Force of Humanity:
The Regulation of Warfare and its Human(s)

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Abstract

Force of Humanity: The Regulation of Warfare and its Human(s)

What is the relationship between the law regulating warfare and the figure of the human? "Force of Humanity" focuses on this question to re-examine the epistemic formation of the human as a particular category of being juridified by this body of law. My intervention departs from viewing the doctrinal development of the regulation of warfare as constrained to the practice between states and the human as a mere subject to be included or excluded. Instead, I situate the development of the law governing warfare within the larger production of Western knowledge on the human. Through this reframing, I argue that the doctrine regulating warfare acts in a reiterative manner to juridify a particular human rooted in coloniality and anti-blackness. This human is universalised through a forcible assimilation of other modes of being human and non-human into its juridical categories, which is best understood as a process of humanisation. Thus, the doctrinal regulation gives legal form to specific vernaculars of humanity that become over-represented through warfare.

Through Sylvia Wynter's rethinking of the 'human' and the practice of 'Black Study', I trace the over-representation of this particular humanity and demonstrate how coloniality and anti-blackness persists in the legal project of regulating warfare. I return to key moments in the historical development of this body of law and contextualise them within the wider scope of Western humanity's self-fashioning. Across these critical moments, I trace three distinct yet complementary vernaculars of humanity, 'Christianised humanity', 'racialised humanity', and 'securitised humanity'. I locate these particular forms of being human by immersing myself in a wide range of primary materials, including mediaeval canonical instruments, works of history by jurists, colonists, and planters, as well as colonial and contemporary military manuals. Turning to these primary materials expands the relevant sources of, and contributes to, the historiographic literature on the laws of armed conflict. This method precipitates a shift away from the multiple binaries underpinning the laws of armed conflict and instead reorients our gaze towards modes of waging war excessive to the legal categorisation of armed conflicts. By rethinking the violence of armed conflict through the broader category of warfare, I bring to light three forms of warfare, 'missionary warfare', 'savage warfare', and 'counterinsurgency warfare', each corresponding to their particular vernaculars of humanity. These forms of warfare illuminate a shadow narrative of the legal regulation of warfare tied to the emergence of a particular humanity in the context of Euro-modernity's global expansion.

My intervention spans three chapters, with each set across scenes of humanisation demonstrating the emergence and overrepresentation of a distinct vernacular of humanity through its corresponding mode of warfare. Chapter 1, 'Christianising Humanity', looks at the emergence of a distinctly Christianised humanity through the waging of missionary warfare authorised by the Catholic church as 'just war'. Across two scenes, the Medieval Crusades and the Portuguese expansion towards West Africa, and the Spanish conquest of the Americas, I illustrate how missionary warfare juridifies a specifically Christian form of being and universalises it. In chapter 2, 'Racialising Humanity', I show

how the particular mode of Christianised humanity is transformed to the secular variant of an inclusive racialised humanity and made universal through the doctrine of savage warfare. By focusing on the English colonisation of Virginia, the Jamaican plantocracy's war against the Maroons, and small wars in the South Asian subcontinent, the three scenes demonstrate how the epistemic exercise of race-making contributes to the juridification of racialised humanity by savage warfare on the colonial frontier. In the final chapter, 'Securing Humanity', I show how counterinsurgency warfare has worked to juridify a hyper-assimilatory form of securitised humanity through the intertwining of development and security. In the three scenes, spanning from late-colonial counterinsurgency during decolonisation, to the counter-terror operations in Iraq and Afghanistan, and the domestication of counterinsurgency warfare through policing and prisons, I show that counterinsurgency warfare acts as a form of racialised social control that juridifies a form of humanity which is to be secured for development in perpetuity. Ultimately, the regulation of warfare to humanise battlefield conduct juridifies and over-represents the human through the forceful incorporation of all other modes of being. By understanding 'humanising warfare' as a continuation of Western humanity's self-validation and universalisation, I conclude with advocating for the abolition of the human and its attendant juridical categories to realise reparative futurities.

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I dedicate this thesis to the many people who have struggled, are struggling, and will continue to struggle against the enclosure of life, towards liberation in small and large ways. Your resistance is a roadmap for all of us to be brave like you.

On Humanising Warfare: An Introduction

"The colonial world is a world divided into compartments… Yet, if we examine closely this system of compartments, we will at least be able to reveal the lines of force it implies."

Frantz Fanon, *Wretched of the Earth*[1]

"The encounter between African and European had been abrupt, not so much in historical terms as in philosophical ones."

Cedric J Robinson, *Black Marxism*[2]

"Once you redefine being human in hybrid *mythoi* and *bios* terms that draw attention to the relativity and original multiplicity of our *genres* of being human, all of a sudden what you begin to recognize is the central role that our discursive formations, aesthetic fields, and systems of knowledge must play in the performative enactment of all such genres of being hybridly human."

Sylvia Wynter, *Unparalleled Catastrophe for Our Species*[3]

What is the relationship between the legal regulation of warfare and the figure of the human? An orthodox response to my question states that the legal framework of the law of armed conflict, particularly the principles of proportionality and military necessity, are balanced by the principle of humanity which places an obligation on combatants to reduce harm to human life during war.[4] By contrast, a critical response reads the laws of war as a facilitator of wartime violence which legitimates inhumane acts in the pursuit of achieving military objectives.[5] In both these responses, the human is a subject to be either protected or violated by the legal norms regulating warfare. My intervention disrupts the figuration of the human as a subject of the legal regulation

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[1] Frantz Fanon, *The Wretched of the Earth. Trans. C. Farrington* (Grove Press 1968), 29.

[2] Cedric J Robinson, *Black Marxism: The Making of the Black Radical Tradition* (University of North Carolina press 2000), 308.

[3] Katherine McKittrick and Sylvia Wynter, 'Unparalleled Catastrophe for Our Species?' in Katherine McKittrick (ed), *Sylvia Wynter: On Being Human As Praxis* (Duke University Press 2014). 31.

[4] Michael Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance' (2010) 50 Virginia Journal of International Law 795.

[5] Chris af Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War, [1994] Harvard International Law Journal.

of warfare. Instead, it argues that the human is a form of being juridified by the regulation of warfare.

By situating the development of the law governing warfare within the broader context of colonial expansion and the transatlantic slave trade, my argument particularises the formation of this body of law within the production of Euro-modern knowledge concerning the human. Thus, my thesis does not view the human as a mere subject with rights and obligations enshrined within the regulation of warfare. Rather, my interest is in showing how the figure of the human comes to be as a universalising mode of being through the doctrinal regulation of warfare. The regulation of warfare, organising intense violence in the legal form, juridified the human as a particular mode of life that comes to be through the forceful incorporation of others into its categories of knowing. Specifically, my argument is that the production and universalisation of the form of life we refer to as 'human' is entangled with warfare and its regulation. As I will show in this thesis, the process of regulating warfare to rationalise certain types of violence and against whom it could be legitimately deployed, acted as the means for describing and universalising the human through the use of force. Consequently, humanisation becomes a violent process of forceful incorporation through warfare of all other modes of living into the particular form of life denoted by the human. This concern goes to the heart of the issue of whose humanity is recognisable within this body of law that regulates when and how armed force can be used.

The human has become a renewed site of intervention within the scholarship of the law of war – what is known as either the law or armed conflict or international humanitarian law (IHL) – with respect to the regulation of new military technologies. Most scholarship within this area has focused on the importance of the 'human in the loop' in the use of these technologies and ensuring compliance with the law in the development and use of autonomous technologies.[6] Some critical interventions have aimed to disrupt the anthropocentricity of and enchantment with legal regulations by foregrounding the limits of human understanding, law, and vision.[7] Interventions grounded in posthuman feminism have engaged with the figure of the human critically to disrupt the human/nonhuman divide which reiterates itself in regulatory and policy

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[6] For key debates in the regulation of autonomous technologies, see Nehal Bhuta and others, *Autonomous Weapons Systems: Law, Ethics, Policy* (Cambridge University Press 2016); Klaudia Klonowska, 'Article 36: Review of AI Decision-Support Systems and Other Emerging Technologies of Warfare' in Terry D Gill and others (eds), *Yearbook of International Humanitarian Law, Volume 23 (2020)*, vol 23 (TMC Asser Press 2022); Bérénice Boutin, 'State Responsibility in Relation to Military Applications of Artificial Intelligence' (2023) 36 Leiden Journal of International Law 133; DILEMA Report, 'Decision-Support Systems and Human-Machine Interaction', Panel Discussion held at the REAIM Summit, 15 February 2023, Report prepared by Taylor Woodcock (2023), available at www.asser.nl/dilema/news-and-updates/report-dss-and-hmi <accessed 13 January 2025>
[7] Max Liljefors, Gregor Noll and Daniel Steuer (eds), *War and Algorithm* (Rowman & Littlefield International 2019).

approaches.[8] Posthuman feminist approaches have illuminated the exclusionary categories underpinning IHL's human, and look towards extra-legal approaches to account for a relationality between the human and non-human. While these approaches have illuminated the limits of the figure of the human, my intervention asks us to take a step back to interrogate the making of this human and understands it as a distinctly Euro-modern formation brought into existence by the epochal break of colonialism and transatlantic slavery.

Colonialism and transatlantic slavery advanced a shift in Euro-modernity's self-conception, inducing the redescription of the human as a mode of life only knowable through the limiting epistemes of coloniality and antiblackness.[9] My approach brings to the fore black feminist theories of the human and the practice of Black Study.[10] This approach enables me to demonstrate how specific vernaculars of humanity engendered by the worldmaking processes of slavery and colonialism have come to over-represent themselves as *the* human through warfare. My study shows how this particular human is juridified within the regulation of warfare, and how this process of juridification unfolds recursively. I argue that the emergence and over-representation of the human as the only form of life have taken place through the formation of rules governing warfare. Akin to a feedback loop, I demonstrate how this relationship reproduces itself stably and self-referentially, occluding the process of its unfolding. Understanding this self-producing and self-validating, i.e. autopoietic, relationship exposes the law-like manner in which the human as a particular mode of being auto-institutes itself by

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[8] For key literature exploring posthuman feminist critiques of the legal regulation of new technological means of armed conflict see: Emily Jones, *Feminist Theory and International Law: Posthuman Perspectives* (Routledge 2023); Emily Jones, Sara Kendall and Yoriko Otomo, 'Gender, War, and Technology: Peace and Armed Conflict in the Twenty-First Century' [2018] Australian Feminist Law Journal.

[9] Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, after Man, Its Overrepresentation - An Argument' [2003] New Centennial Review. Antiblackness acts as a constitutive logic of coloniality by reproducing the physical and metaphysical subjection of Black life. The various modalities through which antiblackness materialises has been the subject of study within the theoretical fields of Afropessimism, black feminist theory, and critical race theory among others, see for example: Moon-Kie Jung and João H Costa Vargas, *Antiblackness* (Duke University Press 2021).

[10] 'Black feminist theories of the human' is a collective term used by Alexander Weheliye to describe a tradition of thought that inquiries into the production of racialisation as an object of knowledge, see: Alexander G Weheliye, *Habeas Viscus* (Duke University Press 2014). This tradition of thought is varied in its approach to analysing the processes of race-making, blackness, and gendering, nonetheless all approaches read these processes as co-constitutive of producing our current mode of existence as 'human' and the orders of knowledge that underpin it. Destabilising these orders of knowledge underpinning the universal ontological existence of the human is one of the key concerns of Black Study, see: Joshua Myers, *Of Black Study* (Pluto Press 2023). I unpack the literature on black feminist theories of the human and Black Study in section 2 of this introduction chapter.

assimilating otherwise forms of life within itself, ordering them as 'human' and 'non-human' through the use of force.[11]

The violent conscription of non-European people into racialised conceptions of 'modernity' and 'universal humanity' is central to the emergence of the figure of the human. The formation of this particular mode of being human has unfolded relationally, and in its unfolding has relied on the abjection and criminalisation of colonised and enslaved humanity.[12] This form of the human privileges white, male, bourgeois, cis-heterosexual modernity, and disciplines other forms of being in relation to itself.[13] Yet, the criminalisation and abjection of other modes of being should not be understood as constituting 'dehumanisation'. Instead, the (mis)recognition of alternate forms of being as abject and criminal is central to their forcible assimilation into the figure of the human. As Jackson shows in her excellent reframing of the human-animal divide, this process of (mis)recognition is best understood as humanisation enacted through a pervasive assimilation into the over-represented figure of the human.[14] My thesis argues that locating the emergence of this human within the epistemes of coloniality and anti-blackness denaturalises its universal claims and provincialises it to a *genre* of being human that has been made universal through force.

To demonstrate the embedding of this particular mode of being human within the legal regulation of warfare, I turn towards the history of the making of this body of law. The 'historical turn' as a method in international law has led to a re-examination of ideas, figures, structures, and theories within the field, considering the broader social, political, and intellectual context of how legal norms are made.[15] History can denaturalise the given presumptions of international

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[11] The autopoietic nature of our current mode of being human is the cornerstone of Wynter's theory of Man, she draws on the scholarship of Humberto Maturana and Francisco Varela who theorised autopoiesis as a concept to address the recursive process of cognition and autonomy within living systems, see: Humberto R Maturana and Francisco J Varela, *Autopoiesis and Cognition: The Realization of the Living* (Stafford Beer tr, D Reidel Publishing Company 1980). On law and autopoiesis see Gunther Teubner, *Law as an Autopoietic System* (Blackwell 1993).

[12] Wynter (n 9). For a brilliant engagement with Sylvia Wynter's corpus of work and its relevance to international law, see Darryl Li, 'Genres of Universalism: Reading Race Into International Law, With Help From Sylvia Wynter' (2021) 1686 UCLA Law Review. 1704

[13] Sylvia Wynter demonstrates this evocatively in her corpus of work, but particularly in Sylvia Wynter, '"No Humans Involved": An Open Lettter to My Colleagues' (1994) 1 Knowledge on Trial 42.

[14] Zakiyyah Iman Jackson, *Becoming Human: Matter and Meaning in an Antiblack World* (NYU Press 2020).

[15] Matilda Arvidsson and Miriam Bak McKenna, 'The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries' (2020) 33 Leiden Journal of International Law 37. See also: Rose Parfitt, 'The Spectre of Sources' (2014) 25 European Journal of International Law 297.

law and disrupt its political settlements,[16] helping us see it as constantly being ushered into existence, reinforced, and affirmed, rather than as a set of actors and agencies, powers, and competences that are already firmly grasped as historically 'given'.[17] The contingent nature of historical production also draws our attention to the silences within its narratives. These silences can direct our attention towards the settled assumptions animating the historical narrative and consider both what the story presents as notable and that which it elides within itself.[18] Contending with these silences is significant in understanding the preoccupations of this body of law, in particular its investment in a teleologically unfolding progress narrative.[19]

I unpack the "bundle of silences" within this narrative by returning to key moments in the historical development of this body of law and contextualise them within the wider scope of Western humanity's self-formation. My focus on tracing the emergence and overrepresentation of a particular vernacular of humanity reveals a shadowed narrative of the legal regulation of warfare. These vernaculars are realised in the many utterances of describing, categorising, and justifying the human as a particular mode of life visible in the archive of regulating warfare. I explore this narrative across three chapters showcasing distinct vernaculars of humanity formed through waging specific types of warfare. Chapter 1 shows the making of a Christianised humanity through missionary warfare ordained as 'just war' by the Catholic church in its expansionary conquests of the Americas and West Africa. Chapter 2 considers the transformation of Christianised humanity into its secular variant of an inclusive racialised humanity through the waging of 'savage warfare' on the colonial frontier by English planters against the Algonquin in Virginia, the Jamaican plantocracy against the Maroons, and the British armed campaigns against criminalised caste communities. In Chapter 3, I trace the re-shaping of racialised humanity into a hyper-assimilatory securitised humanity structured by the intertwining of development and security as achieved by counterinsurgency warfare in the decolonisation period, counter-terror operations in Iraq and Afghanistan, and its domestication through prisons and policing.

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[16] Nawal Arjini and Adom Getachew, 'History's Presence' (*The New York Review of Books*, 12 August 2023) <https://www.nybooks.com/online/2023/08/12/historys-presence-adom-getachew/> accessed 13 January 2025.

[17] Matthew Craven, 'Theorizing the Turn to History in International Law' in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press 2016).

[18] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Beacon Press 1995).

[19] Emily Haslam, *The Slave Trade, Abolition and the Long History of International Criminal Law: The Recaptive and the Victim* (Routledge 2019).

By redefining what constitutes warfare, my thesis performs a radical retelling of the narrative of its legal regulation. This renarration is made possible by immersing myself in a wide range of primary materials, including mediaeval canonical instruments, works of early jurists of law of nations, natural histories by colonists and planters, as well as colonial and contemporary military manuals. I draw on materials such as colonial travelogues, natural histories, and narratives of self-experience in theatres of colonial and imperial violence, to expand the archive of sources underpinning the law on the use of force and armed conflict. These non-law archival materials enable me to reinterpret primary materials central to international law, for example my centring of Vitoria's ethnological writing in Chapter 1 provides a different lens to read his theorisation of *jus gentium* and the place of the *indios* in it. Reading across these sources to expand and reinterpret the legal regulation of warfare is an exercise of Black Study that widens my scope of critical engaging with what constitutes war and displaces the technical terminology of armed conflict to consider warfare as an expansive category. The redefinition of warfare through this method shows how it accommodates ways of using force in excess of the juridical frame of armed conflict and makes explicit how its regulation is tied to the epistemic project of defining humanity in the terms of Euro-modernity.

I destabilise the presumed universality of the humanitarian appeal of regulating warfare through law and show instead that the project of juridifying warfare has acted to produce a mono-humanism into which other genres of being human are violently assimilated through their (mis)recognition within the juridical frame. Recognising that the human for whose sake war is regulated is an accretion of violent processes of physical and epistemic annihilation moves me towards arguing for the abolition of this human and its attendant juridical frames. I demonstrate the need for an epistemic transformation of the human through reckoning with practices of livingness oriented towards a futurity of liberation.

This introduction proceeds to explain my argument by first looking at how the progressively unfolding narrative of using law to regulate warfare has been defined by a tension between humanity and military necessity. This tension is characterised by increasingly technical responses for resolving the dilemma between safeguarding human life while achieving military objectives. I complement my diagnosis of the doctrinal literature with critical approaches to this body of law. Within this critical literature, the figure of the human is constructed through the categories of civilian and combatant which are burdened by structural exclusions occurring along axes of gender, race, and civilisation. I proceed to then show how an approach of Black Study provides a new entry point into this tension between the figure of the human and warfare. I show how black feminist theories of the human disrupt this binarized tension to put forth an understanding of the human as a hierarchically organised mode of being produced through regimes of force. I continue to show how this reorientation is productive in expanding the

insights of critical approaches to this body of law, contributing especially to the new turn of situating the human in relation to warfare and its regulation. Finally, I end the introduction with a short outline of the chapters in my thesis.

1) Narrating humanity in the regulation of warfare through law.

a) The Master narrative: juridifying war for 'obvious considerations of humanity'

One of the dilemmas encountered in the study of *jus ad bellum* and *jus in bello*, the two bodies of law regulating the circumstances for using force and the conduct of hostilities, respectively, can be used in international law, is the possibility of legally regulating situations of complete tumult and societal breakdown. It was not without reason that Hersch Lauterpacht stated that the "very idea of a legal regulation of a condition of mere force has appeared to many incongruous to the point of absurdity".[20] Yet, giving juridical form to the practice of war has been a sustained concern underpinning the Eurocentric development of the laws of war.[21] While some of this literature acknowledges that the development of rules regarding warfare is not an entirely Eurocentric endeavour by indicating similar rules developed across ancient China, India, and the medieval Ottoman Empire, the laws that we in modern terms refer to as the laws of armed conflict originate within a Eurocentric narrative and incorporate their own presumption regarding their legitimate subject.[22]

The account generally originates in the medieval period, citing how the Christian concept of just war emerged in the context of the establishment and expansion of the Holy Roman Empire as a conglomeration of religious and legal doctrine derived through combining divine law and

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[20] Hersch Lauterpacht, *International Law: Being the Collected Papers of Hersch Lauterpacht. The Law of Peace, Part 2* (Elihu Lauterpacht ed, Cambridge University Press 1970), 37-39. *Quoted in* Marco Sassòli and others, *How Does Law Protect in War?* (Third, expanded and updated edition, International Committee of the Red Cross 2011), 13-14.

[21] Pablo Kalmanovitz, *The Laws of War in International Thought* (Oxford University Press 2020); Michael C Howard, *The Laws of War: Constraints on Warfare in the Western World* (Yale University Press 1997); Alexander Gillespie, *A History of the Laws of War* (Hart Pub 2011). This narrative is also reproduced in textbooks on the law of armed conflict: Emily Crawford and Alison Pert, *International Humanitarian Law* (2015); Gary D Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (1st edn, Cambridge University Press 2010).

[22] In recent scholarship, some have gone beyond acknowledging alternative paradigms of regulating warfare and have incorporated these paradigms in their assessment of IHL. See: Zhuo Liang, 'Chinese Perspectives on the Ad Bellum/in Bello Relationship and a Cultural Critique of the Ad Bellum/in Bello Separation in International Humanitarian Law' (2021) 34 Leiden Journal of International Law 291; Dr Omar Mekky, *Islamic Jihadism and the Laws of War: A Conversation in International and Islamic Law Languages* (1st edn, Oxford University Press 2023).

natural law.[23] It then follows on to the early modern period where the centrality of divine law in guiding questions of waging war was increasingly supplanted by nascent notions of sovereignty and theories of natural rights underpinning the advent of the law of nations. The most often cited example of this transformation is Grotius' *De jure belli ac pacis* (On the Law of War and Peace), published in 1625, that elaborates on the rights of the state to make war and the rights of private companies to use force to enforce contractual obligations.[24] Within this early part of the story, humanising the practice of war does not appear as the core concern of its medieval and early-modern regulation. Nonetheless, material such as Grotius's extensive list of moral prohibitions in on *the Law of War and Peace* that included the killing of women, children, prisoners of war and other categories of non-fighters, are drawn upon to historicise a tradition of restraint and humanitarianism in war.[25]

This move towards a history of humanitarianism in war acts as a bridge to connect the nineteenth century when the discursive turn towards the humanising of war through law distinctly emerged.[26] The foundational moment of humanitarianism is traced to the horror of seeing wounded and dying soldiers on the battlefield of Solferino in 1859 for Henry Dunant, a Swiss philanthropist on his way to meet Emperor Napoleon III to gain concessions in Algeria where he did business. This inspired his involvement in the Red Cross movement and advocate for the adoption in 1864 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.[27] The 1864 Geneva Conventions and the 1863 Lieber Code are the early codified instruments that typify this humanitarian sensibility.[28] These conventions are followed by an itinerary of legal instruments codifying restraint such as the 1874 Brussels Declaration, the 1868 St Petersburg Declaration prohibiting the use of bullets

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[23] Joachim Von Elbe, 'The Evolution of the Concept of the Just War in International Law', (1939) 33 AJIL 665; Roda Mushkat. 'When War May Justifiably Be Waged: An Analysis of Historical and Contemporary Legal Perspectives' (1989) 15 Brook.J.Int'l L. 223. For a history on the development of the category of the 'infidel' within just war doctrine see James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250-1550* (University of Pennsylvania Press 1979)

[24] Stephen C Neff (ed), *Hugo Grotius on the Law of War and Peace: Student Edition* (1st edn, Cambridge University Press 2012. See also: Martine Julia Van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595-1615* (Brill 2006).

[25] Crawford and Pert (n 21).

[26] Kalmanovitz (n 21); James Crossland, *War, Law and Humanity: The Campaign to Control Warfare, 1853-1914* (Bloomsbury Academic 2020); Amanda Alexander, 'A Short History of International Humanitarian Law' [2015] European Journal of International Law.

[27] Hilaire McCoubrey, *International Humanitarian Law: Modern Developments in the Limitation of Warfare* (Routledge 2020); 16.

[28] Crawford and Pert (n 21), 7.

which were "explosive or charged with fulminating or inflammable substances"[29], and the 1880 Oxford Manual.[30] The proliferation of these codified instruments is credited with the concretising of *jus in bello* as a distinct body of law and casting light on a new, but ill-defined, figure of the non-combatant subject to the law.[31]

The nineteenth century codification of humanitarian restraint in war is crucial to the master narrative as it forms the prelude to the appearance of 'international humanitarian law' as a discrete body of laws governing conduct during hostilities following the Second World War.[32] It also represents a tradition of increasingly objectifying the practice of war through compliance with law. The introduction of 'armed conflict' as a concept to be applied through a factual analysis of thresholds such as organisation of armed groups and intensity of violence through the Geneva Conventions of 1949 and the subsequent Additional Protocols transformed the conduct of war into an objective exercise and made the legal regulation of warfare universal on one hand, while depoliticising its conduct on another. Alongside the prohibition on the use of force enshrined within Article 2(4) of the UN Charter, the doctrinal bifurcation of *jus ad bellum* and *jus in bello* was cemented. As Alexander points out, the distinction between the 'laws of war' and 'the law of armed conflict' was representative of a different concept of law and distinct rules that had been understood as closely intertwined for most of the 20th century.[33] Disentangling these two strands of law created new definitional issues for the persistent yet contradictory balance between principles of military necessity and humanity.[34] An acute example of such a definitional issue was the non-recognition of anti-colonial armed liberation movements as lawful belligerents, and their resistance as armed conflict.[35] In this exercise of non-recognition,

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[29] Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, in force 29 November/11 December 1868, 138 CTS 297 ("St Petersburg Declaration"). First operative paragraph: "The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances".

[30] Solis (n 21) 40.

[31] Geoffrey Best, 'The Laws of War from Early Modern Times to the Second World War: An Essay on the Essentials' in Geoffrey Best (ed), *War and Law since 1945* (Oxford University Press 1997).

[32] Jean S Pictet, 'The New Geneva Conventions for the Protection of War Victims' (1951) 45 American Journal of International Law 462. In his recent historiography of the Geneva Conventions of 1949 and the International Committee of the Red Cross, van Dijk shows how Pictet and the wider ICRC were the main proponents of this term following the Geneva Conventions, see: Boyd van Dijk, *Preparing for War: The Making of the Geneva Conventions* (First edition, Oxford University Press 2022).

[33] Alexander (n 26).

[34] ibid

[35] Van Dijk shows how Eurocentric presumptions regarding the applicability of the Geneva Conventions licensed severe violence against anti-colonial armed movements. See: Boyd van Dijk, 'The Geneva Conventions, Insurgency, and Decolonization' in Martin Thomas and Gareth Curless

the interest of military necessity tipped the balance against the application of the Convention, particularly standards on the treatment of prisoners of war.

Over the decades, the master narrative of juridifying war for the sake humanity has matured as the law of armed conflict has undergone a gradual process of 'humanisation'.[36] The humanisation of armed conflict has aimed to mainstream the consideration of "fundamental moral values" of human protection, a key presumption of international human rights law, in the application of norms of *jus in bello* and increasingly *jus ad bellum.*[37] Yet, increasingly, the body of law is portrayed as a system which finds itself in perpetual crises due to its apparent inability to regulate new modes of armed conflict and ensure protection for civilians.[38] In response, international humanitarian lawyers have turned towards privileging the language of the doctrine as a terrain for interpreting what constitutes a breach of the body of law and in the process reiterate technical measures to ensure compliance.[39] The approach of compliance, a

(eds), *The Oxford Handbook of Late Colonial Insurgencies and Counter-Insurgencies* (Oxford University Press 2023); Nicholas Mulder and Boyd van Dijk, 'Why Did Starvation Not Become the Paradigmatic War Crime in International Law?' in Ingo Venzke and Kevin Jon Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press 2021).

[36] Theodor Meron, 'The Humanization of Humanitarian Law' (2000) 94 American Journal of International Law 239.

[37] On the mainstreaming of the morality of human protection and the attendant consideration of human rights law into *jus in bello* and *jus ad bellum* see: Frédéric Mégret, 'What Might a Human-Rights-Harmonious International Regime on the Use of Force Look Like?' (2023) 14 Transnational Legal Theory 211; Eliav Lieblich, 'The Humanization of Jus Ad Bellum: Prospects and Perils' (2021) 32 European Journal of International Law 579; Rogier Bartels, 'A Fine Line Between Protection and Humanisation: The Interplay Between the Scope of Application of International Humanitarian Law and Jurisdiction over Alleged War Crimes Under International Criminal Law' in Terry D Gill and others (eds), *Yearbook of International Humanitarian Law, Volume 20, 2017* (TMC Asser Press 2019); Gabriella Blum, 'The Individualization of War: From War to Policing in the Regulation of Armed Conflicts' in Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey (eds), *Law and War* (Stanford University Press 2014).

[38] Antonio Cassese, 'Current Challenges to International Humanitarian Law' in Andrew Clapham and Paola Gaeta (eds.) *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press 2014); See also: Pictet (n 32); Jean Pictet, 'The Formation of International Humanitarian Law' (1985) 25 International Review of the Red Cross 3.

[39] Dieter Fleck, 'Implementation and Enforcement of International Humanitarian Law' in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford University Press 2021). For a snapshot of currently favoured technical measures to improve compliance with IHL during armed conflicts, spanning from computational modelling to proportionality assessment frameworks and consultations amongst states see: Mais Qandeel, 'The Protection of the Natural Environment in Armed Conflicts and Agent-Based Modelling' [2023] International Review of the Red Cross 1; Won Jang, 'For Whom the Bell of Proportionality Tolls: Three Proposals for Strengthening Proportionality Compliance' (2020) 102 International Review of the Red Cross 629; Jelena Pejic, 'Strengthening

particularly neoliberal orientation towards liability, has been increasingly stressed upon in response to the 'war on terror' marked by escalating civilian casualties from US-led coalition airstrikes and asymmetric warfare with non-state actors.[40]

This is exemplified by the Collateral Damage Estimation Methodology (CDEM), put in place in 2009, by the US military as one of the various processes to avoid collateral damage following significant criticism regarding the killing of civilians by US airstrikes. The CDEM draws its methodology from the basic tenet of the law of armed conflict that stipulates only legitimate military objects are targeted and that anticipated civilian injury or loss of life and damage to civilian infrastructure is proportionate to the expected military advantage gained.[41] CDEM augments the legal doctrine to purportedly make it suitable for the varied military contexts. For instance, to reduce concerns of collateral damage to civilians, the CDEM may dictate the use of certain precision-guided munitions whose detonation can be delayed ensuring they do not explode on impact with the roof but instead within the targeted building, or it may suggest a specific direction from which the attack will occur to ensure that the blast is directed away from the civilians or civilian objects.[42] In his discussion of CDEM and US targeting procedures in Afghanistan, Michael Schmitt finds the law to be secondary to the policy considerations governing the US counterinsurgency, arguing that these policy considerations place a higher burden on US officials to avoid poor targeting decisions which could lead to civilian casualties which jeopardise operational objectives of limiting the insurgency.[43] While he locates the application of IHL as law within a context of "classic attrition warfare", in the realm of "persuasive warfare" the law is at best a metaphor that complements operational concerns of limiting collateral damage, and its application is diffused into the language of compliance.

Within the current crisis-laden narrative, CDEM typifies the new approaches to preserve the balance between military necessity and the protection of humanity during war to facilitate the fine-tuning of lethal force. Ultimately, even though these measure for compliance with the law become dominated by extra-legal concerns and methods, the narrative of protecting humanity in

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Compliance with IHL: The ICRC-Swiss Initiative' (2016) 98 International Review of the Red Cross 315.

[40] Janina Dill, *Legitimate Targets?: Social Construction, International Law and US Bombing* (Cambridge University Press 2014).

[41] United States Joint Chiefs of Staff, 'No Strike and the Collateral Damage Estimation Methodology' (13 February 2009) <https://www.aclu.org/sites/default/files/field_document/drone_dod_3160_01.pdf> Accessed 13 January 2025

[42] John Cherry, Kieran Tinkler, and Michael Schmitt, 'Avoiding Collateral Damage on the Battlefield' (11 February 2021) <https://www.justsecurity.org/74619/avoiding-collateral-damage-on-the-battlefield/> Accessed 13 January 2025

[43] Michael N. Schmitt, 'Targeting and International Humanitarian Law in Afghanistan' (2009) 85 Int'l L Stud Ser US Naval War Col 307

warfare reiterates itself in the foundational logic for these new technical approaches to resolve battlefield dilemmas and 'trilemmas'.[44] The belief that better compliance by weapons technology and personnel helps in securing the humanitarian aims in warfare, in turn, recentres the self-indulgent master narrative, where humanitarian ideals attempt to temper the waging of war using the language of the law.

b) 'Propensity to Exclude': critiquing the Master narrative

As states increasingly embrace a compliance-based discourse premised on 'objective and neutral' application of the laws, they obfuscate the power politics underpinning the law's development, and to whom it is applicable and when. Yet the current legal framework of IHL is an outcome of political struggles and in outlawing some forms of inhumanity, other were tolerated.[45] The outlawing of illegal battlefield conduct did not simply shape the contours for what a humanised war is, but also provided the new grammar to establish the legality of waging war.[46] Importantly, in delineating the conditions for carrying out warfare that respects the human person, the laws also created the vocabulary through which conduct contrary to this principle could be justified, creating exceptions to the application of the law, which are nonetheless legitimate and lawful. Thus, critical lawyers have shown how the law acts a legitimating cover for inhumane acts by powerful, industrialised nations against less developed nations.[47]

Recent work pertaining to the archive of international humanitarian law has also inquired into how its norms emerged by recognising and rectifying the historical exclusion of the Third World's contributions to the making of this body of law.[48] In particular, these works turn to the period of decolonisation following the Second World War to excavate the role played by Third World armed liberation movements and newly decolonised states who adapted and challenged legal norms grounded by a Eurocentric vision of regulating war.[49] Tracing how Third World

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[44] Janina Dill, 'The 21st-Century Belligerent's Trilemma' (2015) 26 European Journal of International Law 83.

[45] Pictet (n 32); Pictet (n 38). In both texts Pictet discusses the difficulties in reaching agreement between the representatives present at the conferences. In the first convention, the recognition of non-international armed conflicts was a point of contention, alongside the regulation of aerial bombardment.

[46] Dijk (n 32), 3-7

[47] Jochnick and Normand (n 5).

[48] Boyd Van Dijk, 'What Is IHL History Now?' (2022) 104 International Review of the Red Cross 1621.

[49] Some key works taking this approach are Van Dijk (n 31); Van Dijk (n 34); Mulder and Van Dijk (n 34); Emma Stone Mackinnon, 'Contingencies of Context: Legacies of the Algerian Revolution in the 1977 Additional Protocols to the Geneva Conventions' in Ingo Venzke and Kevin Jon Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University

national liberation movements and states used the laws of armed conflict to indict the conduct of the 'civilised' armies of Europe is an important contribution to the expansion of the historiography of international humanitarian law as it highlights the gaps within the championing narrative I recounted in the previous section. It makes apparent the contrasting political aims pursued by non-European engagements with this legal framework and opens possibilities of reinterpreting the definitional constructs underpinning it. However, despite their critical contribution to the historicization of international humanitarian law from a global perspective, these works risk reenchanting its institutions and archive. By focusing on how IHL comes to matter in the ways colonised peoples negotiated their armed resistance against empire, these accounts inevitably reify Eurocentric notions of military necessity, humanity, and justice as universal attributes at the expense of engaging the complexity of subaltern demands for legal recognition.[50] Therefore, while the foregrounding of the contributions of jurists such as Mohammed Bedjaoui, who served as a legal adviser to the Algerian National Liberation Front (FLN),[51] provides an important corrective to the Eurocentric narrative of IHL, a sole focus on the

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Press 2021); Jessica Whyte, 'The "Dangerous Concept of the Just War": Decolonization, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions' (2018) 9 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 313; Andrew Thompson, '"Restoring Hope Where All Hope Was Lost": Nelson Mandela, the ICRC and the Protection of Political Detainees in Apartheid South Africa' (2016) 98 International Review of the Red Cross 799; Amanda Alexander, 'International Humanitarian Law, Postcolonialism and the 1977 Geneva Protocol I' (2016) 17 Melbourne Journal of International Law 15; Fabian Klose, 'The Colonial Testing Ground: The International Committee of the Red Cross and the Violent End of Empire' (2011) 2 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 107.

