



BIROn - Birkbeck Institutional Research Online

Koram, Kojo (2022) Drug prohibition and the policing of warfare. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 13 (1), pp. 22-39. ISSN 21514372.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/46620/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html>
contact lib-eprints@bbk.ac.uk.

or alternatively

DRUG PROHIBITION AND THE POLICING OF WARFARE

The War on Drugs, Globalisation and the Moralisation of Perpetual Violence

Following the Second World War, a reconstituted international legal order – with the United Nations at its centre, promised to save ‘succeeding generations from the scourge of war.’¹ Alongside crystallising legal regimes of human rights or development, among the first comprehensive projects undertaken by the UN was the creation of a new system of international drug prohibition. At the heart of this system sat *The United Nations Single Convention of Narcotic Drugs, 1961* (hereafter referred to as *the Single Convention*). Informed by the humanitarian atmosphere of international law that gave rise to many rhetorical claims of peace and salvation during this era, the *Single Convention* promised to protect ‘the health and welfare of mankind’ from the ‘evil’ of drugs, combining the twentieth century’s scientific, welfarist concern for global health with an older, more theological notion of just war to signal the ways in which sovereign violence and population control would mutate in the new world of nations.²

In the decades that followed, alongside the discourse of liberal moral universalism that accompanied the opening up of the global economy grew a parallel renewal of exclusion and racialised violence through the globalisation of policing power founded on an ever-escalating War on Drugs. To read together the violence of the drug war with international law’s claim’s to ending the ‘scourge of war’ advances our understandings of both drug policy studies and critical international law as avenues of research that are inter-related but under-

theorised together. Reading the War on Drugs within the context of wider transformations of international law, such as the growth of human rights or the emergence of the doctrine of Responsibility to Protect, provides real insight into how war would not disappear under the UN's supervision but rather shift in mode, from conflict between rival sovereign states to collective assault upon a symbolic 'threat' to the universal order.

The focus of this article will be on the insight that the War on Drugs can bring to wider theories of how violence within the international arena has been managed following the peace acclaimed by post-war international law. Following the mid-twentieth century period of wars being generally anchored on naked aggression and geopolitics, the War on Drugs has a good argument for setting the tone of moral justifications for militarized security projects, that carried into wars for humanitarian intervention, wars based on the responsibility to protect and, of course, the war on terror. The history of the drug war needs to be placed in conversation with literature concerned with the emergence of what has been called 'new war' and how our understandings of war changed during the era of the UN.³

The Declaration of War

In a single year, US President Richard Nixon made two decisions that redirected the flow of commodities around the globe. The same year that he removed the US dollar from the gold standard and effectively rung the starting bell for the runaway financialization of the world economy, Nixon gave his official declaration for the start of the 'the War on Drugs' in a speech made to the United States Congress

on June 17th, 1971.⁴ The Nixon shock had been driven by the collective efforts of economists in Mont Pèlerin and Chicago who saw the end of the gold standard, the relaxing of exchange controls and the embrace of floating exchange rates as the way to reenergise global capitalism.⁵ But there was an underside to this new age of globalisation, with the increased circulation of contraband accompanying the trade of legitimate commodities. The campaign for international drug prohibition had already been creeping higher up the American political agenda during the twentieth century, thanks to pressure from a convergence of religious temperance movements, moralistic lawmakers and widespread racist paranoia. Therefore, when Nixon finally gave this campaign overarching coherence by christening drug control and prevention policies with the new moniker of ‘the War on Drugs’, he was not only announcing an intensification of state opposition to psychoactive substances but also to the political movements of that era that threatened the prevailing social order. This was an era when counter-cultural artistic and political expression in the USA were intimately connected to the growing fashion for drug experimentation. Nixon’s election as President had been founded on a promise to reinstate ‘law and order’ in the face of rising black power, civil rights and anti-war movements and the clampdown on drugs served as a metaphor for the promise of reinstating order. In Nixon’s words, drugs were a ‘a problem which afflicts both the body and the soul of America’ gesturing towards the fears regarding the eschatology of a racially-divided country that sat behind the ostensible concern with public health under which the ‘War on Drugs’ was officially justified.⁶

Domestically, not all of Nixon’s anti-drug initiatives as draconian as his rhetoric. While he did increase law enforcement powers domestically, Nixon also established a Special Action Office to coordinate research, treatment, and educational

efforts across the country in a bid to curb demand for drugs.⁷ However, in the international arena, Nixon's administration continued the general trend of American governments promoting universal drug prohibition as amongst their flagship international policies. With the U.S.A's hegemonic position within the global order now firmly established, drug prohibition provided to serve as the disciplinary anchor to liberal promises of human rights and development that were remaking the terms of the international. The same year Nixon declared the birth of a new 'War on Drugs', the UN reinforced the Single Convention with a second drug prohibition treaty, the *UN Convention on Psychotropic Substances of 1971*, which, in addition to expanding the number of substances now prohibited by international law, provided a wider legislative foundation on which to advance the new era of warfare. In the June 17th speech given to the Congress of the United States, Nixon declared that in order to 'wage an effective war against heroin addiction, we must have international cooperation. In order to secure such cooperation, I am initiating a worldwide escalation in our existing programs for the control of narcotics traffic.'⁸

Acknowledging the weaponization of America's economic power, Nixon's speech boasts how 'the United States has already pledged \$2 million to a Special Fund created on April 1 of this year by the Secretary General of the United Nations and aimed at planning and executing a concerted UN effort against the world drug problem.'⁹ However, an escalation of drug prohibition would require not only further resources but also further laws, and as a result, the Nixon administration campaigned to reinforce the legislative framework of international drug prohibition, starting by revisiting the Single Convention.¹⁰ Prohibitionists 'aggressively solicited the support of other governments throughout 1971' and under pressure from Washington, the UN

hosted a conference in Geneva in March 1972 to amend the Single Convention, eventually strengthening the treaty's powers.¹¹

After Richard Nixon first employed the idea of a 'War on Drugs' in 1971, the use of 'war' to describe a counter-narcotics programme that claimed to be ultimately a humanitarian project then became common place within political language for a generation. As a phrase, the 'War on Drugs' was further popularised during the presidencies of Ronald Reagan, George H.W. Bush and Bill Clinton in the 1980's and 1990's, with each president advocating for the militarisation of the rhetoric of drug prohibition as well as the militarisation of the policing tactics used by law enforcement. In a 1982 radio address to the nation, Reagan declared that 'few things in my life have frightened me as much as the drug epidemic' before defiantly declaring 'we've taken down the surrender flag and run up the battle flag [...] we're going to win the War on Drugs.'¹² Then in a famous 1989 speech, Reagan's successor, George H.W Bush, held up a bag of 'crack cocaine seized [...] by Drug Enforcement agents in a park just across the street from the White House' implying that drugs being so close to the seat of US state power was an act of aggression by the drugs themselves. Bush duly responded in kind with escalated military rhetoric that drew on the realities of urbanised warfare as it had emerged in the guerrilla/national liberation wars of the decades after World War Two, concluding his speech by declaring 'the War on Drugs will be hard-won, neighborhood by neighborhood, block by block, child by child.'¹³ Following Bush, and illustrating the embrace of the drug war across the American political spectrum, a change in the government to Bill Clinton and the Democrats did not herald much change in the rhetoric or policies of the U.S. government in pursuit of drug prohibition. In a speech at the end of his presidency made alongside his Colombian counterpart Andres Pastrana, Clinton

commended Colombia for having taken on the ‘cause of burden sharing in the war on illegal drugs across the globe’ and assured Pastrana that they would no longer have to carry so much of ‘the burden of the international drug war.’¹⁴ In recent years, the description of the international effort to prohibit drugs as being a ‘War on Drugs’ had declined as the futility of the endeavour began to make itself clear to more and more people, however the election of Donald Trump in 2016 reinvigorated the metaphor as drug prohibition synthesised with his protectionist and anti-immigrant political stance. In 2017, he took to Twitter to declare that the U.S.A was once again ready to help ‘wage WAR on the drug cartels and wipe them off the face of the earth.’¹⁵

