The Nomos of Cyberspace

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In 1543 Copernicus first published his theory of a heliocentric universe, a theologically controversial idea that would play out in the early 1600s when the Catholic Church placed Galileo on trial for supporting such views. The Church, in 1616, banned books that supported a Copernican map of the solar system and only recently recanted its position in the Galileo matter.[1] Scientifically, the work of these two scholars cannot be overstated as the heliocentric model is fundamental to human understanding of the solar system, but it is the Church's reaction to the Copernican map that shows the true impact of Copernican thinking. The Catholic Church at the time was trying to maintain dominance in Western Europe, and its claim to legitimacy and power was rooted in the space of Christendom. This sphere of Christ, oriented towards the central divine authority of the Pope, was experiencing growing pains as kings and princes made claims to similar authority. In the wake of the English Reformation and on the eve of Westphalia, the Copernican map literally changed Western human orientation within the geography of the universe.[2] The map presented by the Catholic Church was one that depended on the Church being at the center of the Universe making it the natural focal point for the heavenly gaze. The legitimating principle of divine right depended on the centralization of that right to a single point importance.[3] Copernican thinking destroyed "a world in which the spatial structure embodied a hierarchy of values" and replaced it with "a universe of indefinite proportions."[4] This fragmented the map of Christendom by diminishing the importance of its chief spatial indicators: Rome was no longer the literal center of the Universe. Indeed, the human society was displaced to the periphery.

Now, move the clock forward 400 years to 2016 and transport to a New York City street (or any street in any big city or medium sized city or, quite possibly, any street, anywhere). If you look around you will likely see someone looking at a map on a digital device. A map that conveniently centers on that individual's location at the touch of a button. The power in Copernicus' idea, has in a sense been lost. Humans have found their way back to the center of the map. More precisely, the digital device has found its way to the center of the map, which reveals the user's location, and the gap between device and user is shrinking.[5] These maps choose their centers dynamically, imparting importance on the device and the user as both move through space and time, and as a result the user experience is such that they become part of the map as space extends out from them both virtually and physically.

This idea that humans are at the center of the map again, is more than just a quippy metaphor. Maps, at their most basic, display the relative location of various geographic epistemic units. As a representation of the world, maps are human constructs of orientation, and as such maps construct how humans experience the world.[6] The lesson from Galileo is that the choice of where to center a map is a choice of relative importance.[7] As a result, a world map made for a U.S. middle school social studies class during the Cold War might center on the United States thereby dividing the Soviet Union into two parts. Even the seemingly neutral choice to place the Prime Meridian at the center of some world maps embeds Western primacy by entrenching the Atlantic Worldview. A further example is Buckminster Fuller's Dymaxion map, which projects the world on an icosahedron that can be unfolded in multiple ways to reveal the connections and disconnections in the world. Fuller's projection was intended as a counter narrative to politically conceived maps by challenging the boilerplate nature of the traditional world map by diminishing the importance of its center and taking away conceived notions of up and down produced by cardinal directions. [8] Fuller's map embraces the idea that geographic understandings can and do change, and these

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understandings change how individuals and societies understand the world.

Since maps signify space, then control of maps is linked to control of space. As a result, many states have strict mapping laws. For example, China's State Secrets Law places geographic information under the control of the Central Government.[9] Such control of space by the state is not without its complications. The Google Maps tool has repeatedly been at the center of controversies on how borders are drawn in its mapping software.[10] Borders are important because they set limits: spatial, legal, and political. The center of the map, chosen for importance, is limited by borders, which show the limits of the central power. In terms of the state, for instance, the map shows a star as the central capital, and solid dividing lines as the borders of both the values and law that flows from the star.