[50] This is especially relevant in the making of the Geneva Conventions, whose development was characterised by strong debates over the extension of the Conventions' protections to colonial warfare. Beyond the recognition of colonised people's resistance, a major concern was the extension of the prohibition on the use of certain methods such as collective punishment in 'savage' warfare. Despite the reticence of colonial powers to include colonised peoples within the protection of the Conventions, the Kenyan Land and Freedom Army and the National Liberation Front Algeria saw validity and demanded recognition within the language of the Geneva Conventions. Recent work by Nicola Perugini provides a different way of approaching the archive of Third World liberation movements' engagement with the law of armed conflict which highlights the various antagonisms that characterised this relationship and goes beyond tracing contribution to this field of law, see: Nicola Perugini, 'Decolonising the Civilian in Third World National Liberation Wars' (2024) 52 Millennium 252; Neve Gordon and Nicola Perugini, *Human Shields: A History of People in the Line of Fire* (University of California Press 2020).

[51] Mohammed Bedjaoui, *Law and the Algerian Revolution* (International Association of Democratic Lawyers 1961). On Bedjaoui's contribution to international law, in particular principles of self-determination and decolonisation see Umut Özsu, 'Determining New Selves: Mohammed Bedjaoui on Algeria, Western Sahara, and Post-Classical International Law' in Jochen von Bernstorff and Philipp Dann (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (Oxford University Press 2019).

legitimacy of the FLN reifies dominant narratives of historicising the Algerian revolution and obscures different visions of the struggle and decolonisation.[52]

The critical turn to place the development of the laws of war within a history of European imperialism has also meant that a similar focus has been placed on the different categories and principles that encompass the law. Critical approaches grounded in postcolonial and feminist theory, primarily, have sought to uncover the exclusionary entanglements that inform the principles of distinction and military necessity, and the related categories of civilian and combatant. These approaches have sought to interrupt the universal, 'hyper-inclusive' rhetoric of IHL, by interrogating the 'other' embedded within the law and its application.[53] My argument in this thesis is influenced by these critical appraisals of international humanitarian law's Master narrative.

In his critical exploration of colonialism's foundational role in the making of IHL, Frédéric Mégret demonstrates how exclusion and the creation of the 'savage other' has been foundational to the laws of armed conflict. This 'other' is both a figure excluded from the various categories of protection the laws provide, and a metaphor from which the law seeks to distance itself.[54] By tracing the discourse surrounding the position of non-European peoples in relation to the laws of war, Mégret shows that the exclusion of the 'uncivilised' is a consequence of colonialism's inner tensions between exclusion and universalism. This tension animates the law's "propensity to exclude" according to Mégret, maintaining the universal vision which naturalises war and its regulation, and in this universal vision determines the legitimate participants in warfare. The determination of the legal participants transforms the question of which rules are applicable in warfare to *whom* the rules are applicable to in warfare, and within this transformation the 'civilised/savage' binary is reanimated. The persistence of the excluded 'other' is constitutive of IHL's development and application, as Wilke demonstrates in her study of the 1923 Draft Rules on Aerial Warfare.[55] Focusing on how the figure of the civilian emerges as a conglomeration of

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[52] On rehistoricising the place of the FLN in the Algerian revolution to illuminate other decolonial possibilities see for example: Ryme Seferdjeli, 'Rethinking The History of The Mujahidat During The Algerian War: Competing Voices, Reconstructed Memories and Contrasting Historiographies' (2012) 14 Interventions 238; Alina Sajed, 'How We Fight: Anticolonial Imaginaries and the Question of National Liberation in the Algerian War' (2019) 21 Interventions 635.
[53] Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"' in Anne Orford (ed), *International Law and its Others* (1st edn, Cambridge University Press 2006) Also see: Sara Bertotti and others, *The Law of War and Peace: A Gender Analysis* (ZED 2021) for an up to date survey of feminist critique of the law on the use of force and the laws of war, chapter 4 engages specifically with IHL and its production of gendered other(s)
[54] Mégret (n 53), 267-268.
[55] Christiane Wilke and Helyeh Doutaghi, 'Legal Technologies: Conceptualizing the Legacy of the 1923 *Hague Rules of Aerial* Warfare' [2023] Leiden Journal of International Law 1; Christiane Wilke,

gendered and racialised conceptions of agency and innocence, she shows that the Draft Rules understood the civilian protected under its ambit as white, European, and not participating in combat. Wilke's study of how the 'civilian' as a subject worthy of protection came to be tied to the regulation of warfare as a symbol of civilisation extends Mégret's critique of the law's attachment to a fantasy of sameness. In particular, her work shows how indices of race and gender dominate the construction of the legitimate subject to benefit from the protection of distinction as civilian.[56]

The subject of international humanitarian law as a "constructed player" is a critique long advanced by feminist scholarship within this field.[57] Gardam's analysis of the gender-neutral fiction of regulating warfare through law elucidates how the female person is produced as an extension of the patriarchal honour belonging to men as opposed to an autonomous individual.[58] In framing women's presence in the law as a construct, she also demonstrates how the male subject came to be the naturalised player within this body of law. Gina Heathcote extends Gardam's analysis by engaging the construction of the female subject alongside the ongoing construction of the non-human technological subject in attempts to regulate autonomous weapons systems.[59] Through this comparison, she shows that despite the burgeoning women, peace, and security agenda IHL has still not adequately accounted for its gendered outcomes. Instead, most attention within the laws of armed conflict has highlighted a preoccupation with emerging autonomous weapons.[60] As a result women are alienated twice from IHL – confined

'How International Law Learned to Love the Bomb: Civilians and the Regulation of Aerial Warfare in the 1920 s' (2018) 44 Australian Feminist Law Journal 29.

[56] Christiane Wilke, 'Seeing and Unmaking Civilians in Afghanistan: Visual Technologies and Contested Professional Visions' (2017) 42 Science, Technology, & Human Values 1031; Christiane Wilke, 'Beyond Law and Numbers: Civilian Suffering and the ICC's Engagement with Afghanistan' (2020) <https://twailr.com/beyond-law-and-numbers-civilian-suffering-and-the-iccs-engagement-with-afghanistan/>. Accessed 13 January 2025

[57] Judith Gardam, '"An Alien's Encounter with the Law of Armed Conflict"' in Rosemary J Owens and Ngaire Naffine (eds), *Sexing the subject of law* (LBC Information Services 1997); Hilary Charlesworth and Christine Chinkin, 'An Alien's Review of Women and Armed Conflict' in Dale Stephens and Paul Babie (eds), *Imagining Law* (University of Adelaide Press 2016).

[58] Judith Gardam, The Silences in the Rules That Regulate Women during Times of Armed Conflict, in Fionnuala Ní Aoláin and others (eds) *The Oxford Handbook of Gender and Conflict* (Oxford University Press 2018); Judith Gardam, 'A Feminist Analysis of Certain Aspects of International Humanitarian Law' (1988) 12 Australian Yearbook of International Law 265.

[59] Gina Heathcote, 'LAWS, UFOS AND UAVS: Feminist Encounters with the Law of Armed Conflict' in Dale Stephens and Paul Babie (eds), *Imagining Law: Essays in Conversation with Judith Gardam* (University of Adelaide Press 2016).

[60] Ibid 166

within the restrictive representation provided by the law, and discursively removed from the development of the discipline.[61]

By demonstrating how the categories of the 'combatant' and the 'civilian' are constructed through the discourses of civilisation, gender, and innocence, these postcolonial and feminist engagements trace the exclusionary logics underpinning these categories and how they continue to reverberate in current applications of IHL. However, within this body of critical literature, the figure of the 'human' is engaged with on limited terms, either emerging as the 'colonial savage' constructed through civilisation's racist gaze or as the passive feminised subject belatedly included yet alienated by a patriarchal structure. This is a gap that posthuman feminist theory has responded to by analysing how race, gender, (dis)ability, and class co-constitute the human subject and the emerging non-human subject of IHL.

The predominant focus of posthuman feminist interventions has been the regulation of military technologies, building upon the feminist critiques of IHL, specifically the under theorisation of gender within the field and especially in relation to the creation, use, and regulation of emerging technologies of warfare.[62] By interrogating definitions of both the human and the non-human, posthuman feminist approaches emphasise the interrelationship between both categories and expands the narrow conceptions of actors, participation, and chains of causality within armed conflict, distinguishing how various technologies and their production interface with construction of the figure of the human as the sole subject of warfare and its regulation. Key interventions within this body of literature have theorised how digital conditions of warfare

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[61] Bertotti and others (n 53). For a look at how feminist approaches have negotiated and expanded the canon of international law see Karen Engle, Vasuki Nesiah and Dianne Otto, 'Feminist Approaches to International Law' in Jeffrey L Dunoff and Mark A Pollack (eds), *International Legal Theory* (1st edn, Cambridge University Press 2022). Recent feminist histories of international law have also contributed to re-historicising the role played by women in shaping the canon of laws of war, see in particular: Franck Latty, 'Christine de Pizan: The Law of Warfare as Seen by a Medieval Woman' in Immi Tallgren (ed), *Portraits of Women in International Law: New Names and Forgotten Faces?* (Oxford University Press 2023); Boyd van Dijk, 'Marguerite Frick-Cramer: A Life Spent Shaping the Geneva Conventions' in Immi Tallgren (ed), *Portraits of Women in International Law: New Names and Forgotten Faces?* (Oxford University Press 2023).

[62] Jones, Kendall and Otomo (n 8). Increasingly posthuman feminist theory is also finding application within international environmental law alongside new materialism, especially with regards to the Rights of Nature movement and the construction of nature and animals as 'non-human'. See: Emily Jones, 'Posthuman International Law and the Rights of Nature' (2021) 12 Journal of Human Rights and the Environment 76, Emille Boulot and others, 'Posthuman Legalities: New Materialism and Law beyond the Human' (2021) 12 Journal of Human Rights and the Environment, and Jones, *Feminist Theory and International Law* (n 8).

modify the human subject – ushering a shift towards 'posthumanitarian' international law,[63] amending debility in warfare through exoskeletons to maintain the perpetuity of the modernist man in warfare,[64] and interrogating the varied enmeshments between the human and the machine in the production of everyday militarism within the civilian development of new weapon technologies.[65] Thus, posthuman feminist approaches to questions of exclusionary constructs within the legal regulation of war extends the critiques embedded within postcolonial and feminist approaches by identifying and dismantling how axes of gender, race and class make the human subject and place it in a hierarchical relationship over other subjects – including the environment and nonhumans.

2) Disfiguring the juridical human through Black Study

In my recounting of the master narrative and its critique, I have traced how the figure of the human is made legible through juridical subjectivity. Obviously, the categories of civilian and combatant inscribe the figure of the human most clearly through conferring them recognised status. Yet, the human is also inscribed through its presence as a particular form of life at the centre of modes of rule.[66] As my exposition of the master narrative has shown, the basis of recognition underlying the doctrinal regulation of warfare inscribes a concern with humanity balanced against military necessity, with law as the fulcrum. Within this narrative the figure of the human appears as a naturalised fixture, progressively made universal. The critical narrative, as I have shown, interrupts the progressive unfolding of this universal human by challenging its exclusionary habit towards feminised and racially colonised subjects who are invisiblised by the legal categories.[67] Within these narratives, the universality of the human is interrogated through the lens of race, gender, and increasingly in relation to the non-human. Here the focus on how the 'otherised' experiences the law and their exclusion from it provides a crucial critique of the presumed objectivity of how war is regulated. Yet, despite its difference from the master narrative, the critical account too naturalises the figure of the human from whom the other is displaced. The critical approaches presume the stable existence of the human as a universal

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[63] Matilda Arvidsson, 'Targeting, Gender, and International Posthumanitarian Law and Practice: Framing the Question of the Human in International Humanitarian Law' [2018] Australian Feminist Law Journal.

[64] Gina Heathcote, 'War's Perpetuity: Disabled Bodies of War and the Exoskeleton of Equality' [2018] Australian Feminist Law Journal.

[65] Emily Jones, 'A Posthuman-Xenofeminist Analysis of the Discourse on Autonomous Weapons Systems and Other Killing Machines' [2018] Australian Feminist Law Journal.

[66] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press 2012). Esmeir's work is a crucial contribution to how juridical recognition underlies the notion of humanisation, particularly how legal subjecthood substantiates humanity.

[67] Perugini (n 50).

reference point, critiquing how violent subjugation operates to exclude certain groups, and devising arguments that seek to include the oppressed subjectivity. But in mounting these critiques of exclusion to expand the terms of the law towards inclusive recognition the above critical approaches reproduce the model of humanity that has become synonymous with the Homo sapiens species, dehumanised across socio-political markers of gender, race, class, and disability.

My intervention reorients the critical concern with dehumanisation to inquire how the human presumed within this body of law comes to be. By focusing on how *humanisation* takes places within this body of law, I reconceptualise its relationship with the figure of the human. Instead of viewing the law as an inhibitor or facilitator of war's violence against the human, my concern lies with how the law, in its juridification of the violence of armed conflict, makes the human as a specific mode of being. I show how this specific mode of being sustains itself by overrepresenting itself as universal through forcibly assimilating within itself and categorising other modes of being according to its singular reference point of humanity. This is a radical move to denaturalise the universalised liberal humanist figure that underpins Euro-modern thought and particularise it through an epistemic shift.

I turn towards Black Study, a practice of "denaturalising western disciplinary knowledges",[68] to show how the form of life we refer to as human is an object of knowledge created through force and determines the hierarchical ordering of the homo sapiens species into humans, not-quite-humans, and non-humans.[69] As the intellectual practice underlying the (non)disciplinary formation of black studies, it illuminates and refuses "knowledge of the world as it was given to us by those committed to colonial and racial order".[70] In doing so, it presents itself as both a form of strategy and a form of critique, as well as a location from where to practice this strategy and critique to rethink the familiar.[71] For the purpose of this thesis, Black Study presents the ideal groundings from which to disfigure the smooth universality of the human produced by this body of law. My analysis takes the extensive and detailed intellectual work of Jamaican writer and cultural theorist Sylvia Wynter, on how Euro-modernity's modes of knowing produce a coloniality of being, as its starting point. Her more than two hundred texts and presentations,

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[68] Joshua Myers, *Cedric Robinson: The Time of the Black Radical Tradition* (John Wiley & Sons 2021), 13. On Black Study as a practice of thinking otherwise and beyond critique see Myers (n 9); Robin DG Kelley, 'Black Study, Black Struggle' (2018) 40 Ufahamu: A Journal of African Studies <https://escholarship.org/uc/item/8cj8q196> accessed 13 January 2025; Robin DG Kelley, '"Western Civilization Is Neither": Black Studies' Epistemic Revolution' (2020) 50 The Black Scholar 4; Alexander G Weheliye, 'Introduction: Black Studies and Black Life' (2014) 44 The Black Scholar 5.
[69] Weheliye (n 10), 8.
[70] Myers (n 9), 8
[71] Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning & Black Study* (Minor Compositions 2013).

including the nine-hundred-page unpublished manuscript *Black Metamorphosis: New Natives in a New World* brings together critical insights from literature, critical theory, science, history among others to configure Black Study as an intellectual endeavour attuned to the possibility of undoing and unsettling the human by recognising it as an expression of Western modernity arising from the colonial encounter, transatlantic slavery, and territorial expansion.[72]

For Wynter, the problem of the human is not identity-based but epistemological, or "in the *enunciations* of what it means to be human".[73] Her writing demonstrates that Euro-modernity's epistemes of coloniality and antiblackness narrativised a concept of the human and humanity which in turn serves to legitimate the epistemological foundation that produced it. The human and humanity by extension appears as a conglomerate of what she refers to as 'Man 1' and 'Man 2'. Man 1 emerges in the period of the late fifteenth through eighteenth century as a Christianised subject that transforms to a secular political self in the Enlightenment period. Man 2 emerges as a bio-economic model during the nineteenth and twentieth century to augment Man 1's political self as definable in Darwinian terms of natural selection.[74] These formations are situated within moments from where new assertions of Euro-modern humanity's knowledge of being emerge and became universalised outside of its specific contexts to dominate and overrepresent itself as humanity.[75] By treating these moments as productive sites where the idea of Man-as-human emerges, she asks us to look at colonialism and its encounters as a world-making process of coloniality which sustains the overrepresentation of Man, despite the rupture of decolonisation.

Wynter's rearticulation is crucial because it positions the production of the human as a relational object of knowledge and theorises its overrepresentation as occurring through a hegemonic assumption of ontology. Her work is in conversation with the Afro-diasporic thought of Frantz Fanon, W.E.B DuBois, Aimé Césaire, C.L.R. James and continental thought of Michel Foucault and Jacques Derrida. Fundamentally, her practice of co-citation and co-identification

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[72] Katherine McKittrick, 'Axis, Bold as Love: On Sylvia Wynter, Jimi Hendrix, and the Promise of Science' in Katherine McKittrick (ed), *Sylvia Wynter: Being Human as Praxis* (Duke University Press 2015).

[73] Walter D Mignolo, 'Sylvia Wynter: What Does It Mean to Be Human?' in Katherine McKittrick (ed), *Sylvia Wynter: Being Human as Praxis* (Duke University Press 2015).

[74] Wynter 'Unsettling the Coloniality of Being' (n 9). In addition to this text, Wynter has further explored her theory of Man's overrepresentation in Wynter 'No Humans Involved' (n 13); Sylvia Wynter, *Black Metamorphosis: New Natives in a New World* (unpublished manuscript). See also: Sylvia Wynter, '1492: A New World View' in Vicky Macintyre (ed), *Race, Discourse, and the Origin of the Americas* (Smithsonian Institute 1992).; Aaron Kamugisha, '"That Area of Experience That We Term the New World": Introducing Sylvia Wynter's "Black Metamorphosis"' (2016) 20 Small Axe: A Caribbean Journal of Criticism 37.

[75] Ibid.

across conceptual frames, and knitting them together, shows the ways in which the racialised and gendered ordering of life is necessary to the expansion, development, and universalisation of Man-as-human. Thus, as Silva notes in one of the foremost readings of Wynter's work alongside that of Michel Foucault, "Wynter recuperates what remains illegible in Foucault's critique of Man: "the idea of race"".[76]

Wynter's critical engagement with Foucault's analysis of the displacement of the classical episteme by the current Euro-modern mode of knowledge clarifies how, in identifying the discontinuity between the two epistemes, Foucault overlooked the presence of the continuous cultural field put in place by Judeo-Christianity's generalised formulation of existence as human.[77] While the transition from Christian subjectivity to the political-secular existence of Man 1, which became the naturalised bio-economic subject Man 2 at the end of the eighteenth century, results in a shift in the descriptive statements of each episteme's specific modes of being and knowing, Wynter argues that each of these shifts occurs within the framework of a specific secularising formation of the Judeo-Christian matrix.[78] It is this recognition of the continuity of how colonial juridical-economic power is encoded and sustained through the figure of the human, as well as a *refiguring* of the human that is produced relationally to the violent history of corralling blackness into "race" as the signifier of fallen flesh that recasts the ruler and tools of classification that underpin Foucault's archaeology of knowledge.[79] Ultimately, as Weheliye argues, Wynter's foregrounding of racial subjugation to reconceptualise humanity provides an indispensable corrective to bare life and biopolitics discourse's aspiration to transcend racialisation by rendering it to absolute bio-social particularity.[80]

Despite the shared critical rethinking of Western humanity by continental philosophy and the intellectual traditions disciplined into various forms of critical ethnic studies, black studies amongst them, the theoretical formulations by white European thinkers is given a "conceptual carte blanche", while those who speak from the purview of so-called minority discourse on the same concerns are relegated and confined to ethnographic specificity. [81] In particular, the easy transposability of theoretical frames provided by European thinkers such as Foucault and Agamben to questions of violence, legal exclusion, and power reiterates the belief that ideas with credibility as proper objects of knowledge ought to emerge from an 'uncontaminated' anti-identitarian position. Not only does this belief further displace structurally oppressed

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[76] Denise Ferreira Da Silva, 'Before Man: Sylvia Wynter's Rewriting of the Modern Episteme' in Katherine McKittrick (ed), Sylvia Wynter: On Being Human as Praxis (2015).
[77] Wynter 'Unsettling the Coloniality of Being' (n 9), 318.
[78] Ibid.
[79] Silva (n 76), 93-94.
[80] Weheliye (n 10), 4-7. See also: Alexander Weheliye, 'Racializing Biopolitics and Bare Life' in Nada Elia et al. (eds), *Critical Ethnic Studies: A Reader* (Duke University Press 2016).
[81] Weheliye, 'Racializing Biopolitics and Bare Life', 477.

intellectual traditions, it occludes that bare-life and biopolitics discourse also emerges from an ethnographic locality of white Europeanness. Recognising European critical theory, crucial to critical legal interventions, as a specific mode of knowing and leaving it behind to centre interventions in critical thinking by Black Study puts in practice this thesis' commitment to the denaturalisation of Western knowledge. This form of citational politics isn't as concerned with absenting White men from the footnotes, a difficult task to undertake anyway given the prevailing influence of White male thinkers in the discipline of international humanitarian law. Instead, it's invested in clearing the epistemic grounds through which we theorise how the human comes to be in this body of law through racial domination. [82] The interest in *how* we come to know, as opposed to *who* we know, is a central ethic of Black Study. Thus, while Wynter's theory of Man-as-human is central to my argument, I do not ascribe my analysis to a "Wynterian" frame, which runs the risk of re-instituting the discursive-symbolic transposability of Western thought.[83] Instead, in the spirit of co-citation, I read her alongside other thinkers across disciplinary and identity formations.

Confronting this racialised and gendered coloniality of being provides a new direction to approach the question of the human in relation to the legal regulation of warfare.[84] In particular, it makes explicit how giving legal form to the waging of war violently disciplined and organised humanness through the production of blackness. Understanding blackness as a capacious category of being structured by, in response to, and against Euro-modernity's different forms of subjugation goes beyond the restrictive logics of enslavement's racialising abjection. Thus the violence of slavery, while a crucial site of analysis, does not totalise the intellectual practice of Black Study. [85] In Euro-modernity's defining of the human, blackness acts as the constitutive logic animating the hierarchisation of different forms of life and how they come to be placed simultaneously within and outside the totalising description of humanity. As da Silva notes, analytics of raciality act as the "onto-epistemological arsenal" that produce ethical, political, and legal personhood through racial and cultural difference as political signifiers deploying power in the naming of modes of being human.[86] Turning away from 'race' as a mere discursive concept for the logics of exclusion, dehumanisation, and violence and instead recognising it as a political,

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[82] Katherine McKittrick, *Dear Science and Other Stories* (Duke University Press 2021), 22

[83] Sylvia Wynter, 'Rethinking "Aesthetics": Notes Towarda a Deciphering Practice' in Mbye B. Cham (ed) *Ex-iles: Essays on Caribbean Cinema* (Africa World Press 1992), 242.

[84] Wynter (n 9); see also: Aníbal Quijano, 'Coloniality and Modernity/Rationality' (2007) 21 Cultural Studies 168.

[85] Some recent works taking this approach are: Christina Sharpe, *In the Wake: On Blackness and Being* (Duke University Press 2016); Fred Moten, *Black and Blur* (Duke University Press 2017); RA Judy, *Sentient Flesh: Thinking in Disorder, Poiesis in Black* (Duke University Press 2020); Rizvana Bradley, *Anteaesthetics* (Stanford University Press 2023).

[86] Denise Ferreira Da Silva, 'No-Bodies: Law, Raciality and Violence' (2009) 18 Griffith Law Review 212; Denise Ferreira da Silva, *Toward a Global Idea of Race* (University of Minnesota Press 2007).

and therefore juridical, mode of consciousness to give meaning to biological difference makes apparent the processes of categorising and hierarchising, as well as the *logic to* categorise and hierarchise, that underlie race-making. Crucially, racialisation does not merely act as the process of differentiation across the varied phenotypes amongst humans, but in fact encompasses the very category of the human defined as a categorically and hierarchically distinct form of life from nature, animal, and the non-human.[87] Thus, rather than representing a subordinate function, race defines the core essence of modern humanity as "the code through which one not simply *knows* what human being is, but *experiences* being".[88]

In this thesis, Black Study provides the conditions of possibility for understanding race as a set of relations, not a mere biological or cultural descriptor. Confronting Euro-modernity's defining of the human vis a vis blackness, makes it possible to locate the over-determination of the human as a specific mode of being. More importantly, it unveils the modes of being otherwise that have been alienated, annihilated, or assimilated through their violent encounters with Euro-modern humanity. It reframes race as constitutive of modernity, internal to its sociopolitical processes of differentiating, categorising, and hierarchising life, as well as the reflexive logic that precipitates differentiating, categorising, and hierarchising life as the only mode of knowing, being, and relating. This disfigures the smooth operation of a universal human with exclusionary tendencies, as found within international legal scholarship, and instead sets the stage for a general theory of the human and not its particular exception.[89] In this manner, Black study is not only concerned with how the exclusionary inclusion of blackness pervades the categorisations of humanity, but with the very issue of categorising forms of being and knowing as human/sub-human/non-human. Foregrounding this production of blackness *as* race-making through the figuration of the human disturbs the naturalisation of race as a descriptive category within critical approaches to studying the regulation of warfare and troubles the move towards a politics of inclusion in the historicising and theorising of this legal field.

Furthermore, my focus on racialisation should not be understood as a detraction from a concern with how the law genders its subject. I engage Wynter's reframing of the human, and scholarly interventions that have extended this reframing, to highlight and sustain the specific critique mounted by Black feminist theory that name the entwined nature of racial, gendered, and sexual subjectivities produced within, against, and projected onto universal humanity. As I show in the thesis, and in particular chapter 2, gendering the human unfolded alongside the process of

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[87] Zakiyyah Iman Jackson, 'Animal: New Directions in the Theorization of Race and Posthumanism' [2013] Feminist Studies; Jackson, *Becoming Human* (n 14).
[88] David Scott, 'The Re-Enchantment of Humanism: An Interview with Sylvia Wynter' (2000) 8 Small Axe 173, 183.
[89] Weheliye (n 10), 19.

racialising the human as a distinct species, a *kind* of being. In her rejection of the existence of gender as an independent category of subjugation that can be expanded through incorporation of other axes of subjugation such as class, race, disability, and sexuality, Wynter clarifies that "our issue is not the issue of 'race.' Our issue is the issue of the genre of 'Man.'"[90] Black feminist theories of the human have taken seriously how race-making inflects the differentiation of human physiology in colonial modernity to identify the place of sexual difference in the formation of the human and shown that the anchoring of racial difference in physiology and the repeated foreclosure of black subjects from the domain of the human occurs in and through gender and sexuality.[91]

Understanding blackness as integral to the structuring of humanity clarifies the role of political violence in giving coherence to this mode of being. The "lines of force" dividing the colonial world as noted by Fanon do not act merely to extend the brutality of colonisation over the colonised. In fact, these acts of violence transform colonised and enslaved being into not-quite humans and nonhumans while simultaneously supplying the symbolic material for their racialisation as humanisation.[92] Seeing violence as the pathway to humanisation unsettles our conception of suffering war's excess violence as the defining feature of those excluded or denied humanity by this body of law.[93] Although my analysis in this thesis converses with Third World and other critical approaches to international law by locating the legal regulation of warfare as the frame through which Euro-modern humanity is violently produced and overrepresented, it also departs from these critical approaches significantly by turning away from the terms of international law as a resolution to the violence of forceful humanisation through warfare.

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[90] Greg Thomas, 'PROUD FLESH Inter/Views: Sylvia Wynter' (2006) 4 Proud Flesh: New Afrikan Journal of Culture, Politics & Consciousness, 23.

[91] This body of literature is extensive and evolving, some key texts are: Hortense J Spillers, 'Mama's Baby, Papa's Maybe: An American Grammar Book' (1987) 17 Diacritics 65; Hortense J Spillers, 'Interstices: A Small Drama of Words [1984]', *Black, White and in color: Essays on American Literature and Culture* (University of Chicago Press 2003); Hortense J Spillers, *Black, White, and in Color: Essays on American Literature and Culture* (University of Chicago Press 2003); Saidiya V Hartman, 'Seduction and the Ruses of Power' (1996) 19 Callaloo 537; Jennifer L Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (University of Pennsylvania Press 2004); The following recent interventions have contributed the concept of plasticity to the construction of blackness through gendering: Zakiyyah Iman Jackson, 'Losing Manhood: Animality and Plasticity in the (Neo)Slave Narrative' (2016) 25 Qui Parle 95; Patrice D Douglass, 'Black Feminist Theory for the Dead and Dying' (2018) 21 Theory & Event 106; Patrice D Douglass, 'Assata Is Here: (Dis)Locating Gender in Black Studies' (2020) 22 Souls 89; Patrice D Douglass, *Engendering Blackness* (Stanford University Press 2025)

[92] Weheliye (n 10), 28.

[93] Jackson (n 14).

My approach sidesteps claims of recognition from the law and views juridical subjection as constitutive to the violent imposition of humanity.[94] Retelling the narrative of the regulation of warfare from this vantage point requires evading the linearity of how this body of law comes to be and consequently disrupts doctrinal definitions such as 'armed conflict', 'civilian', and 'combatant'. Primarily, this perspective attunes our gaze towards modes of waging war, such as plantation slavery, that are in excess of recognised doctrinal separations of *jus ad bellum* and *jus in bello* and cannot be adequately understood through the definitional construct of armed conflict. Due to this I utilise the term 'warfare' to describe practices of domination through the use of force. My concern with the use of law to regulate warfare is first and foremost how it acts as a discourse that narrates a humanity for whose sake war ought to be waged against other modes of being. Consequently, I am interested in the potential of the law as a site where the coloniality of being is signified. My use of doctrine to describe the various forms of waging annihilatory war, from the medieval to the modern period, acts as a heuristic device to locate the discursive processes that underpin the institution and overrepresentation of a specific mode of being as the human, and its invocation to affirm the use of force. Doctrine provides me a means to focus on my actual interest in juridification, the discursive ethical, political, and legal practices that enunciate the human as a form of life for whose preservation force ought to be used. My focus on how the human is juridified also problematizes the existing archive of this body of law that presents the production of the doctrine to regulate warfare in a self-authorising manner. Deciphering the basis which governs the production of the regulation of warfare, as a specific impulse of Euro-modernity, necessitates identifying the culture-specific processes and practices of instituting human forms of life.[95]

A note on method

As mentioned earlier, Black Study as an intellectual tradition brings together theories of critiquing Western knowledge with a strategy of how to practice that critique. In the verbing of theory through 'study', this way of knowing brings together thinking and doing, shaping how I traced the human within this body of law. I had to zoom out from a narrow focus on this legal framework and its presumptions and place the basis of juridifying warfare within the broader epistemic exercise of defining and juridifying the human. I placed the legal archive of regulating warfare in relation to the archives of colonisation and trans-Atlantic slavery. Broadening my lens in this manner presented an opportunity for me to expand the historical materials this field relies upon to historicise itself. In particular, I supplemented my study of legal primary materials such as canonical documents sanctioning conquests, legal treatises on the use of force, and

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[94] Saidiya V Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford University Press 1997).
[95] Wynter (n 83), 243.

colonial and contemporary military manuals, with archival materials on colonial ethnology, historical accounts authored by colonists and planters, as well as autobiographic and 'lessons-learned' accounts of late-colonial and contemporary counterinsurgents.

Drawing on such a wide range of primary material across disciplinary boundaries enabled me to innovate a new historical approach to analysing the project of humanising warfare through law and interrogate its accepted presumptions. Nonetheless, in my use of the archives of Euro-modernity's violence I have also had to reckon with how this archival record represents its violence. In particular, the archival record of slavery and colonialism is an encounter with power that violates the lives of those recorded by sealing them within the narrative construct of the archive itself, akin to a "a death sentence, a tomb, a display of the violated body, an inventory of property, ..., an asterisk in the grand narrative of history".[96] My critical engagement with these archives doesn't treat them as value-neutral historic representations, but as materials that come to be through and as a record of Western epistemic practices. This archival record, as Hartman notes, rests upon a founding violence that determines the terms though which this record of violence is understood, analysed, and critiqued. [97] It is unable to provide an exhaustive account, and at best functions as a fictive narrative that represents itself as 'real'. These are the terms which structure my encounter with the archival materials that underpin my analysis in this thesis. By enacting a reclamation of archival materials for contrary purposes, here to expose the terms through which humanity is sutured to warfare, I have read them against the grain to write another account of how the project to humanise warfare has unfolded.[98] Instead of reproducing the violence of the archive, my use of quotations from archival materials aims to attend to the silence, relations of violence, and domination that structures these official accounts.[99]

Approaching the juridification of warfare through the entry point of the human as constituted by Euro-modernity's delineation of blackness situates us within *Epiphenomenal time*, a temporality that refuses direct causality for a "'now', through which the past, present, and the future are

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[96] Saidiya Hartman, 'Venus in Two Acts' (2008) 26 Small Axe 1, 2.

[97] Ibid, 10.

[98] Hartman (n 99), 10.

[99] I recognise the limitations of this historical method, particularly the risk of blurring historical specificity of the various discontinuities across historical periods and geographies. I have mitigated for this risk by focusing on the human as a locus of discursive continuity across my reading of the archival materials. Furthermore, my focus on how Euro-modernity utilised armed force for colonial conquest and enslavement, while crucial to analysing how warfare is central to the universalisation of the human, prevents a thorough consideration of how armed force was used by enslaved and colonised people against this violence of humanisation. In the historical scenes, where possible, I have endeavoured to centre enslaved and colonised peoples' armed struggle and revolts, but a fuller engagement with this radical history of threatening Euro-modern humanity and the prefigurative potential it holds for rethinking the human remains outside the scope of this thesis.

always interpreted".[100] Accounts of how warfare came to be regulated through law continue to ascribe to a linearity of progressive development from the medieval to the modern period. However, my focus on the human in relation to the development of this body of law ruptures the linear narrative by showing how practices of using force cohere to the overrepresentation of the human specific to Euro-modernity, across spatial and temporal contexts. My interest in reading the archival materials to focus on how the human comes to be through the regulation of warfare is two-fold: I aim to illuminate a shadowed narrative that brings to light the human as a central concern to the regulation of warfare, and to show how this human has naturalised and universalised itself through the use of force against forms of being that have threatened its domination.

The human vis a vis blackness comes to be as both a constructed phenomenon originating from the colonial encounter, and also an epiphenomenal moment of interpretation through the epistemes of coloniality and anti-blackness. To identify the moments around which to anchor my story of how the legal regulation of warfare juridified a particular human rooted in coloniality and anti-blackness I turn towards moments of shifts in Euro-modern society, as noted by Wynter. I specifically focus on the transformations precipitated in the description of the human by the Crusades, Christian conquests of the New World, British colonial wars with the Algonquin, Jamaican Maroons, and criminalised tribes in the Indian subcontinent, counterinsurgency wars against Third World decolonisation, the Global War on Terror, and domestic warfare in the United States and the postcolony. Despite the above spatio-temporal transformations in the description of the human, it does not change the terms through which the human is defined as much as it fosters the agglomeration of this category through continuous redescription. I trace the construction of three distinct yet complementary vernaculars of humanity, 'Christianised humanity', 'racialised humanity', and 'securitised humanity', that are enunciated into juridical form across specific time periods extending from the medieval period to the contemporary. By focusing on the interrelationship between the vernacular of humanity and its corresponding juridification as opposed to identifying causality between the two, provides me a method of engaging the historic production of the regulation of warfare. This historical method illuminates the many continuities in the making and overrepresentation of the human across different moments of Euro-modernity and its ongoing hegemonic time – while

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[100] Michelle M Wright, *Physics of Blackness: Beyond the Middle Passage Epistemology* (University of Minnesota Press 2015), 4. Genocide studies scholar Zoé Samudzi has applied this concept to rethink the historicization of the Ovaherero and Nama peoples' genocide by Germany against the teleology of Holocaust exceptionalism in defining genocide, see: Zoé Samudzi, 'In Absentia of Black Study' (*The New Fascism Syllabus*, 31 May 2021) <https://newfascismsyllabus.com/opinions/the-catechism-debate/in-absentia-of-black-study/> accessed 13 January 2025; Zoé Samudzi, 'Paradox of Recognition: Genocide and Colonialism' (2020) 31 Postmodern Culture.

also leaving space for discontinuities accounting for shifts in the material production of knowledge and contingencies of racialisation.[101]

My approach contributes to the critical methods of analysing histories of international law, notably as undertaken by Third World Approaches to International Law authorship.[102] By paying attention to how the above identified vernaculars of humanity are iterated by the juridification of warfare, I illuminate three forms of warfare, 'missionary warfare', 'savage warfare', and 'counterinsurgency warfare', each corresponding to their particular vernacular of humanity. As I show the juridification of these modes of warfare occurred in parallel and often intersecting with the formation of the better-known canon of the laws of armed conflict. Recent histories of small wars and wars of decolonisation have illustrated how these forms of warfare in the colonial theatre did not represent 'lawless violence' and were in reality subject to legal considerations.[103] Taking inspiration from this scholarship, I interrogate how these modes of warfare cast light on a shadow narrative of the legal regulation of warfare tied to the emergence of a particular humanity in the context of Euro-modernity's global expansion through violent domination.