The increased attention on drug prohibition only increased the demand for the prohibited substances and over the next decade the international trade in drugs grew exponentially. The Single Convention had marked out a set of scheduled drugs, most notably opium, cannabis and cocaine as an ‘evil’ within the new post-war international order in a discursive level but it had not mapped out the legislative framework to allow these drugs to be sufficiently criminalised.¹⁶ As a result in 1984, the UN General Assembly directed the Economic and Social Council to instruct the Commission on Narcotic Drugs to begin to draft another convention, this time dealing directly with the issue of trafficking.¹⁷ Eventually, from the 25th of November to the 20th of December 1988, a plenary conference convened in Vienna.¹⁸ Delegates from 106 states attended the plenary conference, concluding by agreeing the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (hereafter referred to as the 1988 Convention). The 1988 Convention strengthened the extradition provisions in the international drug prohibition legal framework making acts such as money laundering, or the manufacture, transport, and distribution of equipment and precursory substances

extraditable offences.¹⁹ Extradition to the United States became a primary weapon of the drug war over the final decade of the millennium, reinforcing the country de facto title of world policeman. The 1988 Convention came into force on the 11th of November 1990, with the new, stringent legislative instrument arriving just in time to mark the commencement of the UN's official 'Decade Against Drug Abuse'. At a plenary meeting on the 23rd of February 1990, the General Assembly adopted a resolution declaring 'the period from 1991 to 2000 the United Nations Decade Against Drug Abuse.'²⁰ A global programme of action was agreed to ensure further co-operation on a multilateral level to support the drug prohibition mechanisms created by the three UN drug conventions.

The decision by the UN to label the 1990's as 'Decade Against Drug Abuse' was not mere hype; the decade would see a marked escalation in the War on Drugs. The spectre of rivalry that had haunted the international community since the post-war emergence of the Cold War dissipated with the fall of the Berlin Wall in 1989. The delay between the Single Convention as the major post-war international treaty and the height of the drug war in the 1990's follows a similar historical arch as Human Rights.²¹ Drug prohibition only crystallises into a full-scale War on Drugs as what George H.W. Bush described as a 'New World Order' began to appear into view.²² As a result, greater totality in the international legal order allowed for an expansion of laws that operated on a global scale, with the rapid increase in international drug prohibition enforcement amongst the most explosive of instantiations of this trend. Drug prohibition became a key topic of discussion at the American Society of International Law meetings.²³ Representing the U.S Department of State, Robert Kimmitt exemplified the renewed confidence of American international bureaucrats in the international drug war at the American Society of

International Law in 1990, stating ‘the prospect of enhanced international legal cooperation may find one of its brightest realisations in the world War on Drugs.’²⁴ Crediting the U.S.A for leading the way and other governments for co-operating, Kimmitt proclaims the 1988 Convention and the renewed global commitment to the War on Drugs as the world entered the final decade of the twentieth century, as the most significant evolution of international law following the conclusion of the Cold War.²⁵ For Kimmitt, the stringent measures aimed at erasing drug trafficking in ‘this convention represent the internationalisation of many U.S. legal standards to create a level international playing field.’²⁶ Legal force in the endeavour of prohibition operates not only through state enforcement against production and supply of drugs, but also through asset seizure, shipment interceptions, crop eradication and extradition procedures.²⁷ Furthermore, American soft power included providing large amounts of funding to the CND and other UN organisations and developing an annual system of certification, which ensured countries complied with Washington's anti-drug policies on penalty of losing American financial assistance or trade relations.²⁸ Through this expansive territorial scope, the universality of the War on Drugs was reinforced so as to provide no jurisdictional exterior to which traffickers could escape. Kimmitt captures the optimism of a coming triumph of humanitarian drug prohibition in the closing sentence of his ASIL presentation, stating:

If we can meet the challenge of expanding and adapting international law to assist all nations in this transnational War on Drugs, future casebooks will conclude, in their final chapter, that the potential of international law was well realized and humanity well served.²⁹

Such belief in the War on Drugs as being able to universally eradicate what the Single Convention had deemed the ‘evil’ of non-legitimate drug use reached its zenith in this epoch. The age of globalisation fully crystallised the understanding of drugs as a contagious embodiment of a negation of humanity that had been cultivated over the previous century of growing drug prohibition. With international law’s vision of universal humanity becoming more confident in light of the decline of Cold War rivalry, the temptation to construct a ‘new problem of evil’ as Mark Fisher describes it and to lock any failings of the system within a set of objects that could be then externalised, informed the increasing ambition of drug prohibition in this moment.³⁰ This hubristic moment is perhaps most clearly illustrated in the ‘Decade Against Drug Abuse’, by the 1998 United Nations General Assembly Special Session on the World Drug Problem, which was held under the slogan: ‘*A Drug Free World – We Can Do It*’.³¹ To the authorities in the international secretariat, the new millennium meant that a world without the scourge of decadent drug use was surely just over the horizon. Yet the empirical failure of the drug war to achieve its stated objectives of ‘a drug free world’ is detailed by the ever-increasing numbers of drug use, trade, addiction and deaths that have accompanied international drug prohibition.³² In 2017, the United Nations Office on Drugs and Crime own’s statistics estimated that in 2017, 271 million people, or 5.5% of the global population aged 15-64, had used prohibited drugs in the previous year.³³

Therefore, with the ‘drug-free world’ appearing further way than ever, how do we confront the problematic of the relationship between global legal ordering and the violence of the law in the ‘post-war’ era that the piling of bodies on top of bodies in the impossible, indefinite attempt at drug prohibition gives question to: What does international law’s fidelity to a war that persistently fails to meet its own stated

objectives tell us about the workings of war after war and how law seeks to manage global violence?

On Law and War

Much like the description of drugs as 'evil' in the Single Convention, the use of the idea of 'war', is never merely a question of semantics. Particularly within the discourse of international law, to name something as a war shapes the form in which it is realised.³⁴ The drug war was produced through the United Nations - an institution with a stated commitment to save 'succeeding generations from the scourge of war' in its founding charter.³⁵ How was the War on Drugs able to be reconciled with this new model of institutionalised management of a 'universal' peace? In his major intervention on the relationship between war and law, David Kennedy argues that when 'we call what we are doing "war," we mean to stress its discontinuity from the normal routines of peacetime. Differences among us are now to be set aside.'³⁶ However, as Kennedy's would recognise in due course, while war continues to create unity through opposition to a common enemy, in the new epoch of capitalist globalisation, war does not so much mark a discontinuity from the everyday, but instead it becomes a force that is performed through our daily routines, including through the workings of the law. Rather than international law being a pacifying force, or at least an overarching mechanism detached from war and judging its legality, it has become a vehicle which war works itself through. In Kennedy's words, 'warfare has become a modern legal institution.'³⁷ To appreciate how war works its way through international law it is essential for making sense of the changes that the form of war has undergone following the end of the Second World War.

The exponential growth of the destructive capacities of military technology over the course of the two world wars made traditional warfare, as in symmetrical conflict between sovereign nation-states, an increasingly apocalyptic prospect.³⁸ The Cold War maintained a state of paralysis between the rival blocs, in part, due to the mutually destructive capabilities of both parties. The absence of direct, full-scale military conflict between the U.S.A and USSR added support to the argument that history had moved passed symmetrical warfare. Yet, any characterisation of the Cold War as a triumph of a new era of international peace would be misguided. Globally, the Cold War resulted in a mountain of casualties, mostly in the theatre of the Third World; the unacknowledged third-term anchoring the two rival power blocs. The post-WWII decline in symmetrical warfare has not caused the end of all international conflict. Rather, scholars of international law and international relations began to talk of the emergence of what was termed the ‘new wars.’³⁹

The production of a universal peace was the *raison d’être* of the UN, AS as shown by the UN charter, the Nuremberg principles and the Universal Declaration of Human Rights. However, the grand humanitarian claims masked how the cohering of an international legal order continued to require the violence of law to be managed and wielded out. Therefore, while a decline in traditional warfare came about, the mutation towards what has been termed the ‘new wars’ has produced conflicts that escape previous theoretical models of war by being indeterminate, abstracted and with no defined point of conclusion.

