

## A Sociological Research on the Nomos of the Earth and International Law From the Perspective of Legal Philosophy

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### Abstract

Land is deemed as the mother of law. Land possession is a legal act. The origin and development of international law is in accordance with land occupation. From the perspective of international law, a borderline is a division. The word “nomos” is related to order and space. It has become the most convenient word which reflects the political and social order of a nation. The varied meanings of nomos is adaptive to the changes of new historical contexts, but its essence remains the same, that is, land occupation.

**Key words:** Land occupation; Nomos; International law

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### INTRODUCTION

In mythology, land is considered as the mother of law. This indicates that law and justice have basically three foundations. First: Rich land means high productivity, which has an internal scale or the richness of the nutrients in the land itself determines whether people’s hard work will be rewarded. People regard such a scale as justice; Second, the land is cultivated by people with hard-working hands, and their labor marks the land, thus dividing the areas under their respective jurisdiction. Within these boundaries, the rules and regulations of human

civilization on earth can be clearly distinguished. Third, fences, boundaries, city walls, houses and other buildings on the land further outline these marked boundaries, so that the order of human social life becomes more and more distinctive with the boundaries. The important aspects of social life, including family, clan, tribe, real estate, different forms of ownership, people’s relations with neighbors and various relations of power and dominance, have also shown a clear picture. We can see that land itself means law. It contains laws as a reward for labor. Through the boundaries fixed on it, the law is revealed, thus maintaining the law and public order of the social civilization built on the land. Law and land are interdependent.

### 1. LAND OCCUPATION AND DEVELOPMENT OF INTERNATIONAL LAW

Ocean does not reflect the meaning of law and order because of its lack of a clear sense of space. Although ocean is also rich in treasures, which can be harvested ashore through human labor, these products do not depend on people’s farming. People can’t draw firm boundaries on ocean, which is a free domain. According to the latest international law, ocean can not be regarded as a fixed territory, but should be opened for three aspects of human activities: fishing, peaceful navigation and war. Ocean can be regarded as a domain for peaceful work, and it can also be a realm of war. Before the birth of maritime power, the axiom of freedom of the sea meant that it was an area robbed by pirates. Homeric heroes will not be ashamed of their predatory behavior, but can think of it as an adventure and a test of courage. On the high seas, there are no boundaries, sacred places and private properties. Many people choose to stay away from ocean and live in mountainous areas, but they are still afraid and pious

about ocean. It was not until the rise of maritime countries that pirates were regarded as enemies of mankind. They should be excluded and exiled and deprived of their rights. They were declared rebels by the laws of maritime countries. The extension of the territory controlled by law to the sea is of revolutionary significance in human history. For example, Assyrians, Cretans, Greeks, Carthaginians, Romans along the Mediterranean coast and British people can all be regarded as “misappropriation of the sea”. The awakening of people’s consciousness of being avail of the ocean is accompanied by their own capability and the cognition of space.

In contrast, the original land law obviously has a tendency towards occupying lands. Kant says: “First acquisition of a thing can be only acquisition of land.” (Kant, 1996, p.50). People occupy land and establish colonies. The occupation of land and the construction of city-states are related to the measurement and distribution of land, thus producing the original rules, which in turn affect the subsequent ones. Any arbitration in the ontological sense can originate from the land. The occupation of land is the most fundamental act of our legislation. Land occupation can be attributed to two aspects: internal and external ones. Among the occupiers of these lands, the relationship between private rights and property is determined by the division of land; Whether these rights are public, private, collective or individual, they all come from the initial land distribution. Although individuals have the ownership of land, they still rely on public land, and this right is also given by the original public decree. Therefore, the possession of land internally creates a kind of collective ownership of the community beyond the private owner, even if the subsequent property distribution does not rely on public instructions, but completely obeys the individual will.