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[101] On thinking through continuities and discontinuities of colonialism as part of historical method see: Dipesh Chakrabarty, 'Provincializing Europe: Postcoloniality and the Critique of History' (1992) 6 Cultural Studies 337; Trouillot (n 18); Michel-Rolph Trouillot, *Trouillot Remixed: The Michel-Rolph Trouillot Reader* (Duke University Press 2021). Recent literature has extended this method to reinterpret the colonial archive, see for example: Saidiya V Hartman, *Lose Your Mother: A Journey along the Atlantic Slave Route* (Farrar, Straus and Giroux 2007); Saidiya V Hartman, *Wayward Lives, Beautiful Experiments: Intimate Histories of Riotous Black Girls, Troublesome Women, and Queer Radicals* (First published as a Norton paperback, WW Norton & Company 2019); Ramnarayan S Rawat and K Satyanarayana, *Dalit Studies* (Duke university press 2016); Tony Ballantyne, Lachy Paterson and Angela Cheryl Wanhalla (eds), *Indigenous Textual Cultures: Reading and Writing in the Age of Global Empire* (Duke University Press 2020); Daniel Marshall and Zeb Tortorici (eds), *Turning Archival: The Life of the Historical in Queer Studies* (Duke University Press 2022); Isaac Kamola and Asli Calkivik, 'The Archive as a Battlefield for the Future: Anti-Colonial Struggles and Insurgent Temporality' (2024) 123 South Atlantic Quarterly 549.
[102] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011); Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021); Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020); Haslam (n 19).
[103] Some recent works in military history covering warfare in colonial geographies include: Caroline Elkins, *Legacy of Violence: A History of the British Empire* (Vintage 2023); Lauren Benton, *They Called It Peace: Worlds of Imperial Violence* (Princeton University Press 2024); Michelle Gordon, *Extreme Violence and the 'British Way': Colonial Warfare in Perak, Sierra Leone and Sudan* (Bloomsbury Academic 2022); Kim A Wagner, 'Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency' (2018) 85 History Workshop Journal 217.

3) Retelling the story: a chapter outline of the thesis

My thesis presents a new story of the legal project of humanising warfare. In this story, legal regulation neither makes war humane, nor does it adopt an exclusive posture to justify war's violence. Instead, doctrinal regulation of warfare interprets, applies, and overrepresents a specific mode of life originating within Euro-modernity and embodied by the figure of the human. In explicit terms, my thesis shows how a Euro-modern concern with juridifying warfare articulates the human and makes its definition universal through violent imposition on other modes of life. My retelling of the story of humanising warfare unfolds across three chapters, with each set across scenes of humanisation depicting the emergence and overrepresentation of a distinct vernacular of humanity through its corresponding mode of warfare. By referring to the distinct modes of humanity I uncover in each chapter as a 'vernacular of humanity', I am foregrounding the Wynter's concern with understanding the human as a form of life narrated into being and extending it to the regulation of warfare as a specific frame of enunciation. Within these scenes, a particular human is constructed through its interpretation into juridical instruments regulating the use of force and reinforced through domination. The scenes showcase how knowledge that naturalises a particular form of being as human is applied through force to assimilate other modes of life into, which acts as an exercise of humanisation. As I note in the previous section, these scenes are not set to a teleological narrative and do not substantiate causality or uniformity in the appearance of the human. Instead, these scenes trace the particular vernacular of humanity as distinct to the specific epistemic developments in Euro-modernity, as well as continual in its persistence across spatial and temporal shifts.

My narrative begins with chapter 1, 'Christianising Humanity', which looks at how a distinctly Christianised humanity emerged through the waging of missionary warfare authorised by the Catholic church as just war. As a fundamental concept in orthodox histories of regulating warfare, just war acted as the doctrinal backbone for waging war in the medieval period and was the central facet of the law of nations constituted by the colonial encounter. The chapter returns to this foundational moment in the narrative of juridifying war, in particular to two scenes, the Crusades and their expansion to West Africa, and the Spanish conquest of the Americas, that represent an epistemic shift in Medieval Europe's knowledge of itself. These two scenes reveal how a theocentric definition of the human grounded in a Christianised conception of the world gained coherence through the juridical frame of just war, and the successive universalisation of this definition of humanity following Christendom's New World encounters with African and Indigenous people. The first scene charts the emergence of a particularly Christian framing of humanity enunciated within canonical instruments, specifically Pope Urban's speech authorising the Crusades, Innocent IV's papal bull *Quod super his*, and Nicholas V's papal bull *Romanus Pontifex.* These primary materials put into practice a Christian cosmology in which

pagans and other non-Christians are categorised as infidels, a figure antithetical to Christianised humanity and deemed to forcible assimilation through missionary warfare. In the second scene, I turn to the New World conquest of the Americas by Spain and draw upon Alexander VI's papal bull *Inter Caetera* I-II, the *Requiremento*, and Vitoria's ethnological and juristic writing. These primary materials show how the 'infidel' shifts from being antithetical to Christianity to instead being an '*indios*' at odds with rationality, an incomplete 'man' within a hierarchical classificatory system of comparative ethnology. Despite the discontinuity in the epistemic construction of the infidel, moving from a theocentric description of religious difference towards an ethnological description of difference, the continuity of Christianised humanity persisted.

In chapter 2, 'Racialising Humanity', I demonstrate the transformation of Christianised humanity towards a secular redescription of itself as racialised humanity through savage warfare on the colonial frontier. My focus in this chapter is not how norms of 'civilised warfare' excluded colonised populations described as 'uncivilised savages'. Instead, this chapter is invested in showing how an understanding of the human as a product of racialisation, a process marked by identifying, categorising, and ordering forms of life, recognises the savage as a kind of being in-between the human and animal distinction against whom unrestrained violence is necessary. I show the emergence of racialised humanity across three scenes, the frontier war of Virginia waged by English colonists against the Algonquian, the Jamaican plantocracy's war against the Maroons, and small wars by the British against tribal communities in the South Asian subcontinent, each depicting distinct moments of race-making. These scenes show how an increasingly biocentric definition of the human ran adjacent to and over time supplanted the vernacular of Christianised humanity towards a flexible and contingent logic of racialisation actualised through savage warfare. In the first scene I look at Alberico Gentili's *De iure belli* and records of the Virginia Company's colonists to show how the humanity of the Algonquian and other Native American peoples was increasingly recognised by the colonists as proximate to animal in the taxonomy of racialised humanity. This recognition as human animal wasn't simply an act of metaphoric comparison, it constituted the epistemic exercise of incorporating the difference of Native American being into a secularised definition of humanity through wars of annihilation. In the second scene, I shift my gaze to consider the plantation society of Jamaica as a landscape of war against the enslaved through laws punishing fugitive slaves and planters accounts of the war against the Maroons. The materials demonstrate the contingencies of racialisation underpinning the juridification of black humanity as a type of bestial human. Unlike the totalising discourse of conquest that enfleshed all Native Americans as a type of human proximate to animal that needed to be either tamed or eradicated through armed violence, blackness in Jamaica was an infinitely manipulable category necessitating a shift towards an assimilatory mode of warfare. The final scene shows the extent to which racialised humanity is manipulable by placing it in relationship with another epistemology of hierarchically defining

humanity through caste in the South Asian subcontinent. I show how the knowledge frames of racialisation and caste intersected in the transformation of caste communities as discrete kinds of "martial" and/or "criminal" beings. This contributed to the refining of the doctrine of savage warfare into modes such as "bush warfare" and "hill warfare", each necessitating its own tactical considerations as part of fighting 'small wars'.

In the third chapter, 'Securing humanity', I show the appearance of a hyper-assimilatory form of securitised humanity through the intertwining of development and security by counterinsurgency warfare. My concern within this chapter is to show how the vernacular of racialised humanity transfigured itself into a form of humanity to be secured for development in perpetuity. This form of human comes to be through the use of armed force hand-in-hand with development to neutralise threats and pacify populations by investing them in maintaining the security of this mode of human as a condition of their existence. I trace the articulation of securitised humanity across three scenes, the liberal counterinsurgency campaigns during the period of decolonisation, the United States counterinsurgency campaigns in Iraq and Afghanistan, and the domestication of counterinsurgency by policing and prisons. While the War on Terror has necessitated an examination of US counterinsurgency practices in Afghanistan and Iraq, which includes placing them in a longer durée of armed campaigns during the period of decolonisation, the focus so far has exclusively been the execution of military operations through kinetic force. Instead, these scenes advance an understanding of counterinsurgency warfare as racialised social control through looking at the full scope of its practice. I show the war-like relations underpinning the practice of counterinsurgency warfare, and how these war-like relations are suffused into the population through coercive securitisation. In the first scene, I focus on the works of Robert Thompson, Frank Kitson, David Galula, and Roger Trinquier whose ideas came to dominate the practice of counterinsurgency warfare against armed movements for national liberation during decolonisation. I supplement my reading of this 'lessons-learned' literature with an analysis of the US Overseas Internal Defense Policy to show how securitised humanity in the era of decolonisation twinned capitalist economic development with coercive social modernisation, targeting rural populations in newly decolonised territories such as Vietnam. In the second scene, through an exploration of the 2006 United States *Counterinsurgency Field Manual* (FM 3-24), I show how the spatialisation of the 'terrorist threat' to regions of uneven development introduced the notion of risk. My analysis of the *Field Manual* shows how the counterinsurgency campaigns in Iraq and Afghanistan produced a neoliberal securitised humanity into which 'risky' populations were to be assimilated through technocratic practices mobilising crude anthropological insights to coercively shape Iraqi and Afghan life. The final scene traces the domestication of counterinsurgency warfare through policing and prisons, primarily in the United States and the postcolonial world, to show how the continuum of

carcerality acts as the modality for risk-management and the universalisation of securitised humanity.

Ultimately, these vernaculars of humanity I trace above, enunciate a mode of life that sustains itself as the *only* natural form of life through using force and realises itself through the juridical frame of regulating warfare. In the concluding chapter, I apply my argument to make sense of the ongoing genocide in Gaza as a catastrophe engendered by our current order of being and the frames of knowing underpinning it. The ongoing settler-colonial genocide in Gaza strikingly demonstrates the coalescing of the vernaculars of Christianised, racialised, and securitised humanity that narratively and materially condemn Palestinians to premature death. I critically analyse the disciplinary debates within international law, in particular the law of armed conflict, regarding Israel's use of force in Gaza and the Palestinian armed resistance. My critical reading shows how relying on the juridical frame to interpret the intensive violence of warfare produces a distorted reality of the core conditions structuring annihilatory Zionist violence and misrecognises Palestinian armed resistance against it. Consequently, interpreting violence through this frame reiterates its underlying presumptions and forecloses other possibilities of knowing and living. To breach this foreclosure of life, I advocate for the abolition of the human and its attendant juridical categories. I return to the radical demand underlying Black Study, of an epistemic revolution towards the redefinition of our current mode of being and plot the multiple and relational praxes of reparative futures available to us that leave behind and challenge the human's monopoly on knowing life – towards liberation.

Chapter 1: Christianising Humanity

Missionary warfare and the 'infidel' from the Crusades to the New World.

Introduction

Scholars and historians of the Western laws of war trace the emergence of constraints in warfare to the Medieval period, in particular, to the canonistic contribution of the Catholic church and Christian theologians in the form of just war theory. Medieval and early-modern conquests from the Crusades to the New World were underpinned by questions on the justness of Christian invasion of lands held by 'infidels', and the emergent discussions led to the developing of a doctrine of missionary warfare premised on Augustinian just war theory. Just war is located as the originating point of immunities for non-combatants and a code of conduct for wars,[1] it has also been understood as providing a moral basis for the conduct of warfare.[2] Just war theory features prominently in key reference texts within the disciplinary canon of the legal regulation of warfare, especially due to Francisco de Vitoria's contribution to the theory.[3] In recent times, following the 'war on terror' and the framing of the US invasion into Iraq as a just war, its theoretical paradigm has returned as a means for analysing

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[1] James Turner Johnson provides an in-depth inquiry into the historical development of just war theory as providing a framework for restraining warfare, see: James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (First published in 1981, Princeton University Press 2016). The literature on just war within the history of regulating armed conflict is extensive, some key texts are Michael C Howard, George J Andreopoulos and Mark R Shulman (eds), *The Laws of War: Constraints on Warfare in the Western World* (Yale University Press 1997); Alexander Gillespie, *A History of the Laws of War* (Hart Pub 2011); Stephen C Neff, *War and the Law of Nations: A General History* (Cambridge University Press 2005); Theodor Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Later Middle Ages* (Oxford University Press 1993).

[2] Michael Walzer's "moral equality thesis" remains a key philosophical engagement with just war and its applicability in modern wars. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Basic Books 2007). It must be noted that Walzer's theorisation of just war in the modern context has justified Israel's ongoing armed occupation of Palestine.

[3] Key textbooks of the discipline of international humanitarian law that refer to just war as an originating point include, Emily Crawford and Alison Pert, *International Humanitarian Law* (Cambridge University Press 2015); Gary D Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge University Press 2010) <https://www.cambridge.org/core/product/identifier/9780511757839/type/book> accessed 113 January 2025; Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press 2003); The chapter on Vitoria's conception of just war and *ius gentium* in Kalmanovitz's monograph is instructive of the broader engagement in historicising the laws of war, Pablo Kalmanovitz, 'Political Theology, Ius Gentium, and Just War in Spanish Scholasticism' in Pablo Kalmanovitz (ed), *The Laws of War in International Thought* (Oxford University Press 2020)

contemporary armed conflicts against terrorism and to assess their legality and moral conduct.[4] Such an application of just war to the war on terror has been criticised, as it draws on civilisational discourses whose productive powers of gendered and racialised innocence create an 'other', to whom the considerations of just war are inapplicable.[5] The resuscitation of the just war paradigm in the 'war on terror' has also been critically analysed in relation to the narrative of the Crusades and the category of the 'infidel'. Cardinal and Mégret demonstrate how the otherisation of the Muslimness of the Seljuk Turks during the Crusades was central to the Medieval development of just war theory and its eventual utilisation within the law of nations.[6]

My intervention engages these recent critiques of just war theory to interrogate the frames of knowledge within which the application of just war theory is imbricated. For my purposes, just war theory provides an entry-point for enquiring into the development of a doctrine of missionary warfare, which I contend is a particular doctrine for waging war to assimilate those outside of Christianity into it.[7] This doctrine situates itself in an exclusively Christian worldview which holds itself as always already universal. Due to the presumed universality of this Christian worldview, it manifests itself as an all-subsuming mode of relating with difference, wherein that difference is only knowable through translation into Christianised terms. This epistemic exercise is central to what I refer to as the vernacular of 'Christianised humanity', an enunciation of universal humanity defined in Christian terms, especially in relation to the 'infidel'. This chapter presents two scenes: the Medieval Crusades and the Portuguese expansion towards the Canary Islands and West Africa, followed by the Spanish conquest of the Americas. These illustrate the universalising concept of Christianized humanity from the eleventh to the sixteenth century. In these scenes, I will illustrate the universalising idea of Christianised humanity across the medieval and early-modern period, spanning from the eleventh century to the sixteenth century. These two scenes will demonstrate how an exclusively Christian worldview instrumentalised just war to wage missionary warfare against those deemed as 'non-Christians'. Missionary warfare acted as the means for violently imposing Christianised humanity upon

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[4] James Turner Johnson, 'Humanitarian Intervention after Iraq: Just War and International Law Perspectives' (2006) 5 Journal of Military Ethics 114; Jean Elshtain, *Just War Against Terror* (2017); Michael Walzer, 'Terrorism and Just War' (2006) 34 Philosophia 3; Alex J Bellamy, 'Is the War on Terror Just?' (2005) 19 International Relations 275.

[5] Helen Kinsella, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Cornell University Press 2011).

[6] Pierre-Alexandre Cardinal, Frederic Megret, 'The Other "Other": Moors, International Law and the Origin of the Colonial Matrix' in Ignacio de la Rasilla del Moral and Ayesha Shahid (eds), *International Law and Islam* (Brill Nijhoff 2019).

[7] Carl Erdmann utilises the term 'missionary war' to describe the battle waged by Gennadius, the exarch of Africa, to defend the Byzantine Empire from the Muslims. Carl Erdmann, *The Origin of the Idea of Crusade* (Princeton University Press 1978)

the many modes of being outside of its particular form, animating the juridical categories of just war for carrying out expansionary conquests. In this manner, the juridification of Christianised humanity by the frame of just war and the practice of missionary warfare acted to forcefully humanise and include those modes of life placed outside of Christendom.

My preoccupation with the figure of the infidel, while engaging with questions of otherisation, is to identify the contours of knowledge from which this category of human arises and becomes subjected within a juridical frame, first of canonistic law and subsequently the law of nations. Across these two scenes, the infidel does not emerge as a derogatory term for an outsider to Christianity, in fact, the designation of Muslims and pagans as infidels is constitutive of their subjection into a status of normative divergence *within* the frames of Christianity itself. These infidels were incorporated within Christianity's universal vision of rational humanity, which recognised their rights and dominium, while also subjecting them to a universal standard of natural law to authorise violent intervention as just war against them.[8] Thus, Christianised humanity, as it emerges in this chapter, is not to be simply understood in the terms of exclusion and otherisation, as it cannot conceive of an 'other' to itself. It is better understood as an already assimilatory form of being, which over-represents itself as the universal mode of being into which all humans are to be incorporated through conversion and conquest.

In the first scene I will show how the encounters with the infidel formed an integral part of the Church's reflections on its jurisprudence on just war. The Church's inclusive vision of humanity relied on an evangelical posture towards the infidel, generally oriented towards conversion to Christianity. Christianity's medieval encounters with the "moors" was a crucible for early ideas on the role of warfare in relations between Christendom and its others.[9] In this scene I draw upon three canonical instruments, Pope Urban's speech authorising the Crusades, Innocent IV's papal bull *Quod super his*, and Nicholas V's papal bull *Romanus Pontifex*, to show a clear rendering of a particularly Christian framing of humanity enunciated through defining the infidel. Pope Urban's authorisation of the Crusades demonstrates how the particular vernacular of Christianised humanity retooled the theory of just war to wage missionary warfare against the *Saracen*, who emerges as the paradigmatic representation of the infidel in the 11th century. Throughout the Medieval period, as Christendom expands and comes into further contact with other modes of being, the representation of the *Saracen* as the infidel becomes instructive as a comparator against which pagans and other non-Christians are defined as antithetical to Christianised humanity. As I show when discussing Innocent IV's papal

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[8] David M. Lantigua, *Infidels and Empires in a New World Order: Early Modern Spanish Contributions to International Legal Thought* (Cambridge University Press 2020)

[9] Cardinal and Mégret (n 6).

humanism, his commentary shaped Christendom's self-knowledge in contrast to those who rejected the Christianized universal standard of the "natural" normative order, extending just war for disciplining the normatively divergent into a naturalised Christian humanity. I refer to the knowledge matrix underlying Innocent IV's commentary as papal humanism to explain the precipitating shift in the description of Christendom's self-knowledge which expressed itself in the hybrid form of theological papal hierocratism and the autonomous secular authority of natural law.[10] These conclusions are obvious in King Duarte's letter to Nicholas V justifying the papal grant for a Christian conquest of the Canary Island, which subsumed the difference of the Guanche into a monopolised definition of 'natural humanity' within a purely Christian cosmology.

In the second scene of this chapter, I will focus on how the unfolding of the Spanish conquest of the Indies reengaged the questions of infidel humanity with respect to the indigenous peoples of the New World. Given the pre-existing medieval reference point of the 'infidel', Christian theologians, missionaries, and "explorers" like Christopher Columbus understood the indigenous people they encountered comparatively to the constructed 'infidel' of the Medieval period. This comparative mode of understanding the radical difference of the indigenous people represented a shift precipitated by the incorporation of natural philosophy into theology. I draw on Wynter's terminology of 'de-godding' to explain this shift away from a purely theocentric notions of Christianised humanity, towards an increasingly secular rational conception of the same. I draw upon Alexander VI's papal bull Inter Cetera I-II, the Requiremento and the Laws of Burgos, and Vitoria's writings on the law of nations, to show how the infidel shifts away from being antithetical to Christianity to instead being at odds with rationality. The *indios,* as defined within the above primary materials, becomes rendered as irrational and an incomplete 'man' within a hierarchical classificatory system of comparative ethnology, wherein the cultural difference of the indigenous people can only be understood within hierarchical terms of political evolution as rational evolution.[11] Thus in this second scene, the presumptions of just war shift to accommodate the emerging secular mode of being, becoming retooled for justifying missionary warfare on the grounds of *ius gentium*.

Across these two scenes, the continuity of Christianised humanity persists despite the shifting nature of its earlier purely theocentric mode of being. Unlike the continuity of Christianised humanity, the

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[10] Robert A Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford University Press 1992), 41-43. Williams refers to this precipitating shift visible in Innocent IV's synthesis in his opinion as 'secular humanism', I choose to refer to it as a papal humanism due to the continued significance of the papacy as the ultimate sanctioner of Christian conquest in this period. As I show in the second scene of this chapter, the degodding of the Christianised human takes place alongside a displacement from papal authority, ushering a new description of the human in terms of secular-rationality.
[11] Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge University Press 1986).

infidel appears and disappears, depending on the emphasis placed upon religious difference by Christianised humanity. This discontinuity of the infidel as a definitional and juridical category is visible in my analysis in the second scene, where terms of natural philosophy dominate the epistemic exercise of defining indigenous humanity. Nonetheless, the violent imposition of the terms of Christianised humanity, recognised as the only natural mode of life at the end of the sixteenth century, upon the indigenous peoples of the Americas demonstrates the persistent over-representation of this particular vernacular of humanity.

Thus, the continuity of Christianising humanity unfolds as a recursively to structure the justification for armed conquests against the 'infidel'. The category of the 'infidel' is enunciated within this recurrent limited mode of Christianised humanity, but in reference to the specific context of its invocation to give coherence to the dialectical relationship between Christianity and its other. Thus, the infidel comes to occupy a position of alterity which is to be remediated through violent inclusion into Christianity through conversion during the Medieval period or "improved" through trade, settlements, and plantations in the modern-period. In both cases, the limited recognition of non-Christian subjectivity within the figure of the 'infidel' presupposes a universalising vision asserted by force. Though the category of the infidel would be rendered superfluous by the eighteenth century, the secular category of the 'savage', defined by purely biocentric notions, would transmute and incorporate its underlying Christianising worldview into the hierarchy of civilisation, a shift, which I have shown, prefigures in Vitoria's writing.

1) Medieval Just War and the 'Infidel'

Historical accounts of the just war and specifically, immunity, draw on the writings of Augustine (fifth century) and the enumerations of Thomas Aquinas and commentaries of Christian canonic law developed throughout the 12th and 13th Century.[12] The centrality of the papal Crusades and the holy wars in the Catholic church's effort to include all of humanity within the spiritual and juridical body of Christ gave rise to a doctrine of missionary warfare, which retooled the Augustinian notions of just war towards a universal conception of Christianised humanity. Within this section I trace the first scene of this chapter, across distinct moments of the medieval period, that exemplify the formation and continued reiteration of a Christianised humanity as a particular mode of being, and its juridification as the basis of just war. I show with reference to three canonical instruments, Pope Urban's speech authorising the Crusades, Innocent IV's papal bull *Quod super his*, and Nicholas V's papal bull *Romanus Pontifex*, a clear rendering of a particularly Christian framing of humanity. In these instruments, we can see an epistemic exercise of framing Christianised humanity, which is contingent on defining the

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[12] Roda Mushkat, 'When War May Justifiably Be Waged: An Analysis of Historical and Contemporary Legal Perspectives' (1989) 15 Brooklyn Journal of International Law 223.

difference of Muslims and pagans as normatively divergent and consequently a threat to Christian universalism. As I'll demonstrate through my analysis of these papal instruments, Christianised humanity structured the presumptions on the basis of which missionary warfare could be conducted as just war.

Augustine's concept of just war, emerging in the 5th century, stated that a war could be just on only one side, and only self-defence or recovery of stolen property were justified causes for waging war against perpetrators of such crimes. This concept was originally restricted to the civil sphere but was extended by Augustine to include the notion of a spiritually sanctioned holy war to enforce discipline within the Church and Christendom following the Donatist challenge.[13] The idea of the Church as a universal Christian commonwealth, hierarchically directed by the pope had a profound influence on medieval legal thought including just war. The sanctified justification of Christians to wage wars to enforce discipline within Christianity, against the 'enemies of the faith' provided the conditions for defining the 'infidel' and juridifying it as a subject of canon law.

The doctrine of just war developed alongside the broader considerations by canon lawyers and theologians regarding the status of Jews who dwelled within Christian Europe and the Muslim *Saracens* within and along the borders of Christendom. The status of those who were not members of the Church solidified into clearly identifiable categories in canonical writings of twelfth and thirteenth century.[14] For instance, in the second volume of canon law, the *Decretales* identified distinct chapters devoted to Jews and *Saracens*, alongside heretics and schismatics who had been the principal object of canonistic study in the early Medieval period.[15] Through this comparative exercise, the 'infidel' comes to be defined in relation to categories already legible within the Christian order of knowledge, and given a juridified status within Christian Europe.[16] Moreover, the extension of canonistic study towards Jews and Muslims reflected the importance of discerning Christendom's relation of itself to their difference, which strengthened the growing sense of internal cohesion within a distinct Christian identity set in terms of opposition to the 'enemies of the faith'.

This mode of Christianised humanity pre-existed the Crusades, as demonstrated by its universal posture towards Jews, in particular, but came to be solidified and over-represented following the

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[13] James A Brundage, *Medieval Canon Law and the Crusader* (University of Wisconsin Press 1969), 19-21.

[14] James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250-1550* (University of Pennsylvania Press 1979).

[15] Ibid, 4-6

[16] Ibid, 4; As Muldoon notes, papal decrees forbid the building of new synagogues by Jewish communities living in Europe and the keeping of Christian slaves by non-Christians.

Crusades.[17] This consolidation of Christianised humanity occurs in relation to what it perceives as an existential threat to its form of being and pre-existing order of knowledge, from so-called 'enemies of the faith' and becomes universal over sustained encounter with those that interrupt its claims of a universal worldview, namely Muslims, Jews, and pagans. These sustained encounters provided opportunities for Christianity to formulate its self-image, constructed entirely in opposition to those only limitedly recognised as 'non-Christians'. The oppositional relationship between Christendom and those it recognised as 'infidels', thus became constitutive to the universalisation of a particular Christianised worldview. The orientation of the Church towards the 'infidel' was entirely evangelical, seeking at first to assimilate 'non-Christians' through peaceful conversion, or eventually by armed conquest. My analysis of the above canonical instruments shows that the doctrine of missionary warfare represents the instrumentalization of the concept of just war through the lens of Christianised humanity. The sanctification missionary warfare provided the basis for the universalisation of a humanity steeped within the particular frames of Christian cosmology, which rendered Muslims, Jews, and pagans knowable only within the limited juridical frame of the 'infidel'.

a) *Missionary warfare at the frontiers of Christendom*

The doctrine of missionary warfare and immunity developed in the context of the Church reclaiming warfare as an exercise of possible grace when undertaken in the service of maintaining Christendom's borders. Despite the evangelical posture of the Church, the prohibition on compulsion in religion posed a contradiction between conquest and evangelisation, which was to be resolved through the bypass of political subjugation as a precondition for subsequent missionary activity protected and promoted by the state authority.[18] This doctrine of *indirect* missionary warfare against pagans was first enunciated by Pope Gregory the Great in the 7th century, and alongside Augustine's theory of just war provided the dual intellectual basis for holy war.[19] While the idea of missionary warfare struggled to gain followers until the First Crusade declared at the Council of Clermont in 1095, it provided the seeds for ecclesiastical politics favouring religious war against infidels.[20]

Pope Urban II's (1088-1099) call to the Crusades sanctified violence against those categorised as infidels, specifically Muslims. The call to the Crusades was responding to the Byzantine request for aid to protect Constantinople, then the capital of the Christian empire of Byzantium, from the Turks by

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[17] For an expansive history of how Christianity's universal posture towards Jews prefigured Christian relations with the indigenous of the Americas see Jonathan Boyarin, *The Unconverted Self: Jews, Indians, and the Identity of Christian Europe* (The University of Chicago Press 2009).

[18] Carl Erdmann, *The Origin of the Idea of Crusade* (Princeton University Press 1978), 10-11.

[19] Ibid.

[20] Lantigua (n 8), 34-35.

leading a charge of soldiers for Christ. Given the proximity of the Muslims in the Iberian Peninsula, which had effectively stalled Christianity's advance, Urban's speech at Clermont was a refined and eastern-directed application of his own opinions on conquering the infidel residing intimately within Europe.[21] Urban's proclamation of the First Crusade initiated an armed pilgrimage by Christian soldiers under solemn vow to defend Christendom in the East, fulfilling a long-held desire of the papacy to reunite Eastern and Western Christianity, against the Saracens and to recapture Jerusalem.

The most widely cited report of the events at Clermont is Robert the Monk's eyewitness account of Urban's proclamation.[22]

> "Distressing news has come to me…For the Turks, a Persian people, an alien people, a race completely foreign to God, of a spirit that broke faith with God, has invaded Christian territory and has devastated this territory with pillage, fire, and the sword… You should be especially aroused by the fact that the Holy Sepulchre of the Lord our saviour is in the hands of these unclean people, who shamelessly mistreat and sacrilegiously defile the Holy Places with their filth…Begin the journey to the Holy Sepulchre; conquer that land which the wicked have seized, the land which was given by God to the children of Israel and which as the scripture says, 'is all milk and honey'. "[23]

Urban concluded his speech by spelling out the spiritual benefits for those who embarked on this armed Crusade, including the remission of sins. As Brundage explains, the Crusades emerged from the Church's tradition of pilgrimage and within the legal apparatus that supplemented it.[24] As mentioned earlier, the contradiction of compulsion within religion presented an irreconcilable obstacle in the legitimisation of missionary warfare, canonistic opinion held that militant activities negated any spiritual benefits that could have been derived from the pilgrimage. Urban's speech simply discarded these prohibitions under a rhetoric of the spiritual reclamation of Jerusalem as a sacred site within the cosmology of Christianity. Urban's descriptions of the Turks as "an alien people, a race completely foreign to God", is a declaration of the normative divergence of all Muslims, existing within and outside the bounds of Christendom, making both indistinguishable from each other within the limited Christianised notions of universal humanity. The proclamation's incendiary language towards the

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[21] Williams (n10), 34.

[22] Dana Carleton Munro, 'The Speech of Pope Urban II. At Clermont, 1095' (1906) 11 The American Historical Review 231. Munro compares Robert the Monk's account against other authoritative accounts to draw out common themes across these different descriptions of Pope Urban's speech.

[23] Brundage (n 13).

[24] ibid. See also James A Brundage, *The Crusades : A Documentary Survey* (Marquette University Press 1962).

Seljuk Turks represents commonplace tropes regarding Muslims, especially as a threat to the expansion and continued existence of Christendom. While the speech is in reference to Jerusalem, Urban's remarks are deeply influenced by the perceived threat emerging from the proximity of Muslims within Iberia, representing a borderland between Christendom and its potential subjects.[25] Overall, Urban's speech is steeped within a particular Christian cosmology, which he holds universal. His reference to the Turks as "completely foreign to God" reiterates the centrality of a Christianised humanity from which the Muslim is alienated.

Thus, within the universal paradigm of Christianised humanity the so-called normative divergence of Muslims is presented as ontologically opposite to the believers of the one truth of Christianity and as justification for missionary warfare. As my analysis shows, the enunciation of Muslims as violent, barbarous, and divergent within Urban's speech serves a dual purpose, it firstly puts forward a coherent Christian identity which must take action to remediate the 'defilement' of Jerusalem by conquest, secondly it justifies the conquest of Jerusalem as the necessary disciplinary action to bring the normatively divergent Muslim in line with the Christianised vision of universalised humanity. Thus, Urban's proclamation becomes a narrative opportunity to project what Christianised humanity is not, and in the same swift move what it is. The articulation of the Crusades as an extension of the Christian practice of pilgrimage, presented the 'Crusader-pilgrim' as the ideal archetype of medieval Christianised humanity, placed in a dyadic relation with the 'infidel'. The 'Crusader-pilgrim' became endowed with the salutary duty of rectifying the defilement caused by the 'infidel' to maintain the internal cohesion of Christendom and aid its outward expansion.[26] As Williams notes, Pope Urban articulated the first truly European colonial form of discourse which held mass appeal by combining the idea of a religious pilgrimage with holy war.[27] Furthermore, by expressing a "right" for the 'Crusader-pilgrims' to conquer the Eastern lands "given by God to the children of Israel" and apparently seized by the "wicked", Urban's speech makes it explicit that Christendom is not territorially bound within Europe. Importantly, the lands that lie in the periphery of Christendom, where Christianity's normative power is unsettled by the presence of divergent 'infidels', could be justifiably conquered and Christianised. Thus, the call to the Crusades presents itself as a key moment in the formation of Christianised humanity, upon which the doctrine of missionary warfare is predicated.

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[25] In summarising the key themes present in the key recollections of Pope Urban's speech at Clermont, Munro remarks that expressions of contempt towards the Turks were commonplace and reflected the general beliefs of that time. Additionally, Munro's comparative exercise also demonstrates the influential parallels between the situations in Iberia and Jerusalem. Munro (n 21), 238-241.

[26] Cardinal and Megret (n 6), 165.

[27] Williams (n 10), 36.

The instrumentalization of just war within Christianity's particular terms of reference is reiterated in the Fourth Lateran Council (1215), which decreed that priests and Crusaders were the respective spiritual and material arms of the Church's fight against enemies of the faith.[28] The growing popularity of the Crusades transformed any ambivalence within relations between Christians and non-Christians. The violence of the First Crusade, where marauding bands of 'Crusader-pilgrims' decimated certain Muslim and Jewish communities from Germany to Egypt, represented egregious examples of forcible baptism under a policy of conversion or death.[29] Despite the widespread violence, chroniclers of the First Crusade emphasised its principal aim as the eradication of pagan idolatry and unbelief, and a sacred act to convert infidels.[30]

The presumptions of Christianised humanity persisted in papal clerics' response to the widespread forcible conversion, pillaging, and murder. By strengthening ecclesiastical oversight of missionary warfare through canon law, especially the doctrine of just war while accommodating the reality of the crusading mission, just war doctrine underwent a significant reformulation, for instance including God's direct authorisation for war in addition to public authority and just cause.[31] Thus, the assimilation of divine authority to ecclesiastical authority, in turn, sacralised warfare in the cause of defending the faith against enemies and opened the possibility of legitimate wars to extend the reach of Christendom.[32]

b) *Papal humanism and the expansion of missionary warfare*

The evolution of just war into a legitimate instrument of Christendom's evangelical aims guided by Christianised humanity found its most articulate exposition in the canonistic writings of Pope Innocent IV (1243-1254). Pope Innocent treated the subject of Christian-infidel relations in his commentary on a papal decretal by an influential predecessor Innocent III (1198-1216). This papal decretal, entitled *Quod super his*, addressed the Crusader vow, the conditions of its fulfilment, and conditions allowing a commutation or delay.[33] Addressing a collateral issue raised by the vow to go on Crusade, which was only considered briefly in the original *Quod super his*, Innocent IV asked "is it licit to invade the lands

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[28] Lantigua (n 8), 35.