Nineteenth-century Prussian military theorist Carl von Clausewitz provided the canonical account of modern international conflict with his famed treatise, entitled *On War*.⁴⁰ Clausewitz’s engagement with the nature of war following modern state formation produced the famous description of war as ‘the continuation of policy

[politics] by other means.⁴¹ This description spoke to a continuity that exists between political objectives and acts of war; war is an instrument of politics that is wielded to achieve specific aims.⁴² As Michael Hardt and Antonio Negri pushed further, Clausewitz's recognition of war as a continuation of politics 'represented a moment of enlightenment insofar as it conceived war as a form of political action and/or sanction and thus implied an international legal framework of modern warfare.'⁴³ However, the Clausewitzian definition as commonly employed is premised on an incompatibility of war with normal human interest, viewing the politics in which war functions as the continuation of the competing objectives of sovereign states, as opposed to the more discursive everyday ordering of human life. Moreover, the understanding of war as being instrumentalised to produce specific outcomes is complicated by the shift of the nature of war away from conflicts between nation-states to the 'new wars' which blur the distinction between a state of war and a state of peace. Hardt and Negri try to provide a telling account of the birth of new war, historicising its emergence to the United States and the Soviet Union signing the *Anti-Ballistic Missile Treaty* in 1972, after which '[w]ar became constrained. Rather than all-out, large-scale combat, the great superpowers began to engage in high-intensity police actions.'⁴⁴

A further element of 'new war' is that the condition of the violence is perpetual; war now takes on an indefinite character. Hardt and Negri elaborate by stating:

A war to create and maintain social order can have no end. It must involve the continuous, uninterrupted exercise of power and violence. In other words, one cannot win such a war, or, rather, it has to be won again every

day. War has thus become virtually indistinguishable from police activity.⁴⁵

The historical synchronicity between Hardt and Negri's birth date for 'new war', Richard Nixon's signing of the *Anti-Ballistic Missile Treaty in 1972*, and the same president declaring a 'War on Drugs' less than a year earlier, points to the later as offering a striking, often overlooked example of this new mode of war as perpetual policing coming into being. Hardt and Negri fail to grasp the full significance of the war on drugs with regard to turning the page on the preeminent mode of global militarised conflict. They even overlook the Single Convention when they describe the category of a crime against humanity as 'perhaps the legal concept that most clearly makes concrete this notion of evil', despite the Single Convention's description of drug abuse as 'evil' being the unique example of 'evil' appearing in the final text of an international treaty.⁴⁶ In colloquial terms, 'war' is often used as a metaphor, however, the difference between the drug war and the using war metaphorically is that the violence of the drug war, while perhaps abstracted, is not figurative. Hardt and Negri do recognise that it is 'with the War on Drugs, [...] and more so with the twenty-first-century war on terrorism, the rhetoric of war begins to develop a more concrete character.'⁴⁷ The drug war, paving the way for the War on Terror, was more than the use of war as a metaphor but also employed the methods of armed combat, lethal force, incarceration, violence, asset seizure and land dispossession that are common in traditional warfare. The legislative innovations put in place as part of the drug war provided the scaffolding for the surveillance and increased detention powers of the War on Terror.⁴⁸ Drawing upon a conflation of police and military power, the 'new wars' tend to penetrate beyond the realm

presumed of traditional sovereign state conflict. Entering the individual lives of citizens and combatants alike, concerning itself with matters of health, hygiene poverty and morality, in these conflicts ‘there is increasingly little difference between outside and inside, between foreign conflicts and homeland security.’⁴⁹ These dynamics make themselves present when we read the drug war critically. It was with the drug war that police forces in the USA, and across countries like Brazil or Colombia, saw a massive expansion in their numbers, capabilities and scope of operations. Police were now no longer just on the streets but in airports and schools as well. Counter-narcotics police worked across multiple jurisdictions. *Narco-traffickers* like Pablo Escobar or El Chapo became not only international criminals but an ‘enemy of mankind’, new versions of the *Hostis humani generis* label that categorized the pirates of yesteryear.

The new wars are notably indeterminate, both spatially and temporally; they are not wars executed by one nation-state or one empire against another, but instead invoke for all humanity to be conscripted against a common enemy. Moreover, the abstraction that is common to ‘new wars’ informs the definition of this enemy. The discursive construction of drugs, as is common with objects/enemies of new war function so that these enemies are not antagonisms in the classical mode of an enemy at war, i.e not the recognised rivals as most common of inter-state conflict; they are rather conceived as contagions within a universal order, ‘symptoms of a disordered reality that poses a threat to security.’⁵⁰ The conception of the universal as a holistic singularity produces enemies of the universal as internal enemies, denigrated forms of the ideal that serve as ‘an *experimentum crucis* for the definition of legitimacy’ demonstrating not only what the force of international law opposes but what it saves us from within ourselves.⁵¹ The object of war becomes not only defeat of the enemy

but what Schmitt calls ‘the universalistic war of annihilation’; the moral justness of the cause turns the war into a ‘cleansing operation’ against that which poisons us from within, a description that captures the modern idea of drugs.⁵² As Mark Fisher describes, the imagining of our enemies as internal contagions betray a persisting failure of ostensibly secularised discourses, such as law, to imagine alternative ways of constituting themselves outside appeal to the theological, ‘we know there are no grounds anymore for belief in evil, yet we find ourselves unable to give up acting *as if* we believe in it.’⁵³ The structure of ‘new war’ illustrates how, in service of a humanitarian impulse, the contagions that are the ‘evil’ enemy in this mode of war become what must be purified for the unified order of humanity to cohere itself.

However, a point of departure between my reading of the drug war and the functioning of ‘new war’ as described by Hardt and Negri comes in their claim of the decline of international law and ‘the rise in its stead of a global...form of law’ in this era.⁵⁴ Hardt and Negri, taking a narrow, Westphalian understanding of international law seek to employ the concept of ‘global law’ as a distinct mode of reading the totalising scope of legal violence at the turn of the millennium.⁵⁵ In contrast to understanding the ‘origins’ of international law within the Westphalian moment, looking instead to figures like sixteenth century Spanish theologian, Francisco Di Vitoria illuminates a totalising, cohering impulse already present within international law, long before the neoliberal globalisation of the late twentieth century. To be bolder, the contemporary moralisation of war signals not simply a decline of international law and the rise of a new ‘global law’, but more accurately international law returning to an earlier instantiation of its claim to universalism. In their reading of ‘new wars’ as operating primarily on a biopolitical register, a disciplinary managerialism being enacted on the global body politic, Hardt and Negri overlook a

full appreciation of juridical-theological underpinnings of international law's totalising impulse. The internalised, moralising violence of war in contemporary form serves as not only a technology for control and management of globalisation but reveals how law still works to expel a barely secularised conception of 'evil'.

