Racism is a venom that poisons the very sources of law. With its assumption of allegedly immutable and inherent differences in nature, race undermines human agency and the power to legislate and enforce positive law. Thus, race destroys the very fabric of law’s “mystical foundation.”\(^1\) Moreover, the ideological function of race, i.e., the inclusion and exclusion of people in the allocation of resources and services,\(^2\) fractures the unity of the legal system and subverts it into a fragile structure that eventually succumbs to the arbitrariness of its divisions. If this is true for domestic law, which has a natural unity and a strong backing of power \textit{per se}, it is even more so for the hybrid cluster of norms we call international law, with its notorious lack of power and the consequently heightened need for consensus and cooperation among its subjects. Historically, international lawyers have felt this potentially corrosive effect of race quite acutely and have often tried to steer clear of it, albeit with mixed success.

A good case in point is Nazi Germany: In April 1939, at a conference in Kiel, Carl Schmitt gave a lecture on the “international legal principles of the greater space” [\textit{Völkerrechtliche Großraumprinzipien}]. This was to be the starting point of Schmitt’s subsequent development of the \textit{Großraum} [space] concept in a number of essays published during the war.\(^3\) In its most elaborate version, Schmitt’s essay on the “international legal greater space order prohibiting interventions by alien powers” (1941) developed the vision of an “empire” [\textit{Reich}] at the core of each sphere of influence that lorded over a scaled hierarchy of nations and protected these against the intrusions of other powers alien to the sphere.\(^4\) This was part of Schmitt’s

\(^1\) For the “mystical foundation,” see Jacques Derrida, 1990.
\(^2\) For this function of racism, see Miles, 1989: 3, 77–84.
\(^3\) Blasius, 2001: 184–202. For a survey of international law scholarship in Nazi Germany, see Stolleis, 2007.
“war of international legal studies” [völkerrechtswissenschaftlicher Kampf] against the universalist and state centered nineteenth century “classical” international law that had served Britain’s imperialist interests so well. Moreover, it was an explicit apology for Hitler’s eastward expansion course in Europe, all the more obvious since the “German-Soviet Treaty of Borders and Amity” of September 1939 seemed to him the virtual embodiment of his greater space theories. As is well known, the treaty aimed to partition Poland.

Schmitt was nonetheless bitterly attacked for his Großraum concept and especially by his personal nemesis, the rabid Nazi jurist Werner Best (1903–1989). Best’s main point of criticism was that Schmitt still clung to the notion of law and wanted to guarantee the independence of the nations within the sphere. Thus, Schmitt upheld the concept of an “international legal greater space” [völkerrechtliche Großraum], whereas Best propagated a “racial greater space” [völkische Großraum]. To protect against the corrosive effects of a racial hierarchy, Schmitt insisted on a Großraum which did not annihilate the “independent life and existence of the various nations, but succeeds in retaining the existence of peoples organized in states on an earth divided into greater spaces.” Best, on the other hand, rallied against such an “artificial preservation” of nations in an existing greater space order. “This would be an aim,” he wrote, “inimical to life and therefore impossible. Life will not be hindered in its rise and fall by deliberately created ‘orders.’” It is perfectly clear that this “fall of life” pointed at the German genocides which were well underway at the time. Thus, Carl Schmitt was eventually sidetracked by the historical developments in Europe. However, his theories of a racially indifferent greater space remained most influential in a completely different political setting—namely, in international legal studies in wartime Japan.

The role of race in Japanese history is a highly elusive issue. Wildly differing theories exist concerning the kind of racial or ethnic self-image that may have existed in imperial and postwar Japan, and concerning which projections of the same type were cast on Japan’s neighbors Korea

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9 Best, 1940: 1007.