[29] Jonathan Riley-Smith, *The First Crusade and the Idea of Crusading* (Continuum 2003).

[30] Lantigua (n 8), 35-36.

[31] Frederick H Russell, *The Just War in the Middle Ages* (Cambridge University Press 1975), 72–73.

[32] Ibid.

[33] Muldoon (n 14), 6.

that infidels possess, and if it is licit, why is it licit?".[34] By raising the question in such generic terms and not restricting the discussion to the Crusades in Palestine, Innocent went on to elaborate a broad justification for the Crusades and the conditions justifying missionary warfare against 'infidels' in general.

Innocent's commentary on *Quod super his* defined the essential terms on the juridical principles applicable to those normatively divergent peoples rendered as 'infidels' upon contact with Christendom's universal ideas of humanity. These juridical principles, or the principles underlying the legal relations between Christendom and the 'infidels', were a synthesis of classical naturalistic thinking and the discourse of papal sovereignty, hierocracy, which were harmonised into a papal humanism. By drawing on the appealing elements of the naturalistic propositions on human nature and reason, while respecting the unitary aspects of traditional Christian ideology, papal humanism responded to the criticisms directed at the most hierocratic versions of canonistic theory and pre-empted the arrival of secular thought. The bifurcation of the world into a 'natural' and 'supernatural' world within humanist thought, could upset the Church's universal vision by constraining its authority purely within the spiritual realm, but instead papal humanism reconfigured itself into a notion of improvement assisted by divine grace under the auspices of the Church. So, while the laws of human state could be seen as valid in their own right, these natural laws and the consequent human state of being should be oriented towards the tenets grounded in divine law directing Christian society. Thus, to preserve the universality of Christianised humanity against the disturbance of naturalist thinking, papal humanism drew on a Euro-Christian normative criteria of 'reason' – constituted by European-defined natural law and the belief in the monotheistic conception of the Church's own God.[35] Once again, we see the persistence of Christianised humanity despite the internal tensions within papal thinking.

Returning to Innocent IV's commentary on *Quod super his* and application of papal humanism to answer the question of juridical principles applicable to non-Christians, he argued that because all authority on Earth descended from God, all dominium was the responsibility of the Holy Roman Church which was the one and only representative of God on Earth, manifesting in the form of the Pope. Taking the Crusades to the Levant as his reference point, he began his discussion by commenting on the words "for the defense" that appeared in *Quod super his*. He asserted that the pope did have the right to order a Christian invasion of Jerusalem to restore Christian control as the Saracens had seized

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[34] James Muldoon, *The Expansion of Europe: The First Phase* (University of Pennsylvania Press 1977), 191-92. See also, Brian Tierney, *The Crisis of Church & State, 1050-1300: With Selected Documents* (Prentice-Hall 1964), 155-56.

[35] Williams (n 10), 46.

the Holy Land unjustly. He drew on the canonistic work already performed by Pope Urban II a century-and-half ago in authorising missionary warfare and rewards for those who joined the Crusades, as an extension of papal authority and responsibility to defend the rights of Christians in those lands. However, he retooled the Augustinian-derived notion of defensive warfare for reconquest of lands seized unlawfully by infidels, which had so far driven Christendom's medieval conquests, in order to generate broader principles regarding the conditions under which lands possessed by 'infidels' could be invaded. By phrasing the question in generic terms, he expanded just war beyond its classic rationales of reclaiming stolen goods or retributive violence. His brief but systemic answer laid out the Christian criteria of war with infidels and became the precedent for subsequent canon legal thinking.[36] Thus, the epistemic frames of Christianised humanity became a constitutive basis for applying just war theory through missionary warfare to humanise the infidel.

Innocent IV's commentary clarified the preconditions of legitimately dispossessing infidels from their dominium granted through natural law-rights. It engaged the normative difference of infidels in their non-belief in the Christian God through the lens of natural reason and commented upon the papacy's spiritual responsibility towards those outside its natural domain as non-Christians. Innocent readily accepted that infidels possessed the same natural-law rights as Christians to elect their own leaders and to exercise dominium over property, but qualified that the pope possessed both direct and indirect authority and right of intervention in the secular affairs of all the Church's subjects – actual and potential. Innocent's reasoning held that as vicar of Christ's universal Christian commonwealth, the pope had been entrusted with spiritual responsibility for the improvement of the infidel towards a perfection rooted in Divine reason. According to him, non-Christians "belong to Christ's flock by virtue of their creation, although the infidels do not belong to the sheepfold of the Church [...] the Pope has jurisdiction over all men and power over them in law but not in fact." [37] Hence, because God was responsible for the creation of *all human beings*, including those deemed as 'infidels', and private property and self-governance are attributes shared by all humans, 'infidels' cannot be denied dominium over their land for the simple fact that they are not Christian. In fact, their dominium is an extension of the dominion of the Holy Roman Church and therefore any lands that belonged to these 'infidels' were under the Church's supervision, and any failure to recognise or abide by this power of title and authority would need to be disciplined and submitted to papal authority. This shows the

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[36] James Muldoon's text provides the most authoritative commentary on the influential nature of Pope Innocent IV's theory of Christian-infidel relations and its subsequent importance in the Spanish conquest of the Americas. Muldoon (n 14).

[37] Muldoon (n 34), 191.

universal claims of Christianised humanity, which over-represents itself as being representative of *all* humanity, incorporating those it defines as 'infidels' into its cosmologies.

Much of Innocent IV's theory regarding the papacy's supervisory role in the spiritual well-being of non-Christians and the need for forceful submission to papal authority emerged from the lens of Christian relations with Jews. This demonstrates the comparative exercise necessary for defining the non-Christians, occurring through Christendom's definition of Jewishness. In his commentary on *Quod super his,* Innocent draws on one of his earlier papal bulls ordering the burning of the Talmud due to it containing material that was heretical, to recall the pope's right to judge those who lived within the bounds of Christendom.[38] He uses this analogy to set out the just causes for papal intervention in cases of violation of natural law by infidels and their rulers refusal to punish such violations. Innocent indicates that sexual perversion, though he does not define what perversions he meant, would constitute a violation. The worshipping of idols was also forbidden and constituted a serious violation of natural law because "it was known to all men that there was only one creator, whom men ought to worship. This creator was not to be identified with the various man-made idols worshipped by deluded people".[39] The commentary reiterates similarly normative notions of what ought to be considered "natural" for all humans with capacities for reason, thus naturalising papal humanism's juridical principles grounded in a Euro-Christian normative criteria of 'reason'. This definition of the non-Christian, constitutes also the defining of Christianised humanity

While papal humanism puts forward infidels had the same rights as Christians, by virtue of their creation by the same divine power, and as rational beings were capable of rational thinking, it defined rational thought within the bounds of universalised Christianity and Eurocentric natural law. Thus, according to papal humanism, this ability for rational thinking, under the universalist normative framework of the Church, would lead infidels to think in the same way as the European Christians did, eventually recognising the universal objective authority of the papacy and assimilating themselves into Christendom. Rejection of this Christianised universal vision of "natural reason", figured the infidel as deluded and irrational because according to Innocent "There is only one right way of life for mankind, and… the papal monopoly of this knowledge makes obedience to the Pope the only means of salvation".[40] Therefore, the Saracens and other infidels' rejection of Christendom's universality made them malicious to the spiritual wellbeing of Christ's flock, and thus justified the pope's divinely instituted mandate to call on Christian princes to raise armies to punish violations of natural law by

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[38] Muldoon (n 14), 30-32.
[39] Muldoon (n 34), 192.
[40] Quoted in Williams (n 10), 46.

nonbelievers and to order those armies to accompany missionaries to infidel lands to instruct nonbelievers in the proper way of worshipping God.[41]

Innocent IV's commentary brought together the hierocratic aims of canonistic legal theory and practice with the naturalistic thesis on man's rational capacity to espouse a form of Christianised humanity that held the acceptance of Christianity and its universal worldview as central to the rationality naturally endowed to humans. In claiming a monopoly over the "only one right way of life for mankind", Innocent IV's papal humanism laid the basis of Christendom's knowledge of itself which was constituted against the sharp relief of those that rejected the Christianised universal standard of the "natural" normative order. Those purportedly "deluded" non-Christian infidels came to signify a threat to the stability of this universalist vision of Christendom, against whom arms could be taken up justly in service of missionary warfare to protect the spiritual wellbeing of potential converts to Christianity. Thus, for papal authority, just war provided the juridical frame for missionary warfare to expand Christendom by disciplining the normatively divergent into a naturalised Christian humanity. The extension of papal supervisory authority by Innocent IV illustrates the universalising of Christianised humanity's self-description, exemplified in the Portuguese conquest of the Canary Islands.

c) *Applying Innocent IV's papal humanism and the conquest of the Canary Islands*

Innocent IV 's humanist commentary radically invented a papal politics of natural law wherein papal frames of knowledge came to be naturalised through the presumed commonality of universal reason. His legal theory of Christian-infidel relation stipulated that given the fact that infidels reside within Christ's flock and are rational creatures subject to the rule of natural law, the Pope reserved the right to judge and intervene in their affairs, through the delegated power of Christ, when their authorities failed to do so. Extending the principle of ecclesiastical intervention in temporal matters to those outside the "sheepfold of the Church", i.e. non-Christians, for the punishment of supposed violations of natural law had significant consequences for Christendom's expansionary evangelical outlook.

Innocent's rationale for intervention outlined a doctrine of missionary warfare disguised within the indirect strategy of punishing sins. This framing evaded the long-running dilemma of forcible baptism which had persisted in the evaluation of the Crusades and its aims of extending the reach of Christianity. Innocent's hierocratic humanism presented itself as a tool for rendering non-Christian ways of being into discrete sins, which if not supressed, were a legitimate foundation for warfare and

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[41] "[I]f the infidels do not obey, they ought to be compelled by the secular arm and war may be declared against them by the Pope and not by anybody else." Muldoon (n 34) 192.

facilitating conversion to Christianity. The linkage of warfare with conversion, became the normative view of Christianity towards infidels, and the resulting political conclusion of this linkage was that if non-Christians did not yield to the supreme authority of the pope in matters such as the admission of preachers and, the suppression of idolatry and other violations of Christianised natural law, then they should fear the threat of war and slavery. Innocent IV's extension of the supervisory reach of the papacy to every human established itself as a key moment in the pre-history of early modern European colonialism. Furthermore, by monopolising the definition of 'natural' within a purely Christian cosmology, the papal humanism espoused by Innocent IV became the dominant mode of thinking and central to Christianity's self-definition. This epistemic exercise, based on claiming Christendom as the universal standard of the 'natural' normative order, provided the knowledge on which missionary warfare as just war was reliant. It is only through the terms of their normative divergence, through which the pagan comes to be within the paradigm of Christianised humanity, as a 'non-Christian', which define the terms of their justified subjection by missionary warfare.

It was particularly in the context of the Portuguese conquest of the Canary Islands and West Africa in the latter part of the fifteenth century that missionary warfare against non-Christians transformed into a civilising mission along the lines of universalised Christianity. Portugal as a geographic and political entity was itself a product of the ongoing *reconquistas*, wars of 're-conquest' waged by Latin Christendom to recover lands in the Iberian Peninsula and the frontier of Africa from Muslim kingdoms.[42] This recent experience was key in shaping Portuguese Christian identity, and consequently relations with other non-Christians. Emerging following the conquest of Lisbon in 1147, like other European nations Christianised by the Church, early political development of Portugal was deeply influenced by the papacy's influence in ecclesiastical and secular administration.[43] Given the burgeoning inter-imperial rivalry between Portugal and Spain, the other Christian monarchy within the Iberian Peninsula, Portugal was also motivated to secure its continued right of conquest. Thus, at the precipice of the early modern period in the late fifteenth century, Portugal was exemplary in its adherence to notions of Christianised humanity developed throughout the medieval period and readily incorporated the Innocentian position of infidel dominium into their colonising ventures. The crusading goals of the Reconquest recommended armed invasions in regions where the Muslim power was seen as vulnerable. As one of the poorest nations in Europe, Portugal saw in crusading an opportunity for both financial gain and religious glory. In 1415 the town of Ceuta in North Africa was

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[42] Muldoon (n 34), 47-49.
[43] Ibid; Williams (n 10), 80.

captured by a Portuguese expedition which turned it into a fortified strong point, soon Portuguese enclaves along the North African coast expanded to include Tangiers.[44]

Following the capture of Ceuta on the northern shore of Africa, Portuguese knowledge of and interest in other lands on the upper Niger and Senegal rivers and along the west coast of Africa grew. These regions were sites of a flourishing trade in gold and enslaved peoples, monopolised by the Muslims. Additionally, the port of Lisbon provided a tactical vantage point for the facilitation of further Portuguese exploration of the west African Gold Coast (arrived at in 1471) and the islands that lay off it. While the Portuguese had already claimed their interests in the Canary Islands in 1341, they settled Madeira in 1419, the Azores in the years 1427-50, and the Cape Verde Islands in 1450-60.[45] By 1482, they had erected their first fort and trading post in the Gulf of Guinea, El Mina, in the Gold Coast (modern day Ghana) despite significant resistance from the Fante and Akan people, whose villages the Portuguese burnt in retaliation.[46] The conquest and settling of these islands and ports along the shores of west Africa was a result of militarised expeditions, which included armed raids of African villages for enslaving its inhabitants. These militarised expeditions were influenced by a mixture of political interests, lucrative trade possibilities, and Christianised Crusading imperatives, becoming crucial to an emerging Portuguese proto-capitalism looking for streams of capital accumulation not dependent on the spoils of the Crusading missions and substantial enough to fund subsequent expeditions.[47]

Given these reasons for protecting Portuguese claims to the Atlantic islands and territories of West Africa and securing the continued conquest of lands and peoples still 'undiscovered' by Portugal in perpetuity against competitors, specifically the kingdom of Castile (modern-day Spain). The conflicting Iberian colonising desires frequently led to violent attacks against the native populations, especially in the Canary Islands, some of whom had already been Christianised. The Guanche of the Canary Islands, were derived from the Imazighen communities of north Africa who followed their own naturalistic

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[44] Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern 1492 - 1800* (Verso 1999), 99.

[45] Muldoon (n 14), 132

[46] Malyn Newitt (ed), *The Portuguese in West Africa, 1415 - 1670: A Documentary History* (Cambridge University Press 2010), 90-95.

[47] Williams (n 10); Immanuel Maurice Wallerstein, *The Modern World System. 1: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century.* (University of California Press 2011); Gerald Horne provides an authoritative historiography of how the inception of sixteenth century feudal capitalism is tied to African slavery and settler-colonialism in the New World, Gerald Horne, *The Dawning of the Apocalypse: The Roots of Slavery, White Supremacy, Settler Colonialism, and Capitalism in the Long Sixteenth Century* (Monthly Review Press 2020). As Wallerstein states, lacking a financial base due to their small and feudalised homeland, the younger members of the Portuguese nobility found the prospects of conquest in African territories to set up militarised mercantile outposts extremely appealing.

belief system, though numerous had converted to Christianity.[48] Their complete annihilation has been described by Adhikari as modern Europe's first settler-colonial genocide.[49] Due to the high death-toll of the Guanches resulting from the inter-Iberian rivalry, Pope Eugenius IV (1431-1447) had issued a bull banning all European Christians from the Canaries at the behest of the local bishops serving the islands who believed that the armed conquests were becoming an impediment in the Christianising of the Guanche.[50] Eugenius' unprecedented ban on Christian colonising activities in the Canaries drew on the Innocentian principle of the papacy's supervisory role in protecting spiritual and temporal well-being of all Christians, inclusive of potential converts. Nonetheless, Innocentian humanism eventually also provided the justification for continued Portuguese claim over the Canaries and the Guanche.

In 1436, Duarte, King of Portugal, wrote to Eugenius requesting the revocation of the ban on Christianising missions to the Canary Islands. The letter of appeal, likely drafted by Duarte's crown lawyers who were presumably theologians themselves, or at least well versed in the dominant theological and canonistic debates of that period, utilises the rhetoric of papal humanism as espoused by Innocent IV to explain why the Portuguese should be allowed to continue their conquests on behalf of Christianity. In making his case, Duarte provides a detailed ethnological description of the Guanche emphasising their "nearly wild character",

> "[The infidels] are not united by a common religion, nor are they bound by the chains of law, they are lacking normal social intercourse, living in the country like animals. They have no contact with each other by sea, no writing, no kind of metal or money. They have no houses and no clothing except for coverlets of palm leaves or goat skins which are work as an outer garment by the most honoured men. They run barefoot quickly through the rough, rocky, and steep mountainous regions, hiding in caves hidden in the ground."[51]

In a word, the Canarian way of life, according to Duarte, was little better than that of animals as the lack of the accoutrements of Christian European civilisation proved. Duarte's letter then engages in a comparative exercise, drawing upon the recently Christianised Canarians as exemplary of the possibilities of transformation from a state of 'barbarism' towards "civil laws and an organised form of society... Where the name of Christ had never been known, Christ is now worshipped".[52] He draws further on the Christianisation of the Guanche by Prince Enrique, Duarte's brother, who arrived on the

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[48] Newitt (n 45), 58.

[49] Mohamed Adhikari, 'Europe's First Settler Colonial Incursion into Africa: The Genocide of Aboriginal Canary Islanders' (2017) 49 African Historical Review 1.

[50] Muldoon (n 14); Lantigua (n 8); Williams (n 10).

[51] Muldoon (n 34) 54.

[52] ibid 55.

Islands with a fleet carrying weapons in hand and soon after arrival converted 400 Guanche, while many others fled in terror. Drawing on this example allowed Duarte to make armed aggression and conquest necessary to precipitating the conversion of non-Christian societies, while qualifying that their conquest was just as it was "more indeed for the salvation of the souls of the pagans of the islands than for his own personal gain, for there was nothing for him to gain."[53] Furthermore as the Guanche would not permit Christian missionaries to land on their islands, their resistance provided further justification for an armed conquest as established under Innocent IV's paradigm of indirect papal intervention. Concluding his letter, Duarte appealed to the papal office's own sense of mission and responsibility of guarding the spiritual wellbeing of the recently converted Christian and likely to be converted Guanche.

He stressed Portugal's will and possession of resources to protect the islands and convert its inhabitants on the Church's behalf. As a trusted ally of the papacy, Duarte implied that as the conquest of the Canary Islands and its inhabitants was inevitable, it was better to bestow that responsibility on to Portugal that had so far selflessly proceeded in a manner to insure the spiritual and physical wellbeing of the native population.

> "The same most serene prince begs Your Holiness that those islands that he has taken from the hands of the infidels, Your Holiness will grant and give to him out of generosity to that king. If this is done, he will be greatly encouraged to prosecute this renowned work, which is already under way, and lead toward an increased devotion toward Your Holiness. Although many will strive on their own authority to wage war and to occupy the lands of the infidels, nevertheless, because the earth and its fullness are the Lord's who left to your Holiness the fullness of this power over the entire world, whatever is possessed by the authority and permission of Your Holiness is understood to be held in a special way and with the permission of almighty God."[54]

Using the humanist Innocentian doctrine of missionary warfare, which reiterates Christianised humanity in its definition of the non-Christian human. Duarte managed to provide legitimacy to continued Portuguese conquest of the Canary Islands. By sidestepping questions of infidel *dominium* and presenting their request as entirely oriented towards responsible Christian guardianship of recent converts and preaching the gospel to potential converts on behalf of the papacy, the Portuguese king presented himself as the pope's dutiful servant striving to bring infidels within the sheepfold of the Church. Furthermore, his descriptions of the Guanche's 'deviance' from the Christianised universal

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[53] Muldoon (n 34), 55; Muldoon (n 14), 122
[54] Muldoon (n 34) 56.

standard of the "natural" normative order, made clear that the natives of the Canary Islands were in obvious and continued violation of natural law justifying Portuguese intervention on behalf of the Church. Finally, the divergence of the Guanche and consequent Portuguese remedial actions provided the specific illustration of the generalised principles Innocent IV put forward in his theorisation of licit papal intervention in non-Christian societies. For Duarte, conquest of the Guanche through missionary warfare was the means to humanise them as a part of Christianised humanity.

The papal response to Duarte's letter is contained within Pope Eugenius' papal bull *Romanus Pontifex*. The most refined version of this papal license of conquest can be found in the 1453-1454 rendition issued by Pope Nicholas V (1447-1455) which reconfirmed the Portuguese rights in the Canary Islands but also endorsed further Portuguese expansion into the African continent.[55] The papal bull represented a major stage in the delineation of zones as a means of resolving inter-imperial conflict between the Castilians and the Portuguese, by justifying Portuguese expansion in terms of the papal humanist form of just war which consequently meant the incorporation of the Guanche into Christianised humanity through being defined in its terms, constituting their eventual enslavement and erasure.

The bull recognised and affirmed Portuguese title to those African "provinces, islands, ports, districts, and seas … which have already been acquired and which shall be acquired in the future", and "the right of conquest from the aforementioned capes of Bojador and Nāo".[56] The opening paragraph restates the paternal attitude of the papacy towards its indirect responsibility over non-Christians:

> "The Roman Pontiff, successor to the bearer of the keys of the heavenly kingdom and Vicar of Jesus Christ, looking with paternal interest upon all the regions of the world and *the specific natures* of all the peoples who dwell in them, seeking and desiring the salvation of every one of them, wholesomely orders and arranges with careful consideration those things [..] by which he may bring the sheep by which he may bring the sheep divinely committed to him into the one fold of the Lord, and may acquire for them the reward of eternal happiness, and may obtain pardon for their souls."[57]

Nicholas V continues with reiterating the fitness of the Portuguese for the Christianising mission, referring to them as "athletes of the Christian faith and fearless warriors for conquering the Saracens

[55] Sidney Zdeneck Ehler and John Brimyard Morrall (trs), *Church and State through the Centuries: A Collection of Historic Documents with Commentaries* (Biblio and Tannen 1988), 144-153.

[56] Ibid 150.

[57] Ibid 146, emphasis added.

and other infidel foes and subjecting them to Christianity's temporal dominion for the sake of protecting and fostering Christianity."[58]

Within this description the natives of the Canaries, Ceuta, the Gold Coast of Africa, and the lands yet to be encountered by Christianity, are corralled into the singular juridical category of the "infidel" which is placed alongside the "Saracen". This phrasing betrays Christendom's universal vision, which despite encountering societies distinct from the Muslims of the Levant, could only recognise the radical difference of the peoples they encountered within its limited vocabulary of Christianised humanity. Within this universal vision, it was reasonable to extend Christendom's responsibility to support the conversion of the non-Christians, if necessary, through war, forcible capture, and enslavement. This reasoning is articulated by Nicholas appreciatively:

> "War was waged for several years against the people of those places ... and during the struggle numerous neighbouring islands were subdued and peacefully occupied. Thence also many inhabitants of Guinea and other negroes were captured by force, while some were obtained by exchange of unprohibited articles or by other lawful contract of buying [...] Among these a large number have been converted to the Catholic faith and it may be hoped ... that if progress of this continues, either those peoples will be converted, or at least the souls of many will be acquired for Christ".[59]

Unlike the Crusades centuries prior that were authorised in bellicose tones of 'recovering' Christian lands possessed unjustly by the Saracens, the language of war and conquest within *Romanus Pontifex* represents a development of missionary warfare towards the larger declared goal of the conversion of non-Christians to Christianised civilisation. The matrix of relationships underpinning this peculiar type of colonial enterprise, i.e the subjection of non-Christian peoples under a mandate of universal Christian responsibility of salvation occurring within the emergent context of proto-capitalism, required a less openly militant discursive posture.[60] *Romanus Pontifex* harmonised spiritual and secular ends within an evangelically grounded colonizing mandate, and in doing so rationalised emergent capitalism's need for devalued labour power in the form of enslaved Africans.[61] This much is made clear by Nicholas V's grant to King Alfonso Prince Henry:

> "[t]o invade, search out, capture, conquer and subjugate all Saracens and pagans whatsoever and other enemies of Christ wherever they exist, together with their

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[58] Ibid 146.

[59] Ibid 148.

[60] Williams (n 10), 73.

[61] Sylvia Wynter, *Black Metamorphosis: New Natives in a New World* (unpublished manuscript), 12.

kingdoms, ..., possessions and whatever goods, which maybe held and possessed by them and to bring their persons into perpetual slavery ... and turn to the use and profit of themselves [...] In consequence of the securing of the aforesaid permission they belong and pertain *de jure* to King Alfonso and his successors."[62]

Thus, *Romanus Pontifex* legitimated the origins of the Portuguese colonial trade and slavery by reference to the radical divergence of the non-Christians encountered by the Portuguese. By stressing that the lands were occupied by enemies of the Christian faith and especially posed a danger to the recently converted Christians within the Canary Islands, Nicholas V was able to justify the conquests as the product of a just war of defence in service of continuing the evangelisation of the natives. The usage of papal humanist discourse of salvation, conditioned upon conversion to Christianity, is suffused within the framing of this conquest as a just war for defense. By rendering the Guanche as "nearly wild", almost animal-like, in their existence and consequently in need of Christian tutelage for their salvation, King Duarte's letter and the papal response in the form of *Romanus Pontifex* eradicate the worldview of the Guanche. They only come to be legible as either potential converts to Christianity or 'infidels' who like the Saracens represent a destabilising force to Christianity, both of which violently elide their particular 'mode of being'. The only possibility of recognition provided under this synthesisation of conquest and Christianisation was within the modes of representation provided by Christianised humanity, i.e. a conversion to Christendom and rejection by the Guanche of their existence as-they-know-it, and failing that rejection suffer armed conquest legitimised as a just war of defence.

The papal humanist formulation of a Christianised humanity anticipated the early-modern shift towards an increasingly secularised attitude in the justification of Christian conquests to bring the infidel sheep of Christ's universal flock to civilisation as understood according to Eurocentric and Christianised norms. Although in the medieval period the juridical category of the infidel had crystallised with explicit reference to the radical difference of Muslims and Jews, particularly due to the destabilising force of Islamic and Jewish cosmologies to Christianity's claims to a universality, the category of the infidel transformed over time to incorporate naturalist thinking and was applied to the different modes of being in West Africa Christendom encountered.

The transformation refined the original ontological relationship between Christendom and the juridical category of the infidel and its originally purely theocentric conception by introducing the naturalistic thesis on man's rational capacity. The concept of 'rationality' as emerging in Innocent IV's *Quod super his* augmented Christianity's earlier purely theocentric description of itself as espoused by

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[62] Ehler and Morrall (n 55), 149.

Urban II in his call to the Crusades and came to express itself as the only rational mode of being. This augmentation defined Christianised humanity instead within a monopolised definition of 'natural humanity' within a purely Christian cosmology. Such a naturalisation of Christian self-identity engendered by papal humanism consequently also changed Christian posture towards the non-Christians as one of paternalistic tutelage into civilisation, and out of their "deluded" modes of being which were at odds with the "one right way of life for mankind". The description of non-Christians as delusional or irrational, based on claiming Christendom as the universal standard of the 'natural' normative order, expanded the modes of papal theorising regarding missionary warfare as just war. Consequently, for papal authority, the conquests that would expand Christendom by disciplining the normatively divergent into a naturalised Christian humanity, came to be legitimised within the juridical paradigms of just wars of defence. Thus, through waging missionary warfare against the infidel, a juridical category composed by Christianised humanity as a reaffirmation of its self-description, just war realised the Christian mode of life as the only natural mode of life into which all had to be incorporated.

2) The conquest of the New World and the 'degodding' of the infidel.

The end of the *Reconquista* with Spain's conquest of Granada and the so-called "discovery" of the Indies, uncannily overlapped in 1492. This moment is frequently interpreted as a break from the Medieval era, heralding the Renaissance, but it actually precipitated a shift that had already begun in the late Medieval period, owing to the prevalence of papal humanism in canonistic thought and its application by Nicholas V to sanctify Portuguese missionary warfare in the Canaries.[63] As I have demonstrated in the previous scene, papal humanism's concept of the papacy's indirect supervisory role in expanding the boundaries of Christendom became materialised through Christian monarchs' carrying out missionary warfare, justified through papal license. The shift engendered by this transference of papal mandate to Christian monarchs affected the rise of the modern European state, as the first, if still partly religious, form of a secularising mode of humanity.[64] Caribbean scholar Sylvia Wynter refers to this shift as "degodding", where the human of medieval Christianised humanity was to be increasingly understood as a political subject resulting from the synthesis of rationality into a Christianising framework.[65] As I mentioned in the previous section, the conceptualisation of naturalist reason within a purely Christianised framework reiterated the belief that the only 'natural' mode of existence was to be found within the singular truth of Christianity. Degodding transformed this naturalisation of Christianised humanity through the concept of "reason", wherein the natural way of

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[63] Muldoon (n 14), 122

[64] Horne (n 47)

[65] Sylvia Wynter, '1492: A New World View' [1995] Race, discourse, and the origin of the Americas: A new world view 13.

being human no longer was simply being 'Christian' but being 'rational'. Thus, as Latin Christian Europe began secularising itself in the fifteenth and sixteenth century, it was to do so within the particular terms of its "own local culture" of Christianity, which continued to underpin this secular notion of reason.[66]

In this second scene of the chapter, I consider how this emergent notion of secularity, while still tied to a Christian cosmology, came to transform the so-far purely theocentric definition of Christianised humanity, and its oppositional figure of the 'infidel'. I contextualise this transformation by drawing on key moments of the fifteenth century Spanish conquest of the Americas, considering specifically how missionary warfare comes to be justified within the secular terms of Spanish political *dominium*, instead of the hierocratic universal responsibility of the Church. These justifications of Spanish political *dominium*, as noted in my reading of Alexander VI's papal bull *Inter Cetera I-II*, the *Requiremento*, and the writings of Francisco de Vitoria, relied upon the construction of the indigenous person as a 'natural man' who was incapable of rational and moral choice. The rendering of the *indios* as "irrational" and "child"-like emerges within a hierarchical classificatory system of comparative ethnology, wherein the different modes of being of the indigenous people can only be understood within hierarchical terms of political evolution *as* rational evolution.[67] The re-inscription of the earlier 'Christian/infidel' binary by the binary of rationality/irrationality demonstrated a shift in Christianised humanity, where it was to be construed within psychological and developmental terms defined according to the Eurocentric norms of the Spanish. These Eurocentric norms of rationality not only justified conquest and enslavement as measures for remediating the indigenous peoples supposed childlike imbecility but consequently instituted itself as the only universally applicable mode of being human.

a) *Inter Caetera and the possession of the Indies*

Pope Alexander VI's (1492-1503) papal intervention in 1493 in the form of papal bulls, *Inter Caetera* and *Dudum siquidem*,[68] assigning the Spanish crown the right to evangelise the indigenous inhabitants of the islands "discovered" by Columbus granted a sacred gravitas to the civilising mission. The papal bulls "give, concede and assign to [Spain] … out of our largest, sure knowledge and plenitude of Apostolic power, by the authority of Almighty God … all the islands and mainlands, found or to be found discovered or to be discovered" to facilitate the "peoples dwelling in those islands and

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[66] Sylvia Wynter, 'The Pope Must Have Been Drunk, The King of Castile a Madman: Culture as Actuality, and the Caribbean Rethinking Modernity' in Alvina Ruprecht and Cecilia Taiana (eds), *Reordering of Culture* (McGill-Queen's University Press 1995), 26-27.

[67] Pagden (n 10), 4.

[68] These papal bulls are together referred to as *Inter Caetera Divinae*; Ehler and Morrall (n 55) 153-159.

continents to accept the Christian religion."[69] *Inter Caetera Divinae* was issued in response to the specific circumstances arising from Columbus's landfall in Guanahani in 1492. On his return voyage to Spain, he encountered strong winds which led to his disembarking at Portugal and the Portuguese crown laying claim to the lands possessed by Columbus for the Spanish Crown. Spain's haste in seeking papal confirmation in the form of the papal donation contained within *Inter Caetera* signified the importance attached to the legitimating function of the papacy to assertions of jurisdiction over non-Christian peoples.

Columbus had been issued a royal contract by the Castilian crown "to discover and acquire certain islands and mainland in the ocean sea", and whereupon discovery he would "be our Admiral of the said islands and mainlands . . . and . . . Viceroy and Governor therein."[70] Having made landfall, Columbus possessed Guanahani, now renamed *San Salvador*, by proclamation and unfurling the royal standard.[71] His assumptions of possessing these lands and the others he encountered, which he renamed in an Adamic act of "discovery", derived from the license awarded to him by the Castilian crown and was supported by his assessment of the 'nature' of the indigenous Arawak he encountered.

Described by him in ethnological detail, the Arawak were:

> "guileless, and so liberal of all they have that no one would believe it who had not seen it. They never refuse anything that they possess when it is asked of them; on the contrary, they offer it themselves, and they exhibit so much loving kindness that they would even give their hearts."[72]

He continues to describe their spiritual nature, "They are not acquainted with any kind of worship and are not idolaters; but believe that all power and, indeed, all good things are in heaven."[73] Furthermore, assessing Arawak society through his Genoese lens, Columbus states that,

> "The inhabitants of this and of all the other islands I have found or gained intelligence of, both men and women, go as naked as they were born, with the exception that some of the women cover one part only with a single leaf of grass or with a piece of cotton, made for

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[69] Ibid 157.

[70] Samuel Eliot Morison, *Admiral of the Ocean Sea: A Life of Christopher Columbus* (Little, Brown and Company 1970), 121.

[71] Christopher Columbus, 'The First Voyage', in Richard H Major (ed), *Select Letters of Christopher Columbus, with Other Original Documents Relating to His Four Voyages to the New World.* (2. ed.; Reprint d. Ausg. London, Hakluyt Soc., 1870, Ashgate 2010), 105-11.

[72] Ibid, 107.

[73] Ibid, 107-108.

that purpose. They have neither iron, nor steel, nor arms, nor are they competent to use them, not that they are not well-formed and of handsome stature, but because they are timid to a surprising degree."[74]

These observations of Columbus are reiterated in the papal bull *Inter Caetera Divinae* to judge the Arawak as suitable wards where "there is hope that, were they instructed, the name of the Saviour, our Lord Jesus Christ could be easily introduced into these lands and islands."[75] The papal bulls of donation to the Spanish Crown draw on the same Innocentian ideas of indirect papal jurisdiction over non-Christians used to justify Portuguese claims by Nicholas V in *Romanus Pontifex*. This similarity is obvious in the descriptions of the Arawak by Columbus, which reiterate the Christian humanist tones of Duarte's descriptions of the Guanches. But unlike the Guanche, who were described as hostile to Christianity and Christians, the Arawak are described as being well disposed to conversion. This marked a significant departure, and consequent expansion, of the legitimising criteria for Christian conquest. Unlike the Portuguese conquest of the Canaries and West Africa, which was sanctified as a just war of defence leading to the incorporation of Christianised Canarians into the sheepfold of the Church stewarded by Portugal, the Spanish conquest of the Americas justified itself in terms of incorporating the Arawak and other indigenous populations under the temporal political rule of Spain. Thus, the mere act of "discovery" maps itself on to "acquisition" as legal cues indicating Spanish possession achieved through occupation, and pre-empting war. Invariably, both modes of legitimising Christian conquest are oriented towards the end result of baptismal conversion and do not preclude the possibility of war. This connotes the transformation of just war, which remains oriented towards the aims of Christendom, now understood in temporal terms of political jurisdiction instead of universal hierocratic supervision. Thus, just war for the purpose of political subordination to Spanish trusteeships serves as *the* route to baptism and salvation and ultimately to the humanisation of the Arawak.