Reading Hardt and Negri's conception of 'new war' against Vitoria takes us back to the sixteenth century theologian's lectures on Spanish-Amerindian relations, and particularly his lectures on the law of war, written as a continuation of his thoughts on the jurisdictional position of the *De Indis*.⁵⁶ Here, Vitoria posits war as a method through which the universal can bring about the transformation in the subjective condition of the Amerindian. In this lecture, Vitoria anchored the jurisdictional basis for just war in the responsibility to intervene on behalf of the natives: legal violence legitimised by the impulse to save the natives from themselves. Subsequently, contemporary scholars have identified in Vitoria's lecture the origins of what would, centuries later, come to be called humanitarian intervention, only of the instantiations of just war theory over the twentieth century but the one that would become dominant by the century's end.⁵⁷ While other claims to the just war declined, wars of decolonial national liberation for example, humanitarian intervention becomes an increasingly common basis for war, especially invoked by the U.S.A and its allies, cited to justify conflicts in the Balkans, Somalia and, most famously, Iraq. Returning to the Vitorian origin of humanitarian intervention, a sustaining element can be spied in the recognition of this form of corrective warfare being, in Vitoria's own words, 'perpetual.'⁵⁸ Vitoria states that 'when the war is at that pass that the indiscriminate spoliation of all enemy-subjects alike and the seizure of all their goods are justifiable, then it is also justifiable to carry all enemy-subjects off into captivity, whether they be guilty or guiltless.'⁵⁹ We can see that within this schema, where the

basis for the war is the transformation of the Amerindian into a humanity fit for universal subjectivity, the war becomes absolute, unbound by the restrictions and limitations that apply in conflicts between recognised sovereign states. The aim of the conflict is not the defeat of another sovereign's military force but the remaking of humanity itself.

Asymmetrical Warfare

With a greater appreciation of the theological impulse behind the 'new war' than that offered by Hardt and Negri, anthropologist Rene Girard offers his own sustained engagement with challenge of late twentieth century warfare. In one of his final works, a dialogue with collaborator Benoît Chantre entitled *Battling to the End*, Girard reads within Clausewitz's canonical account of modern international warfare the recognition of this potential for what is termed ideal absolute war.⁶⁰ Girard emphasised that Clausewitz's famed conception of war as instrumentalised for political gain only arrives after the Prussian General's initial consideration that the real driver of international conflict may in fact be an undercurrent primordial rivalry that lusts after war for war's sake. Clausewitz at first acknowledges a potential for violence to engulf any basis for order. However, after flirting with conceptualising war as an 'absolute manifestation of violence', Clausewitz ultimately concludes that, in practice, war is contained by the machinations of political ambitions, stating that 'war springs from some political purpose, it is natural that the prime cause of its existence will remain the supreme consideration in conducting it.'⁶¹ Ultimately for Clausewitz the calculations of the practical warfare would function as a restraint against the realisation of the theoretical absolute war. However, Girard reads within

Clausewitz's early speculation on ideal absolute war a shared recognition of war as perhaps always already not a political but 'a total social phenomenon.'⁶² For Girard, an ostensible focus on the military strategies and political objectives of 'real wars' in *On War* only masks the haunting presence of 'absolute war' operating underneath, the fear of violence released from its confines without a point of conclusion in sight. Moreover, Girard continues to argue that as the Second World War had functioned as the apotheosis of symmetrical warfare between sovereign nation states, the new mode of conflict- what Hardt and Negri would independently call 'new war'- removed the idea of ideal absolute war from the category of abstraction and made it reality.

Through a re-reading of the work of the Prussian General, Girard was able to translate his work from an anthropological setting to become a lens through which to view international crisis in the late twentieth century.⁶³ Indefinite War had lain in-potentia since the Napoleonic expansionism that informed Clausewitz's writings.⁶⁴ In the aftermath of the Second World War, Girard argues that 'violence steals a march on politics', as war becomes an endeavour in which 'victory can no longer be relative, it can only be total.'⁶⁵ Enemies in war are no longer political rivals to be defeated but existential threats who must be wholly eradicated. Recalling Vitoria's tradition of just war being the transgression of the 'universal' norms of *jus gentium*, the 'universalism' of post-war international law of the UN gives rise to the very spectre it seeks to contain: not the end of war but war without end.

Reading Clausewitz against his great contemporary Hegel, Girard's insight is useful in recognising that the underside of the Hegelian dialectic is the form of a duel, a 'merciless battle between twins,' leading to escalation unless contained by the sacrifice of the unrecognised third term.⁶⁶ However, whilst Girard offers a corrective to Clausewitz, Frantz Fanon offers a further corrective of Girard's myopia over who

serves as that third term in the post-war, universal international order, a racialised violence still visited by the law upon those whose humanity remained conditional. Fanon specifically illustrates that the colonised/racial subaltern figure underwrites the Hegelian dialectic.⁶⁷ Those subjects and geographical regions produced in Euro-modernity as the site of colonial extraction are excluded from the reciprocity that is the foundation not only of Hegelian dialectics but also of international legal subjectivity.

Girard fails to appreciate the racial component of the asymmetrical violence of ‘new war.’ Could this oversight be corrected through an engagement with the drug war? Exemplifying much of the post-Clausewitzian shift in warfare, the drug war operates against a symbolic enemy in defence of a totalising notion of humanity, but an enemy embodied in the figure of the drug addict or trafficker or the drugs themselves.⁶⁸ As the totalising notion of humanity that grounds international legal order must be consistently reproduced to sustain itself, the drug war becomes perpetual and absolute, a war that is an end in itself. The laws that established the War on Drugs as a global norm can be understood as a declaration of absolute war against the discursively produced universal negation but masked in the moral language of humanitarianism. The perpetual nature of the drug war informed the myopia of its advocates, who, whilst pointing to the ever-growing numbers of shipments seized, acres eradicated, and drug traffickers arrested ignore the on-going impossibility of reducing drug use, supply or trade of drugs.⁶⁹

In terms of the victims of the drug war, a major consequence of the drug war has been the expansion of the black population in prison, not only in the U.S.A but in countries such as the U.K. and Brazil as well.⁷⁰ The war announced by Nixon came in the aftermath of the end of formal racial segregation in America and the long history

of drug prohibition has been indebted to racialised fears of contagion from its onset. The correlative expansion of police power, the prison system and the global scope of American hegemonic power through the drug laws remain informed by these historic fears. A wealth of academic scholarship and empirical policy research has established the links between the enhancement of drug laws century and the late twentieth century explosion of the prison population.⁷¹ The drug war, famously decried as ‘the New Jim Crow’ by Michelle Alexander, contributed greatly to a situation in which ‘the United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid.’⁷² Angela Y. Davis provides the racial dimension missed by the Foucauldian critique of prisons as disciplinary mechanisms, by emphasising how the phenomenal rise in drug-related imprisonment following the 1980’s escalation of the drug war illuminates the pivotal role played by racism in sustaining society’s ideological investment in prisons.⁷³ Moreover, Ruth Wilson Gilmore illustrates the relationship between the drug laws and the three-strikes law implemented in California, leading to a flood of new bodies entering the prison system for life, over three-quarters of which were Black and Latino.⁷⁴ The consequences of imprisonment for drug trafficking, particularly in the U.S.A, are so severe that they are not adequately described as a mere temporary denial of liberty but as visiting upon the convict what Colin Dayan describes as a ‘civil death’, a long-term loss of personhood that goes ‘way beyond the logic of punishment’ though barring the individual from access to many of the necessities of life (employment/housing/political representation) even long after release.⁷⁵ The prohibition of drugs led to a redeployment and crystallisation of notions of the inherent criminality of the Black populations of Europe and America; a discursive symbiosis between illicit peoples and illicit substances result in the contemporary system of mass incarceration being

built on the back of these mythologies.⁷⁶ Moreover, drug laws have been utilised to reinforce violent border policing between the grievable lives of the U.S.A and the un-grievable lives of the global south.⁷⁷ Trump's recent intertwining of drug laws with immigration control illustrate one further way that the drug laws have reinforced a racialised notion of community through legitimised violence upon peoples of Latin America. The end of the twentieth century would see Latin America emerge as a major frontier of the drug war. As the frontline of neoliberalism as well as being one of the main sites of focus of American foreign policy, this region provided the ideal terrain to nourish the mutation of war into a perpetual architecture of social ordering. Two countries in particular – Colombia and Mexico – became the main theatres of conflict as the spread of marketism arrived accompanied by infinite, indefinite warfare.