Chapters 2–4 describe the geography of Cyberspace from within Cyberspace. This choice of perspective purposely centers Cyberspace in terms of importance and diminishes territory in terms of borders.[11] It would of course be disingenuous to argue that Cyberspace is not linked to territory, as the physical layer clearly reveals the territorial links. Thus, Goldsmith's claim still rings true, Cyberspace only exists as a result of human enterprise in a physical world, therefore Cyberspace cannot be separated from the physical world in any real sense. Virtual reality is, after all, still virtual.[12] This chapter takes the presented geography of Cyberspace and argues that it presents social actors with an alternative geography that "detach[es] social and political reality from the world of sovereign states."[13] The alternate geography is not a separate place as envisaged by Barlow, instead it is a way of knowing and conceptualizing space that rewires the way we experience the primary geography of the world. It follows then that Cyberspace changes the way in which individuals experience and approach the space they inhabit. This shift in geography does not nullify borders, but it changes their content and meaning, which in turn causes shifts in the underlying governance structures that support such borders. In essence, the argument here is that Cyberspace transforms geography and governance from the international into the interoperable global. The first section will explore the concept of borders and their changing meanings. The second section will argue that Cyberspace re-codes borders and changes their geographic content. The final section will use the concept of nomos to argue that the re-coding of borders is changing world order.

Borderless Worlds

The spatial narrative introduced in Chapter 2 is based on clichés that have taken root in the descriptions of Cyberspace. One of the most popular of these clichés references the Internet and Cyberspace as "borderless" in scope.[14] As part of the spatial narrative, borderlessness is associated with the free transfer of information across national frontiers. Designating a space without containment or limits, "borderless" is used specifically to invoke a counter narrative to international space in terms of spatial, legal, and political geography.[15]

A realist response to assertions of borderlessness is obvious: each physical component and user has location within territory and is subject to the lex loci of that place.[16] There is ample evidence to support such claims. China controls the Internet at nine locations that house physical international telecommunications links.[17] North Korea also keeps tight control over physical entry points for the Internet, and sharply controls individuals' access within its physical geography.[18] Iran has plans to create a "halal Internet" that exists exclusively within its borders.[19] The US and UK's ability to engage in mass surveillance is based on the physical location of infrastructure in the United States and the United Kingdom.[20] Egypt turned the Internet off during the Arab Spring.[21] Realists, both legal and political, have a plethora of evidence to support the claim that the Internet exists within state borders, and that states pursue their national interests in that arena just as they did when railroads were the transformative technology. To some extent, the realist is correct: borders remain an important feature of our experience of the world and they remain important in the organization of law and politics at a global level.

Both the "borderless" rhetoric and the realist argument have a central flaw. They both attempt to describe Cyberspace in terms of the state. The rhetoric miscalculates the level of integration of Cyberspace into the fiber of the state, and the realist miscalculates the lack of control that the state has over that integration. The realist view tends to react to the narrative of Cyberspace as counterfactual to the state system by focusing on discrete layers of functionality. In the realist critique, Cyberspace is a thing, and things are the subject of territorial authority. This externalization of Cyberspace is natural for a variety of reasons, but it insufficiently theorizes Cyberspace and ignores

the endogenous nature of Cyberspace that shapes the space in which law and politics unfold.

Cyberspace is not a counterfactual to the state. Cyberspace is a part of everyday human life in almost every aspect: leisure, business, commercial, political, even romantic.[22] It is no longer exogenous to social interaction, it has become an "endogenous and political"[23] factor "embedded in the material condition" of the world.[24] Geographically speaking, Cyberspace is more river than highway. It is a part of the landscape, and it is difficult to control. Maybe one of the best examples of this can be found in one of the central realist institutions: the military. Militaries around the globe now include Cyberspace as one of the domains in which they operate.[25] By joining Cyberspace with land, sea, air, and space, there is an explicit spatial recognition of Cyberspace as a space in which military operations can take place. This is more than just rhetorical, it is acknowledgement that Cyberspace constitutes a new locus for borders.[26] National defense is an act of protecting borders and Cyberspace as a domain of military operations spatializes Cyberspace as another place that intersects and influences the space of the state.[27] Military doctrine adopts Cyberspace not as a thing to be controlled, but instead as an endogenous medium with a geography that shapes the most realist of activities.

What then is to be made of the maps still inscribed with the borders of international space? The borderless rhetoric seems empty in the face of a clearly depicted international system, because borderlessness asserts an anarchic counterfactual that is not experienced by the user.[28] A better term would be re-bordered which implicates not just the location of borders, but their content as well. Users still experience the borders that appear on a political map of the world. These borders represent national frontiers many of which, if visited, might even be demarcated by walls, fences, or other physical divisions. Physical borders are often, quite literally, legal lines drawn in the sand. They demarcate jurisdiction as deployed across space by political processes. National borders demarcate people into discrete political units of difference, at least in theory. Borders are then inscribed on maps, and are often inscribed physically on the Earth's surface as states build physical barriers along the lines of political demarcation.[29] These barriers "draw on the easy legitimacy of sovereign border control even as they aim to function more as prophylactics against postnational, transnational, or subnational forces that do not align neatly with nation-states or their boundaries."[30] To states, and thus to realists, borders still matter.