This shift in the basis of just war is tied to 1492 as a destabilising moment for the pre-existing knowledge rooted in a Christian cosmology. Columbus's voyages unravelled previous Ptolemaic conceptions of 'habitable' and 'uninhabitable' geographies, as inscribed by a canonistic belief that only the geographies under God's grace were habitable. Given the epistemic revolution brought about by Columbus' "discovery", as Wynter notes: "There could be no longer *habitable* and *uninhabitable*, *inside* the sheepfold, or *out*. All was now one sheepfold, and if not, was intended to be made so."[76] These earlier notions of a geographical schema originating in a theocentric epistemology, were corrected

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[74] Ibid 106-107.
[75] Ibid.
[76] Wynter (n 66), 28.

through the incorporation of the secular notion of Christian political rule to present a meta-cartography still rooted in a Christian cosmology. Therefore, areas previously rendered *torrid* and consequently 'uninhabitable', could become *temperate* and 'habitable' like European Christendom through subordination to temporal Christian rule, and just war becomes degodded and instrumentalised for the purpose of this political subordination.

In this way, Columbus and the Spanish Crown resolved the contradiction of encountering "very many islands, filled with innumerable people",[77] by justifying their subordination through the absence of a Eurocentric conception of political jurisdiction and lack of private property. The absence of private ownership and organised political authority were translated as proof of the indigenous peoples' imbecility, laziness, and need for Spanish tutelage, which would manifest through an institution of forced labour, the *encomienda*, for which indigenous persons would be enslaved through missionary warfare. This violent practice consolidated the spiritual, humanitarian, and economic interests of the Crown, and quickly evolved into a practice of taking possession of the Indies through the forced incorporation of its native inhabitants.[78]

When significant amounts of gold were discovered in Hispaniola in 1499, the ensuing large-scale mining operation created huge demands for manual labour. The Crown's lawyers who drafted the royal document formally instituting the *encomienda* system justified the enslavement of the Taíno peoples with express reference to *Inter Caetera Divinae*.[79] As the papal donation ordained that the natives be Christianised by the Spanish crown, the Spaniards and, especially the clergy, believed that the Taínos would only become true Christian through direct contact with Christians. This was affected through the destruction of their homes, and forced settlement near newly constructed Spanish towns, where they would be under supervision of Spanish overseers or *encomenderos*.[80] The destruction of Taíno society and their enslavement was justified as necessary for their acculturation to the norms of rational socio-political organisation demanded by the Spanish's notion of political dominium, because it was only through remoulding themselves into rational beings who embrace the sovereignty of the Spanish crown could they attain spiritual salvation. Moreover, the enslavement of the Taínos *as the* means of their incorporation in to Christianised humanity represented the only mode of being for the 'irrational' native inhabitants.

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[77] Major (n 71), 105.

[78] Lantigua (n 8), 57-60.

[79] Luis Rivera Pagán, *A Violent Evangelism: The Political and Religious Conquest of the Americas* (1st ed, Westminster/John Knox Press 1992).

[80] Pagden (n 10), 34-35.

This is reiterated by the 1503 Spanish royal decree licensing the enslavement of the Caribs in the Antilles. Having heard of the Caribs shortly after encountering the first Arawak people in Guanahani, Columbus had communicated an image of fearsome natives who raided neighbouring indigenous villages and were cannibals.[81] Prior to the 1503 decree, Columbus as governor sent a memorandum to the monarchs in 1494 setting out the need for enslaving the Caribs. According to him, enslaving the Caribs and sending them to Spain would assist their Christianisation as it would educate them to be language interpreters with other natives, and rid them of their "inhuman custom of eating men".[82] Moreover, enslaving Caribs could improve the standing of the Spanish with other indigenous communities who feared the Caribs, and enslaved Caribs could be exchanged as commodity for other necessary goods. As Columbus states in his letter "when they have got rid of the cruel habits to which they have become accustomed, will be better than any other kind of slaves". [83]

Columbus's reasons for enslaving the Caribs exemplifies the Spanish mindset of physical subordination through enslavement as the prescribed route towards spiritual salvation, and additionally portrays enslavement as central to the achievement of rational political goals of Spanish colonisation. Moreover, in Columbus's rationalisation of enslaving the Caribs we see a putting in practice of an insight steeped in the newly degodded notions of Christianised humanity. Thus, in the specific perspective produced through the co-mingling of theocratic idea of salvation with the secular mode of rational existence, within which Columbus and the Spanish reside, the only mode of being for the Caribs and other native people is enslavement in perpetuity.

As the 1503 decree stated,

> "In case those cannibals resist and do not wish to be indoctrinated in the things of our
> holy Catholic faith and be in my service and render obedience, they can be captured and
> taken to the lands and islands where needed so that they can be brought here to my
> kingdoms and realms ... so they can be sold and utilised without incurring any
> punishment as a result."[84]

The resistance of the Caribs and attacks on the Spaniards and other native communities provided the Spanish Crown with legitimate grounds for waging missionary warfare and enslaving the Caribs, which was their only utility given their reluctance to become obedient vassals of the Spanish Crown. In the end, indigenous people were rendered as enslavable regardless of any violation of natural law, and

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[81] Pagán (n 79), 98.
[82] Major (n 71), 170.
[83] ibid, 171.
[84] Pagán (n 79), 99.

where any justification was necessitated in the language of natural law, the 'cannibal native' was a ubiquitous rhetorical device.[85] Therefore, the Caribs and Taíno's existence and eventual salvation within the universal paradigm of Eurocentric political order necessitated for them to be enslaved and for missionary warfare to be utilised for that purpose. Moreover, as connoted within the papal bull of donation and Columbus's communications, the idea of incorporating the newly discovered lands into the political *dominium* of Spain occasions the emergence of the concept of 'territory', unbounded from the particular location of the Christian monarch, over which the political rule is to be established by extension.

The formulation of territory as emanating from political jurisdiction over peoples bifurcates the native peoples from their lands and negates any pre-existing relations between the people and their land on which they constitute their specific mode of being. Instead, the universal rationalising concept of 'territory' is used to subsume the multiple meanings of land particular to the native people, to one of pure utility and expropriation. Such a universalising subsumption is explicitly visible in the frequent references by Columbus to the various precious metals in the land and the land itself "which is so beautiful and rich for planting and sowing … and for building towns and villages."[86] The indigenous peoples of the Americas become the physical referent of the projected irrational being, oppositional to the rational self-conception of the Spanish Crown and its Christianising mission, following the encounter of 1492. From then on, the Spanish would remain unable to conceive of an 'otherwise' to its definition of the human, and all other modes of being human would instead not be recognised as alternative modes of existence, but as challenging the ontological absoluteness of its secular rational self-description.[87] This challenge to an ontologically conceived universal secular humanity, posed by the 'irrationality' of the indigenous peoples in the absence of Eurocentric political rule and private property, was to be addressed by waging missionary war and rendering them as property through subjugation to political rule.

b) *The Requerimiento and the legal rationale for conquest.*

As Spanish conquest of the Americas intensified, moving from the islands towards the mainland, missionary warfare became reliant on legal rationalisation. This reliance was supplemented by the Spanish Crown's continuous need to defend its title to its New World empire on the basis of Alexander

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[85] ibid, 99; As Pagán states: "From this exception came, naturally, the geometric multiplication of the number of alleged cannibals in the accounts of conquerors and adventurers".

[86] Major (n 71).

[87] Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, after Man, Its Overrepresentation - An Argument' [2003] New Centennial Review, 282.

VI's papal bull of donation. King Ferdinand II (1452-1516) immediately convened a council principally of royalist theologians and canon-law scholars which met at the Spanish town of Burgos in 1512. Two legal documents followed from this council – the *Requerimiento* and the Laws of Burgos, both providing the Spanish conquest of native territory and the subsequent transformation of native societies through the force of law.[88] The rise of such Spanish colonial legislation was a continuation of the juridical nature of royal decrees and papal grants, but they were now given a civil and positivist gloss.

While the discourse of papal universal jurisdiction still retained some usefulness in constraining the colonial aspirations of Portugal and other neighbouring European monarchies, its appeal had significantly dwindled within the sixteenth century Renaissance courts of Christendom. Hence, positivist legal thinking took hold of the humanist tradition and put it in service of establishing civil *dominium.* As Myers states, "The most popular application of humanism by the end of the sixteenth century was jurisprudence".[89] This much is made clear in theologian and jurist Juan Lopez de Palacios Rubios's opinions at the Burgos Council, best reflected in his treatise "Of the Ocean Isles" and his authorship of the *Requerimiento.* Palacios Rubios's attempt to limit the reach of papal jurisdiction recognised the inherent threat to royal autonomy posed by a theocratic reliance on the papacy as the sole originating source of legitimacy, arguing that with respect to the native inhabitants, the pope possessed only on a right to insist on the enforcement of natural law. The Crown however, according to Palacios Rubios, possessed the absolute right to "enact rules of law ... by virtue of its supreme power which is inherent in the very marrow of the kingdom."[90]

This culmination of medieval papal theories of universal papal supervision with an absolutist conception of state rationality and the monarch's unquestioned sovereignty is clearly apparent in the *Requerimiento,* which provides a juridical framework for carrying out missionary warfare to discipline the indigenous people encountered by the Spanish into becoming subjects of the Spanish Crown. As a formal document, it was prepared in 1513 for Pedrarias Dávila's expedition into the mainland, towards Panama.[91] The document was to be read to all native communities upon their initial encounter with the Spanish colonisers, it began with a version of history rooted in Christian cosmology:

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[88] Williams (n 10); see also Pagán (n 79) on the *Requerimiento*.
[89] Joshua Myers, *Of Black Study* (Pluto Press 2023); 64.
[90] Antonio Truyol y Serra, 'The Discovery of the New World and International Law' (1971) 3 Toledo Law Review 305, 317.
[91] Pagán (n 79), 33.

> "On behalf of His Majesty... I ... his servant, messenger... make known as best I can that God our Lord created heaven and earth ... and gave charge of all peoples to one man named St Peter... and gave him all the world for his lordship and jurisdiction. One of these Pontiffs ... made a donation of these islands and mainland of the Ocean Sea to Catholic kings of Spain."[92]

The central point of the document is a call to the indigenous to submit twice-over, first to the universal spiritual jurisdiction of the papacy and second to the temporal jurisdiction of the Castilian Crown.

> "I beg and require of you ... that you recognise the Supreme Pontiff as lord and superior of the universal world, and His Majesty in his place as superior, and lord and king ... and consent that these religious fathers declare and preach. If you do so, you will be acting well, and those who are over you and to whom you owe obedience ... would welcome you with love and charity."[93]

If the natives did not consent to permit the missionaries accompanying the conquistadores to preach to them, or if "maliciously" delayed in their doing so, the *Requerimiento* authorises war:

> "I will enter forcefully against you and make war everywhere, and I will subject you to the yoke and obedience of the Church and His Majesty, and I will take your wives and children, and I will make them slaves ... and I will take your goods, and I will do to you all the evil and damages that a lord may do to vassals who do not obey of receive him."[94]

Drawing on the papal humanist precedent of understanding the prohibition of missionaries as a violation of natural law and grounds for just war, as discussed in section 1, Palacios Rubios adds a royalist spin to it. A divine trustee of the Church in the Americas, Spain unquestionably relied upon the papal donation, yet Palacios Rubios understood that the Church's missionary task was only as effective as the secular arm conducting the temporal affairs through Christian monarchs.[95] Thus, now just war can not only be waged for preventing the entry of missionaries but also the entry of civil representatives of the Spanish Crown. Additionally, for the avoidance of doubt, the *Requerimiento* makes clear that destruction befalling upon the natives for resisting their subjection is "[the natives'] fault and not that of His Majesty, nor mine, nor of the gentlemen who came with me." Because this legal

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[92] Lewis Hanke (ed), *History of Latin American Civilization. 1: The Colonial Experience* (Little, Brown and Co 1967), 93.

[93] ibid, 94.

[94] ibid, 95.

[95] Lantigua (n 8),64.

document of ritualised dispossession was constructed and implemented by the representatives of the Spanish Crown, it set the aims of warfare as not simply surrender, but as the mode of being submitted to Christianity and its legitimate representatives the Spaniards. Additionally, it mobilises just war to attain objectives attributable to temporal reasons of state, i.e. the serving of His Majesty as subjects and vassals. Thus, missionary warfare no longer remained an instrumentalization of just war to correct violations of natural law, but instead becomes a means to retool just war towards disciplining the indigenous people and remake them as Christian subjects.

Whether or not the Indians comprehended the alien vision of the *Requerimiento*, or the threat of violence rejecting it entailed, Spain relied on that document as the official legitimating basis for declaring missionary warfare to occupy indigenous territory and enslave indigenous people. Like the papal bull *Inter Caetera Divinae* and Columbus's writing justifying the enslavement of the Caribs and Taíno peoples under the *encomienda*, the *Requerimiento* also channels the particular Spanish worldview as universal. For instance, when the Cenù people encountered the *Requerimiento* and its specific request of subordination based on the donation of the Cenù's land, without their consultation, to the Spanish, they are reported to have replied:

> "About the Pope being the Lord of all the universe, and that he had given the lands of the Indies to the King of Castile, the Pope must have been drunk when he did it, for he gave what was not his … The king who asked for and received this gift must have been some madman for he asked to have given to him that which belonged to others."[96]

The Cenù's purported rejection of the politico-juridical worldview expressed by the *Requerimiento,* and the broader Spanish Christianising-cum-civilising mission and declaring instead the Pope to be "drunk" and the King of Spain a "madman" is a direct interrogation of Spain's legitimacy as a colonising power. More importantly, their rejection makes visible the parameters of the Spanish 'local culture' within which the *Requerimiento* and its juridical force to justify missionary warfare is rooted. The purpose of this legal document was to draw the culturally and normatively different people of the Americas into the classificatory logics necessary for the now secular political rationality, still underpinned by a Christianised humanity. These classificatory logics were borne out of ethnological observations of the natives and aimed to give coherence to their observable 'difference', but any framework to give coherence to these comparative exercises was still rooted in the naturalisation of Christianised mode of humanity and its underlying assumption of commonality of reason. As Wynter notes, the terms of the *Requerimiento* functioned as "terms that could make the [Cenù peoples] subjugation and expropriation

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[96] Stephen Greenblatt, *Learning to Curse: Essays in Early Modern Culture* (Routledge classics edition, Routledge 2007), 27.

by the Spanish state seem *real* and *normal*".[97] In setting out these terms of 'reality' and 'normalcy', as conceived of within the local theo-political matrix of the Spaniards but projected to be universal through the force of law and warfare, the *Requerimiento* functions with the pre-conception that the existing being of indigenous peoples and their society is 'abnormal' and 'unreal'. The Cenù's challenge to the ontological and all-encompassing vision of reality that emerges from the "mad" and "drunken" terms of the *Requiremento*, underlined by a mode of Christianised humanity, shows that its truth is only true within the Spanish's own self-conception, which they continue to over-represent as the only way of being rationally human.

The over-representation of this limited mode of humanity, originating from within the specific culture of the Spanish, was achieved through first conquering under the terms of the *Requerimiento* and the subsequent destruction of indigenous tribal life under the Laws of Burgos (1513) and subsequent legal instruments that sought to regulate the relationships between Spaniards and the natives and ensure the spiritual salvation of the indigenous. The Laws of Burgos formally rendered Indigenous socio-political norms to a deficient and diminished legal status, that were to be restructured according to the norms mandated by the secular political rationality constitutive of the Spanish monarchical state. For this purpose, the Burgos code detailed the mandatory provision of religious instruction and the baptism of children, it encouraged marriage and forbid nakedness, further codified the institution of *encomienda*, and ordered the destruction of the natives pre-existing houses.[98] All indigenous peoples were compelled to give nine months of service each year to Spaniards in order to "prevent them living in idleness and to assure their learning to live and govern themselves like Christians."[99]

While the Burgos code was formulated as a humanitarian response to the criticisms of the violence imparted by the Spanish *encomenderos* on to the indigenous people, they also laid the groundwork for aligning evangelism with differentiated labour structures through which the native could be assimilated into Christianised humanity but on unequal terms.[100] Conversion as ordained by the Laws of Burgos was both moral and cultural, where spiritual care as the wards of a Christian monarch was attached to the assimilatory demands for Indigenous peoples to acquire certain practices and abandon others, leading to an equation of indigenous salvation to complete submission. Thus, the Laws are concerned not only with bodily survival and Christian conversion of the indigenous, but with

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[97] Wynter, 'The Pope Must Have Been Drunk, The King of Castile a Madman' (n 66), 19, emphasis added.
[98] Ronald D Hussey, 'Text of the Laws of Burgos (1512-1513) Concerning the Treatment of the Indians' (1932) 12 The Hispanic American Historical Review 301, 323-326.
[99] Ibid.
[100] Eleanor Craig, 'We Have Never Been Human/e: The Laws of Burgos and the Philosophy of Coloniality in the Americas' in An Yountae and Eleanor Craig (eds), *Beyond Man: Race, Coloniality, and Philosophy of Religion*, (Duke University Press 2021) 86-107.

inculcating ways of being – forms of kinship, modes of dress, and even manner of sleep – that mirrored the Spanish. At the basis of the Burgos code was a belief that the indigenous peoples exist only incompletely until they have been brought under the tutelage of and mastered by the Spanish.[101] The freedom of the natives constitutes an injury to them, which can only be rectified through their forcible conscription into the *encomienda* through which they would become suitable Christian subjects.

These assessments of the nature of indigenous people which undergird both the *Requerimiento* and the Laws of Burgos was a significant point of discussion at the meetings of the Council of Burgos from which both legal texts originated. The indigenous were assessed as belonging to that class of people set aside by nature as slaves, according to the Aristotelian notion of natural slavery, to serve that part of humanity considered more 'suitable' to be masters. The 'natural' suitability of the indigenous to be enslaved and placed under the guidance of the Spanish, was to be justified through the observation of patterns of behaviour regarded as deviant to classify the natives as those with minds "unequipped to deal with the complicated business of living 'rational' lives."[102] This early empiricism in which comparative ethnology is rooted became the mode of evaluating the difference of indigenous modes of existence, and presenting an empirical 'proof' of native deviance from rational living. The authority of rational inquiry into the natural causality of indigenous living, verifiable through empirical observation as 'truth', displaced the invisible authority rooted within a transcendental theological frame.[103] Hence, as the indigenous is deemed irrational *by nature* and not by divine providence, this irrationality can be rectified through force.

According to Palacios Rubios, the rectification would be effectuated through the reorganisation of the social lives of the indigenous, the conclusions of which become apparent especially in the Laws of Burgos. The central component of indigenous social life selected for Christian and rational intervention was the 'family', specifically the remaking of indigenous communities with a distinct family structure whose natural ruler was the 'father'. This modelling of indigenous society according to Spanish sensibilities meant the negation of pre-existing social structures which were not gender-specific, and the reading of fluid sexual practices through Eurocentric notions of gender which presupposed heterosexuality. The introduction of 'gender' as a classificatory schema went hand in hand with the other Eurocentric barometers utilised to compare the nature of indigenous society. It also demonstrated a primary instance where local cultural frames of reference originating within the specifically Eurocentric understanding of 'man' and 'woman' and their attendant cultural and biological meanings, were applied outside of its particular context. The Eurocentric conception of

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[101] Pagden (n 11), 48.

[102] ibid, 47.

[103] Sylvia Wynter, 'The Ceremony Must Be Found: After Humanism' (1984) 12 boundary 2 19-70, 33.

gender was used to rationalise the physical bodies of Indigenous people and their sexual practices, making them knowable only within the limited frames of the 'coloniality of gender', i.e. the hierarchical dichotomous distinction between 'men' and 'women' as a mark of rational civilisation.[104] Thus, the Spanish fixation with the sexuality of the indigenous 'women', sodomy, and incest, became another justification in addition to the previous tropes on cannibalism, for continued need for violent Spanish intervention in re-forming the indigenous according to their ideas of Christianised humanity.[105] The violence licensed by *the Requerimiento* and the code of Burgos acted as the conditions for incorporation in to the universality of Christianised humanity, effectuated through missionary warfare.

c) *Juridical inquiry into the 'nature' of the indios*

The expansion of Spanish colonialism continued rapaciously under the dual premise of political and spiritual submission demanded by the *Requerimiento*. The conquests supported the amassing of empirical knowledge regarding the peoples, flora, and fauna newly encountered by Spanish sensibilities, knowledge that became a powerful tool of defining and governing.[106] The close and detailed examination of the nature of indigenous peoples coincided with the emergence of a new movement in theology, logic, and law which came to be known as the School of Salamanca. The members of this school were from the Dominican Order and had been either pupils of, or influenced by the pupils of theologian and jurist Francisco de Vitoria.[107]

Vitoria, as a proponent of the Thomistic method, brought Aquinas' rationalistic terms to bear on the study of theology which covered everything governed by divine or natural law. This was typical of the School of Salamanca, in the sense that they all shared the same preoccupation with the need to explain the natural world and man's place within it, which in practice meant providing an exegesis of the law

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[104] María Lugones, 'Heterosexualism and the Colonial/Modern Gender System' (2007) 22 Hypatia 186.

[105] The signification of indigenous women as sexually "divergent" by the Spanish and the rendering of native sexual behaviour as 'divergent' when it contradicted Spanish heterosexual morality became a key indicator of the continued need for Spanish colonisation and Christianisation. See Rebecca Overmeyer-Velazquez, 'Christian Morality in Spain: The Nahua Woman in the Franciscan Imaginary' in Antoinette Burton and Tony Ballantyne (eds), *Bodies in Contact Rethinking Colonial Encounters in World History* (Duke University Press).

[106] Antonio Barrera-Osorio, *Experiencing Nature: The Spanish American Empire and the Early Scientific Revolution* (1st ed, University of Texas Press 2006); For Jesuit networks as significant producers of scientific knowledge *as* Christian knowledge see: Andrés I Prieto, *Missionary Scientists: Jesuit Science in Spanish South America, 1570 - 1810* (Vanderbilt University Press 2011), and, Paula Findlen (ed), *Empires of Knowledge: Scientific Networks in the Early Modern World* (Routledge, Taylor & Francis Group 2019); For a broader evaluation of colonial scientific practices in the early-modern Atlantic world see: James Delbourgo and Nicholas Dew (eds), *Science and Empire in the Atlantic World* (Routledge 2008).

[107] Pagden (n 11), 60.

of nature. Vitoria's scholarship on just war, sovereignty, law of nations, and papal authority has been significant in the literature of international legal history, marking it as one of the earlies formulations of international law. Vitoria's attempts to 'humanise' the indigenous people in his lectures addressing Spain's *dominium* and just conquest of the New Indies, have been considered as prefiguring humanitarian discourses which embody visions of equality and justice.[108] This selective understanding of Vitoria has been criticised as it omits the historical context of colonialism within which his humanitarianism is espoused, notably Anghie has demonstrated how Vitoria provided the discursive foundations for imperialism in the application of international law.[109]

My reading of Vitoria in this section adds to Anghie's argument by deepening our understanding of how the cultural difference between the Spanish and the indigenous people was structured through the vernacular of Christianised humanity. In fact his comparative ethnological renderings of the indigenous' difference from the Spanish are at the basis of his conceptualisation of *dominium* and the law of nations. In this section, I will focus on the centrality of ethnological study of the 'nature' of the indigenous in Vitoria's response to the 'affairs of the indies'. For Vitoria, the challenges posed to Spanish conquest and Christianisation of the indigenous could be resolved by grasping the nature of the relationship between the Spanish and the natives, which consequently meant defining the type of 'man' the *indio* was. Given my terms of engagement with Vitoria, my focus will specifically be on his lecture '*De temperantia'* (On Dietary Laws, or Self Restraint) as it details most of the discussion regarding cannibalism, human sacrifice, and other 'unnatural' acts, he relies upon in his more famous lecture *De indis* (On the American Indians). The purpose of this is to demonstrate that the deliberations regarding sovereignty and territory, which Vitoria is renowned for, originated in relationship to his deliberations indexing the nature of indigenous humanity. As such, these precepts

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[108] The projection of Vitoria as a progressive and humanitarian thinker is also visible in recent literature such as Pablo Zapatero Miguel, 'Francisco de Vitoria and the Postmodern Grand Critique of International Law', in Jose Maria Beneyto and Justo Corti Varela (eds), *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law* (Springer 2017).

[109] Antony Anghie, 'Francisco De Vitoria and the Colonial Origins of International Law' (1996) 5 Social & Legal Studies 321. Anghie extends his thesis regarding the imperial foundations of international law in his book *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007). Apart from Anghie, Vitoria's contribution to a Spanish ecclesiastical imperialism has been analysed by Alfred P Rubin, 'International Law in the Age of Columbus' (1992) 39 Netherlands International Law Review 5; Ignacio de la Rasilla del Moral, 'Francisco de Vitoria's Unexpected Transformations and Reinterpretations for International Law' (2013) 15 International Community Law Review 287; Koskenniemi attributes to Vitoria the contribution of public and private rights as applicable to international law, Martti Koskenniemi, 'Empire and International Law: The Real Spanish Contribution' (2011) 61 University of Toronto Law Journal 1; A historical account for situating Vitoria's thoughts regarding the law of nations and its impact on non-European peoples is provided by Cardinal and Mégret (n 6); Williams (n 10); Pagán (n 79).

of international law emerge alongside and are constituted by the logics that define Christianised humanity for Vitoria.

By 1532, the empires of the Aztec and the Incá had been encountered through the respective conquests of Hernán Cortés in 1519-22 and Francisco Pizzaro 1531-1532, which revealed to the Europeans new modes of being and organising life which were more recognisable to Spanish ideas, thus rendering the Aztec and Incá societies as superior in comparison to the ones in Hispaniola and other Caribbean Islands. A series of 'natural history' publications and catalogues followed the conquering of new lands and peoples, and their main role was to render the exotic "discoveries" knowable to the Spanish and European learned public. Publications such as Cortés's famous *Cartas de Relacion* which described the conquest of Mexico also prominently reported the human sacrifices made by the natives alongside descriptions of various flora and fauna.[110] By 1535 Gonzalo Fernández de Oviedo's *Historia general y natural de las Indias* appeared in Seville and became an authoritative account of the deviance of indigenous life.[111] Given the already present propensity of the Spanish to see the indigenous world within their particular classificatory logics and with comparison to their Eurocentric worldview, these publications appropriated native versions of reality within European forms of witing, and in Oviedo's case, images, to make sense of the *indios* and their cultural phenomenon.[112]

The importance of empirical observation and drawing conclusions to determine the nature of the indigenous peoples had so far played an important role in justifying the Christianising conquest against them for their 'irrational' practices. These early scientific practices had also developed classificatory logics within which to categorise and understand the newly assimilated indigenous peoples, necessary for the development of colonial laws for fostering a homogenous Spanish Christian polity. The proliferation of new laws to organise and govern native society, especially due to the rapid decline in native population precipitated by the Spanish policies so far, show a clear protoracial rendering of early-modern Spanish society. Ordinances such as those forbidding other races and *castas* (Hispanic, Black, and Creole) from residing within Indian communities are representative of the important and changing nature of modes of classification that depended increasingly on observable

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[110] Hernán Cortés, *Letters of Cortés: The Five Letters of Relation from Fernando Cortes to the Emperor Charles V* (Francis Augustus MacNutt ed, 1908) <https://wellcomecollection.org/works/ejmhrzzh> accessed 13 January 2025.
[111] Pagden (n 11), 58.
[112] Alexandre Coello de la Rosa, 'Representing the New World's Nature: Wonder and Exoticism in Gonzalo Fernández de Oviedo y Valdes' (2002) 28 Historical Reflections / Réflexions Historiques 73, 81.

phenotypical phenomenon than the pre-existing theocentric conception of difference.[113] Moreover, the inquiry into the 'true nature' of the native were precipitated by the existence of 'advanced' indigenous societies like the Incá and Aztec, which unlike the 'primitive' Caribbean native societies, possessed, what seemed to the Spanish through comparative familiarity, an economy with markets, a merchant class, and most importantly a structured and ritualistic, but bloody and idolatrous, form of religion. These societies posed a conundrum to the Spanish, particularly their persistence in practices such as human sacrifices, given their 'higher-level' of social and political organisation.

Vitoria was seized by this conundrum, never having travelled to the New World, the ethnological accounts and 'natural histories' mentioned above were part of the knowledge he relied upon as facts to assess the typology of 'man' the native could be categorised into.[114] The cannibalism of the indigenous was a much discussed subject, demonstrated by its constant invocation to justify conquest, and reasons for it generally fell in to two categories according to the Spanish – revenge, as in the case of the itinerant communities of Guarani or the supposed need to make up for a protein deficiency, as theorised in particular reference to the Mexica.[115] Both these rationalisations for the practice of cannibalism demonstrates a European ontological perspective on the reasons behind anthropophagy, grounded in a view that inherently views this act as irrational and prescribes corrective measures such as the Castilian Crown's request to Cortés to scale up the importation of cattle and provisions of the Laws of Burgos which stipulated that the indigenous be given cooked meat on Sundays.

But the question facing Vitoria was not *why* the indigenous practiced cannibalism and human sacrifice, he was more interested in theorising why anthropophagy is against natural law. The premise of his question itself is grounded within a universalising notion of natural law and presupposes that what is natural within his reference point is universally applicable. The universality of his viewpoint is obvious when he declares, "Eating human flesh is abominable to all nations", thus satisfying for him the first requirement of consensus, i.e. cannibalism is a violation of natural law because "all men have held this practice to be disgusting and base". [116] To support this universal claim, he turns towards Christocentric logic, deducing that as cannibalism is inevitably a cause of homicide and murder, and contravenes the natural right of burial which "would mean injustice (*iniuria*) at the resurrection since

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[113] Francisco Bethencourt, *Racisms: From the Crusades to the Twentieth Century* (Princeton University Press 2014); María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford University Press 2008).

[114] Anthony Pagden, 'The Forbidden Food: Francisco de Vitoria and José de Acosta on Cannibalism' (1981) 13 Terrae Incognitae 17.

[115] Ibid, 21

[116] Francisco de Vitoria, *Political Writings* (Anthony Pagden and Jeremy Lawrance eds Cambridge University Press 2008), 210.

men's bodies would be mixed up together", it is an unnatural practice.[117] Yet, Vitoria's reasons for explaining cannibalism as a violation of natural law extended beyond the reasons derived from consensus and Christian concerns regarding the soul. In having consumed another human's flesh, the natives are committing what Pagden refers to as a "radical category mistake".[118] As Vitoria explains:

> "Food is ordained according to the thing it is supposed to feed, and consequently ought always to be less noble than the eater. Ergo, *man cannot be food for man*."[119]

Within this framing, the unnaturalness of anthropophagy is not simply that it violates commonly held opinion or causes injury, it's in fact a much deeper transgression of the natural order – as divinely ordained and rationally confirmed within Spanish "reality". By failing to perceive that for all living beings, foodstuffs are confined to organisms that live on levels lower than the consumer – a belief emanating from the Aristotelian hierarchical model of the Great Chain of Being – they were clearly behaving in an unnatural manner. Like the "vices which contravene human nature" such as bestiality and sodomy, of which the natives were also accused, their cannibalism demonstrated their incapability of clearly distinguishing between the rigid and presumptively self-defining categories into which the natural world was considered divided by the Spanish. Dietary norms, like sexual ones, were the measure of man's natural capacity for reason, and his ability to live as man. For a religion insistent on the theological and sacramental transcendence of spirit, within a naturally defined hierarchical order of being, the ritualistic practices of the natives of New Spain presented a disconcerting and overwhelming preoccupation with the body and flesh. Through the ontological perspective of Christianised humanity inhabited by Vitoria, whose purely theological basis of knowledge has been amended through the application of natural philosophy, the anthropophagic and sexual practices of the indigenous only translates as categorial violations of natural law – cannibalism, bestiality, and sodomy. Moreover, these categorical violations are proof of the inability of the indigenous to see the world as it really is. Indeed, in considering the "mental incapacity" of the indigenous peoples at the end of *De indis*, Vitoria considers the diet of the natives as an indicator of their madness and incapacity to self-govern. As he states, the natives' diet is "no more civilized and little better than that of *beasts*" and that this constitutes grounds for their conquest.[120]

The political consequences of Vitoria's thought are clearly apparent and applied through his concept of just war and *ius gentium*. Unlike the humanist theorising of Palacios Rubios, discussed in the prior

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[117] Ibid
[118] Pagden (n 11), 85.
[119] Vitoria (n 116), 210 emphasis added.
[120] ibid, 292 emphasis added.

section, the *indios* does not appear as a natural slave in Vitoria's deliberations, but is still nonetheless, very far from being a whole civil man. Comparisons with wild beasts and brute animals are structuring logics of how the native is to be apprehended within the vision of Christianised humanity.[121] These comparisons are not merely derogatory figures of speech in the sense of denoting a sub-humanness to indigenous people, but the very conditions of coming to be understood and juridified within Vitoria's law of nations. Despite the indigenous people's ability to perform some rational acts such as building grand stone buildings, their inability of performing other acts of rationality demonstrates that their rationality remains in *potentia*, i.e. the *indios*' mind is frozen in a state of development, whose potential has not been actualised.[122] Thus, indigenous humanity can only exist through comparison to a marker of animality and bruteness, because within Christianised humanity's hierarchical vision of the natural world the native exists somewhere between man and animal, as an incompletely rational man is a misnomer. Such an existence bookends the juridical character of the *indios* in Vitoria's jurisprudence, especially with regards to just war.

Vitoria visited the question of the lawfulness of war against indigenous people on the grounds of their practices of anthropophagy and human sacrifice in *De temperantia*, 2 years prior to the more famous statement on the status of the natives contained within *De indis,* making specific reference to the Mayan peoples of the Yucatán. He concludes that Christian princes can declare war on the indigenous for their practices of cannibalism and human sacrifice on the following grounds:

> "First, if they eat or sacrifice innocent people, princes can defend the latter from harm...
> No one can give another the right to kill him, whether it be to eat him or to sacrifice him...
> Hence, since it is a fact that these barbarians kill innocent men, at least for sacrifice,
> princes may wage war on them to force them to give up these rituals. Even if they
> sacrifice criminals to eat, they still commit an injustice (iniuria), since there is a law of
> nations (ius gentium), indeed a natural law, that the bodies of the dead are exempt from
> this injustice."[123]

Thus, despite the imperfect nature of the *indio* as a man, he is a man nonetheless, and thus capable of violating natural law, which dictates the law of nations. Within Vitoria's formulation cannibalism and human sacrifice are not only construed as violations of natural law, but laws of the higher rational order universalised as the law of nations. Injustice, according to Vitoria's conception law of nations

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[121] The full quotation is "Thus if they seem to us insensate and slow-witted, I put it down mainly to their evil and barbarous education. Even amongst ourselves we see many peasants (*rustid*) who are little different from brute animals." ibid, 250.
[122] Pagden (n 11), 94.
[123] Vitoria (n 116), 225.

underlined by the combination of Christian morality and empirical naturalism, constituted a justified reason for conquest. As Anghie states, it is through waging war "that the aberrant Indian identity might be effaced". [124] Just war becomes not simply a means of redressing the injustice presumed under the crime of cannibalism, but also correct the deviant nature of the *indios* who practice such a crime. This notion of just war is reiterated to support conquest if the natives refuse to receive missionaries, as the refusal to receive missionaries, alongside the refusal of traders and travellers, not just constituted a violation of *ius gentium* but was in fact also a violation of the natural hierarchy which subjugated the natives to the Spanish. As he states:

> "[...] brotherly correction is as much part of natural law as brotherly love; and since all those peoples are not merely in a state of sin, but presently in a state beyond salvation, it is the business of Christians to correct and direct them ... Therefore, it is the business of Christians to instruct them in the holy things of which they are ignorant."[125]

In Vitoria's insistence that it was their "evil and barbarous education" that had made them incapable of rational behaviour,[126] indigenous people emerge as merely ignorant misguided people awaiting the light of reason by salvation, to be achieved through Christian correction of their unhuman practices. It was hoped that through Spanish conquest, *for the benefit of*, the natives could learn to become true men and realise the complete potential of their rationality by, for example, eating cooked animal meat as opposed to consuming raw human flesh.

