interest of

maintaining peace and the security of the people, and in hope of securing further the reconstruction of political life in Germany on a democratic basis, the Allied Military Authority orders the following:

Article 1. The Prussian state with its government and its entire administrative apparatus is herewith dissolved.

[45] *The Partisan as Prussian Ideal in 1813
and the Turn to Theory*

It was neither a Prussian soldier nor a reform-oriented regular officer of the Prussian general staff, but a Prussian Prime Minister, Bismarck, who in 1866 “wished to take up any weapon proffered by the unleashed national movement not only in Germany but also in Hungary and Bohemia” against the Hapsburg monarchy and Bonapartist France, in order to avoid defeat. Bismarck was determined to set the Acheron flowing. He liked to employ the classical locution *Acheronta movere*, but blamed it, naturally, rather on his domestic political opponents. Acherontic plans were the farthest thing from the minds of Kaiser Wilhelm I and the Prussian Chief of Staff Moltke; such things must have appeared uncanny and downright un-Prussian to them. Acherontic would also be a bit too strong a word for the feeble attempts at stirring up revolution on the part of the German government and its General Staff during World War I. However, Lenin’s train ride from Switzerland to Russia in 1917 is relevant in this context. Whatever the Germans may have thought and planned for the organization of Lenin’s journey, it was so dreadfully/horribly outdone and overrun by the historical effects of this attempt at revolution that our thesis on/of the Prussian mistreatment/misconception of partisanship is thereby rather confirmed than undermined.²⁵

[46] Still, the Prussian soldier-state had once its acherontic moment in history. It was in the winter and early spring of 1812/13, when an elite corps of General Staff officers sought to unleash and get under their control the forces of national enmity against Napoleon. The German war against Napoleon was no partisan war. It can hardly even be called a people’s war;

as Ernst Forsthoff rightly puts it, only “a legend with political undertones” could make it that.²⁶ One succeeded quickly in maneuvering those elemental forces into the secure framework of the state order and of a regular war against the French army. However, this revolutionary moment, abbreviated as it was, has an unexpected significance for the theory of the partisan.

It is natural to think, in this connection, of a famous masterpiece of military science, the Prussian General von Clausewitz’s *Vom Kriege*. And rightly so. But Clausewitz was at the time still an epigone of his teachers and masters Scharnhorst and [47] Gneisenau, and his book was not published until after his death, after 1832. There is, however, another manifesto of enmity against Napoleon stemming from spring 1813 that can be counted among the most astonishing documents of the whole history of partisanship: the Prussian edict on the *Landsturm* [national levies] of 21 April 1813. Signed by the King of Prussia, it was published in the Prussian compendium of laws in that very form. The fact that it is based on the model of the Spanish *Reglamento de Partidas y Cuadrillas* of 28 December 1808, and the decree known by the name of *Corso Terrestre* of 17 April 1809, is unmistakable. These were not, however, signed personally by the monarch.²⁷ It is astonishing to see the name of the legitimate king under such an appeal to partisan warfare. These ten pages of the Prussian Compendium of laws of 1813 (79–89) must certainly be counted among the most unusual pages of legal code in the world.

Every citizen, so it says in the Prussian royal edict of April 1813, is obliged to resist the intruding enemy with weapons of whatever kind. Axes, pitchforks, scythes, and shotguns are explicitly recommended (§43). Every Prussian is charged to obey *no* order from the enemy, but to harm him with whatever means are at hand. Even if the enemy is trying to re-establish public order, one mustn’t obey, because obedience facilitates his military operations. It is explicitly stated that the “excesses of the unbridled rabble” are less damaging than that state of affairs in which the enemy can dispose freely of all his troops. Reprisals and terror in defense of the partisan are [48] assured, and the enemy threatened with them. This document represents, in short, a sort of *Magna Carta* of partisanship. In three places—the introduction and paragraphs 8 and 52—explicit reference to Spain and its

Guerrilla War as “prototype and example” is made. Combat is justified as a battle of self-defense that “sanctifies every means” (§7), even the unleashing of total disorder.

As I have said, a German partisan war against Napoleon did not come about. The *Landsturm* Edict itself was already changed three months later, on 17 July 1813, and purged of every partisan danger, of every acherontic dynamic. What followed was played out purely in battles conducted by regular armies, even if the troops were inspired by the dynamic of the nationalist impulse. Napoleon could pride himself on the fact that in the many years of French occupation, not one German civilian had taken a shot at a French uniform.

Thus, in what does the special significance of that short-lived Prussian ordinance of 1813 consist? In the fact that it is the official document that legitimates the partisan in the name of national defense. It is a special legitimation, namely, one that proceeds from a spirit and a philosophy that were current in the Prussian capital of Berlin of that time. The Spanish Guerrilla War against Napoleon, the Tirolean uprising of 1809, and the Russian Partisan War of 1812 were elemental, autochthonic movements of a pious, catholic, or orthodox people whose religious tradition was untouched by the philosophical spirit of revolutionary France; they were *underdeveloped* in this sense. In an angry letter of 2 December 1811 to his Hamburg General Governor Davout, Napoleon called the Spaniards in particular a treacherous, superstitious people misled by 300,000 monks, who could hardly be compared with the diligent, hard-working, and reasonable Germans. By contrast, the Berlin of 1808–1813 was characterized by an intellectual atmosphere, which was on intimate terms with the French Enlightenment: so intimate as to be equal if not superior to it.

[49] Johann Gottlieb Fichte, a great philosopher; highly educated and genial military men like Scharnhorst, Gneisenau, and Clausewitz; a writer like Heinrich von Kleist, deceased in November 1811, indicate the enormous spiritual potential of the ready-to-act/enthusiastic Prussian intelligentsia in that critical moment. The nationalism of this milieu of the Berlin intelligentsia was a matter of the intellectuals, not that of a simple or even illiterate people. In such an atmosphere in which an aroused national

feeling united itself with philosophical education, the partisan was discovered philosophically, and the theory of the partisan became historically possible. That a doctrine of war pertains to this alliance, too, is shown in the letter which Clausewitz wrote as “an anonymous military man” (Königsberg, 1809) to Fichte as “the author of an essay on Machiavelli.” In it, the Prussian officer instructs the famous philosopher respectfully that Machiavelli’s doctrine of war is too dependent on antiquity, and that today “infinitely more is gained by the vitality of individual forces than by artful form.” The new weapons and masses, Clausewitz opines in this letter, do fully correspond to this principle, and in the end it is the courage of the individual in close combat that is decisive, “especially in the most beautiful of all wars, conducted by a people in its own fields [*Fluren*] on behalf of their freedom and independence.”

The young Clausewitz knew the partisan from Prussian insurrection plans in 1808/13. In 1810 and 1811 he presented lectures at the general military academy in Berlin on low-intensity war; he was not only one of the most important military experts on such war in its technical sense of the employment of lightly armed mobile troops. The guerrilla war was for him, as for the other reformers in his circle, “preeminently a political matter in the highest sense of the word, of an almost revolutionary character. The declaration of arming the people, insurrection, revolutionary war, resistance and uprising against the established order, even when it is embodied by a foreign occupation regime—this is something really new for Prussia, something ‘dangerous’ which—so to speak—falls outside the sphere of the judicial [50] state.” These words by Werner Hahlweg capture the essence of it for us. But he quickly adds: “The revolutionary war against Napoleon, as imagined by the Prussian reformers, certainly did not take place.” A “semi-insurrectional war,” in the words of Friedrich Engels, was all that it came to. Still, the famous memorandum of February 1812 remains important for grasping the “innermost incentives” (Rothfels) of the reformers; Clausewitz authored it with the help of Gneisenau and Boyen, before he went over to the Russians. It is a “document of sober political and general staff-worthy analysis”; it refers to the experiences of the Spanish people’s war and cool-headedly lets it come “to countering cruelty with cruelty, acts

of violence with acts of violence.” The Prussian *Landsturm* Edict of April 1813 is already clearly recognizable here.²⁸

Clausewitz must have been sorely disappointed that everything he had expected from the insurrection “fell through.”²⁹ The people’s war and partisans—*Parteigänger*, as Clausewitz calls them—had been recognized by him as an essential part of “the forces exploding in war,” and he worked them into the system of his doctrine of war. Especially in Book 6 of his doctrine of war (Precis of Defensive Means), and in the famous Chapter 6B of Book 8 (War is an Instrument of Politics), he recognizes openly the new “potential” that it represents. In addition, one finds astonishingly telling remarks in his work, like the one about the civil war in the Vendée: that sometimes a few isolated partisans might even be able “to lay claim to the title of [51] army.”³⁰ But he remains on the whole the reform-minded regular officer of a regular army of his age, unable to germinate the seed which becomes visible here or to develop it to its full potential. As we will see, that would happen only much later, and it involved an active professional revolutionary. Clausewitz himself still thought all too much in classical categories when in the “wondrous triplicity of war” he attributes to the people only the “blind natural impulse” of hate 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.