Plan Colombia and The Making of a *Limpieza*

An especially potent exemplar of the escalation of the War on Drugs in the age of globalisation came with an initiative commonly known as Plan Colombia. Colombia had become the world's largest cocaine supplier after deindustrialisation and neoliberal agricultural reforms resulted in driving those cast out by the 'legitimate economy' into the illicit production market.⁷⁸ Oscar Guardiola-Rivera reads the drug war and neoliberalism as twin elements of a Janus-faced 'humanitarian intervention' into Colombia by the U.S.A.⁷⁹ In this form, 'humanitarianism' has the effect of de-politicizing war, making the destruction of both human and plant life and the seizure of land and resources from indigenous/Afro-Colombian populations appear as a moral endeavour, enacted to save them from themselves. Furthermore, the drugs trade was

equated with radical opposition groups such as the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the *Ejército de Liberación Nacional* (ELN).⁸⁰ Following a deterioration in relations between America and Colombia over counter-narcotics policy during the 1990's, with the U.S.A refusing to certify Colombia as co-operating in the War on Drugs in 1996 and 1997 over suspicions that Colombian President Ernesto Samper Pizano had ties with the Cali Cartel, his successor President Andrés Pastrana re-established ties with America. In 1999, Pastrana secured the return of U.S certification before drawing up an aid plan for Colombia to provide sustainable economic support to cultivators. However, as Julia Buxton informs us, American directives redirected what had become 'Plan Colombia' from a peace plan into a battle plan, as 'nearly 80 per cent of the financing provided by the USA was ring-fenced for military assistance, with the entire funding package dependent on Colombian acceptance of an eradication strategy based on aerial fumigation.'⁸¹ Whilst the original intention for Plan Colombia had been to combine an increase in enforcement capabilities with greater investment in development and social programmes, in practice the scheme privileged the militarisation of drug enforcement with the legal and security infrastructure of the country being strengthened in anticipation of an escalation of the drug war as entwined with other counterinsurgency initiatives.⁸² Plan Colombia's goal was to reduce the cultivation, processing, and distribution of illegal narcotics by 50% in 6 years.⁸³ The failure of Plan Colombia is evident from the reports of the United States Government Accountability Office, which found that coca cultivation and cocaine production in Colombia had increased by about 15% and 4%, respectively between 2000-2006.⁸⁴ This increase occurred despite the U.S State and Defense departments providing nearly \$4.9 billion to the Colombian military and National Police Force to combat

narcotic trafficking and \$1.3 billion for a wide range of social, economic, and justice sector programs between 2000-2008.⁸⁵ Moreover, in contradiction to the presumption of the Colombian drug war as being ‘lawless’, Plan Colombia directed much of its funding towards reinforcing the rule of law.⁸⁶ \$239 million was spent on expanding legal reach against drug traffickers through judicial reform and legal capacity building.⁸⁷ This expansion of the rule of law, as opposed to bringing about a decline in cocaine production, resulted in the escalation of a ‘drug-fuelled conflict [that] killed 32,436 people between 1998 and 2008 and displaced an additional 3.4 million,’ while cocaine production from Colombia increased by 17% over the same period.⁸⁸ In this moment the relationship between law and violence appears as complementary rather than oppositional.

Upon understanding the violence of the drug war as working through the laws on prohibition, the increase of the rule of law through Plan Colombia coinciding with an increase in violence and cocaine production no longer appears contradictory; it is rather consistent with the wider transition in the form of war. After touring Cali, Colombia in 2001 (in the midst of Plan Colombia) Michael Taussig provides an immersive account of sacrificial violence being visited upon this region through the method of the anthropologist's field diary, later published as *Law in a Lawless Land*.⁸⁹ Subtitled this book as the ‘*Diary of a Limpieza in Colombia*’, Taussig places the focus on the purifying power underlying the violence in Colombia, which was popularly described as a *Limpieza* – the cleansing. As a word, *Limpieza* contains two interwoven understandings in common usage in Colombia: the older meaning referring to a traditional practice of spiritual healing which cleanses the body of sick person or house after it has been infested by malevolent sorcery; however, in the wake of political violence within the country, *limpieza* took on an additional meaning as the

description for the public acts of purifying violence.⁹⁰ This time concerned with cleansing the corrupting forces of a body politic rather than the body of a person, *limpieza* came to refer to the, often public, slaughtering of ‘undesirables’ by paramilitary forces. Those determined to be delinquents or degenerates, a category that recycled familiar tropes of peoples involved in drugs or in league with the guerrillas, are purified from the social order. Among those rendered most exposed to this violence are those known locally as ‘Vicioso’, meaning ‘druggie’.⁹¹ Drugs are awarded a transformative power here again, capable of turning a life into something sacrificial, serving as an agent of the contagion.

Taussig’s title captures the presence of the law within this context of sacrificial violence; the *limpieza* doesn’t happen outside of the gaze of the law but realises itself through the law. While the public executions may be carried out by paramilitaries, these killings are often state-sponsored or occur under the complicit gaze of the state. Disturbing the presumption that such violence happens in the absence of law, Taussig describes:

The brazenness of the killing today takes your breath away, in broad daylight, in the street – the exact opposite of anonymity. This is not some remote hamlet where are no police or law courts. This is a town just forty-five minutes by road from Cali, police, 5 judges, 3 district attorneys, a jail with 120 prisoners, and an elaborate judicial system.⁹²

Whilst the ostensible targets of the *limpieza* are narcotrafficientes/guerrillas, the expansive scope of the violence and the impunity with which it is enacted allow the production of a constant fear and uncertainty amongst the general population as ‘one

never really knows who next will be murdered, tortured, intimidated, or run-out-of-town.⁹³

The entire region that Taussig visits, Valle del Cauca, in the Cali region of Colombia that endured the brunt of the drug war, could be read to exist in juridical theodicy that parallels Fanon's 'zone of non-being'.⁹⁴ The population exists within the scope of the law but in a condition of exclusion, allowing for violence enacted upon their being to not sufficiently disturb the order of the law. Instead, one could argue, it even constitutes and sustains the order of the law. Drawing on both Benjamin and Nietzsche's critique of legal violence, Taussig describes how 'the violence of law is not only a question of guns, handcuffs, and gaols, but, far worse, what gives that violence its edge and its lip-smacking satisfaction is deceit in the service of justice [. . .] is it so surprising that the paras and the police are virtually the same?'⁹⁵ Of course, Taussig does recognise that the representatives of the law are not the only source of violence in the region and he notes that the traffickers are not above employing paramilitaries to wield indiscriminate violence amongst target populations themselves.⁹⁶ However, despite their shared contributions to the culture of violence, Taussig does not suggest that we accept any false equivalency between the traffickers and state. Talking of the drug traffickers as a response to the violence of the state, Taussig states that 'criminals become hardened by observing that they and the police use the same methods, except with the police, the methods are worse because the police excuse their actions in the name of justice.'⁹⁷ The impetus to enforce law and order gives the *limpieza* its cleansing quality, with drug laws a key element in this network of violence. We see how the laws on drugs create the conditions for both the state to violently enforce that prohibition and for the traffickers, in response, to violently circumvent the law's determinations. Drug cultivation, trade and usage

existed for centuries without being an excessively violent practice prior to prohibition; the cleansing violence that Taussig describes is rooted not in the drugs but in the law.