The signification of the indigenous as some variety of grown child with an incomplete mind are the very terms of their humanisation available in the order of knowledge structuring Christianised humanity. As Pagden clarifies, "this 'barbarian', by definition an 'outsider', had now been brought 'in' at the lowest possible social and human levels".[127] The humanisation of the indigenous only happens through conquest, with an ultimate goal of transforming the nature of the *indios* by effacing their particular mode of being. Just war, retooled to address violations of the universal normative order upon which the law of nations is contingent, becomes the legal frame for authorising missionary warfare to discipline the indigenous peoples into Christianised humanity increasingly supplanted by secular rationality. Revisiting Vitoria's ethnological reflections clarifies that the "colonial encounter" is not just an encounter between two different cultures of humanity, occurring within a dynamic of colonialism. In this way, my intervention departs from Anghie's analysis of cultural difference. As I

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[124] Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 Third World Quarterly 739, 744.

[125] Vitoria (n 116), 284.

[126] Ibid 250

[127] Pagden (n 11), 105.

have shown, this encounter is best understood as taking place between two different modes of existence and self-description, wherein one is completely subsumed by the particularistic and homogenising viewpoint of the other. By framing the difference of the indigenous within the naturalised terms of Christianised humanity, the *indios* only comes to be as an 'incomplete' human, contrasted with the appropriately Christianised-rational Spanish, and integrated at the basest level of humanity through missionary warfare. These terms of describing indigenous life over-represent the narrow terms of Spanish humanity as the only form of humanity that is 'real'. The *indios* is defined and then juridified into the law of nations through the violent imposition of these limited terms of being. It is this abduction into the categories of Christianised humanity through just war, that constitutes the violence of humanisation for the indigenous peoples of the Americas and is the originating point for the law of nations.

Conclusion

In the years following from Vitoria's *De indis*, the question of indigenous humanity was revisited in detail in the Valladolid debate (1550-1551) between friar Bartolomé de las Casas and humanist philosopher Juan Ginés de Sepúlveda. Las Casas' 'humanitarian' argument for ending the violent *encomienda* institution and replacing the enserfed natives with enslaved African labour, alongside a strengthening of Spanish sovereignty unitarily exercised by the Crown for converting the natives sat in opposition to Sepúlveda's justifications of the violent conquest and continued near-enslavement premised on the indigenous peoples' nature as subhuman. For Sepúlveda, it was only through serving the Spanish *encomenderos* and violent subjugation under Spanish rule, could the natives, who are described as "almost as monkeys are to men", attain proximity to full humanity.[128] The Valladolid debate demonstrates the inherent totality of Christianised humanity, where either indigenous humanity is to be defended through the subjugation of African humanity, who are 'justly' enslaved as spoils of missionary warfare, or comes to be as a subhuman figure comparable to animals or homunculi. It is in this entanglement that we also find the connection to the incipient logics of anti-blackness undergirding the transatlantic slave trade.[129]

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[128] Juan Ginés de Sepúlveda, *Democrates Segundo* (ed. Angel Losada 1951), quoted in ibid, 117.

[129] For Las Casas, the Wolof people of West Africa, enslaved primarily by the Portuguese from their missionary wars in West Africa, were justly enslaved due to their apparent proximity to Muslims, Daniel Castro, *Another Face of Empire: Bartolomé de Las Casas, Indigenous Rights, and Ecclesiastical Imperialism* (Duke University Press 2007), 74. As Wynter states, Las Casas coming to this conclusion is inextricably linked to the dual complexes of *limpieza de sangre* (blood purity) and *hidalguia* (noble spirit) he inhabited, she concludes that this demonstrates the emergence of a proto-racial thinking. Wynter, '1492: A New World View' (n 65).

As I've shown in this chapter, Christianised humanity presents us with a monopolised definition of humanity, juridified into just war theory by the doctrine of missionary warfare against the infidel. In the first scene I trace the emergence of Christianised humanity as a cohesive mode of being in the context of the Crusades, where the Muslim as the disruptor of Christianity's universal claim to truth and knowledge, is defined as antithetical and an 'enemy to the faith'. This paves the way for its recognition into Christianised humanity as an infidel, enacted through conquest. By the middle of the thirteenth century, Christianised humanity refigures itself through Innocent IV's papal humanism, extending its duty for shepherding all of humanity towards salvation. It asserts this over-representation of itself as the only possible mode of humanity through expansionary conquests, such as the Portuguese conquest of the Guanche, expanding the juridical category of the infidel and the rationale of just war. The waging of missionary warfare by the Portuguese against the Guanches of the Canary Islands and the Fante and Akan communities of West Africa, now transformed into infidels, enabled their humanisation according to the particular terms of Christianised humanity.

In the second scene, I trace the consequences of papal humanism's incorporation of natural philosophy and its intersection with the sixteenth century Spanish conquest of the Americas. The convergence between a transforming order of knowledge and the political transformation induced by this early foray into colonialism began the de-godding of Christianised humanity's purely theocentric mode of being, and the secularising of missionary warfare. The Medieval infidel's radically different mode of being, so far conceptualised within religious terms, is supplanted by the *indio* who is only understandable as cannibalistic, sexually perverse, and irrational. For Columbus, the spiritual deviance and irrational existence of the indigenous presented a hurdle to their spiritual conversion and salvation, necessitating their enslavement and conquest. This shows a rehearsal of Innocentian papal humanism mobilised to also satisfy the rational imperatives of the colonial endeavour, but these justifications within the terms of papal universalism are despatched by Vitoria. His defining of the *indios* as an imperfect man due to their 'irrational' practices, understood as violations of the law of nations, authorises missionary warfare not simply as a means of redressing the injustice of these practices, but as the primary means to humanise them by rehabilitating their deviant nature .

The terms of the Valladoid debate would create another justification for the "fallenness" of the infidel in the terms of reason.[130] Wynter notes the debate as inaugurating an order of knowledge that, in her words, "transumed" the values of the Church's notions of humanity and completed the move towards de-supernaturalising by making the authority of rationality central to its new secular mode of being.[131] Vitoria's contribution to just war understood as an early secularising of Innocentian papal humanism,

[130] Myers (n 89), 89.
[131] Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom (n 87).

prefiguring this new order of knowledge and pursuing the goals of a rational political order serving the needs of an expanding empire, instead of universal hierocratic supervision. While my focus has primarily been on Vitoria's comparative ethnology of the *indios*, his theorisation of territory and sovereignty cannot be separated from it, as these concepts are part of defining the natives as imperfect and incomplete in their humanity. The emergence of territory as a concept constituted a significant development within the law of nations, indicative of the secular separation of people from their lands, an incipient logic of the colonial settlement of the Americas in the seventeenth and eighteenth centuries.

This chapter has charted the transformation of Christianised humanity in relation to, initially, the figure of the infidel and subsequently the *indios*. The move from a theocentric description of religious difference as in the case of the infidel, towards an ethnological description of 'natural' difference depicts a discontinuity within the epistemic frames of Christianised humanity, in spite of which this mode of life persists. As I show in the subsequent chapter, the expansion of the colonial frontier through savage warfare enfleshed the emergent secular mode of recognising and rooting difference in nature in the form of racialised humanity. The Spanish had situated the indexing of indigenous humanity through bestial analogies in early ethnology inspired by Classical and Renaissance notions of rationality. However, the rapid expansion of European colonisation by the seventeenth century, alongside the growth of the mercantile trade, expansion of the transatlantic slave trade, and the emergence of new modes of society and government set the scene for a redescription of the human. As Christendom gave way to Euro-modernity, the singularity of Christianised humanity transmogrified to become a hierarchically ordered form of being that incorporates humans and non-humans through the vernacular of race, which is constituted by the volatile biopolitical frontier between the two categories.

Chapter 2: Racialising Humanity

Savage warfare and animality on the colonial frontier.

Introduction

In the previous chapter, I showed how the medieval and early-modern encounter between Christendom and 'non-Christians' universalised a particular form of humanity defined in exclusively Christian terms. Drawing on the medieval Crusades, Portuguese colonial expansion in West Africa, and the Spanish colonisation of the Americas, I demonstrated how an exclusively Christian worldview instrumentalised just war to wage missionary warfare to assimilate those outside of Christianity into it. As I concluded in the previous chapter, at the end of the sixteenth century, Christianised humanity's recursive nature had transposed the authority of rationality over its theological matrix to engender a shift away from its purely theocentric origin towards a de-godded, secularising description of itself.

This new, secularised, mode of being ushered a method of physiognomic and phenotypical signification located within observable difference.[1] In this chapter, I am interested in how 'racialisation', as the novel mode of signification developing from the seventeenth century onwards, presents an epistemic framework for making sense of the perceivable differences between peoples for the purposes of practicing and regulating warfare on the colonial frontier.[2] Thus, the vernacular of 'racialising humanity' enunciates itself in the epistemic exercise of defining and delineating the various physical differences between humans into a discretely organised classificatory system attuned to the rationality of Europeans and cohering to a developing notion of whiteness. This, in turn, influences the emergence of a doctrine of savage warfare to be practiced against the so-called uncivilised populations encountered through

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[1] Sylvia Wynter, '"Genital Mutilation" or "Symbolic Birth?" Female Circumcision, Lost Origins, and the Aculturalism of Feminist/Western Thought' 47 Case Western Law Review (1997).

[2] Apart from Sylvia Wynter's work, my thinking about racialisation as a process is primarily indebted to Frantz Fanon, Denise Ferreira da Silva, and Stuart Hall. See: Frantz Fanon, *Black Skin, White Masks* (Richard Philcox tr, Grove Press 1967); Frantz Fanon, *The Wretched of the Earth* (Constance Farrington tr, Penguin Books 1990); Denise Ferreira da Silva, *Toward a Global Idea of Race* (University of Minnesota Press 2007); Stuart Hall and others, *Policing the Crisis: Mugging, the State and Law and Order* (2nd edition Macmillan International Higher Education 2019); Stuart Hall, *Selected Writings on Race and Difference* (Paul Gilroy and Ruth Wilson Gilmore eds, Duke University Press 2021); Stuart Hall, *Essential Essays, Volume 1: Foundations of Cultural Studies* (Duke University Press 2018).

colonial expansion. In this way, the racialisation of humanity within the regulation of warfare juridifies a kind of human against whom annihilatory violence is authorised.

As I explained in the introduction of this thesis, the regulation of armed conflict, has been influenced by Eurocentric ideas of civilisation. The centrality of civilisational discourse has been critically analysed from the perspective of how racial difference emerges as a rationale for enabling the otherisation of non-Europeans and excluding them from its recognition, while also providing limited inclusion for authorising violence through permissive interpretations of existing norms of 'civilised warfare'. This contradiction in the universality of this body of law signifies an exclusionary propensity, according to Mégret.[3] Similarly, Wilke shows how the hierarchy of civilisation becomes a key aspect of defining the civilian and regulating practices of aerial bombardment in the mid-20th century, which reproduces the exclusion of the 'savage native'.[4] As Anghie has shown, the contradictory nature of the legal regulation warfare in relation to the uncivilised savage extends to the use of force, especially following the US invasion of Iraq.[5] Tzouvala has also identified how this differentiation of civilised and uncivilised maps on to the utility of the unable and unwilling theory to justify humanitarian intervention and constant militarisation, which enables the deployment of violence to reiterate historic and current patterns of racialised subordination.[6]

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[3] Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"' in Anne Orford (ed), *International Law and its Others* (1st edn, Cambridge University Press 2006), 28.

[4] Christiane Wilke, 'How International Law Learned to Love the Bomb: Civilians and the Regulation of Aerial Warfare in the 1920 s' (2018) 44 Australian Feminist Law Journal 29; See also Wilke's article on how the ICC has racialised different techniques of warfare in its investigation of war crimes in Afghanistan, Christiane Wilke, 'Beyond Law and Numbers: Civilian Suffering and the ICC's Engagement with Afghanistan' (2020) <https://twailr.com/beyond-law-and-numbers-civilian-suffering-and-the-iccs-engagement-with-afghanistan/> Accessed 13 January 2025; Ringmar has also drawn upon 20th century aerial bombardment to reconsider the problem of defining the civilian and the principle of distinction, Erik Ringmar, '"How to Fight Savage Tribes": The Global War on Terror in Historical Perspective' (2013) 25 Terrorism and Political Violence 264. Within the discipline of international relations, Kinsella's scholarship has provided a key accounting of how racial and gendered differences have determined the recognition of the 'civilian' in armed conflicts from medieval to present times, Helen Kinsella, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Cornell University Press 2011).

[5] Antony Anghie, 'The War on Terror and Iraq in Historical Perspective' (2005) 43 Osgoode Hall Law Journal 45; see also Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007).

[6] Ntina Tzouvala, 'The "Unwilling or Unable" Doctrine and the Political Economy of the War on Terror' (2023) 14 Humanity: An International Journal of Human Rights, Humanitarianism, and Development

In these critical engagements, considerations of racial difference become entangled with the international legal regulation of armed conflict and the use of force. As Mégret notes, this entanglement informs the application of the relevant doctrinal rules and discrimination "sneaks back in" in determining the legal participants in warfare.[7] Race therefore becomes an actor influencing the development and application of legal rules and quasi-doctrines such as "unwilling and unable" to produce racial inequality and reify exclusionary difference, counter to the purported universality of international law. While these critiques provide insight into how international law reproduces structures of racial inequality and reifies imperial modes of capitalist extraction to enable violence, they also naturalise the determinative value of 'race'. Racial difference exists as an a priori truth which gets organised along the binary of 'white' and 'non-white' which echoes, within this critique, the binary of the 'civilised' and 'savage'. This presumption ends up obfuscating the various locally contingent processes which inform the organisation of the global racial hierarchy, and moreover leaves the question of the 'human' uninterrogated. How the human comes to be within and through the regulation of warfare, is instead assumed to have universal uniformity, its figuration simply differentiated across various racial typologies organised hierarchically.

By considering the human as an accretion of processes of racialisation underpinning the analytical project of identifying, categorising, and ordering humanity into various 'races', my intervention will demonstrate how the legal regulation of warfare did not exclude humanity racialised as non-European and non-white but instead produced a particular kind of human as 'savage'. As I'll show, the 'savage' does not exist solely as a descriptive category of inferiority and otherness applied to those alienated by whiteness, which becomes implicated in the discriminatory application of emerging restraints in the practice of warfare. Instead, the 'savage' emerges as a coalescence of different knowledge frames underpinning racialisation. These frames of knowing dictate the process of its juridification within the regulation of warfare across the long durée of colonial modernity. Therefore, the 'savage' comes to be as a type of being which emerges from within and already included into the universalising vernacular of racialised humanity, whose racial logics rationalise the use of excessive violence as part of colonial warfare.

As I've noted in the previous chapter, the assimilation of naturalist thought into a pre-existing knowledge frame rooted in a Christian humanity led to the successive replacement of divine

19; Katherine Fallah and Ntina Tzouvala, 'Deploying Race, Employing Force: "African Mercenaries" and the 2011 NATO Intervention in Libya' (2020) 67 UCLA Law Review 1580.
[7] Mégret (n 3), 28.

authority by secularised 'reason'. This displacement was hastened by the European encounter with the 'New World', which disrupted its pre-existing theocentric worldview, defined by zones of inhabitability and uninhabitability, and mapped it on to the ostensible bifurcation between the European 'temperate' zone and the other 'torrid' zone.[8] This disruption would prove to be consequential to how European travellers and colonists described, defined, and categorised the unfamiliar natural phenomenon and peoples in the New World. In fact, this descriptive exercise would lay the foundations of separating man from nature, and reimbuing the Renaissance notion of a 'chain of being' with humanist interpretations of classical and biblical literature, law, and mythology to delineate observable difference.[9] The enfleshment of the above geography shaped a meta-cartography where the now obsolete bifurcation between temperate and torrid was applied onto racialised human classificatory models.

Concerning myself with the operation of race as a verb, [10] i.e. the processes and practices of race-making in shaping the human, I show the development of practices of warfare meant specifically for the colonial context. As European colonial expansion at the turn of the seventeeth century encountered new frontiers and new varieties of peoples, plants, and cultures, it applied its emerging ideas of logic and rationality to categorise these differences through its own particular mode of reference. This ordering of nature and humanity was constitutive to the worldmaking project of European coloniality. Racialised humanity emerged from within this epistemic process of ordering and delineated categories of being within its own self-referential terms of naturalised distinctions between nature, animal, and human.[11] My aim is to show how this knowledge matrix, where 'race' and 'species' act as mutually reinforcing terms to order a racialised humanity. This vernacular of racialised humanity realises itself through the juridification of savage warfare as the means through which the terms of this particular mode of life are violently instituted upon all other modes of being. As a result, the doctrine of savage warfare enables racialised humanity to over-represent itself by forcefully enclosing all other forms of life into its categories.

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[8] Sylvia Wynter, '1492: A New World View' [1995] Race, discourse, and the origin of the Americas: A new world view; See also Bench Ansfield, 'Still Submerged: The Uninhabitability of Urban Redevelopment' in Katherine McKittrick (ed), *Sylvia Wynter* (Duke University Press 2015); Nicolás Wey Gómez, *The Tropics of Empire: Why Columbus Sailed South to the Indies* (MIT press 2008).

[9] Calista McRae, '"The Great Chain of Being Come Undone": Linking Blackness and Animal Studies' (2022) 14 Environmental Humanities 202.

[10] Hazel V Carby, *Imperial Intimacies: A Tale of Two Islands* (Verso 2021).

[11] McRae (n 9)

Through three scenes, I will trace how the processes of racialisation informed the juridification of the 'savage' as an interlocutor between humanity and animality. The categories of human and animal are constitutive of racialised humanity's hierarchical ordering of life, with the 'savage' made to occupy the volatile rapport between them. The incredible violence of savage warfare against the animalised human in the colonies and plantation did not emerge from a purported exclusion from or absence of law, but in fact through various techniques of law-making, often responding to the 'savage' reclaiming the actual terms of their humanity. The categorising of humanity through race-making runs contiguous to the legal formalisation of governance and warfare practices. Both practices were strands emerging from a particularly European epistemology concerned with universal order. This chapter will demonstrate how these two strands converged in the production of 'savage warfare' as a doctrine deployed at the colonial frontier. It will show how savage warfare enclosed various modes of being through force into a description of the human comprising of discrete categories organised hierarchically.

The first scene takes place in the seventeenth century frontier war waged by English settlers against the Algonquian to establish the colony of Virginia. I look at the emergence of a doctrine of perpetual war against the native Powhatans through Alberico Gentili's *De iure belli* and records of the Virginia Company's colonists. These primary materials show how the humanisation of the Algonquian and other Native American peoples by the colonists increasingly occurred by proximity to the animal in the taxonomy of racialised humanity. This recognition as human animal wasn't a mere act of metaphoric likeness. In fact, it constituted the epistemic exercise of incorporating the difference of Native American being into a newly degodded redefinition of humanity into secular terms.

In the second scene, I show how the eighteenth-century plantation society of Jamaica was a landscape of war against the enslaved. I turn towards acts of the Jamaican Legislative Assembly punishing fugitive slaves and historical accounts by planters such as Edward Long on the war against the Maroons. Within these materials the contingencies of racialisation underpinning the juridification of black life as a kind of bestial human become visible. I illuminate the role of (anti)blackness as a discursive formation central to the indexing of race. Here 'black' does not operate simply as an objective descriptor of African peoples but performs a lexical exercise through which the actual terms of African humanity are negated and assimilated into a universal racialised humanity.[12] Unlike the totalising discourse of conquest that enfleshed all Native Americans as a type of human proximate to animal that needed to be either tamed or

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[12] Zakiyyah Iman Jackson, *Becoming Human: Matter and Meaning in an Antiblack World* (NYU Press 2020).

annihilated through armed violence, blackness in Jamaica was an infinitely manipulable category necessitating a shift towards an assimilatory mode of warfare.

In the final scene of this chapter, I depict the processes through which nineteenth century British ideas of racialisation interacted with the pre-existing local graded hierarchy of caste in the South Asian subcontinent. This interplay between distinct processes of categorising and ordering humanity clarifies the contingency of race-making as well as the role of warfare in overcoming these contingencies and universalising racialised humanity. I look at military handbooks, and authorship by military officers stationed in the subcontinent to show the processes of racialisation that categorised caste communities as inherently "martial" or "criminal", and their incorporation into the codification of practices of small wars in the nineteenth and twentieth century.

By choosing these scenes to illustrate how the vernacular of racialised humanity realises itself through the juridification of savage warfare, I am widening the ambit of how the regulation of warfare developed across the long durée of colonial expansion. In particular, my focus on savage warfare shows how its practice on the colonial frontier naturalised phenotypical difference as the core consideration for the means and methods of using force. Within these scenes, processes of racialising humanity do not unfold uniformly but are contingent upon and inform each other. Reading the English colonisation of native lands in Virginia, alongside the militarised maintenance of the slave colony of Jamaica, and the practices of containment and disciplining in the subcontinent enables us to see the enunciation of racialised humanity in its full diversity and its centrality in savage warfare as the doctrine for regulating the use of extreme violence in the colonial context.

1) English colonisation of Virginia and "perpetual warre" against the 'savage'.

In Eric Williams' rendering of the transatlantic slave-trade, the three points of the Atlantic triangle, Africa, the Americas, and Europe are embodied through the chromatic taxonomy of 'Black', 'Red', and 'White'.[13] This above organisation of geographies and bodies reflects a world ordered by European ambitions, where Europe locates itself as the bearer of rationality and civilisation; Africa as the source of captive Africans for enslaved labour; the Americas and the

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[13] Eric Williams, *Capitalism and Slavery* (University of North Carolina Press 1994).

Caribbean as sites of rapacious production. This emerging cartography betrays the epistemic foundations for a world that took Europe as its centre.

Within this section, I trace the first scene of this chapter, focusing on the frontier warfare waged by the English against the Algonquian for the settlement of Virginia in the seventeenth century By drawing on a combination of legal and historical material on the governance of the Virginia Colony, I will show juridification of the 'savage' in legal treatises justifying the colonisation of 'Virginia', through the recognition of Native American humanity as a particular type of humanity. This scene will show how a racialised humanity emerged in the early-modern period, bridging theocentric conceptions of being with a secular mode of existence which privileged the materiality of the body. My argument in this section is to show how the practices of warfare against purportedly 'savage' peoples enfleshed them in particular racialised ways.

By the time English colonists crossed the Atlantic to arrive in the Americas and the Caribbean in the seventeenth century, they already possessed the trans-European ethno-historiographical tradition of depicting the imagined native in emergent notions of racialised difference.[14] Differentiation was not always fixed to differences in physical appearance, though they played a key determinative role, and prior to the eighteenth century, differences rooted in a universal Christian humanity held purchase in defining cultural differences. As Jordan notes in his critical study of blackness' emergence in America, English concepts of civility overlapped with their self-conception as Christian, specifically in noting the proper division of labour between the sexes and sexual morality in West Africa, understood analogously to English society.[15] Contextualising the purported difference in West African society through their particularistic lens which overlaid Christian morality with notions of environmental difference, led the English "to make Negroes seem a radically different kind of men".[16] Brown has extended Jordan's conclusions on the centrality of blackness within English practices of race-making in the early modern period by reading racialisation of Africans alongside the racialisation of Native Americans to further enquire how discussions of culture became linked to physical appearance to theorise difference.[17] Nudity, one of the most constant refrains in Early European accounts of peoples living in the so-called 'torrid' zone, became the indicator through which cultural

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[14] Jennifer L Morgan, '"Some Could Suckle over Their Shoulder": Male Travelers, Female Bodies, and the Gendering of Racial Ideology, 1500-1770' (1997) 54 The William and Mary Quarterly 167.

[15] Winthrop Donaldson Jordan, *White over Black: American Attitudes toward the Negro, 1550-1812* (2. ed, University of North Carolina Press 2012), 20-28.

[16] Ibid, 28.

[17] Kathleen Brown, 'Native Americans and Early Modern Concepts of Race' in Martin Daunton and Rick Halpern (eds), *Empire And Others* (Routledge 1998).

differences became mapped on to the body. The appearance of allegedly naked bodies signified contradictory meanings to the English. On the one hand nudity conjured images of the garden of Eden and communicated arrested development and a state of innocence; on the other hand, nudity was often understood to demonstrate sexual promiscuity and a "beastly living" in the absence of civility.[18]

As the above illustrates, racialisation appears as a complex of processes, rather than simply a matter of phenotypical difference, to which sexual mores and gender, as understood purely through a Eurocentric sensibility become crucial determinants to define the *kind* of human the non-European is. This sensibility was inherently gendered through the gaze of English male travellers, who especially noted the "monstrosity" of African and Native women's bodies, relying on gender to convey an emergent notion of racialised difference.[19] Their "monstrous bodies" became enmeshed with their "beastly" modes of being to provide the index for racialising humanity along the contours of blackness. Observations of gender and sex, perceived to be a universal constant against which to measure other morphology, were deployed to make race as a knowable and visualizable fact.[20] Consequently, racial discourse was deeply imbricated with ideas about gender and sexual difference, conditioning the grid of intelligibility – not just what the Englishmen saw or their practices of observation, but how they came to *know* what they actually saw.[21] Within this rubric, privileging English norms which idealised white femininity, the African and the Native American women's gendered and sexual deviation from the normative rendered them paradigmatically as humanity's limit case, somewhere between human and non-human animal.

Thus, the racialisation of African and Native American peoples by the English prefigured discourses on the boundary between animality and humanity to constitute racialised humanity. By focusing on the English emphasis on the animality of Native humanity in the legal and historical materials of the Virginia colony I will consider in this section, my analysis will demonstrate how practices of warfare juridified the Algonquian as a kind of human animal. As I shall show, the categorisation of the Algonquian as a kind of human proximate to beasts was the threshold for their humanisation in the vernacular of racialised humanity. Their recognition as

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[18] Ibid, 88.

[19] Morgan (n 14), 168; For a further elaboration of Morgan's retheorisation of racialisation through gender see Jennifer L Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (University of Pennsylvania Press 2004).

[20] Jackson (n 12), 6.

[21] Ibid, 7

bestial humans was realised by the waging of perpetual wars of extermination against them by the English

a) *The bestialisation of Native American humanity and the 'perpetual enemy'*

In his 1584 treatise, *On Discourse of Western Planting,* English geographer and historian Richard Hakluyt declared "the people of America crye oute unto us, their nexte neighboures, to come and helpe them, and bringe unto them the gladd tidinges of the gospell".[22] Hakluyt wrote his discourse to urge English investors to support the planting of a colony in Virginia and to convince Queen Elizabeth I that their efforts would enhance the social and economic welfare of the commonwealth. The ideology of agrarian improvement, conjoined with Christian Providentialism rooted in Protestantism and the ambitions of natural philosophy had quickly found its expression much closer to England at the end of the sixteenth century.[23] The colonisation of Ireland by the English and the Scots was emblematic of the equation between planting and civilisation, where agriculture became the means for "reclaiming them from their barbarous manners … [and] populate plant and make civil all the provinces of that kingdom", as stated by Francis Bacon.[24]

The coupling of plantation with civilisation unfolded fatally for the Algonquian peoples, across the Atlantic, as the Virginia Company set out to establish England's first permanent New World colony. Agriculture tied to commerce to ensure economic efficiency in an age of burgeoning inter-imperial rivalry rationalised the colonisation process, shifting the emphasis of English colonising legal discourse away from the religiously grounded and anti-Spanish justification relied upon in the Elizabethan age. In the transformed legal discourse of England's seventeenth century, the native peoples of the Chesapeake, or Tsenacommacah, came to be seen as the entry barrier to the lawful sovereignty of the English over land that was to them underutilised by these 'savage' peoples. Thus, the conquest of indigenous lands and its inhabitants found its justification in a combination of Adamic right and utilitarian rationality.

The above synthesis is clearly visible in Alberico Gentili's *De iure belli* (1598)*,* which provided a comprehensive treatment by an English jurist of the law of war within the emergent Law of Nations. Gentili's evaluation of the various legal, political, moral problems arising in connection with waging war provided a bridge between the papal humanist discourse of Francisco Vitoria

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[22] David B. Quinn & Allison M. Quinn, eds. Discourse of Western Planting (London: Hakluyt Society, 1993).

[23] Richard Drayton, *Nature's Government: Science, Imperial Britain, and the 'Improvement' of the World* (Yale University Press 2000), 55.

[24] Quoted in ibid, 55

to the discursive practices of modern international law more fully elaborated by Dutch jurist Hugo Grotius.[25] Questions regarding war against the 'infidel', despite the waning relevance of that descriptor, permeated his text and many of his opinions directly cited Vitoria.[26] For instance, he expresses approval for waging war against those who diverge from the normativity of Christianised humanity, reproducing Renaissance motifs of Indian savagery:

> "Therefore, I approve the more decidedly of the opinion of those who say that the cause of the Spaniards is just when they make war upon the Indians, who practiced abominable lewdness even with beasts, and who ate human flesh, slaying men for that purpose. For such sins are contrary to human nature, and the same is true of other sins recognized as such by all except. . . brutes and brutish men. And against such men, as Isocrates says, war is made as against brutes."[27]

It is important to note however that Gentili's justification for waging war against the Indians was not purely based on their divergence from Christianity, but in their purportedly abominable cultural practices. Their divergence from Christianity, which was the *natural* mode of being for most Europeans at this time, was supplanted by their divergence from "human nature".[28] This is further evidenced by Gentili's disagreement with Innocentian papal humanism's jurisprudence which authorised warfare to compel conversions of non-Christians to Christianity.[29] For example, instead of waging war to simply punish idolatry, *De iure belli* provided a novel qualification that idolatry had to be joined with another heinous violation of natural law, bifurcating the Renaissance doctrine between wars waged on the basis of natural law and wars waged on behalf of religion.[30] Through this bifurcation, Gentili provided for a new, supposedly secularised legal science which could bridge the expansive thematics of Christianising doctrine to establish a new Law of Nations focused on the juridical unity of a world polity which is governed by universally binding norms in the civil sphere.[31]

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[25] Robert A Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford University Press 1992), 195. Gentili's contribution to the Law of Nations and the Law of War as a bridge between Medieval Just War and Enlightenment Law of Nations has been further explored in David M Lantigua, *Infidels and Empires in a New World Order: Early Modern Spanish Contributions to International Legal Thought* (Cambridge University Press 2020).

[26] Alberico Gentili, *De Iure Belli Libri Tres* (John C Rolfe tr. Oxford University Press 1933), 38

[27] Ibid, 122.

[28] Ibid.

[29] Ibid 123.

[30] Ibid 123-125.

[31] Williams (n 25), 196.

The reference point of this new secular juridical discourse is a similarly totalising concept of universal humanity that we had seen animating Vitoria's Law of Nations, but instead of being located in a Christian universality, it demonstrates a secular orientation around the universality of nature. This is exemplified in the above quotation, within this all-encompassing idea of human nature the Indian's inability to recognise the heinous nature of the acts ascribed to them by Gentili places them alongside brutes. The prominence of bestial sexuality and flesh figures the Native Americans as of a different bodily essence altogether distinct from the English, which contravenes nature. This equation of Indian to brute does not excise the Indian from being recognised as a human, but that recognition as human takes place through the index of bestialisation, rendering the Native Americans "brutish men". Consequently, as the above quotation notes, this recognition as a kind of animalised human stipulates that war against "such men" is made as against animals. Thus, within the vernacular of racialised humanity enunciated by Gentili, the Indian is enfleshed as human animal, and warfare becomes the means through which this particular form of humanisation is juridified within the Law of Nations.

The nature of Native Americans as animalised humans was evoked frequently to support arguments for settling Virginia. For instance, describing the "natural state" of Tsenacommacah in *Nova Britannia* (1609) Robert Johnson describes its inhabitants as a "wild and savage people, that live and lie up and downe in troupes, like heards of deare (deer) in a Forrest."[32] In a later tract on *The Lawfulness of Removing Out of England into the Parts of America* (1622), organiser of the Mayflower voyage Robert Cushman argues that as "their land is spacious and void, and there are few and do but run over the grass, as do also the foxes and wild beasts" it is lawful for English taking.[33] The transmutation of Native American being in to a manner of human animals went hand in hand with the rendering of their lands as empty. Colonial theorists like John Winthrop defined two main ways of land ownership, one natural and one civil. Natural right to the soil emerged from when "men held earth in common" but this form of ownership was superseded when individuals began raising crops, keeping cattle, and most importantly improving land through enclosure.[34] This particularly English way of understanding land only through its utility and ownership through enclosure and productive use, whereby the land is subjugated to human rationality and transformed into a possession, was central to what they

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[32] Robert Johnson, *Nova Britannia : Offering Most Excellent Fruites by Planting in Virginia : Exciting All Such as Be Well Affected to Further the Same* (1609) <https://lccn.loc.gov/04015770>.

[33] Andrew Delbanco, 'Robert Cushman, Reasons and Considerations Touching the Lawfulness of Removing out of England into the Parts of America (1622)' in Alan Heimert (ed), *The Puritans in America* (Harvard University Press 1985), 43-44.

[34] William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (24. print, Hill and Wang 1983).

conceived was the natural mode of being which should be universal to all humans. The Algonquian relationship to the land through hunting, foraging, and seasonal movement of settlements was only recognisable to the English through approximation to non-human animals, which set the context for the dispossession of Native lands and also their inclusion into a racialised humanity.[35]

Of course, the English gaze which dictated how they saw the divergent nature of the Native Americans was informed by pre-existing impressions about the "wild Irish", who too were similarly careless in utilising their land appropriately.[36] This was especially the case due to various English colonists undertaking the establishment of the Jamestown colony in Virginia had previously served in the Elizabethan Wars in Ireland. [37] My reason for returning to the Irish as a comparator to explain the racialisation of the Native Americans is to expose the centrality of race-making in the English worldview, even before they crossed the Atlantic. In his theorisation of racial capitalism, Cedric Robinson noted the co-constitutive processes of capital expropriation of land and race-making had already begun to emerge in their nascent form prior to their encounter with the Algonquin peoples, and the Irish existed as racialised subjects of English society.[38] As reiterated by Robin Kelley, Robinson theorised that racialization *within* Europe was very much a colonial process involving invasion, settlement, expropriation, and racial hierarchy.[39]

Such an understanding of racialisation enables us to contextualise Edward Coke's ruling in *Calvin's case*, especially his formulation of the common law presumption of the King's right to wage perpetual war against "alien enemies". Coke, then Lord Chief Justice, synthesised Gentili's legal discourse on war against infidels with English common law in his *obiter* comments on Robert Calvin's case. Calvin, a Scotsman by birth had his lands in Haggerston, Shoreditch seized

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[35] On the Algonquians' relationship to the landscape of Tsenacommacah prior to English arrival see: Martin D Gallivan, *The Powhatan Landscape: An Archaeological History of the Algonquian Chesapeake* (University Press of Florida 2018).

[36] James E Doan, '"An Island in the Virginian Sea": Native Americans and the Irish in English Discourse, 1585-1640' (1997) 1 New Hibernia Review / Iris Éireannach Nua 79; See also Drayton (n 23) regarding English discourse of planting Irish land as the source of civilisation, 55-57.

[37] David Harding, 'Objects of English Colonial Discourse: The Irish and Native Americans' (2005) 4 Nordic Irish Studies 37.

[38] Cedric J Robinson, *Black Marxism: The Making of the Black Radical Tradition* (University of North Carolina press 2000).