Land owners are different groups, and there is a confrontation between them. Owning land means having a legal title in international law. Owning land has the categorical character in Kant’s sense, as Kant clarified in his philosophy of law system: territorial right is sacred, which is the premise of ownership and subsequent public law and private law. What we need to pay attention to is that land possession is a legal act. Fierce land competition occurred in the historical period when large-scale immigration and conquest movements emerged in large numbers or successfully resisted foreign invasion. In Vico’s view, land division, religion, marriage and refuge are the four basic elements for the initiation of human law and civilization. Locke believes that the core of political power is the legal occupation of land. Kant also confirms that land is a prerequisite for the formulation of property rights and laws. This is a true understanding for all ethnic groups, republics and empires who have settled in a certain place, and it is unquestionable in any historical period in which human beings live.

We can further conclude that the development of international law is consistent with the history of human land occupation. The *nomos* of earth is determined by the relationship between land and sea. With the rapid development of human transportation means, new space has been continuously expanded. We are in a new stage, and we will surely get a new understanding of space and reconstruct a brand-new global order. From the Age of Discovery, the earth was continuously occupied and measured by Europeans with a sense of globalization for the first time, thus forming the earliest geodetic law. It is based on the spatial order of the land and that of the ocean, and has maintained the *jus publicum Europaeum* for 400 years. In the 16th century, driven by the Industrial Revolution, the British boldly began their journey of discovery from land to sea. The secret of this exploration was hit home by Hegel, who believed that family life depended on solid land, while the ocean was a natural factor to help industry expand outward. “The principle of family life is dependence on the soil, on firm land, on *terra firma*. Similarly, the natural element for industry, animating its outward movement is the sea.” (Hegel, 1967, p.151)

For centuries, human beings have only a mysterious impression of the earth and lack of scientific understanding of it, so there is no such concept as planet, compass or positioning. In this way, people don’t have the consciousness of globalization to share a common political goal. If we talk about international law in that era, it only means the difference of spatial structure, not the real one based on the whole planet. Under such circumstances, we don’t have to consider the universality in the philosophical sense in the Hellenistic era. It has pulled out the world-state from a city-state, but what they think of as a world-state lacks a clear positioning *topos*, so there is no specific order. If we look back at the development of the whole earth, we can see many patterns of division, although people didn’t realize it at that time. Generally speaking, the earth lacks a holistic spatial order, there is no real land law, and there are only large power complexes in different forms, such as ancient Egypt, the Hellenistic Empire, the Roman Empire, the African Black Kingdom and the Inca civilization in the United States, which are isolated from each other. Even accidental connections lack the characteristics of globalization. Every kingdom thinks that it is the world where human beings live, or the center of the world, or even the whole universe. It thinks that other kingdoms are independent of themselves, considered as unoccupied spaces, and can be conquered, from which they can acquire land and establish colonies.

Roman law made it clear which were enemies and which were looters. A clear definition of the enemy is the beginning of international law. The international law that existed before the era of globalization is still in the mysterious stage, and these ideas can no longer reflect their rationality in the process of geographical discovery

and scientific survey that swept the world after the 16th century. The earth looks like a circle, and its boundaries are determined by some mysterious concepts, such as the Midgard snake or the Pillars of Hercules, which surround the earth. They can be regarded as giant walls, which are used to strengthen the surrounding defense and defend the peaceful residence, and beyond them are the fields of war. The purpose of these walls is to separate the peaceful order from disorder, and the universe from chaos.

In the sense of international law, a border is a division. However, in the 18th and 19th centuries, according to European international law, the territory of countries no longer emphasized absolute separation, but recognized each other, and the territory beyond the land of adjacent countries was the sovereign territory. There are certain treaties between countries, including mutual support to deal with international and domestic enemies, extradition of refugees and immigrants. This is the model of international conventions and the determination of mutual leadership between the two empires. For example, the agreement between Babylon and the king of Assyria is regarded by some historians as a prototype of international law, but they are only international law in an incomplete sense. These political forces, which existed in ancient times and the Middle Ages, in the East and the West are the products of continental and relatively developed cultures, most of which are the cultures in river areas or inland areas. They haven't realized the division between land and sea. The opposition between land and sea, as the opposition of multi-dimensional order, is a phenomenon that has only begun to appear in modern society. After the 17th and 18th centuries, it controlled the order of European public law, that is to say, when the ocean really entered people's field of vision, the picture of globalization appeared immediately, and such an order became possible.