The Merida Initiative as Plan Mexico

[Juarez] is not a breakdown of the social order. [Juarez] is the new order.⁹⁸

Charles Bowden

The failings of Plan Colombia did not precipitate a change of approach in international drug prohibition. As the epicentre of the drug war in Latin America shifted from Colombia to Mexico, the Merida Initiative was established in 2008 to reinforce the United States' financial and military support for drug prohibition enforcement to the Central American region.⁹⁹ Prior to the creation of the Merida Initiative, Mexico did not receive large amounts of U.S. security funding in comparison with neighbouring countries, in part, due to historical suspicions regarding the protection of Mexican sovereignty from US incursion. The signing of the North American Free Trade Agreement in 1994 remade the context for increased transnational collaboration on security matters over the continent, opening up new opportunities for both cross-border drug trafficking and counter-narcotics collaboration. The similarities between the Merida Initiative and the earlier Plan Colombia are captured by the scheme often being described as 'Plan Mexico' by scholars and activists.¹⁰⁰ Following in the manner of Plan Colombia, the Merida Initiative facilitated American provision of military weaponry, surveillance technology and inspection equipment, technical advice and training of law enforcement units to the Mexican government, all in service of an escalation of the

drug war. Between 2008-2010 the U.S government spent \$1.15 billion in Mexico alone through the Merida Initiative with a further \$275 million being spent in other key drug war fronts in Central America and the Caribbean such as the Dominican Republic and Haiti.¹⁰¹ In a 2021 review of the Merida Initiative, US Congressional research estimated having spent roughly \$3.3 billion on this program, at the same time as admitting that ‘escalating violence in Mexico and drug overdose in the United States have led many to question the Merida Initiative’s overall efficacy.’¹⁰² The project was driven by a ‘kingpin’ strategy, underwritten by a belief that the targeting, arresting and extradition of the leading figures in drug organization would automatically weaken the trade. The Merida Initiative provided much of the firepower that fuelled Mexican President Felipe Calderón’s government’s embrace of the War on Drugs during his six-year term (2006-2012). Yet, perhaps unsurprisingly, the consequences of ‘Plan Mexico’ have not been dissimilar to its Colombian predecessor; evidence of its empirical failure is shown by how Mexico’s ‘overall homicide rate grew by over 260% from 2007 to 2010.’¹⁰³ A particularly violent epicentre of the Mexican drug war has been Ciudad Juárez, where ‘the rate of killings per 100,000 inhabitants rose from 14.4 in 2007, to 75.2 in 2008, to 108.5 in 2009.’¹⁰⁴ This resulted in the 2009 murder rate in Juárez’s rate being ‘one of the highest in the world, far surpassing Rio de Janeiro, Brazil, and Medellin, Colombia.’¹⁰⁵ Anabel Hernández captures the failings of the Plan Mexico by stating:

Calderón’s time in office has left Mexico ablaze. There is only one victor in his so-called War on Drugs: Joaquín Loera Guzmán, El Chapo [...] during Calderón’s six-year term, Guzmán became the most powerful drug trafficker in history, while his enemies were decimated.

El Chapo's empire is Calderón's chief legacy.¹⁰⁶

Furthermore, the impact of NAFTA contributed to Mexico becoming not just a transit country for drugs but also a producer. Similarly to Colombia, the agricultural reforms demanded of Mexico by neoliberal economic dogma to dismantle protectionism, divided up communal lands under the premise of making them more competitive, leading to falling incomes and rising unemployment. Farmers turned to narcotics production to sustain an income; the move into a sector with greater potential profit returns merely following the dictates of neoliberal dogma.¹⁰⁷ As a result, drugs became another product to be transported through Ciudad Juárez to satisfy the demand of the U.S.A., as that nation amplified the force of law against drugs as the illegitimate element of the desired global economic order. Drugs belonged to a vast array of commodities that flowed relatively uninterrupted through the U.S-Mexican border. The War waged on through the perpetual War on Drugs became a war not against such commodities but against human bodies associated with them. The force of the law fell far more harshly upon people moving across the border than the drugs, connecting the Merida Initiative to the broader focus on immigration security. The Merida Initiative included a pillar containing more than \$100 million in training and equipment for securing Mexico's southern border.¹⁰⁸ Much like with Plan Colombia, the ineffectiveness of the project of sustained warfare brought about by the Meridia initiative has given rise to popular rejection of the policy. Perhaps the most significant rejection came in 2019 when Mexico's president Andrés Manuel López Obrador declared an end to the country's War on Drugs and articulated a desire to reduce the role that the USA play in Mexico's security apparatus moving forward.¹⁰⁹

Conclusion

At the start of this article, I identified the paradox of the drug war as a challenge for the law and particularly for an international legal order claiming to expel the ‘scourge of war.’ War underwrites theories of what grounds or sustains international law, raising as it does the question of how law could restrain outbreaks of violence between sovereign entities, without overarching authority. The question posited in the introduction, asking how the piling of bodies upon bodies produced through the drug war could work in conjunction with post-war international law’s ‘humanitarianism’, can start be addressed when we study the ways in which new modes of warfare blurred the distinctions between police activity and military conflict under the architecture of globalisation. Moreover, the mass incarceration, aerial fumigation and paramilitary killings of the War on Drugs, are not contrary or disconnected from the UN institutions transitioning towards a more liberal, moral universalism in this era, they a part and parcel of the same structure. The language of human rights, development and humanitarianism are not contradicted by the drug war but actively invoked in its service as the international community as a whole that is claimed to coalesce as a totality through its capacity to expel its degenerate elements. The War on Drugs escalated in parallel with the triumph of human rights and the spread of free-marketism because it served as the perpetually violent underside to claim of globalization to have brought about the history ending ambition of universal peace.¹¹⁰ Yet, precisely because the ‘War on Drugs’ was framed in moralistic ‘just’ terms, notions of legal order remained undisturbed by the law-making violence that emerged from drug prohibition. The silence of the discourses of human rights in addressing the plight of the victims of drug war betrays their lives as ungrievable;

they become merely necessary sacrifices to be made in service of bringing an international community into being, through the casting out the ‘evil’ of drugs.

Therefore, a problem presents itself to international law; a problem of articulating a new concept of universalism, untied from a logic of totalisation and sacrifice. The facing of this challenge requires the turning away from the masked violent exclusion and essentialism that is rendered naked when we examine this often overlooked example of moralized warfare.

¹ Preamble to *The Charter of the United Nations* (San Francisco: 1945)

<<http://www.un.org/en/sections/un-charter/preamble/index.html>> [accessed 3 August 2019].

² *The United Nations Single Convention on Narcotic Drugs, 1961, Preamble*.

³ For critical engagement with the concept of the late twentieth century ‘new war’ see, Christine Chinkin and Mary Kaldor, *International Laws and New Wars* (Cambridge: Cambridge University Press 2017), Mark Duffield, *Global Governance and The New Wars: The Merging of Development and Security* (London: Zed Books, 2001); Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era*, 3rd edn (Cambridge: Polity Press 2012); Chris Hables Gray, *Post-modern War: The New Politics of Conflict* (London: Routledge, 1997).

⁴ Richard Nixon, “Special Message to the Congress on Drug Abuse Prevention and Control”, June 17, 1971. *The American Presidency Project*, ed. by Gerhard Peters and John T. Woolley.

<<http://www.presidency.ucsb.edu/ws/?pid=3048>> [accessed 7 October 2019].

⁵ Matthias Schmelzer, ‘What Comes After Bretton Woods? Neoliberals Debate and Fight for a Future Monetary Order’, in Philip Mirowski, Dieter Plehwe, and Quinn Slobodian, *Nine Lives of Neoliberalism* (London: Verso 2020): 197-219

⁶ *Ibid.*

⁷ William McAllister, *Drug Diplomacy in the Twentieth Century* (London: Routledge 2000), 233-235.

⁸ Richard Nixon, ‘Special Message to the Congress on Drug Abuse Prevention and Control’.

⁹ *Ibid.*

¹⁰ William McAllister, 235.