Within this short-lived *Landsturm* Edict of April 1813 is concentrated the moment in which the partisan turns up for the first time in a new, decisive role, as a novel and hitherto unacknowledged figure of the world-spirit [*Figur des Weltgeistes*]. It was not the will to resistance of a brave, belligerent people but education and intelligence that opened this door for the partisan, bestowing on him legitimacy from a philosophical basis. It was here that he was, if I may put it so, philosophically accredited and that he became presentable [*hoffähig*]. Before this, he was no such thing. In the seventeenth century he had sunk to the level of a figure in a picaresque novel; in the eighteenth century, the age of Maria Theresa and Frederick the Great, he was Pandarus and Husar. But now, in the Berlin of 1808–13, he was discovered not only in his military-technical capacity but also philosophically,

and valued accordingly. For one moment at least he attained to historical stature and spiritual vocation. This was a process he would never forget. For our theme this is decisive. We speak of the theory of the partisan. Now, a political *theory* of the partisan exceeding merely military classifications [52] had become possible in fact only through this accreditation in Berlin. The spark that in 1808 flew north from Spain found in Berlin a theoretical form that made it possible to preserve its flame and pass it on to other hands.

At first, however, even in Berlin the traditional piety of the people was as little threatened as the political unity of the monarch and his people. It seemed fortified rather than endangered by the conjuration and glorification of the partisan. The Acheron that had been released receded immediately into the channels of state order. Following the wars of freedom, the philosophy of Hegel was dominant in Prussia. It attempted a systematic mediation of revolution and tradition.³¹ It could be considered conservative, and it was. But it also conserved the revolutionary sparks, and provided, *via* its philosophy of history, a dangerous ideological weapon for the forward driving revolution, 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 thinkers more than activists of the revolutionary war. It was only through a professional Russian revolutionary, Lenin, that Marxism became the doctrine of world-historical power that it now appears to be.

From Clausewitz to Lenin

Hans Schomerus, already cited as an authority on partisanship earlier on, gives as the heading of one of the sections of his elaborations (which were made available to me in manuscript form) [53]: *From Empecinado to Budjonny*. It means: from the partisan of the Spanish Guerrilla War against Napoleon to the organizer of the Soviet Cavalry, the mounted officer [*Reiterführer*] of the Bolshevik war of 1920. Such a heading illuminates an interesting military-scientific line of development. But for us, aiming at the

theory of the partisan, it draws attention too strongly to military-technical questions of the tactics and strategy of mobile warfare. We need to keep an eye on the development of the concept of the political, which undergoes in exactly this moment a striking turn. The classical concept of the political as fixed in the eighteenth- and nineteenth-century was founded on the *state* of European international law. This concept understood the war of classical international law as a pure state-war contained by international law. Since the twentieth century, however, this mode of state-war with its containments was set aside and replaced by the revolutionary partisan-war [*Parteien-Krieg*]. This is why we assigned to the following elaborations the heading *From Clausewitz to Lenin*. In doing so we might run the risk of losing our way in the opposite danger, namely in the derivations and genealogical tracings of the history of philosophy, instead of the restriction to pure military science.

In this context, the partisan is a safe guide since he protects us from such commonplace historical-philosophical genealogies, leading us back into the reality of revolutionary development. Karl Marx and Friedrich Engels had long since recognized that the revolutionary war of today is not the barricade war [*Barrikadenkrieg*] of the older sort. Engels, who had written many military-scientific treatments, lay particular stress on this. But he considered it possible that bourgeois democracy with the assistance of universal suffrage might confer a majority on the proletariat in the parliament, and so transform bourgeois social order into a classless society in a legal manner. Consequently, even a wholly un-partisan revisionism might appeal to the authority of Marx and Engels.

In contrast to this, it was Lenin who recognized the inevitability of violence and of bloody revolutionary civil war as well as state war, [54] and so affirmed partisan war too as a necessary ingredient of the revolutionary process. Lenin was the first who consciously conceived of the partisan as an important figure of national and international civil war, and tried to make him into an effective instrument of central communist-party leadership. As far as I can see, it turns up first in an essay called *Der Partisanenkampf* that appeared on 30 September 1906 in the Russian journal *Der Proletarier*.³² It represents a clear continuation of the recognition of enemy and enmity

that begins in particular with the turn against the *objectivism* of Struve in his essay “What to Do” in 1902. “The professional revolutionary followed logically” from it.³³

Lenin’s essay about the partisan concerns the tactics of the socialist civil war and takes aim at the attitude, widespread among social democrats of the period, that the proletarian revolution would be achieved as a mass movement in parliamentary countries, so that methods of direct use of violence would then be obsolete. For Lenin, the partisan war belongs to the realm of the methods of civil war and is concerned, like all others, with a purely tactical or strategic question relating to the concrete situation. Partisan war is, as Lenin says, “an unavoidable form of combat,” one to be employed without dogmatism or preconceived principles just like other means and methods—legal or illegal, peaceful or violent, regular or irregular—depending on the particular situation. The purpose is the communist revolution in all countries of the world; whatever serves this purpose [55] is good and just. Thus, the partisan problem too can be very easily solved pursuant to this line. Partisans directed by the central communist authority become freedom fighters and venerable heroes. Partisans whose activity deviates from this authority become lumpen rabble and enemies of mankind.

Lenin was a great expert and admirer of Clausewitz. He studied the book *Vom Kriege* intensively in 1915 during World War I, and he entered extracts from it in German, marginal notes in Russian with underlinings and exclamation marks, into the *Tetradka*, his notebooks. In this way he produced one of the greatest documents in world history and the history of ideas. From a rigorous study of these extracts, marginalia, underlinings, and exclamation marks the new theory of absolute war and absolute enmity can be developed, one that would be determinant for the age of revolutionary war and the methods of the modern cold war.³⁴ What Lenin learned from Clausewitz, and he learned it well, was not just the famous formula of war as the continuation of politics. It involved the larger recognition that in the age of revolution the distinction between friend and enemy is the [56] primary distinction, decisive for war as for politics. Only revolutionary war is true war for Lenin, because it derives from absolute enmity. Everything else is a conventional game.

The distinction between war (*Woina*) and play (*Igra*) is accentuated by Lenin himself in a marginal note to a passage in Chapter 23 of Clausewitz's Book II ("Keys to the Country"). Its logic entails the decisive step that tears down the containments which the state war of European international law had managed to establish in the eighteenth century, and which had been successfully restored by the Congress of Vienna (1814/15), and had lasted through World War I. Clausewitz had not yet really considered their elimination. In comparison with a war of absolute enmity, the contained war of classical European international law, proceeding by recognized rules, is little more than a duel between cavaliers seeking satisfaction. To a communist like Lenin, imbued with absolute enmity, such a war could only appear to be a mere game, a game that he would play in order to mislead the enemy, but one which he basically despised and thought risible.³⁵

The war of absolute enmity knows no containment. The consistent realization of absolute enmity provides its meaning and its justice. The only question therefore is this: is there an absolute enemy and who is it *in concreto*? For Lenin the answer was unequivocal, and his superiority among all other socialists and Marxists consisted in his seriousness about absolute enmity. His concrete absolute enemy was the class enemy, the bourgeois, the western capitalist and his social order in every country in which they ruled. The knowledge [*Kenntnis*] of the enemy was the secret of Lenin's enormous strike power. His comprehension of the partisan rested on the fact that the modern partisan had become the irregular proper and, [57] in his vocation as the executor proper of enmity, thus, the most powerful negation of the existing capitalist order.

The partisan's irregularity refers today not only to a military "line" or formation, as it did in the eighteenth century, when the partisan was just a "lightly armed troop," nor to the proud uniform of the regular troop. The irregularity of class struggle calls not just the military line but the whole edifice of political and social order into question. In the Russian professional revolutionary, Lenin, this new reality was raised to philosophical consciousness. The alliances of philosophy with the partisan, established by Lenin, unleashed unexpected new, explosive forces. It produced nothing

less than the demolition of the whole Eurocentric world, which Napoleon had tried to save and the Congress of Vienna had hoped to restore.

The containment of the *interstate* regular war and the taming of the *intrastate* civil war had become so commonplace to the European eighteenth century that even intelligent parties of the *Ancien Régime* could not imagine the destruction of this kind of regularity, not even after the events of the French revolution of 1789 and 1793. They could only express it in a language of general and insufficient childish analogies. A great courageous thinker of the *Ancien Régime*, Joseph de Maistre, was clairvoyant in anticipating what it was all about. In a letter of summer 1811³⁶ he declared Russia ripe for a revolution, but hoped that it would be a *natural* revolution, as he calls it, and not an enlightenment-European one like the French revolution. What he feared most was an *academic Pugatschow*. He expressed himself in this way in order to illustrate what he correctly [58] recognized as the real danger, namely an association of philosophy with the elemental forces of insurrection. Who was Pugatschow? The leader of a peasant and Cossack uprising against Tsarina Catherine II, executed in 1775 in Moscow, who had passed himself off as the Tsarina's deceased husband. An *academic*, Pugatschow would be a Russian who "started a revolution in the European way." That would unleash a hideous spate of wars, and if it came to that, "words would fail me to tell what we would have to fear from it."

The vision of this intelligent aristocrat is astonishing, as much for what he grasped, namely, the possibility and danger of association between the western intelligentsia and Russian rebellion, as for what he did not grasp. The time and place of de Maistre's letter, St. Petersburg, summer 1811, puts this vision practically next door to the Prussian army reformers. But it notices nothing of its real proximity to the reforming regular officers of the Prussian General Staff, whose contacts at court in St. Petersburg were yet quite extensive. It does not intimate the existence of Scharnhorst, Gneisenau, and Clausewitz; linking their names with Pugatschow's would miss the real point altogether. The profundity of a meaningful vision gets lost, and only one more *bon mot* in the style of Voltaire or even Rivarol, if you like, remains. Thinking further in the direction of the alliance of the

Hegelian philosophy of history with the unleashed forces of the masses, as the Marxist professional revolutionary Lenin consciously managed to bring about, tones down the formulation of the genial de Maistre to a quiet echo in the chambers or ante-chambers [*Räume und Vorräume*] of the *Ancien Régime*. The language and the conceptual world of the contained war and the enmity measured in doses were no match any longer for the sudden emergence of absolute enmity.