These physical landmarks are not fortifications against other states, but against the ideas of other space.[31] The fortifications are attempts to construct the meaning and content of national borders in the public mind, but "[s]tate borders are certainly not comparable to fortifications" despite this physical architecture.[32] This function of borders is not new and has historically been implicated with information technologies. Vannever Bush in 1949 wrote that "[i]ron curtains are not new inventions; yet they are now harder to maintain."[33] Bush's evaluation in the wake of WWII taps into a familiar logic of transparency and liberation driven by free flow of information. Bush, though, pushes this narrative further by observing that the "same technical advances that sustain in mystery the distant emperor . . . also tend to penetrate the barriers to ideas that he must maintain for his continued sway."[34] This observation places technology as central to the transformation of space through social experience. Thus, while borders maintain a "physical obdurate premodern signature," the power they contain "is networked virtually" and the people they contain are "hybridized."[35] Interoperability renders standards as "non-tariff barrier[s]" which eases interaction across these fortifications.[36]

Just as Copernicus started a process of changing the way in which humans orient themselves to the world, the technology of Cyberspace is causing shifts in human orientation to the world. Copernicus did not change the borders of territories, he simply reoriented those territories drawing into question the content of their borders. Cyberspace does the same. As a decentralized, interoperable network, Cyberspace presents an alternate geography that is increasingly networked into the social consciousness. It is this non-Copernican conception of the world that allows for the social construction and experience of global space by "destroying notions of traditional borders."[37] Such construction and experience happens on the other side of "a legally significant border between Cyberspace and the 'real world.'"[38] The technical design of Cyberspace, the architecture itself, is reprogramming the content layer of geography by recoding borders.

Re-coding Borders

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To understand this process of re-coding borders, it would be helpful to have a map of Cyberspace.[39] A map would help to uphold the claim of cybergeography made throughout this book. There is rich work on mapping Cyberspace that reveals a variety of aspects. These maps show the world as disaggregated networks. Borders in the traditional sense are not visible despite the state's claim to the physical layer.[40] One of the reasons for this separation is that the "cost and speed of message transmission on the Net is almost entirely independent of physical location."[41] Instead, these often beautiful maps reveal network connections in the shape of a decentralized and distributed network and display the vast opportunities for interoperability.[42] Cyberspace is depicted as the sum of its endpoints, making its true external border the digital divide.[43] Indeed, in most maps of the Internet, geographic features – the traditional features represented on maps – are the exact feature that are obscured.[44] Instead, these maps show the configuration of the network from a variety of different perspectives.

Maps of Cyberspace are not Copernican maps, with humans at the edges circling around a central power source. These maps show the connections among humans on a global scale, and these connections are strikingly decentralized.[45]   In fact there is often no discernible center at all, meaning that these maps are dynamically configurable to allow for understanding of the interactions they chart. Cyberspace maps reflect spatial characteristics in terms of devices and users, placing devices and users as the external boundaries of its legal and political geography and reflecting the interoperability of open architecture networking.[46] These visualizations depict an alternative geography in which the "power to control activity in Cyberspace has only the most tenuous connections to physical geography."[47] The idea of the border is unhinged from territory, which calls for reconsideration of spatial, legal, and political geography.[48]

What we are left with is a dual geography in which the conceptual separation of Cyberspace from real space becomes increasingly untenable as there is dissonance between an observed physical reality of borders and an experienced spatial reality in which these borders do not exist.[49] This can be seen in the sociological debate between "digital dualism" and "augmented reality." These two sociological concepts are used to describe the effect of the human absorption of Cyberspace. Digital dualism suggests two selves: one online and one offline. Whereas augmented reality posits a cyber-experience that augments the perception in the real world,[50] digital dualism keeps separate the "virtual" and the "real" and augmented reality argues that "the digital and the physical are increasingly meshed" as Cyberspace "implodes atoms and bits."[51] This debate centers on how the social mind reconciles two different maps of the world. Augmented reality allows such a reconciliation to be achieved through the development of new understandings of geography.