[39] Robin D.G Kelley, 'Foreword' in Ibid, xii-xiii. See also Robin DG Kelley, 'What Did Cedric Robinson Mean by Racial Capitalism?' [2017] *Boston Review* <https://www.bostonreview.net/articles/robin-d-g-kelley-introduction-race-capitalism-justice/> accessed 13 January 2025.

by Englishmen Richard and Nicholas Smith on the pretext that as Calvin was an "alien born, out of the allegiance of the said lord the King of his kingdom of England", he ought in law be barred from having an answer to his writ.[40] In considering the arguments of the parties, Lord Coke undertook a key systematising effort of the rights and status of an alien under English law, distinguishing them as following :

> "Every alien is either a friend that is in league, or an enemy that is in open war. Every alien enemy is either pro tempore, temporary for a time, or perpetus, perpetual. [...] All infidels are in law perpetui inimici, perpetual enemies (for the law presumes not that they will be converted, that being remota potentia, a remote possibility) for between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility, and can be no peace." [41]

Robert Williams has noted the significance of Coke's above formulation of infidels as 'perpetual enemies' within English common law to the colonisation of Virginia, specifically the centrality of Coke to the drawing of the royal charter for the Virginia Company.[42] Williams notes that the presumption of the infidel as a perpetual enemy authorised the English invasion of Tsenacommacah, a clear assertion of warfare in perpetuity is found in the charter's authorisation of armed force for the security of the plantation:

> "[B]y these presents, for us, our heirs, and successors, give and grant licence ... that they, and every of them, shall and may, from time to time, and at all times for ever hereafter, for their several defences, encounter, expulse, repel, and resist, as well by sea as by land, by all ways and means whatsoever, all and every such person or persons, as without the special licence of the said several colonies and plantations, shall attempt to inhabit within the said several precincts and limits of the said several colonies and plantations, or any of them, or that shall enterprise or attempt, at any time hereafter, the hurt, detriment, or annoyance, of the said several colonies or plantations." [43]

The above provision was likely conceived in response to the need to secure the colony from external European imperial incursions, but the most immediate threat to the security of the

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[40] Calvin's Case (1608) 77 ER 377, 378

[41] Ibid, 397

[42] Williams (n 25), 200.

[43] First Charter of Virginia (1606), XII < https://encyclopediavirginia.org/primary-documents/first-charter-of-virginia-1606/> Accessed 13 January 2025

plantation was posed by the Algonquian nations of the Chesapeake. From the moment of settlement, the colony of Jamestown faced attacks from neighbouring indigenous communities of the Powhatan who regarded the arrival of the new settlers with grave suspicion.[44] Anglo-Native relationships were marked by contentious moments of peace, the motivations of which prioritised English benefit. For the English, struck by disease and hunger in an environment unknown to them, establishing alliances with the Native Americans provided opportunities for trade in corn as well as the extension of their political sphere of influence. But as Gentili and Coke had both stated, it was only possible to keep peace with 'infidels', not make official alliances with them.[45]

b) The 1622 Powhatan Uprising and the colonists war to 'tame' the Native American

Over the first decade the Jamestown colony expanded exponentially. Following an initial trade-based alliance completed with the ceremonial subjugation of Wahunsonacock through the vestment of a copper crown in the name of James I, Powhatan sovereignty had been subjugated to the English in 1608. Yet as the food crisis in the colony exacerbated, many English conducted night raids to steal corn which often led to Native retaliation for that theft. These skirmishes transformed into the first Anglo-Indian War of 1610.[46] Across a four-year belligerent campaign of looting, massacring, and scorched earth tactics, the English expanded their settlement into Algonquian lands neighbouring Jamestown, combining Coke's jurisprudence of perpetual warfare against the infidel with Gentili's instruction that such warfare should be made with a beastly character. The first war ended in an unstable peace and by the end of 1618 the English population of the colony was at 1000, and rapidly increasing with the arrival of boatloads of settlers motivated by land grants and additional dividends from land ownership. As settlements expanded, they encroached farther and farther into Algonquian territory, cultivating tobacco for commercial trade and exhausting the land and its native occupants, this "peacetime" behaviour was carried out through aggressive intimidation and violent provocations.

The 1622 Powhatan uprising killed nearly 350 English settlers, a fourth of the colony's population, presenting a watershed moment in the warring frontier between the Virginia Colony and Tsenacommacah. This audacious attack by Opechancanough and the Chickahominy on 30 English settlements along the James River was a serious reminder of continuous insecurity of

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[44] John Smith, *A True Relation of Virginia* (Charles Deane ed. Wiggin and Lunt, 1866), see also William R Nester, *The Struggle for Power in Colonial America, 1607–1776* (Lexington Books 2017).
[45] Gentili *De Iure Belli Libri Tres* (n 26), 401-402.
[46] J Frederick Fausz, 'An "Abundance of Blood Shed on Both Sides": England's First Indian War, 1609-1614' (1990) 98 The Virginia Magazine of History and Biography 3.

English settlement and proof of the Algonquians as "treacherous, perfidious and inhumane people."[47] Waterhouse's account formed the authoritative narrative of the "massacre" according to the Virginia Company.[48] Unsurprisingly, the narrative positions the attack as unprovoked on the English who were "settled in a peace (as all men there thought) sure and unviolable … because it was solemnly ratified and sworne, and at the request of the Native King stamped in Brasse."[49] In this narrative the Algonquians appear as unnaturally "base and brutish" beasts, proving to be incorrigible despite receiving "many benefits and favours" and their lack of remorse makes them:

> "[B]eing in this more fell then Lyons and Dragons, which … have beene so farre from hurting their Benefactors; such is the force of good deeds, though done to cruell beasts, as to make them put off the very nature of beasts, and to put on humanity upon them. But these miscreants, contrariwise in this kinde, put not off onely all humanity, but put on a worse and more then unnaturall bruitishnesse."[50]

Within this narrative, the Chickahominy people's acts are not only a contravention of the agreed peace between the English and the Powhatans, but a much more serious contravention of the entire natural order. Not only had they failed to act according to the expected norms of humanity as conceived by the English but had also acted unlike beasts that had been tamed through good deeds, thus marking them as unnatural and unreasonable. Their bestiality, already evident in the expectation of the English in taming the "wild" character of the Algonquians, is now exaggerated. Further in the narrative, Opechancanough's home is referred to as a "a denne or hog-stye" and the animality of the attackers, referenced as "hell-hounds", is amplified through comparison with another Christianised Indian "man" Chanco who had saved the lives of some Englishmen by alerting them.[51]

Waterhouse was not alone in rendering the attackers as human animals. Christopher Brooke, another Virginia Company man, express his disgust at these "errors of nature" by referring to

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[47] Edward Waterhouse, *A Declaration of the state of the Colonie and Affaires in Virginia* (1622)
[48] Ibid, The title of Waterhouse's narrative references to the uprising as 'the barbarous Massacre in the time of peace and League, treacherously executed upon the English by the native Infidels'.
[49] Ibid, 12
[50] Ibid, 15
[51] Ibid, 16-18

them as "vermine of an earthly slime"[52] Even narratives like George Wyatt's letter to his son, Sir Francis Wyatt, Governor of Virginia, that appear to humanise Native Americans by showing respect for specific tribespeople like Nemattanow, a respected werowance whose murder by the English was widely regarded as the event that sparked the uprising, cannot avoid the draw of animalizing the Algonquians. Giving advice to his son on the strategy to respond to the uprising, he reassures him that the attack was not due to his failures as governor, but resulted from an "agreinge vertue by mildnes to bringe on thos Barbarians to Civilitie and Christianitie", and that he should wield his power in managing "the headstrong wildness of the People, as you hold still a stronge Cord on them if they shuld play the Jades with you".[53] Jades, here is a contemptuous phrase for an unruly horse, one that is of inferior breed and not as well tamed as a riding horse.[54] Wyatt Sr continues in his letter to provide "stratagems", strategies for waging a war of attrition, through which Wyatt Jr as Governor may "husband them well".[55] In addition to "feedfighting", a tactical vocabulary for destroying the enemy's food supply, Governor Sr advises his son to see his task as:

> "Your Game are the wilde and fierce Savages hauntinge the Desartes and woods.
> Some are to be taken in Nets and Toiles alive, reserved to be made tame and searve
> to good purpose. The most bluddy to be rended to due reveng of blud and crueltie,
> to teache them that our kindneses harmd are armed."[56]

In August 1622, the Virgina Company called for a "perpetuall warre without peace or truce",[57] and the principles of Gentili and Coke's jurisprudence of perpetual warfare against the infidels found its practical application in a key incipient moment for the doctrine of savage warfare, where the 'savage' itself has been indexed as either a form of vermin that needs to be

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[52] Christopher Brooke, "A poem on the late massacre in Virginia. With particular mention of those men of note that suffered in that disaster" [1622] <https://hdl.handle.net/2027/uc1.l0073277204> Accessed 13th January 2025

[53] J Frederick Fausz and John Kukla, 'A Letter of Advice to the Governor of Virginia, 1624' (1977) 34 The William and Mary Quarterly 104.

[54] The Oxford English Dictionary defines the archaic use of the word 'jade' as A contemptuous name for a horse; a horse of inferior breed, e.g. a cart- or draught-horse as opposed to a riding horse; a roadster, a hack; a sorry, ill-conditioned, wearied, or worn-out horse; a vicious, worthless, ill-tempered horse, Oxford English Dictionary, 'Jade, n.1 Sense 1.a' <https://doi.org/10.1093/OED/9465763113>.

[55] Fausz and Kukla (n 53), 127.

[56] ibid

[57] Susan M Kingsbury (ed), *The Records of the Virginia Company of London Volume III* (United States Government Printing Office 1935), 672 online accessible <https://www.loc.gov/item/06035006/> Accessed 13 January 2025.

exterminated or an untameable beast that needs to be mastered. There is little doubt about this in the Virginia Company's declaration of war:

> "We conceave it a Sinne against the dead, to abandon the enterprize, till we have fully settled the possession, for which so many of our Brethren have lost theire lives: this is the first thing due from us and you; and the next, which will likewise much further the other, is a sharp revenge uppon the bloody miscreantes, even to the measure that they intended against us, the rooting them out from being longer a people uppon the face of the Earth."[58]

The rooting out of the Algonquians is given the authority of the Law of Nations by Waterhouse, who proclaims that the English "may now by right of Warre, and law of Nations, invade the Country, and destroy them who sought to destroy us", and inhabit "their cleared grounds in all their villages".[59] During the next decade the colony waged total war against all neighbouring indigenous communities, regardless of pre-existing friendly relations. Governor Wyatt set in motion a policy of "extirpating of the Salvages"[60], which consisted of a whole array of stratagems calculated to spread widespread fear, starvation, and death, as described by the Treasurer and Council of Virginia in their letter to Governor Wyatt:

> "We conceive no means so proper, nor expedient, as to maintain continually a band of men … that may from time to time pursue and follow them, surprisinge them in their habitations, intercepting them in theire hunting, burninge theire Townes, demolishing theire Temples, destroyinge theire Canoes, plucking upp theire weares, carying away theire Corne, and depriving them of whatsoever may yeeld them succor or relief, by which means … your perpetual security be certainly effected."[61]

The aftermath of the 1622 massacre inflected a shift away from the English policy of assimilation through trade and conversion with the Algonquians, to a policy of organised expulsion and seizing of the remaining Tsenacommacah land. Having failed to abide by the terms of peace conditioned on the terms of English settlers, the Algonquians had forfeited their

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[58] Ibid, 683
[59] Waterhouse (n 47), 22-23
[60] Francis Wyatt, 'Letter of Sir Francis Wyatt, Governor of Virginia, 1621-1626' (1926) 6 The William and Mary College Quarterly Historical Magazine 114, 118.
[61] Kingsbury, *Records of the Virginia Company* (n 57), 672

natural rights to their lands to the English under the superior Law of Nations as surmised by Anglican cleric Samuel Purchas:

> "they have lost their owne Naturall, and given us another Nationall Right; their transgression of the Law of Nature, which tieth Men to Men in the rights of Natures commons, exposing them (as a forfeited bond) to the chastisement of that common Law of mankind."

The double-bind of racialised humanity makes itself explicit here. The Native American is unable to escape the logics which render their mode of being knowable only in the registers of English humanity, either as a human animal situated as the limit case for a 'natural' existence, or as a rights and obligations bearing man who is beholden to the common principles of mankind. These frames of recognition do not run counter to each other, wherein the former supposedly demonstrating an exclusion or dehumanisation of the Native Americans and the latter a discursive performance of convenient inclusion. It is precisely the recognition of Native humanity within this particularly English mode of humanity, conceived of as universal, that motivates performances of authority and peace-brokering which acquire a specific legal form for the English. Within this same particular mode of humanity, the naturalisation of the Native American as animal situates them as 'savages', against whom war is to be made in totality and perpetuity. Thus, both frames co-produce the humanisation of the Algonquians, as the aftermath of the 1622 uprising demonstrates, who must be tamed through force, failing which they must be rooted out.

The Algonquians resisted the colonists' total war until 1632. However, following the murder of Opechancanough by the colonists at the end of the third Anglo-Powhatan war in 1646, another treaty was signed with the new leader Necotowance, who ceded the remaining lands to the English by right of conquest, and the remaining tribes' lands were limited to the area north of the River York. This treaty subsumed all Native polities as tributaries of the English Crown, leaving their lands vulnerable to further incursion by settlers claiming new lands for tobacco cultivation. The experience of the Virginia colony was instructive for Anglo-Native relations, as the English expanded their settlement to form the Carolina and Maryland colonies. The spectre of Native animality guided the various militarised expeditions southward from Virginia, and Native communities of the Doeg, Susquehannock, and Appamattucks bore the brunt of this expansion through repeated raids and enslavement. Thus, the basic logics of English colonisation were determined in the early-Virginian context. With their monstrous bodies and cultures, the Powhatan and other Native Americans were transumed as human animals into the English's conception of a racialised humanity. This enfleshment of the Native Americans as

animal gave practical meaning to Gentili and Coke's jurisprudential dictums of perpetual war that was to be made against the Natives, as against beasts as shown by the various 'stratagems' employed following the 1622 uprising. The practices of annihilatory war against the Algonquians, as evidenced by the primary materials in this scene, juridifed the terms of racialised humanity by recognising the Algonquians mode of life only through approximation to animals. In the next scene, I will demonstrate how the vernacular of racialised humanity enunciated itself with respect to blackness in the Jamaican plantocracy's war against the Maroons.

2) Fictions of race and pacifying the 'internal enemy' of the Jamaican plantocracy

Since the encounter that constituted the New World, Africans were present, insists Wynter in her triadic conception that situates the beginning of the Columbian moment and the establishment of the Americas half a century prior to 1492.[62] This perspective of the New World encounter enables us to see an emergent moment of biocentric, and thus racial, description to which 'blackness' becomes central. As I noted in the previous chapter, the sixteenth century debate between Las Casas and Sepúlveda set the ground for the emergent terms of (anti)blackness, when Las Casas recommended the importation of enslaved Africans as a 'humanitarian' solution to the captivity of the Indians. In this view, blackness exists as a constitutive element of the world-making processes engendered by the colonial encounter.[63]

Yet, considerations of blackness appear within international law primarily with reference to the nineteenth century European incursions into the continent of Africa signified by the 'scramble' for Africa. This oversight has been recently remediated by works theorising international law from the vantage point of the trans-Atlantic slave trade, yet with regards to the regulation of warfare, a perspective rooting itself in the slave trade has been absent.[64] This is generally due to

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[62] Wynter, '1492: A New World View' (n 8).

[63] Tiffany Lethabo King, *The Black Shoals: Offshore Formations of Black and Native Studies* (Duke University Press 2019).

[64] Recent publications within international criminal law that have rethought it through the transatlantic slave trade and its afterlives: Emily Haslam, *The Slave Trade, Abolition and the Long History of International Criminal Law: The Recaptive and the Victim* (Routledge 2019); Kamari Maxine Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Duke University Press 2019). With regards to the broader theorisation of international law through the slave trade see Robert Knox, 'International Law, Race, and Capitalism: A Marxist Perspective' (2023) 117 55; Darryl Li, 'Genres of Universalism: Reading Race Into International Law, With Help From Sylvia Wynter'

the categorisation of the transatlantic trade as occurring during 'peace', with 'war' only incidental to its narrative to account for inter-imperial rivalry between European nations. But the vast system of transatlantic slavery was predicated on a permanent state of war between the enslaved and the enslavers.[65]

In this scene I want to explore how might our understanding of warfare and its regulation shift if we situate ourselves within the vantage point of the slave plantation. Specifically, I am interested in understanding plantation society as one perpetually at internal warfare with its subjugated and notionally freed black populations.[66] Insurrections by enslaved Africans and plantation raids by a free people of colour in plantation societies posed a serious threat to its racial social hierarchy and efficiency of capitalist production. Planters' militarised response to slave rebellions and marronage—the practice of establishing autonomous communities in remote areas by fugitives from slavery and resisting attempts to be re-enslaved—was supported by laws passed by administrative assemblies. The goal of this approach was to restore security to the plantocracy after each instance of rebellion and to avert any potential future uprisings. Societies established for plantation slavery were structured by organised violence, from the overseer's lash to the pack of bloodhounds, slave patrols, and militias. Thus, as Phillips and Sandy state, these societies were organised for "war against the enslaved".[67]

Expanding the ambit of 'war' in this manner opens new grounds to explore the juridification of the 'savage' away from the discourses of conquest which dominate its current theorisation within the history of regulating warfare.[68] I want to consider what happens "when blackness

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(2021) 1686 UCLA Law Review; Andrea Weindl, 'The Asiento de Negros and International Law' (2008) 10 Journal of the History of International Law 229.

[65] Lauren Benton, *They Called It Peace: Worlds of Imperial Violence* (Princeton University Press 2024), 4. See also Marcus Rediker and Peter Linebaugh, *The Many-Headed Hydra: The Hidden History of the Revolutionary Atlantic* (Verso Books 2020).

[66] The conceptualisation of enslaved rebellions as war has been put forward by numerous historians of African resistance against the planter establishment, see for example Michael Craton, *Testing the Chains: Resistance to Slavery in the British West Indies* (Cornell University Press 1982); Orlando Patterson, 'Slavery and Slave Revolts: A Socio-Historical Analysis of the First Maroon War Jamaica, 1655 – 1740' (1970) 19 Social and Economic Studies 289.

[67] Gervase Phillips and Laura Sandy, 'Slavery and the "American Way of War," 1607–1861' (2021) 63 Comparative Studies in Society and History 825, 828.

[68] For instance in Mégret's article, the 'savage' is a rhetorical device for European empires to justify unrestrained violence for the purpose of colonial conquests, Mégret (n 3). See also Wilke, 'How International Law Learned to Love the Bomb: Civilians and the Regulation of Aerial Warfare in the 1920 s' (n 4);Christiane Wilke and Helyeh Doutaghi, 'Legal Technologies: Conceptualizing the Legacy of the 1923 *Hague Rules of Aerial* Warfare' [2023] Leiden Journal of International Law 1. In Wilke's

enters the frame" to bear on the juridification of the 'savage', and its exposure of the contingency of racialised humanity and the modes of recognition it produces.[69] As the scene will show with relation to the plantation society of Jamaica, blackness as a category of being existed uneasily with the fixity of racial hierarchies, engendering repeated crises which necessitated a militarised response from the plantocracy. Although the bestialisation of African being was made possible through chattelization and scientific discourses of speciation underlying the institution of slavery, the near-constant resistance to reclaim their actual terms of being by those enslaved on plantations, runaways, and Maroon communities usurped the linkage of blackness with unfreedom.

While the planters often advocated for strenuous military and other forceful measures against runaway and rebelling enslaved persons, they also entered into agreements with them upon successive failures to pacify the Maroon communities through outright violence. This recognition of Maroon sovereignty, despite the destabilising nature of their autonomous communities, was necessary for the Jamaican plantocracy to address the uprisings being plotted by other slave communities. Within this oppositional frame the creolised Maroons, despite their blackness, become racialised in a manner different from rebellious African slaves. But as I'll show, this particular recognition of the Maroons in opposition to the other African slaves is structured through the gaze of planters such as Edward Long and Bryan Edwards and their assessment of Jamaican society in the eighteenth century.

By turning towards the security of the plantation as an analytical frame, and away from colonial conquests, I propose an interruption of the temporal boundedness of 'war' and its regulation. Instead, security presents a longer durée within which to consider these rebellions and battles as connected through the violent conditions upholding slave societies. Therefore, the responses of the planter elite in the militarisation of everyday black life, especially following the increase in insurrections during the mid-eighteenth century, should be understood as existing in a continuum alongside the more overt uses of armed force in response to revolts by Maroons and other autonomous collectives of African rebels. Thus, in Jamaica, warfare comes to be a modality of governance that goes hand in hand with the administration of the plantation society, both of which are shaped through a racialised humanity where blackness signifies both captivity and

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examination of Elbridge Colby's defence of aerial bombardment in Syria, the 'savage' is representative of a conquered population to whom legal protections do not apply.

[69] I draw the phrase "when blackness enters the frame" from surveillance studies scholar Simone Browne. See: Simone Browne, *Dark Matters: On the Surveillance of Blackness* (Duke University Press 2015), 161.

the risk of its breach, necessitating a total threat of violence to maintain the fragile social order produced through fictions of white supremacy.

a) *Juridifying the terms of black humanity and the security of the plantation*

Blackness as a category of being emerged from a project of juridifying racialised humanity. Medieval jurisprudence had provided the early terms for slave-raiding along the West Coast of Africa, as shown in the previous chapter, justified through missionary warfare against those who deviated from of Christianised humanity. Across the seventeenth century, the transatlantic endeavour became increasingly organised by the Spanish, a crucial party, to manage the intervening interests of other European parties, especially the English. Wanting to expand the so-far monopolistic system of trading in enslaved African labour, the Spanish expanded the legal rights to bring enslaved Africans to the Americas contained within the *asiento de negros*.[70]

The *asiento* was a license giving the holders near exclusive rights to bring enslaved persons from Africa to Spanish colonies, fixing quotas, as well as setting the exchange-rate for the transaction in African peoples.[71] Expanding the transatlantic slave trade through the *asiento* provided the legal framework for European competition. As Weindl notes, the *asiento* was the only possible legal way to gain access to Spanish America and trade in American commodities for Dutch, English, French, Danish, Swedish, and even Brandenburg merchants. This access became crucial for expanding European settlements in the Caribbean, each of them establishing slave depots at islands, such as Barbados and Jamaica, to supply the contractors of the *asiento* and settler with enslaved peoples. Amongst the primary beneficiaries of the *asientos* were Chartered trading companies such as the Royal African Company, who became a leading agent in the trade.[72]

The *asiento de negros* gives legal form to the construction of blackness through racialised slavery. Within these licenses, black life appears through its quantification into *piezas de indias*, or "pieces of the indies", showing a coalescence of the meta-cartography of racialised humanity.[73] The *pieza*, an interchangeable unit of measurement based upon the estimated productivity of an able-bodied, usually male, slave of a certain height and size, was to determine the exchange-value of the enslaved person. The idea of commodities having an exchange-value was central to Europe's burgeoning capitalist organised economy and the plantation was emblematic of this

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[70] Weindl (n 64), 231.

[71] Ibid 252

[72] Ibid 236

[73] Darryl Li (n 64), Li's analysis demonstrates the conflation produced by the *asiento de negros* and its unit of measuring in *piezas de india* as constitutive of international law's racialised political economy.

mode of production. As Wynter notes, the plantations as commercial centres of production for the global market mutated the concept of the word 'slave'.[74] African societies along the West coast of Africa had a culturally situated practice of slavery, and its economy also serviced the European global trade. But in this process of exchange between a culturally specific, African, social definition of slavery and a self-universalising definition of humanity particular to Europe, the multi-tribal and multi-cultural peoples from various societies in Africa were collapsed into a completely new historic entity: the 'Negro'.[75]

Capitalism, as Myers asserts, is "an epistemic monster".[76] The transatlantic slave trade provided the possible grounds for undertaking the epistemic exercise of transmuting the multiple modes of African being into the New World category of blackness. The biological being of the African was conflated with the social being of a slave, creating a naturalisation which was pervasively re-instituted through agreements such as the 1706 treaty between Spain and England titled "Contract of black Negroes made and agreed with Her Majesty of Grand Britain for herself, and such of her subjects, as she shall appoint to be contractors", which identified Queen Anne as the contracting party.[77] Thus, the vernacular of racialised humanity was enunciated by the *asiento,* that juridified blackness as beastly and suitable for enslavement, and was consequently naturalised in the darkness of African flesh.

While climate theory and scripture had provided Europeans with a self-referential knowledge matrix for making sense of the African's *prieto* (dark) nature, a pointed enquiry into the nature of African blackness began with early-modern anatomy.[78] Various seventeenth century European scientists sought out the precise source of blackness within African skin, which was blistered, dissected, and microscopically examined obsessively. The conclusions of these "experiments" were conjectured by the pre-determined naturalist ideas of the human body, its proportions, and degrees of refinement, which distinguished humans away from other nonhuman animals. Thus, the location of blackness as skin-deep, either as dark scales or a layer of skin with dark pigment, materialised the differences so far located within theology and culture to inscribe, what Wynter refers to as "a new mode of physiognomic/phenotypical

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[74] Sylvia Wynter, "Black Metamorphosis: New Natives in a New World" (unpublished manuscript), 27
[75] Ibid 25; see also Demetrius L Eudell, 'From Mode of Production to Mode of Auto-Institution: Sylvia Wynter's Black Metamorphosis of the Labor Question' (2016) 20 Small Axe: A Caribbean Journal of Criticism 47, 48.
[76] Joshua Myers, *Of Black Study* (Pluto Press 2023), 77.
[77] Weindl (n 64), 243.
[78] Andrew S Curran, *The Anatomy of Blackness: Science and Slavery in an Age of Enlightenment* (the Johns Hopkins University 2011).

signification".[79] Through postulating a difference in biology, blackness provides the analytical frame to categorise the African as a separate *kind* of human within racialised humanity.

The obsessive pursuit of making black Africans knowable within Europe's particular mode of humanity was shaped alongside the exponential expansion of the transatlantic slave trade throughout the eighteenth century. European worldmaking consolidated to produce a Western 'civilisation' alongside the stigmatisation of Africa as its polar negation, a void.[80] The chattelization of African peoples through their transformation into *piezas*, appearing in ledgers alongside horses, cattle, and other household items denoted their social death.[81] This 'thingification' of black humanity represented the terms of blackness' inclusion into a racialised humanity.[82] Slavery's violence became the means through which a particular mode of humanity instituted its universality through its attempts at humanising blackness, not through an 'exclusion' of African humanity but by appropriating it into its ontological terms.[83] Black humanity was not merely determined by the vernacular of racialised humanity, but was also its key determinant. Blackness became central to the self-referent image of liberal humanism, with the black body figuring as the essential index for calculating the degree of humanity and human progress, central to the biopolitical frontier between humans and animals.[84] The antiblack animalisation of African humanity provided coherence to the emergent racialising discourse of the eighteenth century. Blackness became central to debates of polygenism and monogenism, the proper ordering of human development as a whole, giving stability to race as a teleological hierarchy, and importantly guiding the terms of debate over slavery.

Thus, slavery's project is better understood as a violent humanisation of African peoples which operates by abjecting black humanity through the spectre of animalisation, as the living border between human and nonhuman animals.[85] This inclusion masquerading as exclusion is denoted within the various forms through which blackness was juridified. While the *asiento* was one such juridical frame, waging savage warfare against those escaping slavery by criminalising their

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[79] Wynter, *Genital Mutilation or Symbolic Birth* (n 1).

[80] Wynter, *Black Metamorphosis* (n 74), 382.

[81] Jackson (n 12), 45; See also Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Harvard University Press 1985). Orlando Patterson's crucial work conceptualises slavery as 'social death' constituted by domination, dishonour, natal alienation, and chattel status.

[82] The term 'thingification' comes from Aimé Césaire, *Discourse on Colonialism* (Monthly Review Press 1972), 42.

[83] Jackson (n 12), 46.

[84] Ibid.

[85] ibid

means of running away and subjecting them to corporal punishment was another. As noted by Hartman, the process of making the slave relied on the abjection and criminalisation of slave humanity, the acknowledgment of the humanity of the enslaved served as a pretext for punishment and chattel slavery's violence sanctioned by law and the state.[86] The Jamaican plantocracy's war against those resisting and escaping from slavery was a veritable crucible for the juridification of blackness as a form of bestial humanity.

In January 1664, Thomas Modyford was appointed as Governor of Jamaica, having previously acted as the agent for the Royal African Company in Barbados, he had successfully wielded that influence to encourage fellow Barbadian planters to settle in Jamaica. Soon after, the Jamaica Assembly published the "Act punishing and ordering of Negro slaves", a copy of Barbados' 1661 Slave Act.[87] The preamble of the 1661 Barbados Slave Act is indicative of the terms of subjection of black humanity:

> "these former laws being in many clauses imperfect and not fully comprehending the true constitution of this government in relation of their slaves their negroes an heathenish brutish & an unsertain dangerous kind of people to whom if surely in anything wee may extend the legislative power given us of punishinary Lawes for the benefit and good of this plantation not being contradictory to the Lawes of England" [88]

The security of the plantation becomes the key determinant for bringing enslaved Africans under the purview of the legislative power of "punishinary laws", through which their unpredictable and irrational nature could be managed and rectified. But there's also a humanitarian tone to the paragraph which follows the one quoted above:

> "...by the right rule of reason and order wee are not to leave them to the Arbitrary cruel and outrageous wills of every evil disposed person but soe far to protect them

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[86] Saidiya V Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford University Press 1997), 5.

[87] Edward Bartlett Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World* (Harvard University Press 2018), 48.

[88] Preamble, *An Act for the better ordering and governing of Negroes* (1661), Barbados Legislative Assembly, Laws of Enslavement and Freedom in the Anglo-Atlantic World <https://slaveryandfreedomlaws.lib.unb.ca/laws/17> accessed 13 January 2025

as wee doo many other goods and chattles and also so somewhat farther as being

treated Men though without the knowledge of God in the world wee have…"[89]

The laws are also needed to ensure the adequate protection of enslaved Africans, already casted as irrational beasts of burden within the paradigm of slavery's racialised humanity. Planters must secure them as "goods and chattles" in which significant financial cost has been invested and whose labour power is needed to achieve speculative returns in an exchange economy. Yet, there also exists a further obligation on the grounds of them "being treated Men" whose nature could be rectified through the "the ordering and governing of negroes." Tying the security of the plantation to the security of enslaved Africans through legislation sets the terms for juridifying blackness and producing the paradox of slave humanity. This is obvious in Jamaica's appropriation of Barbados' 1661 Act as part of its 1664 Act, which reiterates "the orderly and regular commanding and punishing the aforesaid Negro Slaves will tend verry much to the generall advantage of Settlers".[90] The framing presents an equation between "negro slaves" and "settler", neither capable of existing without the other.

The "runaway and rebellious negro" became the focus of the existential stakes of the settler-slave equation in the preceding legislation, as well as many subsequent ones. The 1664 Act proposed a variety of measures to keep the enslaved population captive, including restrictions on leaving the plantation only with a ticket issued by a "Master, Mistress, Commander, or Overseer," as well as significant incentives such as freedom from indentured servitude for white servants in exchange for apprehending and returning runaway enslaved people. The punishments prescribed are also significant; for planters, failure to comply resulted in heavy fines paid in sugar, whereas the enslaved were punished through all methods of torture, disfigurement, and death as ordained by either the "ordinary course of justice" or by Justices of the Peace's decisions. While the law was intended to limit the movement of enslaved peoples, its enforcement mechanisms relied on the responses of the rest of plantation society, empowering everyone from plantation owners to overseers and even white indentured servants to use violence against any black person suspected of being on the run. For example, in the event of an insurrection, the Governor would appoint a Colonel and field officers to enforce martial law, and a voluntary militia of up to twenty people would be raised and funded by the treasury or a

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[89] Ibid

[90] *An Act for The Better Ordering and Governing of Negro Slaves* (1664), Jamaica Legislative Assembly, Laws of Enslavement and Freedom in the Anglo-Atlantic World <https://slaveryandfreedomlaws.lib.unb.ca/laws/jamaica-1664-0>; See also Rugemer (n 87).

public levy. Every colonist was aware that *the* purpose of slave laws was the prevention and deterrence of slave insurrections.

The constant threat of insurrection against the plantation system prompted a focus on rebellious and runaway enslaved peoples. Rebellions by enslaved Africans constantly threatened the security of slave societies throughout the Atlantic world. These rebellions not only disrupted the daily operations of the plantation economy, but they also acted as a catalyst for ongoing resistance. Since the beginning of Spanish settlement in the Atlantic, Africans fleeing slavery established Maroon communities, derived from the Spanish word *cimarrone*s, meaning wild hogs, sometimes alongside indigenous people fleeing the encomienda system. 'Rebelliousness' was frequently invoked in reference to African peoples transported to the New World, resulting from a combination of European understanding of rivalry between African tribes that supplied the slave trade and the overwhelming bestialization of African humanity by slavery. The plantation society's security was realised through the violent regulation of black mobilities, in which sovereign power and racialized disciplinary power combined to surveil slave humanity and render it expendable.[91] As a result, the legislation distributed disciplinary power throughout plantation society in order to maintain its existential security, with various methods of controlling enslaved peoples operating along a continuum of force. In the following section, I show how the disciplinary power of the legal codes meant to contain insurrectionary black movement, became totalising in response to increasingly organised and large-scale rebellions by enslaved people against the Jamaican plantocracy.

b) *The Maroon threat and war against the 'intestinal enemy' in Jamaica*

"Rebellion, or the threat of it", Patterson stated, "was an almost permanent feature of Jamaican slave society."[92] Across the more than 180 years of its existence, serious large-scale slave revolts took place almost every decade and threatened the stability of the entire system. In the years between 1655 and 1740, a long string of revolts culminated with the emergence of the Maroons as an independent group, representing a destabilising threat within the plantation system. Rebellions occurred within the continuum of, and often as a culmination of numerous minor skirmishes, plots and individual acts of violence against overseers and slaveholders, all of which reiterated the precarity of the whole system.[93] White planters frequently thought of themselves

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[91] Browne (n 69)

[92] Orlando Patterson, *The Sociology of Slavery: Black Society in Jamaica, 1655-1838* (Polity Press 2022).

[93] Patterson, 'Slavery and Slave Revolts' (n 64), 289.

as a besieged group, under a constant threat from "an intestine enemy, who threatened no less than the extirpation of the White Inhabitants".[94] This spectre of white annihilation interpellated the "runaway and rebellious negro" as always at the cusp of flight and insurrection. Slave rebellions on plantations served as a conduit through which some joined Maroon communities or formed their own, settling within the hills or precipitous rocky summits such as the Blue Mountains and the John Crow summit.[95]

Between 1673 to 1690, five uprisings took place across plantations in Jamaica's St Ann's, Clarendon, and St Elizabeth parishes, accompanied by mass flight. Hundreds of enslaved Africans seized arms and killed a dozen white folks, in Clarendon, the Sutton plantation was set on fire and its caretaker killed. Martial law was frequently declared in response to these insurrections and various ad-hoc parties of infantrymen and troopers would be tasked with pursuing the rebels, achieving limited success.[96] Following this almost two-decade long campaign of violent resistance, planters petitioned the governor, Council, and Assembly for swift resolution. The legislature acted promptly, diminishing the potential of black flight and autonomy became the central preoccupation of the Jamaican Assembly and it resulted in the 1696 Act for the better Order and Government of Slaves. The Act represented a solution to "the often Insurrections and Rebellions of the Slaves within this Island… and their bloody and inhuman practices."[97]

The Jamaican plantocracy aimed to counter the Maroon threat through legislating their pursuit and capture. Clause 6 of the 1696 Act encourages the voluntary actions of white and black freemen, servants, and other slaves:

> "That if any freeman or servant shall kill or take any rebellious slave or slaves, he
> or they shall forthwith receive as a reward five pounds currant money; and if any
> slave or slaves shall kill or take any such rebellious slave or slaves, he or they shall

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[94] James Knight, *The Natural, Moral, and Political History of Jamaica and the Territories Thereon Depending: From the First Discovery of the Island by Christopher Columbus, to the Year 1746* (Jack P Greene, Taylor Stoermer and Trevor G Burnard eds, University of Virginia Press 2020), 377.

[95] Mavis Christine Campbell, *The Maroons of Jamaica, 1655-1796: A History of Resistance, Collaboration & Betrayal* (Africa World Press 1990), 34-35.