From Lenin to Mao Tse-tung

During World War II, Russian partisans diverted some twenty German [59] divisions onto their activities, according to specialists, and by doing so contributed substantially to the outcome of the war. The official Soviet historiography—the book by Boris Semenovitsch Telpuchowski on the Great Patriotic War 1941/45—depicts the glorious partisan, who threw the enemy's hinterland into confusion. In Russia's huge spaces and on the interminable frontlines, thousands of kilometers long, every division was crucial for the German conduct of war. Stalin's basic conception of the partisan assumed that the latter would always have to fight in the back of the enemy, as in the well-known maxim: partisans in the back, fraternization at the front.

Stalin was successful in linking the strong potential for national and local resistance—the essentially defensive, telluric power of patriotic self-defense against a foreign conqueror—with the aggressive nature of the international communist world-revolution. The connection of these two heterogeneous forces dominates partisan struggle around the world today. The communist element, with its determination and support of Moscow or Peking, had already most of the time the advantage in this relationship. Polish partisans who had fought the Germans in World War II were sacrificed by Stalin in a gruesome way. The partisan battles in Yugoslavia in 1941/45 were not only a collective national defense against a foreign conqueror, they also were brutal internal battles between communist and monarchist partisans. In this internecine war, the communist party leader, Tito, laid siege to his intra-Yugoslav enemy, General Mihailovitch, who

enjoyed the support of the English, and with the help of Stalin and England he annihilated the latter.

The greatest practitioner of revolutionary war in our time was also its most famous theorist: Mao Tse-tung. Many of his writings are “canonical reading today at western military academies” (Hans Henle). Already by 1927 he had accumulated experiences in communist action and then used the Japanese invasion of 1932 in order to develop, systematically, modern methods of both national as well as [60] international civil war. The “long march” from southern China to the Mongolian border, beginning in November 1934, a distance of over 12,000 kilometers in the course of which immense losses were suffered, was a series of partisan achievements and partisan experiences through which the Chinese communist party was amalgamated as a peasant’s and soldier’s party, with partisans as its core. It is a significant coincidence that Mao Tse produced his most important writings in the years 1936–38, which means in the same years as Spain was defending itself in a national war of liberation from the grip of international communism. The partisan played no significant role in this Spanish civil war. Mao Tse on the contrary has to thank exclusively the Chinese partisan war against the Japanese and the Kuo-min-tang for his victory over his national opponent, the Kuo-min-tang and General Chiang Kai-shek.

Mao Tse’s most important formulations for our purposes are to be found in a work of 1938, “Strategy of Partisan War against the Japanese Invasion.” However, some of Mao’s other writings must be brought into consideration in order to complete the picture of the doctrine of war of this new Clausewitz.³⁷ These amount indeed to a consequential and consciously systematic continuation of the Prussian General Staff Officer. But Clausewitz, a contemporary of the first Napoleon, could not yet intuit the degree of totality that goes without saying for the revolutionary wars of the communist Chinese. Mao Tse’s characteristic image proceeds from the following comparison: “In our war, the armed populace and the low-intensity warfare of the partisans on the one side, and the Red Army on the other side, are like the two arms of man. Or to put it more practically: the [61] morale of the populace is the morale of the armed nation. The enemy fears precisely this.”

“The nation armed”: this, as we know, was the motto of the regular officers of the Prussian General Staff who organized the war against Napoleon. Clausewitz belonged to them. We have seen that, at that time, the strong national energies of a certain educated milieu had been brought under control by the regular army. Even the most radical military thinkers of that time distinguish between war and peace, regarding war as a state of exception, clearly distinguished from peace. From his experience as a regular officer in a regular army, Clausewitz, too, was unable to take the logic of partisanship systematically to its limit, as Lenin and Mao have done from their experience as professional revolutionaries. But in the case of Mao’s relation to partisanship, there is one more characteristic through which he comes closer to the core of the thing than Lenin does, and through which he attains to the possibility of the most extensive conceptual completeness. To say it in one word: Mao’s revolution is fundamentally more telluric than Lenin’s. The bolshevik avant-garde, which seized power in Russia under Lenin’s leadership in October 1917, is different in every way from the Chinese communists who, after a war of more than twenty years, took charge of China in 1949. The differences lie not only in the internal structure of the group but also in the relationship to the soil and the people they seized. The ideological controversy around the question whether Mao taught a true Marxism or Leninism becomes, in the face of the immense reality that is determined by a telluric partisanship, nearly as secondary as the question whether ancient Chinese philosophers hadn’t said something very similar already. What it is about is a “red elite” marked by the experience of partisan struggle. Ruth Fischer clarifies everything essential when she shows that the Russian bolsheviks of 1917 belonged, from a national standpoint, to a minority “led by a group of theorists the majority of whom were emigrants,” while the Chinese communists under Mao and his friends had by 1949 [62] been fighting for two decades on their own national soil with a national opponent, the Kuo-min-tang, on the basis of a horrendous partisan war. It may be that they were an urban proletariat in origin, like the Russian bolsheviks who came from St. Petersburg and Moscow; but when they came to power they brought with them the formative experiences of most horrible defeats, and the organizational capacity to transplant their

principles “into a peasant milieu, to be developed in a new, unanticipated way.”³⁸ Here lies the kernel of the “ideological” differences between Soviet-Russian and Chinese communism. But also an inner contradiction in Mao’s own situation, who combines a spaceless [*raumlosen*], global-universal, absolute world-enemy—the Marxist class enemy—with a territorially specific, real enemy of the Chinese-Asiatic defense against capitalist colonialism. It is the opposition of the *One World*, of a political unity of earth and its humanity, to a set of *Großräumen* [large spatial areas] that are rationally balanced both within and among one another. Mao expresses the pluralistic image of a new nomos of the earth in a poem pronounced *Kunlun*, in which it is said (in the translation of Rolf Schneider [63]):

If heaven were my garrison, I would draw my sword
 And strike you into three pieces:
 One as a present for Europe,
 One for America,
 But one left over for China,
 And peace would rule the world.

Various kinds of enmity are joined in Mao’s concrete situation, rising up to 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; internecine enmity nursed in long, embittered civil wars—all this did not paralyze or relativize each other, as they might be thought to; rather, they were confirmed and intensified in the situation. Stalin succeeded in joining the telluric partisanship of the national homeland with the class enmity of international communism. Mao was years ahead of him, surpassing Lenin in his theoretical consciousness by taking the formula of war as the continuation of politics by other means even farther.

The underlying conceptual operation is as simple as it is effective. War finds its meaning in enmity. Because it is the continuation of politics, politics too always involves an element of enmity, at least potentially; and if peace contains within itself the possibility of war—something that by the

standard of experience has unfortunately proved to be true—peace too contains a moment of potential enmity. The question, however, is whether the enmity can be contained and regulated, that is, whether it represents relative or absolute enmity. The warring party alone must decide this on its own account. For Mao, thinking from the instance of the partisan, the present-day peace is only an apparition of real enmity. Even the so-called Cold War does not put an end to it. This war is, accordingly, not a quasi-war and quasi-peace, but an operation of real enmity, depending on how things stand, with other than openly [64] violent means. Only weaklings and illusionists could deceive themselves about it.

So the question arises about the quantitative proportion of military action to be conducted by a regular army relative to other methods of class warfare that are not openly military. Mao finds an exact number: revolutionary war is nine-tenths non-open, non-regular war, and just one-tenth open military war. A German general, Helmut Staedke, has derived a definition of the partisan from it: a partisan is the fighter of the aforesaid nine-tenths of a campaign that leaves only the final tenth to regular forces.³⁹ Mao Tse does not fail to notice that this last tenth is decisive for the end of war. But as a European observer of the old tradition, one has to avoid falling back precisely in this context on conventional, classical concepts of war and peace which, when they speak of war and peace, assume the contained European war of the nineteenth century, with its implication of merely relative and containable enmity.

The regular Red Army turns up only when the situation is ripe for a communist regime. Only then is the country openly occupied by the military. Of course the goal is not a peace accord in the classical sense of the international law. The practical significance of such a doctrine has been exhibited to the whole world in the most urgent way by the division of Germany since 1945. On 8 May 1945 the military war conducted against a besieged Germany ended; Germany surrendered unconditionally. To this day, in 1963, there is still no peace between the allied victors and Germany, but the boundary between East and West follows up to this day exactly the line established eighteen years earlier by U.S. and Soviet regular troops delineating their Occupation Zones.

[65] Both the 9:1 ratio of cold to openly military war, and the deeper political symptomatics of the division of Germany since 1945 are for us only examples, meant to clarify Mao's political theory. Its core lies in partisanship, whose essential characteristic today is real enmity. Lenin's bolshevik theory recognizes and acclaims the partisan. But in comparison to the concrete telluric reality of the Chinese partisan, Lenin has something abstract and intellectual [*abstrak-intellektuelles*] in his definition of the enemy. The ideological conflict between Moscow and Peking, which has grown ever stronger since 1962, has its deepest origin in the concretely varying [*konkret-verschiedenen*] reality of true partisanship. In this respect, too, the theory of the partisan proves to be the key to recognizing political reality.