This need for reconciliation is important in broader terms as well since it requires a reconciliation of the international with the global. International governance is structured around territorial, international assumptions as opposed to global assumptions.[52] At the root of the international is the assumption of national space as a stack of spatial, legal, and political geography compressed into concurrent territorial space.[53] Changes in the international system are generally understood in terms of changes in borders. These lines of geographic understandings that serve as focal points for scholars of world order. This is why Westphalia is a central inquiry for many scholars, as it serves as a fulcrum point for observing transitions in the variety of geographic compressions.[54] There is recognition that changes in how territory is divided is critical to understanding the structure of the international system. Territory is the threshold question of all international legal and political issues.

This link between law and spatial organization is what Schmitt refers to as *nomos*, which explicitly ties the subdivision of the Earth's land territory to the development of law.[55] *Nomos*, as used by Schmitt, naturalizes law in the sense that law flows from *terra firma* due to a human need to divide the Earth with lines ranging from furrows in a field to national frontiers.[56] He claims that "the great primeval acts of law [are] terrestrial orientations: appropriating land, founding cities, and establishing colonies."[57] International law then is the result of *how* humans draw lines on the Earth, and Schmitt's analysis focuses on transitions that reconstitute those borders and, importantly, how understandings of space change. In other words, Schmitt's account is tied to the land.[58] Schmitt's central observation that spatial conceptualization is inherently linked to governance is salient, but in a networked world it must be understood as being linked not to land but to geography as mapped by human understanding of the spatial condition.

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Schmitt's analysis thus falls short in that it fails to contemplate the opening of new space with any real depth.[59] His idea that "[l]aw is bound to the land" recenters the Earth's territory in terms of legal geography with the Earth "contain[ing] law," "manifest[ing] law upon" itself, and "sustain[ing] law above itself."[60] He flirts with alternative geographies when he discusses how technology can push forward a "global image," but his analysis is always constrained by the ends of the Earth.[61] Specifically, he argues that his idea of *nomos* is not applicable to the sea, because it is not divisible in the same way that territory in the form of land is. There is, in his estimation, no *nomos* of the sea, because the seas defy subdivision, and can only be understood as an adjacency to the land. Any law applicable to the sea flows from its adjacency to land. The sea is a global commons except in its liminal spaces where it is sufficiently attached to territory.[62] For Schmitt, non-land can only be defined through its proximity to land.

This ignores the idea that the experience of territory itself is shaped by non-land areas. The ocean can rise up and take territory, thus individuals living on an island likely understand territory differently from individuals in a land-locked area.[63] Schmitt's theoretical limitations are exposed by the contemporaneous dawning of the space age in which humans were first able to see the planet Earth as a globe.[64] Pictures from the early days of space exploration reflect a concurrent change in the spatialization of the Earth's surface. The ability to visualize the Earth not as a map but as a photographic image, literalizing Schmitt's "global image," coincided with major shifts in international governance that began with the process of reconstructing international space in the wake of World War II. This reorganization, though ultimately based on the "territorial integrity and political independence" of the state, would for the first time include human rights as part of the organizing logic for international society.[65] Images of Earth from outer space, such as the Blue Marble, allow for and necessitate reflection on assumptions about the meaning of borders.[66] The photographic medium itself can be seen as closer to experience than a map, which encodes experience and embeds design choice.

Cyberspace has a similar, arguably, stronger effect. Cyberspace architecture allows users to experience borders differently thereby reconstituting the social understanding of those borders.[67] It "cut[s] across territorial borders" and "[undermines] the feasibility – and legitimacy – of laws based on geographic boundaries."[68] While individuals may still feel physically contained by those borders, they are no longer metaphysically contained as well. They instead can import ideas and communications at will across those borders.[69] The human conscience is extended into a global domain.[70] Tied to the values embedded by the coders of Cyberspace, this means that nations are "now wired … with an architecture of communication that builds a far stronger First Amendment than [American] ideology ever advanced."[71] As argued in Chapter 4, this "stronger First Amendment" is really a freedom of expression as envisioned by the designers of the Internet and its applications.