¹¹ *Ibid.*

¹² Ronald Reagan, “Radio Address to the Nation on Federal Drug Policy”, October 2, 1982, *The American Presidency Project*, ed. by Gerhard Peters and John T. Woolley.

<<http://www.presidency.ucsb.edu/ws/?pid=43085>> [accessed 11 August 2019].

¹³ George H.W Bush, “Address to the Nation on the National Drug Control Strategy”, September 5, 1989. *The American Presidency Project*, ed. by Gerhard Peters and John T. Woolley

<<http://www.presidency.ucsb.edu/ws/?pid=17472>> [accessed 11 August 2019].

- ¹⁴ William J. Clinton, “The President's News Conference with President Andres Pastrana of Colombia in Cartagena”, August 30, 2000. *The American Presidency Project*, ed. by Gerhard Peters and John T. Woolley <<http://www.presidency.ucsb.edu/ws/?pid=1419>> [accessed 11 August 2019].
- ¹⁵ Donald Trump twitter, November 5, 2019, Available at <https://twitter.com/realDonaldTrump/status/1191708902041227264?s=20>
- ¹⁶ Jacques Derrida, “The rhetoric of drugs: an interview”, *5 differences: A Journal of Feminist Cultural Studies* 5, no.1 (Spring 1993): 1-25.
- ¹⁷ *Ibid.*, 62.
- ¹⁸ *Ibid.*, 64.
- ¹⁹ Article 12, *The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*
- ²⁰ Paragraph 29, *Political Declaration and Global Programme of Action* adopted by General Assembly at its seventeenth special session, ‘devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances.’
- ²¹ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2012).
- ²² George H.W. Bush gave a speech entitled “Toward a New World Order”, September 11, 1990. (*The American Presidency Project*, ed. by Gerhard Peters and John T. Woolley) <<http://www.presidency.ucsb.edu/ws/?pid=19253>> [accessed 6 January 2019]. For further, see *From Cold War to New World Order: The Foreign Policy of George H.W. Bush*, ed. by Meenekshi Bose and Rosanna Perott (Westport: Praeger Publishing, 2002).
- ²³ Robert M. Kimmitt, “International Law in the War on Narcotics”, in *Proceedings of the Annual Meeting* (American Society of International Law), 84 (March 1990): 302-307, 304.
- ²⁴ *Ibid.*, 304.
- ²⁵ *Ibid.*
- ²⁶ *Ibid.*, 305.
- ²⁷ *Ibid.*
- ²⁸ William McAllister, 235.
- ²⁹ *Ibid.*, 307.
- ³⁰ Mark Fisher, “The New Problem of Evil” in *Aesthetic Justice: Intersecting Artistic and Moral Perspectives* ed. by Pascal Gielen and Niels Van Tomme (Amsterdam: Valiz 2015): 45-55, 50
- ³¹ See the 1998 United Nations General Assembly: Special Session on the World Drug Problem, 8-10 June 1998. <<http://www.un.org/ga/20special/>> [accessed 8 October 2019].
- ³² See Introductory chapter
- ³³ UN World Drug Report 2019, executive summary, Available at <https://wdr.unodc.org/wdr2019/en/exsum.html>
- ³⁴ For more of the impact of the rhetorical use of war in international law, please see Tawia Ansah, “War: Rhetoric & Norm-Creation in Response to Terror”, *Virginia Journal of International Law* 43, no.3 (Spring 2003) 797—860; or Frederic Megret, “War? Legal Semantics and the Move to Violence”, *European Journal of International Law* 13, no.2 (April 2002), 361—399.
- ³⁵ Preamble, *The Charter of the United Nations*.
- ³⁶ David Kennedy, *Of Law and War* (New Jersey: Princeton University Press 2006), 2.
- ³⁷ David Kennedy, 5.
- ³⁸ Mary Kaldor, “In Defence of New Wars.” *Stability* 2, no.1 (2013): 4, 1-16, 14.
- ³⁹ See Nicholas Lamp, ‘Conceptions of War and Paradigms of Compliance: The “New War” Challenge to International Humanitarian Law’, *Journal of Conflict and Security Law* 16, no.2 (July 2011) 225-262; Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era*, 3rd edn (Cambridge: Polity Press, 2012) or Mark Duffield, *Global Governance and The New Wars: The Merging Of Development And Security* (London: Zed Books, 2001).
- ⁴⁰ Carl von Clausewitz, *On War*, ed. by Beatrice Heuser, trans. by Michael Howard and Peter Paret (Oxford: Oxford university Press, 2007)
- ⁴¹ *Ibid.*, 28.
- ⁴² *Ibid.*, 252.
- ⁴³ Michael Hardt and Antonio Negri, *Multitude* (New York: Penguin, 2004): 22.
- ⁴⁴ *Ibid.*, 30. For *Anti-Ballistic Missile Treaty* see <<https://www.state.gov/t/avc/trty/101888.htm>> [accessed 3 August 2019].
- ⁴⁵ *Ibid.*, 15.

- ⁴⁶ Michael Hardt and Antonio Negri, *Multitude* (New York: Penguin, 2004): 16.
- ⁴⁷ *Ibid.*
- ⁴⁸ John E. Thomas, Jr., “Narco-Terrorism: Could the Legislative and Prosecutorial Responses Threaten Our Civil Liberties?”, *Washington and Lee Law Review* 66 (2009): 1881
- ⁴⁹ Michael Hardt and Antonio Negri, *Multitude*, 16.
- ⁵⁰ *Ibid.*, 23.
- ⁵¹ *Ibid.*, 31.
- ⁵² Carl Schmitt, “The Turn to the Discriminating Concept of War (1937),” in *Writings on War*, trans. Timothy Nunan (Cambridge: Polity, 2011): 63
- ⁵³ Fisher, “The New Problem of Evil”, 50
- ⁵⁴ Michael Hardt and Antonio Negri, *Multitude*, 29.
- ⁵⁵ *Ibid.*, 29-32.
- ⁵⁶ See Francisco de Vitoria, *On the Law of War*, in *Francisco de Vitoria: Political Writings*, ed. by Jeremy Lawrance, trans. by Anthony Pagden Jeremy Lawrance (Cambridge: Cambridge University Press, 1992): 293-329
- ⁵⁷ Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Chapter 6, 273-309; or James Muldoon, ‘Francisco de Vitoria and humanitarian intervention’, *Journal of Military Ethics* 5, no.2 (2006): 128-143.
- ⁵⁸ Francisco de Vitoria, *On the Law of War*, paragraph 42, in *Francisco de Vitoria: Political Writings*, 318.
- ⁵⁹ *Ibid.*
- ⁶⁰ Rene Girard, *Battling to the End: Conversations with Benoît Chantre* (East Lansing: Michigan State University Press, 2009).
- ⁶¹ Carl von Clausewitz, *On War*. 28.
- ⁶² Rene Girard, *Battling to the End*, 11.
- ⁶³ *Ibid.*, 9.
- ⁶⁴ For more on Napoleon and the promise of Absolute War, see David A. Bell, *The First Total War: Napoleon’s Europe and the Birth of Warfare as We Know It* (New York: Houghton Mifflin, 2007).
- ⁶⁵ Rene Girard, *Battling to the End*, 18.
- ⁶⁶ Rene Girard, *Battling to the End*, 41.
- ⁶⁷ See Frantz Fanon, *Black Skins, White Masks*, (New York: Pluto Press, 2008), for a full discussion on the misrecognition of the colonised subject and an underwriting of the modern dialectic, see particularly ‘The Negro and Hegel’, 168-173.
- ⁶⁸ For discussions on the drug war as post-Clausewitzian, please see Eva Bertram and Kenneth Sharpe, ‘The Unwinnable Drug War: What Clausewitz Would Tell Us’, *World Policy Journal* 13, 4 (Winter, 1996/1997): 41-51.
- ⁶⁹ Eva Bertram and Kenneth Sharpe, 43.
- ⁷⁰ Niamh Eastwood, Michael Shiner, and Daniel Bear, “The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales”, *Release*, 2013; or Jamie Amparo Alvez and Dina Alvez, “Drugs and Drug Control in Brazil”, *Pan-African Issues in Drugs and Drug Control: An International Perspective* ed. by Professor Anita Kalunta-Crumpton (Ashgate: 2015): 248-292.
- ⁷¹ See Angela Y. Davis, “Race and Criminalization: Black Americans and The Punishment Industry” in *The House That Race Built*, ed. by Wahneema Lubiano (New York: Random House USA, 1999) 265-279; Michael Javen Fortner, *Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment* (Cambridge: Harvard University Press, 2015); Peter Reuter, “Why Has US Drug Policy Changed So Little Over 30 Years?”, *Crime and Justice* 42, no.1 (2013); *The Drug War, Mass Incarceration and Race*, (The Drug Policy Alliance: February 10, 2016) <<http://www.drugpolicy.org/resource/drug-war-mass-incarceration-and-race>> [accessed 1 November 2019].
- ⁷² Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Reprint edition (The New Press: 2012): 7.
- ⁷³ Angela Y. Davis, 275-276.
- ⁷⁴ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 113.
- ⁷⁵ Colin Dayan, ‘Due Process and Lethal Confinement’, in *States of Violence: War, Capital Punishment, and Letting Die* (Cambridge: Cambridge University Press 2009) ed. by Austin Sarat and Jennifer L. Culbert, 127-150.