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## 2. A LEGAL AND HISTORICAL UNDERSTANDING OF INTERNATIONAL LAW

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The situation in Europe during the Christian period in the Middle Ages needs extra investigation. The so-called modern international law, that is, the law between European countries from the 16th century to the 20th century, originated from the disintegrated medieval space order advocated by the empire and archbishop at that time. If we don't understand the spatial order in the Christian period in the Middle Ages, that is, the lasting influence brought by the laws between countries at that time, we can't have a legal and historical understanding of the international law arising from this order. Before understanding the spatial order in the Middle Ages, it is necessary to clarify the difference between anarchy in the Middle Ages and Nihilism in the 20th century.

Although there were many wars and chaos in this period, as long as it maintained the most basic order and unified orientation, the European order in the Middle Ages could be anarchistic in modern connotation, but it was definitely not nihilistic. With the division of land between German landowners and their Roman landlords, new countries and political groups emerged from different forms of tribes. The land where non-Christians are located is the field where Christianity preaches, and it can be allocated to a Christian prince to complete his religious mission according to the instructions of the Archbishop. The relationship between Rome and Byzantine kingdom is a problem of international law in theory, but in fact it has influenced the Balkans and the East. The land of the Islamic State can be regarded as the territory of the enemy, conquered or annexed through religious wars. Land can be distributed among Christian princes and civilians in Europe according to the law, and these princes are also engaged in wars in order to gain their power. This kind of war is carried out on both sides of the war who follow the common order, but it does not mean abolishing or completely denying the unified order. Peace is no longer a floating, regular or universal concept, but refers to hard-won peace, peace among empires, territorial rulers, churches, cities, castles, markets and local judicial institutions.

The Christian kingdom became a restrainer against Christians, and obeying the rule of the Roman Empire meant continuing the Christian faith. The history of the Middle Ages can be regarded as a history of struggle against the Roman Empire. Empire is the suppression of non-Christians, and the mission of the king is also inseparable from the mission of spreading Christianity. On the other hand, all the great theologians and thinkers adjusted their theories according to the provisions of Aristotle's perfect community in the 13th century, so as to adapt to it. The purpose of a perfect community is to live a happier life. In *De Monarchia*, Dante thinks that the empire is the most perfect form of human community, which is different from polity and republic. That is to say, the empire is more excellent than other regimes, but it is a transcendent unity, which has an impact on the peace and justice of independent groups.

Monarchy is a non-Christian form of power, which began in the French Revolution in 1789. Early Christianity is similar to the situation in the 19th century. The French Revolution produced many new words and concepts, which were related to the monarchy. These concepts included civil war, dictatorship, working class or proletariat. There is an analogy between the early Christian period and the present situation. We cannot confuse this analogy with other historical periods recorded by historians and politicians. The analogy between these two periods has been observed and expounded from different angles by many historical figures, including

Claude-Henri de Saint-Simon, Alexis de Tocqueville, Pierre Joseph Proudhon, Bruno Baner and later Oswald Spengler.

From the history of the Middle Ages, we can also see that the Christian meaning of the monarchy (Caesarism) is gradually weakening, and the purpose of the monarch's ruling is no longer to suppress those anti-Christians, and the monarch has become the defender of the law and freedom of an independent Republic, but it has also become tyrannical. He used his power to occupy the land and became the target of public criticism. Since the 13th century, the separation of politics and religion began, which limited the Senate of the Roman Empire to the spiritual field dealing with religious matters. The Christian order in the Middle Ages began to be on the verge of disintegration, but some regimes were still under the control of religion.