Cyberspace is not like the global commons as portrayed by Schmitt. Schmitt claims that the "sea is free" and that "[o]n the open sea there were no limits, no boundaries, no consecrated sites, no sacred orientations, no law, and no property."[72] Schmitt is asserting that the governance structure of global commons excludes these spaces for their lack of geography.[73] This is why the 'borderless world' rhetoric is a poor description of Cyberspace. It deprives it of geography. Cyberspace does not lack "sacred orientations." Quite the opposite, Cyberspace is increasingly becoming a waymarker for individuals moving in real space. Such waymarkers include phrases like "Google it"; the use of Twitter as a locus for action in traditional news coverage; and, possibly most starkly, the proliferation of printed QR codes that serve as physical doors to places in Cyberspace (see Fig 5.1).

Another reason to distinguish Cyberspace from the global commons is that the sea, like other global commons (namely Antarctica and Outer Space), is uninhabitable. While there is vocabulary for transient seafarers, there is no corresponding concept of a permanent seakind.[74] As was argued in Chapter 2, Cyberspace has population. It has transitory surfers, but it also has permanent netizens, many of whom are digital natives. Schmitt's thesis requires inhabitability, because spatial division is entangled with the demarcation of inhabitation. Implicit to Schmitt's theory is the idea that there is a community of inhabitants that inscribe borders onto land.[75] However, the digital native represents "a more mobile kind of legal person."[76]

Cyberspace has inhabitants and communities that exist within its borders.[77] This forces consideration of legal concepts such as self-determination and human rights, because "for there to be principles and practices of legitimacy, there needs to be a community/society."[78] The important implication of a group of "digital natives" is that the world's population will be increasingly dominated by users who have always understood space as shaped by Cyberspace. Digital natives will not experience Cyberspace as an alternative geography any more that Native Americans experienced the Americas as a "new world." Digital natives understand Cyberspace as part and parcel of their geography. The implication is that there is a shift happening in how the world is spatialized; a shift that is deeply implicated with interoperability.

Nomos

Schmitt's object is to prove that international law itself is based on the basic question of spatial division. It is "a primary criterion embodying all subsequent criteria,"[79] and "*nomos*" is the immediate form in which the political and social order of a people becomes spatially visible."[80] Schmitt compresses spatial and legal geography into a single layer.[81] In conjunction with his *Concept of the Political*, which compresses legal geography and political geography, Schmitt reads territory as an essential agent of law and politics. Here, Schmitt's analysis is chosen for critique due to this asserted essentialness, because it is the question of territory that sits at the heart of the debate on the nature of Cyberspace. Schmitt's "terrestrial fundament" presents a fulcrum point from which to base conceptualization, because to understand Cyberspace as an alternative geography, we must first accept the enduring and historically constructed nature of our own physical boundedness.[82] The task is not necessarily one of debunking Schmitt or of supporting Schmitt, but instead seeking an understanding of Cyberspace that resolves the dissonance in the perceptions of geography and alternate geography by articulating them as a single networked geography. This requires investigation into how the *nomos* of Cyberspace shapes the *nomos* of the Earth. Or, in other words, how does Cyberspace re-inscribe borders and transform geography on a world-scale. If *nomos* is to be understood as the "form in which the political and social order of a people becomes spatially visible," then a *nomos* of Cyberspace

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should be visible.[83]

The analysis in *The Nomos of the Earth* is one that is concerned with change. While Schmitt ties territory to law, he recognizes that a diversity of spatial orders can orient that space. The essential link between territory and law is not to be confused with an argument that the state is the natural unit for global organization. Schmitt clearly recognizes that "new spatial phenomenon" can change the spatial order, and he notes that human extension into airspace means that "firm land and the free sea are being altered drastically, both in and of themselves and in relation to each other."[84] He observes that this technology is not just changing the "efficacy and velocity of the means of human power, transport, and information" but the "content of this *effectivity*."[85] Technology in his account can have a transformative effect on the organization of law, and not as an external factor. Technology becomes an endogenous factor that shapes the content of the spatial order itself.

Observing this phenomenon, however, proves more elusive as Cyberspace is complex and expansive. Its networked nature means that it is a system with no exact size or shape. Additionally, it pervades social interaction at a scale that makes generalizations about transactions in Cyberspace severely limited. A natural place to observe border re-coding is at the geographic borders: spatial, legal, and political. Those borders can reveal how Cyberspace pushes up against the international as its territorial geography thins and runs out, and it is these places of abutment and intersection that exhibit the fault lines from which global space is emerging.