From Mao Tse-tung to Raoul Salan

Mao Tse-tung's reputation as the most modern master of warfare is something that French regular officers brought back to Europe from Asia. Their old-fashioned colonial war in Indochina ran head-on into the revolutionary war of the present times. There they learned first-hand [*am eigenen Leibe*] the strike power of well-conceived methods of subversive warfare, psychological mass terror, and its association with partisan war. From their experiences they developed a doctrine of psychological, subversive, and insurrectional war about which a considerable literature has already been published.⁴⁰

[66] It is possible to see in this the typical product of the mind-set of regular officers, indeed of commanding officers and colonels. There is no point in arguing about the ascription to the colonel, though it would be perhaps interesting to inquire whether a figure like Clausewitz corresponds on the whole rather to the type of the commanding officer or to that of the general. But we are concerned here with the theory of the partisan and its consistent development, and following a strikingly concrete case of the last years, the former is rather embodied by a general than a commanding officer, namely, in the destiny of General Raoul Salan. He is, more than other generals like Jouhaud, Challe, or Zeller, for us the most important figure in this context. In the exposed position of this general, an existential

conflict has revealed itself: the decisive conflict for the recognition of the partisan problem, one that must arise when the regularly fighting soldier must endure not only occasional but constant war with a fundamentally revolutionary and irregular fighting enemy.

Salan got to know colonial war as a junior officer in Indochina. During World War II he was assigned to the Colonial General Staff and posted to Africa. In 1948 he arrived in Indochina as Commandant of the French forces; in 1951 he became Senior Commissar of the French Republic in North Vietnam; he led the investigation into the defeat at Dien-Bien-Phu in 1954. In November 1958 he was named Senior Commandant of the French fighting forces in Algeria. He could be considered a man of the left, and as late as January 1957 an opaque organization, whose name could perhaps be translated as *vehme*, made a dangerous attempt on his life. But the lessons of war he had learned in Indochina, and his experiences of the Algerian partisan war, led him to succumb to the remorseless logic of partisan war. The head of the French regime at the time, Pflimlin, accorded him full authority. But on 15 May 1958 Salan helped General de Gaulle to power at the decisive moment, crying *Vive de Gaulle!* at a [67] public event at the Forum in Algiers. Soon, however, he was bitterly disappointed in his expectation that de Gaulle would defend unconditionally the constitutionally guaranteed French territorial sovereignty over Algeria. In 1960 open enmity to de Gaulle began. In January 1961 some of his friends founded the OAS (*Organisation d'Armée Secrète*) whose declared head Salan became when on 23 April he hurried to (lead) the officers' putsch in Algiers. When this putsch failed, as early as 25 April 1961, the OAS carried out premeditated terrorist actions both against the Algerian enemy and the civil population in Algiers, and the population of France itself; premeditated in the sense of the methods of a so-called psychological warfare of modern mass terror. This terror-enterprise suffered its decisive strike in April 1962 with the arrest of Salan by the French police. His trial in front of the High Military Court in Paris began on 15 May and was concluded on 23 May 1962. The charge was attempted forcible overthrow of the legal regime and the terrorist actions of the OAS, including, so to speak, only the period from April 1961 to April 1962. The verdict didn't sentence him

to death, but to life in prison, because the court accorded the accused extenuating circumstances.

I recall these dates summarily for German readers. There is still no history of Salan and the OAS, and it is not for us to interfere in so deep a conflict of the French nation by taking positions and passing judgments. We will content ourselves instead with working out a few points from the material—as far as it is published—in order to clarify our objective question.⁴¹ Many parallels which concern partisanship imposing themselves here. We shall be returning to one of them, out of purely heuristic reasons and with all due caution. The analogy between the Prussian General Staff officer of 1808/13, influenced by the Spanish guerrilla war, [68] and the French General Staffer of 1950/60, who had experienced the most modern partisan warfare in Indochina and Algeria, is striking. The great differences are equally apparent and require no lengthy treatment. There is a resemblance in the situation at its core and in the many individual destinies. But this should not be exaggerated abstractly as if from now on all theories and constructions of defeated armies in world history could be identified with each other. This would be nonsense. Even the case of the Prussian General Ludendorff is in many essential points different from that of the left-republican Salan. The only thing that concerns us is the clarification of the theory of the partisan.

Salan was silent during his trial at the High Military Court. At the opening of the trial he gave a lengthy allocution beginning with the words *Je suis le chef de l'OAS. Ma responsabilité est donc entière* [I am the head of OAS, and I take total responsibility for it]. In this allocution he protested that witnesses he named—including President de Gaulle—were not being examined by the court, and also that the matter of this process [*Prozesstoff*] was limited to the period from April 1961 (the Algerian putsch) to the time of April 1962 (Salan's capture), which meant that his real motives were effaced and great historical events were isolated, reduced to, and encapsulated by the formulas and facts of a standard Criminal Code. The acts of violence by the OAS he characterized as mere reaction to the most hateful of all such acts, namely the one that snatches a nation from a people that does not want to lose this—their—nation. His explanation concludes with the

words, “I owe an explanation only to those who suffer and die because they believed in a broken promise and in a betrayed duty. From this time forward I shall say nothing.”

Salan in fact maintained his silence during the whole trial, even in the face of several harshly insistent questions from the prosecutor, who considered his silence a mere tactic. After referring briefly to it as “illogical,” the presiding officer of the court-martial tolerated, if he did not respect, the bearing of the accused, and did not [69] treat it as a case of *contempt of court* [English in the original]. At the conclusion of the trial, Salan responded to the query from the bench about whether he had anything to add to his defense: “I will open my mouth only to cry *Vive la France!* and to the prosecutor I respond simply *que Dieu me garde!*”⁴²

The first part of Salan’s closing statement is addressed to the presiding officer of the High Military Court, with the application of the death sentence in view. In this situation, at the moment of execution, Salan would cry *Vive la France!* The second part is addressed to the side of the official prosecution and sounds a bit oracular. It becomes, however, intelligible when put into the context of the prosecutor’s sudden religious turn—extraordinary for an official representative of a yet still secular state. He took Salan’s silence not only for hubris and a lack of remorse in order to plead against a lighter sentence based on extenuating circumstances; he spoke suddenly, as he explicitly said, as a “Christian to another Christian, *un chrétien qui s’adresse à un chrétien,*” reproaching the defendant with having committed himself to eternal damnation by rejecting the grace of the Good Lord though his lack of repentance. It was to this charge that Salan retorted *que Dieu me garde!* Such are the abysses over which the acumen and rhetoric of a political trial are conducted. The problem of political justice is not our issue, though.⁴³ We are interested exclusively in illuminating a complex of seriously confused questions by slogans such as/like total war, psychological war, subversive war, insurrectional war, invisible war. They have become tangled, misplacing and obstructing the problem of modern partisanship.

[70] The war in Indochina 1946/56 was the “example of a fully realized modern revolutionary war” (Th. Arnold, 186). In the forests, jungles, and

rice paddies of Indochina, Salan got to know a modern partisan warfare. He experienced that Indochinese rice farmers could rout a battalion of first-class French soldiers. He witnessed the sorrow of refugees and learned about Ho Chi Minh's underground organization, which penetrated [*überlagerte*] and outwitted the French administration. With the exactness and precision of a general staffer, he conducted observation and testing of the new, more or less terrorist warfare. While doing so he soon hit on what he and his comrades called "psychological" warfare, something that belongs beside military-technical action in modern war. With this Salan was able to take on Mao's system of ideas without further ado; but it is well-known that he was also absorbed in the literature of the Spanish Guerrilla War against Napoleon. In Algeria he stood right in the middle of a situation in which 400,000 well-armed French soldiers fought 20,000 Algerian partisans, only to see France renounce its sovereignty over Algeria. The losses of human life were ten to twenty times greater on the side of the general population of Algeria than on the French side, but then the material expenditure of the French was ten to twenty times higher than those of the Algerians. Salan stood, in short, in his whole existence as a Frenchman and a soldier, before an *étrange paradoxe* [strange paradox], within an *Irrsinnslöge* [logic of unreason] that embittered a courageous and intelligent man and drove him to the search for a counter-measure.⁴⁴

[7 1] ASPECTS AND CONCEPTS
OF THE LAST STAGE

From within the labyrinth of a situation so typical for modern partisan war, we shall try to discriminate four different aspects in order to get hold of a few clear concepts: first the aspect of space, then the shattering of social structures, further the interconnectedness with the world-political context, and finally the technical-industrial aspect. This order is relatively flexible. It goes without saying that in concrete reality these are not four isolated and independent realms, but rather their intensive interactions [*Wechselwirkung*] and concurrent functional interdependencies yield a picture of the whole, so that any discussion of one aspect simultaneously

involves reference and implication to the other three, finally leading into the force field of the modern technical-industrial development.

The Aspect of Space

Quite independent from the good- or ill-will of men, of peaceful or martial purposes and aims, every technical improvement produces new spaces and unforeseeable modifications in traditional spatial structures. This holds true not only for the striking external spatial expansions of cosmic space travel but also for our old earthly living spaces, work spaces, ritual spaces, and spaces to move. The proposition that “a man’s home is inviolable” effectuates a quite different form of containment today, in the age of incandescent light, natural gas lines, telephone, radio, and television, than it did in the age of King John and the Magna Carta of 1215, when the lord of the castle could lift his drawbridge [72] at will. Entire systems of legal norms crumble, as nineteenth-century maritime law did, faced with the technical growth of human efficiency. From the abandoned [*herrenlosen*] sea ground, the space in front of the coast—the so-called continental shelf—surfaces as a new space of action [*Aktionsraum*] for man. In the abandoned depths of the Pacific Ocean, bunkers are built for radioactive waste. Technical-industrial progress changes the spatial orders [*Raumordnungen*] along with their structures. For law is only the unity of order and orientation [*Ordnung und Ortung*], and the problem of the partisan is the problem of the relationship between regular and irregular battle.