- ⁷⁶ For further on the relationship between the drug war, mass incarceration and the mythologies of back criminality see Biko Agozino, “Theorizing otherness, the War on Drugs and incarceration” in *Theoretical Criminology*, 4, no.3 (August 2000), 359-376.
- ⁷⁷ See ‘Drugs Across Borders: US Drug Policy and Latin America’, *The Drug Policy Alliance* <www.drugpolicy.org/docUploads/fact_sheet_borders.pdf> [accessed 9 October 2019].
- ⁷⁸ For further on the relationship between the ‘shadow drug economy’ and neoliberalism in Colombia see Oscar Guardiola-Rivera, *What If Latin America Ruled the World? How the South Will Take the North Through the 21st Century* (London: Bloomsbury, 2010), 10-11.
- ⁷⁹ *Ibid.*, 507-508.
- ⁸⁰ William O. Walker III, “The Limits of Coercive Diplomacy: U.S. Drug Policy and Colombian State Stability 1978-1997”, in *When Policies Collide: The Illicit Global Economy and State Power*, ed. by Richard H. Friman and Peter Andreas (Lanham: Rowman & Littlefield 1999) 143-173. FARC refers to The Revolutionary Armed Forces of Colombia and ELN refers to The National Liberation Army, both armed revolutionary groups active in Colombia
- ⁸¹ Julia Buxton, *The Political Economy of Narcotics: Production, Consumption and Global Markets* (London: Zed Books, 2006) 180.
- ⁸² For a full engagement with the overriding military impulse of Plan Colombia, see Noam Chomsky, ‘Plan Colombia’, *Alternative Press Review* 6, 1 (Spring, 2001).
- ⁸³ U.S. Governments Accountability Office (GAO), ‘Plan Colombia: Drug Reduction Goals Were Not Fully Met, but Security Has Improved; U.S. Agencies Need More Detailed Plans for Reducing Assistance’, *GAO-09-71* (October, 2008), Highlights, 1. <<http://www.gao.gov/products/GAO-09-71>> [accessed 11 August 2019].
- ⁸⁴ U.S. Governments Accountability Office (GAO), ‘Plan Colombia: Drug Reduction Goals Were Not Fully Met...’, Highlights, 1.
- ⁸⁵ *Ibid.*
- ⁸⁶ Alvaro Santos, “International Law and its Discontents: Critical Reflections on the War on Drugs or the Role of Law in Creating Complexity”, *American Society of International Law Proceedings* (2012), 172-176, 175.
- ⁸⁷ *Ibid.*, Table 3, 47.
- ⁸⁸ ‘2010 International Narcotics Control Strategy Report’, U.S. State Department, Bureau of International Narcotics and Law Enforcement Affairs. <<http://www.state.gov/j/inl/rls/nrcrpt/2010/index.htm?goMobile=0>> [accessed 09 October 2019], 217.
- ⁸⁹ Michael Taussig, *Law in a Lawless Land: Diary of a Limpieza in Colombia* (Chicago: University of Chicago Press, 2003).
- ⁹⁰ *Ibid.*, xiii.
- ⁹¹ Michael Taussig, 44, 81.
- ⁹² *Ibid.*, 133.
- ⁹³ *Ibid.*, 120.
- ⁹⁴ Frantz Fanon, *Black Skins, White Masks*, 2.
- ⁹⁵ Michael Taussig, 49.
- ⁹⁶ *Ibid.*, 199.
- ⁹⁷ *Ibid.*, 47.
- ⁹⁸ Charles Bowden, *Murder City: Ciudad Juarez and The Global Economy's New Killing Fields* (Burlington: Phoenix Books, 2010), 173.
- ⁹⁹ ‘The Merida Initiative: Fact Sheet’, the Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State (June 23, 2009) <<https://2009-2017.state.gov/j/inl/rls/fs/122397.htm>> [accessed 9 October 2019].
- ¹⁰⁰ For references to The Merida Initiative as ‘Plan Mexico’, see Paul Kenny, Monica Serrano, Arturo C. Sotomayor, *Mexico's Security Failure: Collapse Into Criminal Violence* (London: Routledge, 2013) 151; James D. Cockcroft, *Mexico's Revolution Then and Now* (New York: New York University Press, 2012) 44; or Kristina Aiello, ‘Obama's Choice: Human Rights First or Plan Mexico’, in *NACLA*, <<https://nacla.org/news/obamas-choice-human-rights-first-or-plan-mexico>> [accessed 11 August 2019].
- ¹⁰¹ ‘The Merida Initiative: Fact Sheet’, 2009.
- ¹⁰² Claire Ribando Seelke, ‘Mexico: Evolution of the Mérida Initiative, 2007-2021’, Congressional Research Service, 13/01/2021. <<https://fas.org/sgp/crs/row/IF10578.pdf>> [accessed 12/04/2021]
- ¹⁰³ ‘Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico’s “War on Drugs”’, Report by *Human Rights Watch* (November, 2011), 4. <https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf> [accessed 11 August 2019]

2019].

¹⁰⁴ Ibid., 15

¹⁰⁵ Ibid., 15

¹⁰⁶ Anabel Hernández, *Narcoland: The Mexican Drug Lords and Their Godfathers* (London: Verso, 2013) 25.

¹⁰⁷ Peter Andreas, 'When Policies Collide: Market Reform, Market Prohibition and the Narcotization of the Mexican Economy,' in *The Illicit Global Economy and State Power*, ed. by Richard H. Friman and Peter Andreas (Lanham: Rowman and Littlefield, 1999); 125-127.

¹⁰⁸ Claire Ribando Seelke, 'Mexico: Evolution of the Mérida Initiative, 2007-2021', Congressional Research Service, January 2021.

< <https://fas.org/sgp/crs/row/IF10578.pdf>> [accessed 12/04/2021]

¹⁰⁹ Mary Beth Sheridan, 'Mexico's President says no to U.S. Cash to fight Drug Crime' in *the Washington Post* May 2019, < https://www.washingtonpost.com/world/the_americas/amlo-rejects-us-crime-fighting-funds-injecting-new-uncertainty-into-relationship/2019/05/09/f9e368fe-71c2-11e9-9331-30bc5836f48e_story.html>

¹¹⁰ For an in-depth study of the rise on Human Rights from the 1970's onwards see Samuel Moyn, *The Last Utopia: Human Rights in History*.