The geographic categories used in Part I correlate to the components that Sassen argues are "assembled" into governance structures. She argues that world organizing logic can be understood through the assemblage of territory, authority, and rights, and that across history global systems are constructed and reconstructed as assemblages of these three components.[86] These components serve as points of analysis from which to observe the particular conditions within a world-scale system of governance.[87] While Schmitt and Sassen would likely not see eye-to-eye in substance, their arguments both embrace an understanding that international space is capable of being reconceptualized.

International space is constructed around a myth of Copernican-esque systems: territories with centralized governments that hold authority are the building blocks of international space. States are actors and subjects within this space, and they are given rights based on an organizing logic that aligns high degrees of legitimacy with the occupation of territorial space. Pre-1945 states were the rights bearers in international law. Post Nuremberg and the Universal Declaration of Human Rights, individuals became limited rights bearers in the international order.[88] This reallocation of rights is reflected in the noble mission of the UN, but events such as the Rwandan genocide serves as grim reminders of the concentration of state power over territory despite the 1945 reallocation of rights. Scholarship in international legitimacy portrays these allocations in terms of rightful membership.[89] This scholarship has traced a growing trend in international legitimacy of placing increasing emphasis on rightful action by the state. This shifts the gaze of international governance from the border to the interior of the state by allocating international rights to citizens. Despite this re-allocation the state remains the primary arbiter of human rights within a given territory as a result of low degrees of enforcement despite strong international rhetoric.

If Cyberspace is indeed opening up global geography, then it should be observable in international space through the reallocation of territory, authority, and rights in the international assemblage. There should be observable points where the geography of the international runs out and borders Cyberspace. When the geography of Cyberspace is layered onto the geography of international space it should reveal a networked space which "[runs] in many dimensions."[90] As Habermas observes, "'[n]etwork' has emerged as a key term."[91] Space ordered through the network constitutes a "new spatial phenomenon," which should be observable in the key institutions of the international order. To continue the cartographic metaphor adopted in the beginning of this chapter, by layering cybergeography onto international geography, we should be able to observe the distortions in the projection of the world.

New assemblages often incorporate aspects of historical predecessors embedding these into the construction of new assemblages.[92] Cyberspace is a paradigm shift, but despite this, much of the international system remains intact and will continue to remain intact. Cyberspace, as an alternative geography, is still "filtered through local languages

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and meaning systems."[93] This means that the international will remain a powerful force despite the spatial shift. International space, as a geography, can also be understood to be "filtered" through the languages and meaning systems of Cyberspace.

Part II of this research will take the geography described in Part I and use it as conceptual map that can be juxtaposed to the geography offered by the international system. These geographies will be layered together to explain observable points where Cyberspace changes the geography of international space. Using Sassen's vocabulary of territory, authority, and rights, the thematic case studies presented in the following chapters will analyze how geographies in real space are warping as they come into contact with Cyberspace. Chapter 6, will approach territory from the perspective of transnational cyber conflict, and will examine the idea of "territorial integrity" in terms of the cyber use of force. Chapter 7 will investigate how Cyberspace redistributes authority through an examination of IOs, IGCs, and corporations that make architecture decisions in Cyberspace. This chapter will show that the concept of global multistakeholder governance shifts a great deal of authority outside the borders of the international. Finally, Chapter 8 will explore how Cyberspace transforms the individual's rights in relation to the state. This chapter will use cryptography and surveillance to illustrate how rights have been reallocated in the context of Cyberspace. These three case studies taken together will show the contours of re-coded borders as they unfold in Cyberspace.

Notes

[1] Cowell, "After 350 Years, Vatican Says Galileo Was Right" (1992).

[2] Schmitt, *The Nomos of the Earth* (2003) 86.

[3] *Id.* at 112.

[4] Coicaud, *Legitimacy and Politics* (2002) 98.

[5] *For example see* Lessig, *Code 2.0.* (2006); Riley v. California, No. 13–132 (2014) 18; and Streck, "Pulling the Plug on Electronic Town Meetings" (1996) 25. *See also*, the literature on transhumanism, e.g. Robinson, "Addressing the Legal Status of Evolving 'Envoys of Mankind'" (2011) 470–475.