A modern soldier may for himself be optimistic about progress, or pessimistic; this is not very important for our problem. Every general staffer thinks immediately, practically, and purposively about the technical aspect of weapons. By contrast, the spatial aspect—through war itself—is close to him also in theory. The structural difference in so-called theaters of war, on land and at sea, is an old theme. Since World War I airspace has been added as a new dimension, altering both the old *theaters* of land and sea in their spatial structure.⁴⁵ In partisan battle a complexly structured new space of action emerges, because the partisan does not fight on an open field of

battle nor on the same plane of open frontal war. Rather, he forces his enemy into another space. To the space of the regular traditional theater of war he, thus, adds another, darker dimension, a dimension of depth,⁴⁶ in which the displayed uniform [73] becomes deadly. In this way he provides an unexpected (but no less effective for that) terrestrial analogy to the submarine, which likewise adds an unexpected dimension of depth to the surface of the sea, where old-fashioned naval warfare was once played out. From underground, he disturbs the conventional and regular game on the open stage. On the basis of his irregularity, he alters dimensions not only of tactical, but of strategic operations of the regular army. Exploiting their privileged relation to and at the ground, relatively small groups of partisans can tie down large masses of regular troops. Thus the aforementioned “paradox” of Algeria. Even Clausewitz recognized this, and in an already cited passage (n. 31) suggestively paraphrased it, where he says that a few partisans occupying an area can claim “the title of an army.”

For the sake of concrete conceptual clarity, we shall retain the telluric-terrestrial character of the partisan, avoiding characterizing him as the corsair of the land, or even defining him in such terms. The pirate’s irregularity lacks any connection whatsoever to a regularity. The corsair by contrast collects war booty at sea, and is equipped with the authorizing “letter” of a state regime. His sort of irregularity does not lack that connection to regularity in this way, and thus he was, until the Paris Peace Accord of 1856, a juridically recognized figure of European international law. It is in this respect that both the corsair of the sea war and the partisan of land war can be compared with each other. A strong resemblance and even sameness is demonstrated especially by the fact that the statements “with partisans you can only fight like a partisan” and (the other statement) “*à corsaire corsaire et demi*” [fight the corsair with one corsair and a half] amount to the same thing. Nevertheless the partisan of today is something else than a corsair of land war. The elementary contrast of land and sea is too great for that. It may very well be that the traditional distinctions between war and enemy and booty, which up until now legitimized the international opposition of land and sea, will one day be dissolved in the melting-pot of industrial-

technical progress. For now the partisan still [74] signifies a patch of true home soil; he is one of the last sentries of earth, as a not yet completely destroyed world-historical element.

Already the Spanish Guerrilla War against Napoleon is elucidated fully only by the great spatial aspect [*Raum-Aspekt*] of this opposition of land and sea. England supported the Spanish partisans. A maritime power made use of the irregular fighters of land war for their great martial enterprises in order to lay siege to the continental enemy. Napoleon was defeated in the end not by the English, but rather by the great land powers Spain, Russia, Prussia, and Austria. The partisan's irregular, typically telluric way of fighting served a typically maritime world-political establishment that had inexorably disqualified and criminalized every irregularity at sea. In the opposition of land and sea, various kinds of irregularity were concretized, and only if we keep our eye on the concrete particularity of the spatial aspects characterized as *land* and *sea*, in the specific forms of their conceptual development, are analogies permissible and fruitful. This is true in the first place for the analogy we are concerned with here in the recognition of the spatial aspect. In an analogous way the maritime power England made use of the land-based [*bodenständig*] Spanish partisan, who changed the theater of land war through an irregular space in the former's war against the continental power France, and the land power Germany used submarines as a weapon that added an unexpected other space to the previous space of the conduct of maritime war against the maritime power England during World War I. The masters of the sea's surface at that time immediately tried to discriminate the new way of fighting as an irregular, indeed criminal and piratic means of battle. Today, in the age of submarines with Polaris rockets, everyone sees that both Napoleon's indignation over the Spanish *Guerrillero* and England's indignation over the German submarine are located on one and the same plane—namely, on the indignation-level of judgments of worthlessness in the face of non-calculable spatial modifications.

[75] *Shattering Social Structures*

A horrendous example of the shattering of social structures was endured by the French from 1946 to 1956 in Indochina when their colonial regime in this region fell apart. The organization of partisan battle by Ho Chi Minh in Vietnam and Laos has already been mentioned. Here the communists made use of even the unpolitical civil population in their struggle. They commandeered even the house personnel of the French officers and officials, as well as the unskilled workers involved in supplying the French Army. They forced taxes on the civil population and practiced terrorist acts of every kind in order to bring French counter-terror to bear on the indigenous population, with the aim of inciting further hatred of the French. In short, the modern form of revolutionary war leads to many new sub-conventional means and methods, whose detailed description would go far beyond what is possible here. Commonality exists as *res publica*, a public sphere, and it is called into question when a non-public space forms within it, one that actively disavows this publicness. This instance may suffice to remind us that the partisan, suppressed by the military mind of the nineteenth century, quite suddenly moved into the center of a new kind of warfare whose sense and purpose was the destruction of the existing social order.

This becomes starkly evident in the modified hostage praxis. In the Franco-Prussian War of 1870/71 the German troops, defending themselves from sharpshooters, took the notable citizens of a locale—mayor, ministers, doctors, and notaries—as hostages. Respect for such dignitaries and notables could be used to put pressure on the populace because social regard for such typically bourgeois strata was practically unqualified. It is just this bourgeois class that becomes the enemy proper in the revolutionary civil war of communism. The use of such dignitaries as hostages works—as a matter of fact—in favor of the communist side. For the communist, such hostage- [76] taking serves his turn so well that he might even provoke it himself if necessary, whether in order to exterminate a certain bourgeois class or to drive them over to the communist side. In an already cited book about partisans this new reality is rightly recognized. In partisan war, it tells us, effective hostage-taking is possible only by taking the partisans themselves or their nearest collaborators. Otherwise the effect is only

to create new partisans. For partisans, conversely, every soldier of the regular army, every uniform-wearer is a hostage. “Every uniform,” writes Rolf Schroers, “should feel threatened, and with it everything that it represents as a device.”⁴⁷

You have only to follow this logic of terror and counter-terror to its natural conclusion, and then apply it to every sort of civil war in order to understand the shattering of social structures at work today. A few terrorists suffice to put large masses under pressure. To the narrower space of open terror are added further the spaces of insecurity, anxiety, and common mistrust, the “landscape of treachery” that Margret Boveri has portrayed in a set of four stimulating books.⁴⁸ All the peoples of the European continent—with a couple of slight [77] exceptions—have in the course of the two world wars and two post-war periods experienced this personally [*am eigenen Leib*] as a new reality.

The World Political Context

The third aspect, the interconnectedness with world-political fronts and contexts, has likewise long since been brought to bear on our common awareness. The autochthonous defenders of the home soil, who died *pro aris et focis* [for our altars and our hearths], the national and patriotic heroes who went into the woods, all elemental, telluric force in reaction to foreign invasion: it has all come under an international and transnational central control that provides assistance and support, but only in the interest of its own quite distinct world-aggressive purposes and that, depending on how things stand, either protects or abandons. At this point the partisan ceases to be essentially defensive. He becomes a manipulated cog in the wheel of world-revolutionary aggression. He is simply sent to slaughter, and betrayed of everything he was fighting for, everything the telluric character, the source of his legitimacy as an irregular partisan, was rooted in.

For the partisan is always dependent in some way, as an irregular fighter, on a regular power. This aspect of things was always apparent, and recognized as such. The Spanish *guerrillero* found legitimacy in his defensive posture, and in his agreement with kingdom and nation; he defended the home

soil against a foreign conqueror. But Wellington too belongs very much to the Spanish Guerrilla War, and the war against Napoleon was conducted with English assistance. Napoleon often recalled bitterly that England was the real instigator and the real beneficiary of Spanish partisan warfare. Today the connection strikes us even more forcibly, since continuous increase in the technical means of war renders the partisan dependent on the ongoing assistance of an ally who is in a position, technologically and industrially, to supply and develop him with the newest weapons and machinery. [78] When different interested third parties compete with each other, the partisan enjoys room for his own political maneuver. That was Tito's situation in the last years of World War II. In the partisan battles carried out in Vietnam and Laos, the situation is complicated by the fact that within communism itself, the internecine opposition of Russian and Chinese politics became acute. With Peking's assistance more partisans could be insinuated into North Vietnam through Laos; this would be—effectively—a stronger form of assistance for Vietnamese communism than the support of Moscow. The leader of the liberation war against France, Ho Chi Minh, was an adherent of Moscow. The stronger assistance will decide the matter, be it for the choice between Moscow and Peking or for other alternatives that arise in the situation.

For such a highly politicized context, Rolf Schroers's book about the partisans, cited *supra*, has found a striking formula; it speaks of the *interested third party*. It is a fine expression. This interested third party is not some banal figure like the proverbially laughing third party. It belongs rather, and essentially, to the situation of the partisan, and thus also to his theory. The powerful third party delivers not only weapons and munitions, money, material assistance, and medicines of every description, he offers also the sort of political recognition of which the irregularly fighting partisan is in need, in order to avoid falling like the thief and the pirate into the unpolitical, which means here the criminal sphere. In the longer view of things the irregular must legitimize itself through the regular, and for this only two possibilities stand open: recognition by an existing regular, or establishment of a new regularity by its own force. This is a tough alternative.