### 3. THE ORIGIN AND DEVELOPMENT OF NOMOS

The word "nomos" can properly describe the relationship between order and space. In ancient times, this word lost its original meaning, lacking the concrete meaning that can be actually referred to, for example, it can be used to refer to decrees promulgated in any form, but it should be completely interpreted to show its vitality. From the school of the wise, the word began to be associated with land occupation. In Plato's view, it represents the rule (schodon). In the modern legal sense, Plato's nomoi has the nature of utopia. Aristotle distinguished the individualized nomoi from the totality of politeia, and criticized Plato's nomoi, considering that it only described the accidental nomoi (rules), but rarely involved the totality of politeia (as the order of all). Twenty-four books written by Aristotle's student Theophrast contain a description of the fragmentation of nomoi, which seems to refer to and name the complicated rules of various polities. Xenophon regarded authoritative rulers and written instructions as nomos, so he equated psephismata with nomos. Since Aristotle, the relationship between the word "nomos" and order has become tangible. He believes that it is nomos, not democratic plebiscites, that plays a decisive role. Nomos is almost synonymous with reasonably distributed medium-sized land property. In this sense, the rule of nomos means the rule of the middle classes as opposed to the rule of the very rich, on the one hand, and the rule of the masses of the poor, on the other. Its rule represents the rule of the middle class, not the rule of people who are extremely rich or extremely poor at two extremes. We need to read Aristotle's *Politics* very carefully to distinguish the concept of "nomos" from the "rule of law" in the modern field. In his works, it can be clearly seen that it represents the original land distribution.

The word "nomos" comes from the Greek word "nemein", which means to divide and graze. "Nomos" has become the most convenient word that can reflect the political and social order of a nation. It represents the means that can be used to divide pastures and the specific order that comes with this division process. Using Kant's terminology, we can say that it is "the distributive law of mine and thine", or in a better sense, it is the legal title.

"Nomos" is the specific means upon which land division is based, and it is also a totality composed of political, social and religious order. According to nomos, when a tribe, follower or nation settles down, a certain area on the surface of the earth can become a force-field for a certain order to compete. Individualized nomoi can be regarded as an evolution from a single and sacred nomos.

For nomos, there are some disputes in academic circles, and these disputes are still confusing until now. Some people equate nomos with law, while scientists equate nomos with natural law. The general natural rules refer to the calculable function without substance, but the natural science that emphasizes positivism only pays attention to the cause, not to the origin and prototype. As August Comte said, they only pay attention to the superficial law of appearance, but not to the laws related to the beginning.

From Pindar, Herodotus to Plato, we can see the saying nomos basileus (nomos as king) in the fragments handed down. Nomos refers to kings and dictators. Aristotle put forward the idea of opposing plebiscites, arguing that nomos means medium-sized and reasonably distributed land property. When Herodotus mentioned Spartans, he also mentioned that nomos was a dictator. Nomos is the entire Spartan regime. In Pindar's remnants of works, he mentioned that Heracles was the maker of the mysterious order, and he established the law. Reading these words, we can find that nomos is the expression of the arbitrary power of the strong without exception. It is a transformation from "is" to "ought" and a transformation from actuality to law. At this point, it is similar to the positivism of modern law. Later philosophers also studied this issue. Jost Trier, a German linguist and philosopher, studied nomos from the etymological point of view, claiming that it contains the meaning of a limited field, which may mean residence, region and pasture. Nemos and nomos are the same root words, which have ceremonial meanings. In Homer's *The Odyssey*, nomos refers to the land in a way. There is a word noos that looks like it, but noos refers to spirit, intelligence and character. Those who are interested in the spiritual characteristics of people in different polis can be regarded as the predecessors of Montesquieu, Herder, Hellpach and Keyserling. Noos is different from nomos. Noos is owned by everyone, but a fortified city has no unique spiritual characteristics, but only its defined boundaries. Until later



in modern psychology, spirit(esprit) can be used to refer to a theme of historical and social psychological significance applied to cities and fortresses.

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## CONCLUSION

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The interpretation of the meaning of nomos has evolved with the changes of the new historical context, but no matter how it changes, the core meaning of land possession runs through its meanings. In any historical period, it is very important to realize that nomos is a collection of order and orientation determined by the structure of various ethnic groups gathered on our scientifically measured earth. No matter in which historical period, the coexistence of nations, empires, countries and powers depends on the division of the new

space of the earth and the territory and order established on this basis.

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