[6] Schmitt, *The Nomos of the Earth* (2003) 86.

[7] *See Id.* at 51.

[8] Buckminster Fuller Institute, "The Dymaxion Map" (n.d.).

[9] Hille, "China Cracks Down on Online Maps" (2010).

[10] *See generally* Fenlon, "Did Google Maps Cause an International Border Dispute?" (2011); "India Google Maps Controversy Is Modern Drama" (2014)*;* and Taylor, "The Simple Way Google Maps Could Side-Step Its Crimea Controversy" (2014).

[11] *See* Kulesza, *International Internet Law* (2013) xii.

[12] *But see* Ferguson & Mansbach, *Globalization* (2012) 136.

[13] Kulesza, *International Internet Law* (2013) xi–xii and Bowman, "Thinking Outside the Border" (2007) 221–22.

[14] *See generally* Lessig, *Code 2.0* (2006) 71 and Martin, "Using the US Constitution to Frame the Governance of Cyberspace" (2015) 24.

[15] Kulesza, *International Internet Law* (2013) 2. *See also,* Schmitt, *The Nomos of the Earth* (2003) 96.

[16] Goldsmith, "Against Cyberanarchy" (2014) 7. *See also* Sofaer *et al*., "Cyber Security and International Agreements" (2010) 190 and Yannakogeorgos & Lowther, "The Prospects for Cyber Deterrence" (2013) 50.

[17] Kulesza, *International Internet Law* (2013) 109–10.

[18] Sparkes, "Internet in North Korea: Everything You Need to Know" (2014).

[19] Bernard, "Iran's Next Step in Building a 'Halal' Internet" (2015).

[20] Greenwald & MacAskill, "NSA PRISM Program Taps in to User Data of Apple, Google and Others" (2013) and Gellman & Poitras, "U.S., British Intelligence Mining Data from Nine U.S. Internet Companies in Broad Secret Program" (2013).

[21] Richtel, "Egypt Cuts Off Most Internet and Cellphone Service" (2011).

[22] Liu *et al*., "Cybersecurity" (2012) 1. *See also* Council of the European Union, "EU Human Rights Guidelines on Freedom of Expression Online and Offline" (2014) I.D.33 and Kulesza, *International Internet Law* (2013) ix.

[23] Fritsch, "Technology and Global Affairs" (2011) 28.

[24] Luke, "The Politics of Digital Inequality" (1996) 120.

[25] Kulesza, *International Internet Law* (2013) 67; US Department of Defense, "Department of Defense Strategy for Operating in Cyberspace" (2011); and Hayden, "The Future of Things Cyber" (2013) 3–8.

[26] US Department of Defense, "Department of Defense Strategy for Operating in Cyberspace" (2011) 8.

[27] *Id.* at 5.

[28] Johnson & Post, "Law and Borders" (1996) 1389.

[29] Brown, *Walled States, Waning Sovereignty* (2010) 7–20.

[30] *Id.* at 32. *See also* Habermas, *The Postnational Constellation* (2001) 80–81.

[31] *See* Bigo, "The Emergence of a Consensus" (2008) 76–94. *Compare with* Domscheit-Berg, *Inside WikiLeaks* (2011) 131.

[32] Habermas, *The Postnational Constellation* (2001) 66.

[33] Bush, *Modern Arms & Free Men* (1968) 168.

[34] *Id. See also* Greenberg, *This Machine Kills Secrets* (2012) 128 and Assange, "Conspiracy as Governance" (2006). *But see* Morozov, "Political Repression 2.0" (2011); Lessig, *Code 2.0* (2006) 53; and Wittes, "The Intelligence Legitimacy Paradox" (2014).

[35] Brown, *Walled States, Waning Sovereignty* (2010) 80.

[36] Jayakar, "Globalization and the Legitimacy" (1998) 716.

[37] Spar, "The Public Face of Cyberspace" (1999) 347.

[38] Johnson & Post, "Law and Borders" (1996) 1378.

[39] Post, *Jefferson's Moose* (2012) 24.

[40] *See generally*, Dodge & Kitchin, "Ways to Map Cyberspace" (2001) and Post, *Jefferson's Moose* (2012) 23–30.