To the degree to which the partisan becomes motorized, he loses his soil, and his dependency on the technical-industrial means required to continue the struggle grows. With it, the power of the interested third party also grows until it finally attains to planetary dimensions. All of the aspects which we have employed to understand present- [79] day partisanship are subsumed in this way to the absolutely dominating technical aspect.

The Technical Aspect

The partisan too participates in the development—in the progress—of modern technology and its science. The old-style partisan whom the Prussian *Landsturmedikt* of 1813 wanted to force to take up the pitchfork would cut a comical figure today. The modern partisan fights with machine guns, hand grenades, plastic bombs, and soon perhaps with tactical atomic weapons. He is motorized and wired to a communications network with secret transmitters and radar. He is provisioned by air with weapons and sustenance. But he is also attacked by helicopters and starved, as happens today, in 1962, in Vietnam. He and his opponents both keep step with the rapid development of modern technology and its form of science.

An English marine specialist called piracy the “pre-scientific stage” of sea war. In the same spirit he would have to define the partisan as the pre-scientific stage of land warfare, settling on this as the only scientific definition. But even this definition has been scientifically outdated straight away, because the difference of maritime and land war is itself caught up in the vortex of technical progress, and appears today to the technical expert as pre-scientific, an already finished business. The dead ride fast, and when provided with wheels they move even faster. The partisan, whose telluric character we insist on, is at any rate becoming an outrage for such purposeful rationalists. He provokes a nearly technocratic response. The paradox of his existence reveals an imbalance: the industrial-technical perfection of a regular army’s equipment is in contrast to the pre-industrial agrarian primitivity of the effectively fighting partisan. It was this disproportion that provoked already Napoleon’s fits of rage against the Spanish

guerillero, and this disproportion would only be exacerbated by the [80] progressive development of industrial technology.

So long as the partisan counted only as a “light troop”—a tactically mobile hussar or rifleman—his theory was an affair of military-scientific speciality. Revolutionary war made him a key figure of world history for the first time. But what will become of him in the age of the atomic weapons of mass destruction? In a fully technologically organized world, the old feudal-agrarian forms and representations of battle, war, and enmity disappear. That is obvious. But do battle, war, and enmity for this reason disappear as such and become mere social conflicts? When the inner and, for the wishful thinkers, immanent rationality and regularity of the technologically reorganized world is fully achieved, the partisan will perhaps be not even an irritant anymore. He will simply disappear in the frictionless execution of technical-functionalist processes, no differently from the way that a dog disappears from the autobahn. In the technical picture of things, he is then hardly even a problem for the highway patrol, and—by the way—he is then neither a philosophical, nor a moral, or legal problem anymore.

That would be one way of seeing it, namely, the optimistic, technological face of a purely technical investigation. The technocratic observer expects a New World with a New Man. The old Christianity, and two thousand years later, in the nineteenth century, the new Christianity known as socialism, excited very similar expectations. Both lacked the all-annihilating *efficiency* [English in the original] of modern technical means. However, there will be no theory of the partisan forthcoming from this purely technological perspective, as is always the case with such exclusively technical reflections, but only an optimistic or pessimistic series of ambiguous value judgments. Value has, as Ernst Forsthoff very poignantly puts it with striking force, “its own logic.”⁴⁹ It is the logic of worthlessness, and the destruction of the bearer of this worthlessness.

[81] So far as the prognoses forthcoming from this widespread technological optimism go, their bearer is not at a loss for an answer—i.e., the (to him) self-evident assessments of value and worthlessness. He believes that the irresistible technical-industrial development of mankind would itself

raise to an entirely new plane all prior questions and answers, all prior types and situations, at which level these 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 die out like the stone age hunters did, insofar as they did not succeed in surviving and assimilating. They would become harmless and unimportant, at the very least.

But what if the human type that went into the partisan adapted to its new technical-industrial environment, learned how to make use of the new means, and developed a new, adapted form of the partisan—let's call him the industrial partisan? Is there any guarantee that modern means of destruction always fall into the right hands, and that an irregular combat would be inconceivable? At the other extreme of the optimistic belief in progress, there remains a larger field than is usually imagined for the pessimistic view of progress and its technological fantasies. In the shadow of the current atomic equilibrium between the world powers, beneath the glass cover, so to speak, of their vast means of destruction, room for limited and contained war conducted with conventional weapons and even weapons of mass destruction could be de-limited [*ausgrenzen*]. [82] While the great powers could unite publicly or silently on the matter of degree, it would produce a war in the way of a *dogfight* [English in the original]⁵⁰ controlled by these world powers. It would be an apparently harmless game of a precisely controlled irregularity, a sort of "ideal disorder," ideal insofar as it could be manipulated by the great powers.

Beside this possibility there is also a radically pessimistic *tabula rasa* solution of the technological fantasy. Everything, of course, would be dead if an area were treated with modern means of destruction. But it is still technically possible that a few people would survive the night of bombs and missiles. Given this eventuality, it would be practical and even rationally purposeful to plan for the post-nuclear situation by training men today who would inhabit the bomb craters in the aftermath, occupying the devastated area. A new sort of partisan could then add a new chapter to world history with a new form of space-appropriation [*Raumnahme*].

Our problem thus expands to planetary dimensions. It grows even further into outer space [*Über-Planetarische*]. Technical progress makes travel into cosmic spaces possible, opening simultaneously immense new challenges for political conquest. For these new spaces could be and must [83] be taken by men. Space appropriations [*Raumnahmen*] of a new kind would follow the old-fashioned land and sea occupations familiar to human history. *Division* and *grazing* would follow the *appropriation*. All progress notwithstanding, in this respect things remain as they were. Technological progress will produce only a new intensity of the new ways of occupying, dividing the spoils, and grazing, while the old questions grow even more urgent.

The current confrontation between East and West, and in particular the gigantic race for the immensely large and new spaces, is all about political power on our planet, as tiny as it seems to be by now. Only the ruler of this little earth will be able to occupy and make use of these new fields [*Felder*]. The celebrated astronauts or cosmonauts, who have been deployed so far only as propaganda stars of the mass media, press, radio, and television, will then have the good fortune to transform into cosmo-pirates or even cosmo-partisans.

Legality and Legitimacy

In our treatment of the development of partisanship, the figure of General Salan stood out as an instructive, symptomatic appearance of the last stage. Within this figure, the experiences and effects of wars conducted by regular armies, of colonial war, civil war, and partisan battle intersect. Salan, in the coercive logic of the old saying that partisans can only be fought in a partisan way, thought all of this through to the conclusion. He acted accordingly, not only with the courage of the soldier but also with the precision of the general staff officer and the exacting attitude of the technocrat. The result was that he was transformed into a partisan himself, and that in the end, he declared civil war on his own commandant and regime.

[84] What is the kernel of such a destiny? Salan's defense counsel, Maître Tixier-Vignancourt, found a formula in his summation, on 23 May

1962, that contains an answer to this question. He remarks of Salan's activity as the head of OAS: I have to assume that an old militant communist, if he had stood at the head of this organization instead of a great military commander, (would have done something quite different from General Salan) (Proceedings 530). This is the decisive point: a professional revolutionary would have acted otherwise. He would have had a position different from Salan's not only in respect to the interested third party, and not only in retrospect.

The development of the theory of the partisan from Clausewitz through Lenin to Mao is driven by the dialectic of regular and irregular, of regular officer and professional revolutionary. This development is not brought full circle, in a sort of *ricorso*, to its origins and beginning, by the doctrine of psychological warfare taken over from Mao by the French officers in Indochina. There is no return to the origin of an origin. The partisan can put on the uniform and transform himself into a good regular fighter, even into an especially courageous regular fighter, much as it is said that a poacher might make a particularly competent forest ranger. But this is too abstract a way of thinking about it. The assimilation of Mao's teachings by these French career officers is indeed itself somewhat abstract, and has something of the *esprit géométrique*, as it was called during Salan's trial, about it.

The partisan can transform himself easily in a presentable uniform-wearer; but to the good regular officer, that uniform is more than a costume. The regular can become an institutionalized profession, the irregular cannot. The regular officer can be transformed into the founder of a great monastic order, like St. Ignatius of Loyola. Transformation into the pre- or sub-conventional means something quite different. Disappearing into the dark is one thing, but to transform the darkness into a space of combat [*Kampfraum*], where the traditional theater of the empire and the great stage of the official public sphere [85] can be lifted off their hinges—such a feat cannot be organized by merely technocratic intelligence. There is no telling where the Acheron may have to be crossed; it cannot be conjured even by a clever operator, even when he finds himself in a desperate situation.

It is not our responsibility to re-calculate what the intelligent and experienced military parties involved in the Algerian putsch of April 1961 and

the organizers of the OAS may have taken into account in regard to the few very closely related concrete questions they faced, in particular in response to the effect of terrorist acts conducted on a civilized European population, or in response to the *interested third party* mentioned above. This last question alone is significant enough (by itself). We have recalled that the partisan requires legitimation if he wants to remain in the sphere of the political instead of sinking into criminality. This question cannot be adjudicated by reference to the today habitually mentioned cheap antithesis of legality and legitimacy. For legality shows itself especially in this exemplary case to be by far the stronger form of validity; indeed, it shows itself as that which it originally was for a republican, namely, the rational, progressive, one and only modern, in a word, highest form of legitimacy itself.

I do not wish to recur here to what I wrote on this perdurable theme over the last thirty years, but a passing reference is in order for the recognition of the situation of the republican General Salan in the years 1958/61. The French Republic is a regime of the rule of law; that is its foundation. The opposition of justice and law [*Recht und Gesetz*] and the distinction of justice as the higher instance cannot be permitted to destroy it. Neither the judiciary nor the army is above the law. There is a republican legality, and it is the one and only form of legitimacy in the republic. Any other kind of legality is, for the real republican, an anti-republican sophism. The prosecuting attorney in the trial of Salan had, therefore, a simple and clear position; he appealed repeatedly to the “sovereignty of [86] law,” superior to any other authority or norm. There is no sovereignty of justice next to it. This law transforms the partisan’s irregularity into fatal illegality.

In reply to this, Salan had no other argument than the allusion to the fact that he had, on 15 May 1958, assisted General de Gaulle’s ascent to power against the legal regime of that time, committing himself back then before his conscience, his peers, his country and God, and that he now found that in everything that had been solemnly sanctified, in everything that was promised in May 1958, he had been duped and betrayed (Proceedings 85). He appealed against the state to the nation, and against legality to a higher kind of legitimacy. General de Gaulle had in the past frequently spoken of traditional and national legitimacy, and opposed the

latter to republican legality. All of that changed with the events of May 1958. Even the fact that his own legality was first assured by the referendum of September 1958 did not change the fact that from September 1958 at the latest he had republican legality on his side, and Salan then felt forced to appeal to irregularity in opposition to regularity—a desperate position for a soldier—and to transform his regular army into a partisan organization.

But irregularity for its own sake amounts to nothing. It becomes simply illegal. So there is now an incontestable crisis of law, and with it of legality. The classical concept of law, the observance of which alone is capable of maintaining republican legality, is called into question both from the side of the planning and from the side of the intervening. In Germany, the appeal to justice as opposed to law has become taken for granted even among jurists, something that is hardly even noticed anymore. Even non-jurists now speak of being legitimate (and not legal) when they mean that they are right. But the case of Salan shows that even a dubious legality is stronger, in a modern state, than any other kind of justice. That reflects the decisionistic force of the state and its transformation of justice into law. There is no need to [87] take this matter farther here.⁵¹ Perhaps it will all be different once the state ceases to be. For now, legality is the irrevocable *modus operandi* of every modern state army. The government decides who the enemy is that the army has to fight. Who claims for himself the definition of the enemy claims also a new legality for himself if he does not wish to follow the determination of the existing legal regime.

The Real Enemy

A declaration of war is always a declaration of enmity, this goes without saying; and this is true *a fortiori* of a declaration of civil war. When Salan declared civil war, he was really making two declarations of enmity: continuation of regular and irregular war against the Algerian front, and inauguration of an illegal and irregular civil war against the French government. Nothing makes the hopelessness of Salan's situation clearer than a look at this double declaration of enmity. Every two-front war poses the question of who the real enemy is. Is it not a sign of inner division to have more than

one single real enemy? The enemy is our own question as *Gestalt*. If we have determined our own *Gestalt* unambiguously, where does this double enemy come from? The enemy is not something to be eliminated out of a particular reason, something to be annihilated as worthless. The enemy stands on my own plane. For this reason I must contend with him [88] in battle, in order to assure my own standard [*Mafß*], my own limits, my own *Gestalt*.

Salan took the Algerian partisan for the absolute enemy. But all at once, a far worse enemy turned up on his back: his own government, his own commander, his own brother. In his brothers of yesterday he saw, all of a sudden, a new enemy. That is the core of Salan's case. Yesterday's brother showed himself to be the more dangerous enemy. In the concept of enmity itself, there must be some confusion associated with the doctrine of war. In concluding our exposition, we shall try to find its clarification.

The historian finds examples and parallels in history for all historical situations. Parallels in precedents from Prussian history in 1812–13 have already been adduced. We have also shown how the partisan received his philosophical legitimacy through the ideas and plans of the Prussian Military Reform of 1808–13, and how he was accredited historically by the Prussian *Landsturm* Edict of April 1813. So it will not seem altogether strange—as it might at first sight—to add as a counter-example in the interest of a better elaboration of the central question the situation of the Prussian General York, in winter 1812/13. First of all, of course, enormous differences leap to the eye: Salan, a Frenchman of left-republican origin and of modern technocratic stamp, opposed to a general of the royal Prussian army in 1812 to whose mind it certainly would never have come to declare civil war on his king and highest military commanders. In the face of such differences of time and type, it seems beside the point and even a matter of coincidence that York too had fought as an officer in the colonial East Indies. But the striking differences only serve to make clear that the central question is the same in both cases. Because the issue for both was to decide who the real enemy was.

Decisionist exactness governs the functioning of every modern organization, in particular every regular modern state [89] army. So the central question for the situation of a contemporary general poses itself precisely

in terms of an absolute either-or. The sharp alternative of legality and legitimacy is only a consequence of the French revolution and its contention with the restored legitimate monarchy of 1815. In a pre-revolutionary, legitimate monarchy like that of the kingdom of Prussia, many feudal elements of the relations of senior officers and subalterns could still be found. Loyalty had not yet become something “irrational”; it had not yet been reduced to a merely calculable functionalism. Prussia was already a striking example of a *state* back then; its army could not deny its descent from Frederick the Great; the Prussian military reformers wanted to modernize and not slip back into any sort of feudalism. Still, the ambience of the legitimate Prussian monarchy of that time might appear to the contemporary observer less bitter and sharp, less decisionist-statist even in the case of conflict. This point does not require rebuttal here. All that matters is that the first impression of different costumes of time [*Zeitkostüme*] does not obliterate the real question, namely, the question concerning the real enemy.

In 1812 York commanded the Prussian Division that, as allies to Napoleon, belonged to the army of the French General Macdonald. In December 1812 York went over to the enemy, the Russians, concluding with the Russian General von Diebitsch the Convention of Tauroggen. In the negotiations and at the signing, Lieutenant Colonel von Clausewitz collaborated as a negotiator on the Russian side. The document that York directed to his king and ultimate commander on 3 January 1813 has become a famous historical document, for good reason. The Prussian general writes with the utmost respect that he awaits judgment from the king if York should advance “against the real enemy” or if the king condemns his general’s deed. With the same loyal deference he pronounces himself ready in both cases, prepared if the judgment goes against him, “to await the shot on the pile of sand as on the battlefield.”

[90] The concept of “the real enemy” is worthy of a Clausewitz and touches the core of the question. This is indeed how it appears in General York’s letter to his king. His willingness to stand “on the pile of sand awaiting the shot” belongs to the soldier who takes responsibility for what he does—no differently from General Salan, who was prepared to shout *Vive*

la France! before the firing squad in the trenches of Vincennes. What gives York's letter its proper, tragic, and rebellious meaning, though, is that he—in all his devotion to his king—reserves judgment of who “the real enemy” is. York was no partisan and probably never would have become one. But in regard to the meaning and concept of the real enemy, the step into partisanship would have been neither unreasonable nor inconsistent.

Obviously this is a heuristic fiction, permissible only for the brief moment in which Prussian officers elevated the partisan to an ideal: thus, only for the turning point that led to the *Landsturm* Edict of 13 April 1813. Just a few months later, the notion that a Prussian general could become a partisan would have become grotesque and absurd even as a heuristic fiction, and it probably would have remained so as long as there was a Prussian army. How was it possible that the partisan, who in the seventeenth century had sunk to the level of the Pícaro and in the eighteenth century belonged to the light troop, would appear by new year 1812–13, as an heroic figure for an instant in order to become ultimately, a hundred years later, in our own time, a key player in world history?

The answer is that the partisan's irregularity remains dependent on the sense and content of a concrete regular. After the dissolution that was decisive for seventeenth-century Germany, a regularity of Ministerial wars had developed in the course of the eighteenth century. This imposed such strong containments on war that it could be conceived as a game in which the light, mobile troop collaborated irregularly, and the enemy as a merely conventional enemy became the opponent of a war game. The Spanish Guerrilla War occurred [91] in autumn 1808 when Napoleon besieged the regular Spanish army. The difference from Prussia in 1806–07 lay in the fact that after the surrender of its regular army, it concluded a humiliating peace. The Spanish partisan restored the seriousness of war against Napoleon, enlisting, as it were, on the defensive side of the old European continental states whose old regularity, worn down to mere convention and game, showed itself to be no match for the revolutionary new Napoleonic regularity. The enemy thus became a real enemy again, war again real war. The partisan defending national soil against the foreign conqueror became a hero who was fighting a real enemy in a real sense. That

was indeed the main event that led Clausewitz to his theory and to his *doctrine of war*. When a century later the martial theory of a professional revolutionary like Lenin blindly destroyed all traditional containments, war became absolute war, and the partisan the bearer of absolute enmity against an absolute enemy.