[41] Johnson & Post, "Law and Borders" (1996) 1370.

[42] Post, *Jefferson's Moose* (2012) 23–28 and Leiner *et al.*, "A Brief History of the Internet" (2012).

[43] Luke, "The Politics of Digital Inequality" (1998) 133 and Cooper, "What Is the Concept of Globalization Good For?" (2001) 190.

[44] Post, *Jefferson's Moose* (2012) 28.

[45] *Id.*

[46] Leiner *et al.*, "A Brief History of the Internet" (2012).

[47] Johnson & Post, "Law and Borders" (1996) 1371.

[48] Leiner *et al.*, "A Brief History of the Internet" (2012) and Cooper, "What Is the Concept of Globalization Good For?" (2001) 191.

[49] Gourley, "Cyber Sovereignty" (2013) 277–78.

[50] Jurgenson, "Digital Dualism versus Augmented Reality" (2011).

[51] *Id.*

[52] *See* Kulesza, *International Internet Law* (2013) 30.

[53] *See* Habermas, *The Postnational Constellation* (2001) 60, 63 and Sassen, *Territory, Authority, Rights* (2006) 40. *See also* Johnson & Post, "Law and Borders" (1996) 1369 and Sassen, *Territory, Authority, Rights* (2006) 20.

[54] Clark, *Legitimacy in International Society* (2005) 35

[55] Schmitt, *The Nomos of the Earth* (2003) 70.

[56] *Id.* at 42.

[57] *Id.* at 44.

[58] *Id.* at 42.

[59] *See Id.* at 351–355.

[60] *Id.* at 42

[61] *Id.* at 86.

[62] *Id.* at 183.

[63] *For example* Carrington, "The Maldives Is the Extreme Test Case for Climate Change Action" (2013).

[64] Major, "This Is the Very First Photo of Earth From Space" (2014).

[65] UN Charter (1945) Art. 1–2.

[66] NASA, "Blue Marble – Image of the Earth from Apollo 17" (2015). *See also* Featherstone, "Genealogies of the Global" (2006) 387.

[67] *See* Habermas, *The Postnational Constellation* (2001) 42.

[68] Johnson & Post, "Law and Borders" (1996) 1367.

[69] *Id.* at 1372.

[70] Habermas, *The Postnational Constellation* (2001) 39. *See also* Coicaud, *Legitimacy and Politics* (2002) 136 and Betz & Stevens, *Cyberspace and the State* (2011) 106.

[71] Lessig, *Code 2.0* (2006) 236.

[72] Schmitt, *Nomos of the Earth* (2003) 43.

[73] United Nations Convention on the Law of the Sea (1982) Art. 2; Antarctic Treaty (1959) Art. IV(2); and Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967) Art. II.

[74] A Google search returned no pages discussing any notion of seakind. There is, however, a corresponding notion of spacekind. *See generally* Robinson, "Astronauts and a Unique Jurisprudence" (1983–1984) 483.

[75] Schmitt, *Nomos of the Earth* (2003) 42.

[76] Johnson & Post, "Law and Borders" (1996) 1400.

[77] Assange *et al.*, *Cypherpunks* (2012) 155.

[78] Clark, *Legitimacy in International Society* (2005) 6, 149.

[79] Schmitt, *The Nomos of the Earth* (2003) 45.

[80] *Id.* at 70.

[81] *Id.* at 45, 70.

[82] *Id.* at 47.

[83] *Id.* at 70

[84] *Id.* at 48.

[85] *Id.*

[86] Sassen, *Territory, Authority, Rights* (2006) 18.

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[87] *Id.* at 32.

[88] *See* Donnelly, "Human Rights" (1998) 14.

[89] Coicaud, "Deconstructing International Legitimacy" (2009) 37; Donnelly, "Human Rights" (1998) 2; Clark, *Legitimacy in International Society* (2005) 2; and Menon, "Pious Words, Puny Deeds" (2009) 237.

[90] Habermas, *The Postnational Constellation* (2001) 66.

[91] *Id.*

[92] Sassen, *Territory, Authority, Rights* (2005) 3–6. *See also* Ferguson & Mansbach, *Globalization* (2012) 69 and Burbank & Cooper, *Empires* (2010) 8.

[93] Ferguson & Mansbach, *Globalization* (2012) 205.

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