From the Real to the Absolute Enemy

Martial theory always has to do with the discrimination of enmity, which gives war its meaning and character. Every attempt at containing or fencing in war must involve the consideration that in relation to the concept of war enmity is the primary concept, and that the distinction between various kinds of war is preceded by the discrimination among various kinds of enmity. Otherwise, all efforts at containing or fencing in war are only a game, one that cannot resist the onset of real enmity. After the Napoleonic wars, irregular war was put out of mind by European theologians, philosophers and jurists. There were actually friends of peace who saw in the abolition and outlawing of conventional war in The Hague Land War Provision the end of war as such. [92] And there were jurists who took every doctrine of just war for something just *eo ipso* only because there was St. Thomas Aquinas who had taught of something like it. None surmised what the unleashing of irregular war meant. None considered how the victory of the civilian over the soldier would play out when one day the citizen put on the uniform, while the partisan took it off in order to fight on without a uniform.

Only this failure of concrete reflection has completed the destructive work of the professional revolutionary. This was a great misfortune, for with those containments of war, European man had succeeded in accomplishing a rare feat: the renunciation of criminalizing opponents at war, in other words, relativizing enmity, the negation of absolute enmity. It really is something rare, indeed improbably human, to bring people to the point of renouncing the discrimination and defamation of their enemies.

For it was precisely this that was now again called into question by the partisan. The most extreme intensity of his political commitment is

counted among his criteria. When Guevara says: “the partisan is the Jesuit of war,” he is thinking of the unconditional nature [*Unbedingtheit*] of his political deployment. The life history of every famous partisan, beginning from *Empecinado*, shows that. The person with no rights [*der rechtlos Gemachte*] seeks his justice in enmity. In it, he finds the meaning of the matter and the meaning of justice, once the carapace of protection and obedience that he inhabited is broken, or the system of norms of legality from which he once expected justice and legal protection is shattered. Then the conventional game stops. But the end of the legal protection does not yet have to be partisanship. Michael Kohlhaas, whom the feeling of justice made a robber and murderer, was no partisan because he was not political and fought exclusively for his own, private justice, rather than against a foreign conqueror or for a revolutionary cause. In such cases, irregularity is unpolitical and becomes purely criminal because it loses the positive interconnectedness with a somewhere available regularity. This is how the partisan is distinguished from a—noble or ignoble—robber-chief.

[93] In discussing the world-political context (*supra*, p. 77) it was clear that the *interested third party* played an essential function in providing the link for the irregularity of the partisan to a regular so that he remains within the realm of the political. The heart of the political is not enmity *per se* but the distinction of friend and enemy; it presupposes *both* friend *and* enemy. The powerful third party who is interested in the partisan may think and deal in an entirely egoistic way, but with his interest he stands politically on the side of the partisan. This functions as political friendship and is a kind of political recognition, even if it is not expressed in terms of public and formal recognition as a warring party or as a government. The *Empecinado* was recognized by his people, the regular army, and the almighty English as a political force [*Größe*]. He was no Michael Kohlhaas and also no Schinderhannes, whose interested third parties were criminal fences. The political situation of Salan, by contrast, foundered tragically because he became illegal in his own country, and not only found no interested third party in world politics but ran aground on the enemy shoal of anti-colonialism.

The partisan has then a real, but not an absolute enemy. That proceeds from his political character. Another boundary of enmity follows from the

telluric character of the partisan. He defends a patch of earth to which he has an autochthonic relation. His basic position remains defensive despite his increasing mobility. He comports himself just as St. Joan of Arc did before her ecclesiastical court of judgment. She was not a partisan; she fought the English in a regular way. When asked a theological trick question by the judge—whether she claimed God hated the English—she responded: “Whether God loved or hated the English, I do not know, I only know that they must be driven out of France.” This is the answer that every normal partisan of the defense of the national soil would have given. This fundamentally defensive attitude characterizes the fundamental restriction [94] of enmity as well. The real enemy is not declared the absolute enemy, and also not the ultimate enemy of mankind as such.⁵²

Lenin established the main conceptual shift from war to politics, i.e., to the distinction of friend and enemy. It was a reasonable and a consequential extension of Clausewitz’s idea of war as the continuation of politics. But Lenin, the professional revolutionary of the world-wide civil war [*Weltbürgerkrieges*], went even farther and made an absolute enemy out of the real enemy. Clausewitz had spoken of absolute war, but always premised on the regularity of a subsistent state sphere [*Staatlichkeit*]. He could not yet imagine the state as an instrument of a party, nor a party that commanded the state. With the ascension of the party to absolute status, the partisan too became absolute, elevated to the status of the bearer of absolute enmity. Today it is not hard to see through the conceptual trick that produced this alteration in the concept of enmity. Another sort of elevation of the enemy to absolute status, by contrast, is much more difficult to refute, because it appears to be immanent to the present reality of the nuclear age.

Technical-industrial development has made human weapons into pure means of destruction. A tempting misconception of protection and obedience is produced in this way: one half of mankind is taken hostage by the other half, armed with weapons of absolute annihilation. These require an absolute enemy lest they should be absolutely inhuman. Indeed, it is [95] not in fact the means of destruction that annihilate, but men who kill other men by these means. The English philosopher Thomas Hobbes grasped the

heart of the process in the seventeenth century already (*De Homine* IX, 3) and formulated it in full precision, though at that time (1659) weapons were still comparatively harmless. Hobbes says: the man who believes himself endangered by others is as much more dangerous than any animal, as his weapons are much more dangerous than the so-called natural weapons of animals, such as teeth, claws, horns, or poison. And the German philosopher Hegel adds: weapons are the very being of fighters.

This means concretely that the supra-conventional weapon supposes the supra-conventional man. It presupposes him not merely as a postulate of some remote future; it intimates his existence as an already existent reality. The ultimate danger lies then not so much in the living presence of the means of destruction and a premeditated meanness in man. It consists in the inevitability of a moral compulsion. Men who turn these means against others see themselves obliged/forced to annihilate their victims and objects, even morally. They have to consider the other side as entirely criminal and inhuman, as totally worthless. Otherwise they are themselves criminal and inhuman. The logic of value and its obverse, worthlessness, unfolds its annihilating consequence, compelling ever new, ever deeper discriminations, criminalizations, and devaluations to the point of annihilating all of unworthy life [*lebensunwerten Lebens*].

In a world in which the partners push each other in this way into the abyss of total devaluation before they annihilate one another physically, new kinds of absolute enmity must come into being. Enmity will be so terrifying that one perhaps mustn't even speak any longer of the enemy or of enmity, and both words will have to be outlawed and damned fully before the work of annihilation can begin. Annihilation thus becomes entirely abstract and entirely absolute. It is no longer directed [96] against an enemy, but serves only another, ostensibly objective attainment of highest values, for which no price is too high to pay. It is the renunciation of real enmity that opens the door for the work of annihilation of an absolute enmity.

In 1914 the peoples and regimes of Europe stumbled into World War I without real enmity. Real enmity was first engendered by the war itself, which began as a conventional state war of European international law and

ended as an international civil war of revolutionary class enmity. Who can prevent that in an analogous but endlessly increasing way, unanticipated new sorts of enmity come into being, whose realization evokes unanticipated forms of appearances/apparitions of a new partisanship?

The theorist can do no more than preserve the concepts and call things by their names. The theory of the partisan leads into the concept of the political, in the question concerning 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 Liberación (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, Rodríguez de Solís, José M. Garcia Rodriguez); most extensively, José Gomez de Arceche 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, Character 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, *On 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 Política 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 fría* (Madrid: Instituto de Estudios Políticos, 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 Políticos* 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 soldier. 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 Políticos* 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 Ostliches 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 to 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," *Vierteljahreshefte 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 [*Kriegsthaten*] 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.
- 24a. 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 Ground War Provision) and partisanship is unclear." Dixon and Heilbrunn, op. cit., 3.
25. 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 Frič. 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.
 26. 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.
 27. They transpired as decrees of a *Junta Suprema* because the legitimate monarch at the time did not work out [*ausfiel*]; see F. Solano Costa, as *supra*, 415–16. The Swiss *Kleinkriegsanleitung für Jedermann* of 1958 cited *supra* 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.
28. 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.
 29. 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 Clausewitz; ein Lebensbild in Briefen und Tagebuchblättern* (Berlin, 1916), 336.
 30. 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.
 31. 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.
 32. 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.
 33. Peter Schreibert, “Über Lenins Anfänge,” *Historische Zeitschrift* 182 (1956): 564.
 34. 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.” 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.

35. Walter Grottian, *Lenins Anleitung zum Handeln, Theorie und Praxis sowjetischer Außenpolitik* (Köln und Opladen, 1962), with a good bibliography and index.
36. *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. 105ff. The book is significant in numerous other ways in our context, too.
37. 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 und Lehren* (Frankfurt a. 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).
38. 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.
39. Helmut Staedke, in a lecture of 17 October 1956 (Arbeitsgemeinschaft für Wehrforschung). Particularly well-known in Germany are J. Hogard, "Theorie des

- Aufstandskriege” [“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 révolutionnaire* (1954), cf. Th. Arnold, 171ff.
40. 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 Organización 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.
 41. *Le Procès de Raoul Salan, compte-rendu sténographique*, in the collection “Les grand procès contemporains,” ed. Maurice Garçon (Paris, 1962).
 42. 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.
 43. See Carl Schmitt, *Verfassungsrechtliche Aufsätze* (1958), gloss 5 (109) on the modification of reality in the judicial process.
 44. 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). “Irrsinnlogik,” the expression of Hans Schomerus, has already been cited. It is drawn from his partisan narrative, *Der Wächter an der Grenze* (1948).
 45. 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.
 46. 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].
 47. 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.
 48. 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. *supra* 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.
49. 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 Philosophie* I (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 Políticos* 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.
50. “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 non-military 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.
51. 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.”

- 52 . “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).