[96] Craton (n 66), 75-77.

[97] Preamble, *An Act for The Better Order and Government of Slaves* (1696), Jamaica Legislative Assembly, Laws of Enslavement and Freedom <https://slaveryandfreedomlaws.lib.unb.ca/laws/jamaica-1696> Accessed 13 January 2025.

receive forty shillings of like money, and a serge coat with a red cross on the right shoulder..."[98]

Whereas commissioned officers were mandated to,

"raise a convenient Party of Men, not exceeding Twenty; and with them to pursue, kill, or take alive, all or any of the said Runaways, and shall have and receive from their Owners, as a Reward for their so doing, Forty shillings per Head for all Slaves taken and brought in alive, and Twenty shillings per Head for every Slave killed or driven Home."[99]

Authorising the voluntary pursuit of rebels and runaways, made the already hyper-visible racial subject legible as 'out of place' and singled them out for severe violence and death. Actions taken to crush the rebellious and runaway slaves soon turned towards the use of force and warfare. In the aftermath of these sporadic insurrections, military governance turned simultaneously inward to suppress the frequent slave revolts and maroon raids and outward to harass and contest with imperial rivals.[100] In addition to troops, militias of 16–60-year-old white volunteers pursued rebels. Many militiamen were deeply involved in slave society, which sharpened their militaristic tenets. They used common military punishments like public whipping, dismemberment, and decimation—the practice of killing one in ten for a mass crime. The provost marshal, an army's chief policeman, became a permanent fixture as slave-catchers in Jamaica.[101] But invariably, they were ineffective to adequately counter the Maroon threat, and often majority of the rebels would successfully utilise the mountainous and overgrown terrain to hide, carry out strategic raids, and sow provision grounds to sustain their autonomous communities.

The protracted warfare with the Maroons continued despite the efforts of the Jamaican legislative assembly to suppress the threat of resistant blackness. The Acts of the Assembly between 1699 and 1740 are like a lengthy shopping list for the "extirpation of the Negroes in rebellion", within which the desperation of the plantocracy is evidenced by clauses authorising the raising of voluntary parties by Captains and the Lieutenant Governor to "attack, kill and

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[98] Ibid, clause 6.

[99] Ibid.

[100] Vincent Brown, *Tacky's Revolt: The Story of an Atlantic Slave War* (Harvard University Press 2020), 51.

[101] John Collins, 'Military Law' in Joseph C. Miller (ed), *The Princeton Companion to Atlantic History* (Princeton University Press 2015), 285-287

destroy all and every such Runaway or Rebellious Slaves, which they shall find, be inform'd or in pursuit of."[102] Whereas previous legislation had provided for a higher sum for the capture and return of an enslaved person alive, the legislation passed by the Jamaican Assembly in the early decades of the eighteenth century prioritised the destruction of the Maroons and other black slaves suspected of revolt and flight. This signifies the gravity of the threat posed by the Maroons and other revolting Africans to the stability of Jamaican slave society and its order of white supremacy.

Apart from punitive legislation dedicated to curbing the potential for slave revolts and decimating armed and autonomous black communities, the Jamaican Assembly also legislated for the increased settlement of areas particularly susceptible to the Maroon threat as well as the establishment of forts and barracks around strategic points, as near the Maroon settlements as possible to facilitate strategic raids to "root up, burn, and destroy their provisions" when the weather permitted traversing the forested landscape.[103] The soldiers deployed to the barracks were provided by gangs of dogs, taking inspiration from the Spanish use of canines against the Arawak and other resistant indigenous communities in the Americas. The maintenance of the plantation's security was reflected in its broader architectural landscape structured by the fortified estates of the settlers, dispersed across Jamaica's dense woods and steep mountains, organised in such a manner to ensure that slave rebellions could be isolated to prevent an all-out mutiny.[104] As noted by Brown, warfare against the fugitive black communities in Jamaica linked "the geography of war with human bondage."[105]

The racialised geography of war against the 'intestinal' threat posed by the Maroons established a distinct mode of fighting. The building of forts and barracks as well as shipments of trained troops dispatched from England in response to the desperate pleas of the planters did little to stem attacks from Maroon communities. By the beginning of the First Maroon War in 1730, these communities had become more organised, having absorbed various groups of runaways, and had established themselves across two main encampments in the Windward and Leeward ends of Jamaica, in the most inaccessible parts of the island. Getting into Maroon territory was half the battle for the British redcoats, furthermore it did not ensure that one would even

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[102] Clause 2 and 3, *An Act for Raising Parties to Suppress Rebellious and Runaway Negroes* (1699), Jamaica Legislative Assembly <https://slaveryandfreedomlaws.lib.unb.ca/laws/jamaica-1699> Accessed 13 January 2025.
[103] Campbell (n 90), 37.
[104] Brown (n 100), 52.
[105] ibid

encounter them. As Governor Trelawny wrote in 1738, in an explanation to those back in England:

> "The service here is not like that in Flanders or any part of Europe. Here the greatest difficulty is not to beat, but to see the enemy […] In short nothing can be done in strict conformity to the usual military preparations and according to a regular manner, bush-fighting being a thing peculiar by itself."[106]

'Bush-fighting' represented a novel modality of warfare to the English in Jamaica and was found to be the adequate mode of fighting a "savage and artful foe". Generally, bush-fighting was a pejorative term used by settlers for the guerrilla tactics of the Maroons, who utilised the various tracts and escapes provided by the natural terrain to hide and ambush their enemies. Labelling the Maroon mode of warfare as bush-fighting was an epistemic exercise of enunciating racialised humanity, where the wilderness of the terrain accentuated the already naturalised bestiality of blackness to present a particularly savage type of human. For the English settlers and soldiers, war was represented by the mode of open battle deployed in Flanders which was organised and conducted according to Euro-modern rationality. Maroon warfare was instead seen as "the natural mode of attack and defence", irrational and proof of the base nature of wild blackness.[107]

The nature of the Jamaican Maroons is a significant focus of much natural history written by white colonists who settled in Jamaica. Much of this writing presents the Maroons as a distinctly racialised blackness, resulting from the absence of white control and discipline. Their ability to navigate the mountains with dense vegetation, full of tough and sprawling saplings and new shoots "entangled in a strange manner", evidenced their "wild and roving sort of life".[108] These accounts of the Maroons were written with the ethnological lens predominant in the eighteenth and nineteenth centuries and were influenced by various discourses of racial difference and pitched as contributions to the study of the island's inhabitants. One such account by John Stewart indicates the broad terms in which the Maroon mode of being was recognisable to the English matrix of racialised humanity:

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[106] Edward Trelawny quoted in Barbara Klamon Kopytoff, 'Guerilla Warfare in Eighteenth Century Jamaica' (1977) 19 Expedition Magazine, 23 <https://www.penn.museum/sites/expedition/guerilla-warfare-in-eighteenth-century-jamaica/> Accessed 13 January 2025.
[107] Bryan Edwards, *The Proceedings of the Governor and Assembly of Jamaica, in Regard to the Maroon Negroes* (J Stockdale 1796), xxxiv.
[108] Kopytoff (n 106), 23.

> "The Maroon climbed with the nimbleness and celerity of the roebuck, the
> precipitous rocks and rugged mountains of the wild woods... He patiently explored
> the deepest retreats of the forest; lived in them for whole weeks; found everywhere
> abundance of materials ... he assuaged his thirst with the moisture of the water-
> withe or wild pine."[109]

Within this description of the Maroons way of living in relation with nature, is the lurking reference to an animality which shapes the contours of the type of human the Maroon is. The comparison to the male roe deer's agility and emphasis on their harmonious existence with nature exemplifies not only the wildness of the Maroon, but also the operative terms for recognising Maroon humanity. Maroon humanity is registered as extra-human, excessive to the militaristic abilities of British troops and the militia, and only the "terror of Spanish dogs, operated more powerfully to induce them to surrender".[110] The use of Spanish *chasseurs*, bloodhounds imported from Cuba for their specific ability to relentlessly pursue and kill their targets, as well as contingents of Miskito Indians and the Black Shots formed the key elements of the almost decade long war between the Maroons and the settlers. Maroon super-humanity could only be subjugated through armed squads of other "savages" and vicious dogs, both of which clarified the sub-human status of the rebels. Moreover, the violent resistance of the Maroons to reclaim their actual terms of being challenged the bounds of possibility set by Jamaican slave society, which the above techniques of waging war sought to correct. By utilising the free people of colour and dogs *in service of* the security of the plantation, the plantocracy wanted to reiterate the stipulated roles assigned to all the inhabitants of the island and maintain the hierarchical ordering of racialised humanity which the Maroons had upset. Eventually in 1739, following almost a decade of persistent guerrilla warfare, Governor Trelawny concluded treaties with the two Maroon communities, conscripting the previously 'intestine enemy' to participate in the security of the plantation in exchange for their autonomy.[111]

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[109] John Stewart, *An Account of Jamaica, and Its Inhabitants.* (Printed for Longman, Hurst, Rees and Orme 1808), 292 <//catalog.hathitrust.org/Record/001447517> Accessed 13 January 2025.
[110] Ibid 293. The use of hunting dogs against fugitive slaves and Maroons was a common practice across the Carribbean, for a historical overview of the practice see: Sara E Johnson, '"You Should Give Them Blacks to Eat": Waging Inter-American Wars of Torture and Terror' (2009) 61 American Quarterly 65. Boisseron theorises the impact of this historical practice on the continuity of the interrelationship between dogs and black humanity, see Bénédicte Boisseron, *Afro-Dog: Blackness and the Animal Question* (Columbia University Press 2018).
[111] *An Act for confirming the Articles executed by Colonel John Guthrie, Lieutenant Francis Sadler, and Cudjoe the Commander of the Rebels* (1739) Jamaica Legislative Assembly; *An Act for*

As part of their treaty obligations the Windward and Leeward Maroons were expected to pursue and capture runaway and rebellious slaves, as well as wait on the governor once a year if required. Additionally, two white men were to constantly reside within the Maroon encampments to "keep up friendly correspondence". Even though the treaties provided the Maroons with a recognition of their sovereignty, they primarily operated as a way to subsume them into the British sovereign imagination structured by a belief in racial fixity. The Maroon, originally a super-human apparition of white anxieties of insecurity, was now repositioned as an integral component of the Jamaican plantocracy to be deployed against African slaves rebelling or on the run. Their naturalised proficiency in 'bush-fighting' made them indispensable to the security of the plantation and the integrity of racialised humanity in Jamaica. As Edward Long bluntly states, the various black populations, especially the 'Creoles' and 'Mulattoes' of the island are "themselves instruments made use of to restrain one another within the bounds of their allotted condition".[112] The socio-political reality of the white population successfully withstanding a coordinated rebellion by the unfree and subjected black population of Jamaica necessitated a reconfiguration of racialised humanity, wherein blackness' fixity became elastic to incorporate the Maroon, who appear as sub/super/human all at once. Recognition does not disentangle the Maroon from the subjection of blackness, instead it is their blackness which frames the terms of their recognition for enforcing racialised subjection and incorporation into racialised humanity. The measures of war against the Maroons contained within the Acts of the Jamaican Assembly and the eventual peace treaty provided the necessary means for humanising resistant blackness and juridifying racialised humanity. Thus, the forceful absorption of the Maroons into an inclusive hierarchy of humanity was a necessity to maintain the ongoing security of slavery.

Concluding the treaty with the Maroons assured the settlers in their safety, but they were in for a rude awakening in 1760. A revolt began in April in the parish of St Mary, spreading to different parts of the islands and was not entirely over until October 1761.[113] The revolt was sparked by the 'Coromantee' slaves, a racialising term deployed generically to describe enslaved Akan people from West Africa, led by Tacky. This wasn't the first slave revolt in which the Coromantee

confirming the Articles executed by Colonel Robert Bennett, and Quao the Commander of the Rebels (1740) Jamaica Legislative Assembly.

[112] Edward Long, The History of Jamaica or, General Survey of the Antient and Modern State of the Island: With Reflections on Its Situation Settlements, Inhabitants, Climate, Products, Commerce, Laws, and Government (T Lownudes 1774), Book II 503-504 <//catalog.hathitrust.org/Record/007700854> Accessed 13 January 2025

[113] Catherine Hall, Lucky Valley: Edward Long and the History of Racial Capitalism (Cambridge University Press 2024), 340.

had been implicated, accounts of their violence had proliferated since the 17th Century, especially following the five uprisings between 1673 to 1690.[114] The 1760 revolt began with an attack by approximately a hundred Akan people on Fort Haldane on the north coast of the island, eventually joined by other rebels coming from several estates to gather inland. The militia, troops, and the Maroons pursued the rebels into the woods, killing twenty rebels including Tacky and Jamaica, who had been named as leaders of the insurrection, and capturing 200. In May rebellion erupted once more, this time in Westmoreland, where more than a thousand rebels constructed a fortified encampment to repel the combined attacks of the Maroons and the soldiers. Hundreds were killed and those who escaped continued to launch ambushes from the mountains, into which they escaped.[115] By June, a state of war was sweeping across western Jamaica.

Throughout the summer months squads of soldiers, sailors, militia, and Maroons pursued the self-liberated Africans in search-and-destroy missions through the forests and mountains, following a scorched-earth policy to make the environment inhospitable to the rebels.[116] In his historiography of the insurrection, Brown connects the uprisings of 1760 to the global inter-imperial rivalry between European states which came to be known as the Seven Year's War. For Brown, reframing Tacky's Revolt as a Coromantee War against the plantation establishment is to understand the resistance of the enslaved Africans and the response of the Jamaican plantocracy as occurring within a metropolitan and colonial context.[117] The threat of complete internal war with the Coromantee coupled with ongoing external warfare presented the settlers with a possibility of the colony's total collapse and informed the totalising use of force against the African slaves suspected of participating in the insurrections. According to official reports, the various parties had killed nearly one hundred and captured over two hundred black rebels but as the entire enslaved population was transformed into suspects, precise accounting was impossible. Numerous black rebels were chased by the colonists into the mountains and subsequently died from their wounds, and the British troops destroyed food crops such as plantain to force rebels in hiding into starvation. By the end of the campaign between two hundred to seven hundred black people had been "taken and destroyed" and, as a planter announced, "what they bring in a live we burn and some we hang in gibbets"[118] To prevent the

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[114] Brown (n 100), 87-92.

[115] Hall (n 113), 340-342.

[116] Brown (n 100), 185.

[117] Ibid. The Coromantee War, as Brown refers to it, was the single largest rebellion by enslaved people in the British West Indies in the eighteenth century.

[118] From a letter between settlers, quoted in Brown (n 100), 188.

enslaved from joining the rebellion, the settler and Maroon parties continued to stage gruesome executions, harassing and threatening any black person seen to be out of place and making great shows of collective belligerence as they rode from estate to estate.[119]

The Maroons were integral to winning this internal war against the Coromantee rebels. Their experience in bush-fighting enabled the various parties to pursue and capture the rebels effectively, thereby turning what had previously been an issue for the plantocracy in its militarised campaign to suppress enslaved rebellions into a military advantage.   The participation of the Maroons at the behest of the plantocracy dispelled the terrifying possibility of a liberated black colony. For planters, the Maroons maintained the internal cohesion necessary for the functioning of the slave colony, becoming the ideal intermediary for the security of the plantation. But far more importantly, they maintained the coherence of racialised humanity by ensuring that its anti-black logics sustained the many challenges against it.

For settlers like Edward Long, whose account of the Coromantee War is one of the most detailed, the Maroons adherence to the treaty proved the humanitarian potential of slavery as well as gave credence to his racial theories of blackness. [120] He understood that the security of the island depended on Maroon compliance and made great effort to minimise any suggestions of their conspiring with the Coromantee rebels. His judgment of the Maroons was punctuated with a combination of patronage and repressed fear.[121] They had proved to be "very serviceable, in suppressing several insurrections", but they could be more "honest allies" and "more faithful subjects" if appropriately Christianised and governed according to the rule of law.[122] Even though Long had served in the militia to put down the Coromantee War, he only got to see the Maroons' militaristic prowess up-close as part of a ceremonial encounter during Governor Lyttelton's tour of St James in 1764.[123] Although "eighty-four men, women, and children" from

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[119] ibid, 195.

[120] Devin Leigh, 'The Origins of a Source: Edward Long, Coromantee Slave Revolts and *The History of Jamaica*' (2019) 40 Slavery & Abolition 295. As Leigh states, much of Long's discussion of the Coromantee War operates as a discourse for racialising African slaves within the context of ongoing debates to abolish the slave trade. Edward Long's History of the 'inhabitants' of Jamaica is an extensive discursive exercise in racially typifying the various peoples of the island within distinct racial categories. Long was a polygenist and pro-slavery, not an aberration for the eighteenth century, and his project of racialisation of Jamaica's population was in service of these positions. For more on Long's History of Jamaica see Hall, *Lucky Valley* (n 113).

[121] ibid, 397.

[122] Long (n 112), II 347.

[123] Hall (n 113), 397. Hall discusses Long's contribution to the Jamaican militia on page 340.

the Trelawny Maroon community were in attendance, Long's account remains focused on the fighting men:

> "No sooner did their horn sound the signal, than they all joined in a most hideous yell, or war-hoop, and bounded into action. With amazing agility, they literally ran and rolled through their various firings and evolutions… In short, throughout their whole manoeuvres, they skip about like so many monkies… in wild and warlike capers, endeavouring to throw as much savage fury into their looks as possible."[124]

Long animalises the Maroons' militaristic performance as an epistemic exercise to confirm for himself their subordinated position of "faithful allegiance".[125] For Long the Maroons typify the "centre of connexion between the two extremes",[126] but their in-betweenness troubled any simple black and white binary, which could only be resolved by reiterating the nature of black humanity as bestial.

By placing the Maroons against the Coromantee in his narrative, Long's discourse clearly elaborates the plasticity of blackness within Jamaica's society.[127] Stressing that it was these "*imported Africans*"[128] who were most culpable for the series of revolts that had taken place on the island, Long further demarcated the categories of blackness. Unlike the creolised Africans who, according to Long, had become acculturated to the disciplining of a slave society, the Coromantee were,

> "familiarized to blood, massacre, and the most detestable vices, we should not be astonished at the impatient spirit of such an abandoned herd, upon being introduced to a life of labour and regularity."[129]

This 'abandoned herd' of African peoples, "as savage and uncivilized as the beasts of prey that roam through the African forests" were portrayed as the main source of insecurity in Jamaica, not only attacking white settlers but also "enslaving all such Negroes as might refuse to join

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[124] Long (n 112) II 348-349.

[125] ibid, II 347.

[126] Ibid, II 333

[127] Saidiya Hartman theorises the plasticity of race as "the chameleon capacities of racism, the various registers of domination, exploitation and subjection traversed by racism, the plasticity of race as an instrument of power, and the divergent and sundry complex of meaning condensed through the vehicle of race". Hartman (n 86), 119.

[128] Long (n 112), II 444. emphasis added.

[129] ibid.

them".[130] Long's narrative of the Coromantee War predictably exaggerated the rebels' violent resistance and mobilised rhetorical tropes of physical and sexual barbarity. Describing the attack against one settler, he states that the rebels "sawed his skull asunder and made use of it as a punchbowl" and then "ravished a Mulatto woman" who had been the overseer's mistress at another estate.[131] By drawing on accounts of faithful and loyal 'Negroes' as well as the Maroons, Long's historicising of the events of 1760 explicitly cast the Coromantee as the villain against whom the might of the plantation ought to be directed. The main anti-hero of Long's narrative is the leader of the 1760 revolt, Tacky, whom he is at pains to diminish as "effeminate" and irrational. A begrudging tone of appreciation is present in his description of Tacky's physique as "of good stature, and well made".[132] But this is quickly disavowed, "he had flattered himself with the hope of obtaining (among other fruits of victory) the lieutenant governor's lady for his concubine."[133] Long's earlier description of black male potency takes on a sinister character by raising the spectre of black men violating white femininity, here his own sister.[134]

These representations of the Maroons and the Coromantee against the backdrop of a racially organised population structures the bounds of recognising blackness within the slave society of Jamaica. Long and other white settlers attempts at containing blackness within discrete categories through description, law-making, and warfare was directed towards negating the possibility of a united black resistance. The idea of a unified war waged by various groups targeting the varied territories of the plantation was an existentially debilitating thought for the white plantocracy. But these efforts to impose fixed meanings on the black body presented blackness as "everything and nothing at the register of ontology", [135] a contradiction where the distinction between the 'human' and the 'animal' collapses. Unlike the Virginian context discussed in the first scene where the totalising discourse of conquest enfleshed all Native Americans as a type of racialised human which needs to be either tamed or eradicated through armed violence, blackness in Jamaica operates as a fungible category which is infinitely manipulable and in flux.[136]

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[130] Ibid, II 447.

[131] Ibid, II 447-449

[132] Ibid 457

[133] ibid

[134] Hall (n 113), 352.

[135] Jackson (n 12),3.

[136] Here I am drawing on Hortense Spillers' concept of 'black fungibility', which theorises black enslaved bodies as "territories of cultural and political manoeuvre" transformed into mutable open

Black peoples become "a symbol of unstable borders, processes, and the shifting power relations",[137] punctuating the landscape of Jamaica's slave society and necessitating a shift from annihilatory warfare towards an assimilatory mode of warfare as shown within this scene. Despite their blackness, which marked them as animalised humans, the Maroons were necessary for the security of the island – quelling rebellions in Sierra Leone in the 1790s and crushing the Morant Bay uprising of 1865.[138] Nonetheless, the fact of their blackness could not completely absolve them from suspicion and preserve them from the state's armed violence which was unleashed against them in the second Maroon war of 1793, resulting in the deportation of hundreds to Nova Scotia in 1796. Thus, the humanisation of blackness, Maroon or Coromantee, occurs along the categories of racialised humanity violently imposed through its juridification to wage savage warfare. In an effort to ensure the security of the plantation, the totalising nature of blackness becomes contingent and inclusive, however this does not disturb the ontology of whiteness underpinning racialised humanity – in fact it serves to consolidate it and maintain it through force. In the final scene of this chapter, I will demonstrate how the contingent, yet universal nature, of racialised humanity accommodated the local hierarchy of the caste system in the South Asian subcontinent as part of its juridification into the doctrine of small wars.

3) The 'martial races' of the Indian subcontinent and the codification of small wars

The final decades of the nineteenth century precipitated the maturation of imperialism. The apparent over-accumulation of capital in Europe acquired through the transatlantic trade in colonial commodities and chattelised humans, facilitated speculative overseas investments which in turn fed a self-reinforcing logic of acquisition of more colonial territories.[139] Imperial statecraft calcified the existing bio-economic logic of racialised humanity. Racialisation became a central mechanism of state constitution and reasoning given its conceptual capacity to morph in meaning in response to the overriding social and economic contexts.[140] As imperial states came to organise themselves and their colonial dominions within a "new international imaginary",

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signs to be organised and reorganised infinitely. Hortense J Spillers, 'Mama's Baby, Papa's Maybe: An American Grammar Book' [1987] Diacritics, 65-81.

[137] Tiffany Lethabo King, 'The Labor of (Re)Reading Plantation Landscapes Fungible(Ly)' (2016) 48 Antipode 1022, 1023.

[138] Eugene D Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World* (Louisiana State University Press 2006), 55.

[139] Matthew Craven, 'Colonialism and Domination' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012).

[140] David Theo Goldberg, 'Militarizing Race' (2016) 34 Social Text 19.

they framed the multiplicity of nations within a singular unit that stood for the 'world'.[141] This idea of 'international' was predetermined as a racial imaginary and constituted a global legal order within which difference on the basis of 'race' became naturalised, juridified, and universalised.[142]

The organising of nations into an international imaginary was accompanied and facilitated through the process of codifying repeating patterns of violence and peace-making across regions to incorporate various polities and territories. These repetitive patterns of chronic violence became juridified as 'small wars' and connected European justifications for imperial violence to the ongoing global projects aimed at defining limited war.[143] There was a preponderance of attempts at legally codifying the limits and extensiveness of warfare in the latter decades of the nineteenth century and into the early twentieth century. These attempts at codification, aiming to channel humanitarian concerns into the emergent international law, produced a law of war to humanise battlefield conduct that was marked by an inherent tension between the principles of necessity and humanity, especially demonstrable in the articulation of the legal duty to avoid "superfluous injury".[144] The racial imaginary of international law reiterated itself within these attempts at codification, wherein the extra-European world was consigned to its own juridical space.[145] As Benton has demonstrated, imperial small wars, despite contextual variations, followed a generally similar routine and occupied a juridical frame developed specifically to deal with violence within the colonial theatre. I extend Benton's analysis by explaining how this juridical frame of small wars is animated by the vernacular of racialised humanity, which enunciates itself in the same belief, as shared by the colonists of Virginia and planters in Jamaica, that warfare within the colonial context had a specifically racialised nature that authorised a utilisation of extreme armed force.

As this scene will show, the justifications reached for by proponents of the doctrine of small wars, such as C.E Calwell, mobilised an essentialising epistemology of racialised humanity

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[141] Samera Esmeir, 'On Becoming Less of the World' (2018) 8 History of the Present 88, 89.

[142] Christopher Gevers, '"Unwhitening the World": Rethinking Race and International Law' (2020) 67 UCLA Law Review 1652, 1655.

[143] Benton (n 65), 2.

[144] Pablo Kalmanovitz, *The Laws of War in International Thought* (Oxford University Press 2020). The Lieber Code (1863) and the St Petersburg Declaration (1868) are good examples of this development towards balancing all-out war against humanitarian ideals at the end of the nineteenth century, see Emily Crawford, 'The Enduring Legacy of the St Petersburg Declaration: Distinction, Military Necessity, and the Prohibition of Causing Unnecessary Suffering and Superfluous Injury in IHL' (2019) 20 Journal of the History of International Law / Revue d'histoire du droit international 544.

[145] Benton (n 65), 6.

mapped on to the bodies of the colonised peoples through racial techniques of anthropometry and ethnographies. The racialised essentialisation of the 'natives' social and biological being influenced all aspects of military practice, from recruitment to the designing of weaponry and tactics, each with its own legal codes. In this scene, I locate my analysis primarily within the South Asian subcontinent, a key site for the development of British colonial governance which relied on force as much as bureaucracy. Over the nineteenth and twentieth century, British colonial administrators within the subcontinent sought to understand a diverse population organised by the unfamiliar social reality of 'caste', which became an especially key consideration following the 1857 rebellion. In its aftermath, British military administrators sought to identify native communities adequately 'martial' in character to join their armed regiments. The delineation of the "martial races" of the subcontinent, acted by corollary to demarcate communities oppressed by the caste system as "criminal tribes", and both categories were expressed in phylogenetic terms by the British in various legal instruments. Moreover, as I will demonstrate in the following section, the British juridification of 'martiality' and 'criminality' naturalised the pre-existing caste hierarchy, and its genealogical fictions, through racialising practices such as anthropometry.

a) *The naturalisation of caste and the juridification of 'martial races' and 'criminal tribes'*

The British came to understand the subcontinent as a place where socio-economic and political power was dispersed amongst a range of 'caste' communities.[146] The formation of caste as a graded socio-economic hierarchy is historically contingent upon its various social and political meanings, but it is the central oppressive force and foundational to the epistemology of social relations within the subcontinent.[147] Ambedkar defines caste's hegemonic organisation as an "artificial chopping off of the population into fixed and definite units, with each prevented from fusing in the other through the custom of endogamy".[148] The formation and insulation of caste communities has been understood by historians as a pre-colonial process of encoding the pre-existing socio-economic hierarchy into primarily Vedic scripts, later homogenised as 'Hinduism', between 1500 and 1000 BCE.[149] Prior to being identified as 'religious' communities, caste

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[146] Ahmed Memon, '"English in Taste, Indian in Blood": Caste Hegemony in the Making of British International Legal Thought' [2024] London Review of International Law, 1.
[147] ibid
[148] B.R. Ambedkar, *Castes in India: Their Mechanism, Genesis and Development* (Patrika 1916)
[149] Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge University Press 2001).

communities were clan-like endogamous groups maintaining social, political, economic, and spiritual hierarchies through a logic of purity passed through paternal hereditary lineages to gain material benefits and claim superiority.[150] The caste system has primarily constituted itself through the so-called priestly caste, 'brahmins', making the core epistemology of this graded hierarchy 'Brahmanism'. This graded spiritual, and consequently, social hierarchy of Brahmanism has given rise to contingent yet defined caste communities of the 'kshatriya' (warrior-king castes) and 'vaishya' (trader and business castes). Those deemed lowly by this system of Brahmanism, i.e. the 'sudras' and 'atisudras', have often laboured and serviced the dominating caste communities. Crucially, the logic of purity has dictated the exclusion of specific Adivasi (indigenous) and Dravidian communities from the graded hierarchy of the caste system, categorising them as 'averna' and rendering them untouchable.[151]

The colonial encounter with the British remade the parameters of caste as the subcontinent's central social reality, further ingraining the graded hierarchy and naturalising it through the modality of racialisation. As I've demonstrated so far, for the British, humanity was universally organised as a racialised hierarchy, with the English civilisation occupying the primary position. Throughout the nineteenth and twentieth century, race became located within an entirely biological discourse alongside notions of 'cultural backwardness' emerging within the new field of anthropology to substantiate the worldmaking vision of racialised humanity. When this universalising positivist mode of categorising humanity through race encountered the localised social hierarchy produced through caste, it approximated caste as akin to race. Thus, as Bayly notes, the British did not 'invent' the social stratification of caste but intensified an already existing violent system through the modality of race.[152] British colonial administrators, jurists, and officers of the British Army located within the subcontinent weren't simply conscious about caste as a social reality but often fashioned themselves as amateur anthropologists who sought to conceptualise, measure and analyse caste in a manner similar to race. The treatment of caste as analogous to race, and its consequent naturalisation, had a deep influence on British officers promoting the 'martial races' theory.

For example, J. Craufurd, a contributor to the Royal United Services Institute's professional military journal, suggested in 1858, a year after the 1857 rebellion, that the British should form a new Native Army primarily from the communities of Sikhs, Gurkhas, and Pathans (Muslims

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[150] Ibid.

[151] Ibid, on the conceptualisation of caste formation and fluidity, see M. N. Srinivas, 'A Note on Sanskritization and Westernization' (1956) 15 Far Eastern Quarterly 481.

[152] Bayly (n 149). See also Memon (146).

from the North-West provinces), among other native tribes and castes.[153] He had identified these caste and ethnic communities based on a pair of assumptions. The first was that the 1857 mutiny was precipitated by high-caste Brahmins, the majority of whom were in the Bengal regiment, who were offended by British interference in their so-called traditional practices, and that relying on them to man the Native army could lead to more mutinies. Second, he stated that the above-mentioned groups displayed loyalty, discipline, and valour by not participating in the mutiny and "not holding the same pretensions as the Brahmin".[154] His article exemplifies the anthropological enterprise undertaken for the management of the imperial force. Focusing on the social conduct and physical traits of the Gurkhas, he states:

> "…they are short, squab, and by no means handsome, but of strong and active frames… certainly they have a high military spirit, are fierce in war, of unsurpassed activity, and possess great power of enduring fatigue, being low of stature; they have short limbs, but with enormous muscles and vast strength, and their chests are both broad and deep"[155]

This description of the Gurkhas shows the intertwining of the logics of caste-making and race-making. Not only do the Gurkhas represent the appropriate social characteristics of militarisation as expected from warring caste communities, but those caste attributes are reinforced through a racialising focus on their physiological characteristics. In this manner, the martial nature of the Gurkhas was naturalised by enfleshing social attributes of caste through making biological claims.[156] The physiology of the Gurkhas stature and perceived physical strength provides proof of their ferocity and suitability in war.

The 1857 uprising and the subsequent campaigns to put an end to it acted to concretise caste as a form of racialised humanity by delineating a set of martial races in service of British colonial warfare in the subcontinent. The majority of the units formed as a result of the uprising were organised by the British according to the recruits' perceived 'ethnicity', understood as an admixture of religion and caste subsumed into a British

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[153] J. Craufurd Esq F.R.G.S, 'India, as Connected with a Native Army' [1858] Royal United Services Institution Journal <https://www.tandfonline.com/doi/abs/10.1080/03071845809415905> accessed 13 January 2025.

[154] ibid

[155] Ibid 186

[156] Pradeep Barua, 'Inventing Race: The British and India's Martial Races' (1995) 58 The Historian 107.

sensibility of differentiating and ordering humanity hierarchically by type.[157] The organisation of the Indian military as an epistemic exercise of racialisation is best understood in the wider context of an ethnographically oriented colonial governance.[158] The development of the "ethnographic state" during the latter part of the nineteenth century represented a general attempt by the British to classify and order Indian populations along putatively scientific lines.[159]

Both Brahmanism and the British notion of racialising humanity, in the era of Darwinian ideas of genetic evolution, posited that social traits were attributable to biology and consequently inheritable. The biological inheritability of social character found its utility in making the best military use of the endogamous traits of the 'martial races'. From the late 1890s, martial race theory was codified in a series of "recruiting handbooks" for the Indian Army, many noting the oft-repeated Brahmanical myth of Indian history as a struggle between fair-complexioned Sanskrit-speaking Aryans and darker-skinned Dravidians.[160] These handbooks reinforced the essentialisation of social attributes of certain communities through the lens of caste, making courage, loyalty, and courtesy natural characteristics, demonstrable of their suitability to being a valuable soldier.[161] In a complex social terrain with the continuous anxiety of rebellion within the ranks of the native army, these recruitment handbooks full of tips and trick questions utilising caste knowledge enabled commanding officers to make potential recruits knowable.[162]

It was through the army and the police that the so-called "predatory" castes were now parsed into the loyal "martial races", but this reorganisation of the army as an explicit outcome of the mutiny produced a perverse flip side of rendering purportedly dangerous

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[157] Gavin Rand and Kim A Wagner, 'Recruiting the "Martial Races": Identities and Military Service in Colonial India' (2012) 46 Patterns of Prejudice 232, 241

[158] Mary Des Chene, 'Military Ethnology in British India' (1999) 19 South Asia Research 121.

[159] Nicholas B Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton University Press 2011).

[160] Ibid, 179

[161] Multiple handbooks, each dedicated to a distinct community, were developed in the years following 1890 into the twentieth century: R. M. Betham, *Handbooks for the Indian Army: Marathas and Dekhani Musalmans* (Government of India 1908) <http://archive.org/details/dli.csl.5843> accessed 13 January 2025; J. Evatt, *Handbooks for the Indian Army: Garhwalis* (Government of India 1924); A E Barstow, *Handbooks for the Indian Army: Sikhs* (Government of India 1928) <http://archive.org/details/sikhs-handbook-for-indian-army> accessed 13 January 2025.

[162] David Omissi, '"Martial Races": Ethnicity and Security in Colonial India 1858–1939' (1991) 9 War & Society 1.

and unworthy caste communities as "criminal". The belief that criminality was just as inheritable as martial character pre-existed in the subcontinent's precolonial social system underpinned by caste.[163] But through interaction with the British episteme of racialising humanity, criminality was increasingly expressed as biological fact through anthropological techniques of ethnography and anthropometry. The construction of entire castes as "criminal castes" by the British was part of a broader discourse in which caste was understood as an unchangeable essence determinant of occupational and social character. Caste communities categorised as "criminal" were viewed as having an inheritable predisposition towards committing crime as a profession. Thus, crime was a function of habit, a social occupation that was an effect of caste rather than a wilful act responding to the material conditions of exclusion and dispossession under Brahmanism or part of a highly volatile political system under British rule.

For the British, the "criminal tribes" seemed to belong to a definable caste of hereditary criminals within "the Hindu" social system. Although neither the criminalised communities nor "the Hindus" approached criminality as clearly definable, the British transfixed these communities into an existing hierarchy.[164] The role played by the perceived immutability of caste in defining criminality-by-birth can be gleaned from the following quotation in a communication by a district officer in East Berar:

> "We all know that traders by castes in India; a family of carpenters now will be a family of carpenters a century or five centuries hence, ... so will grain dealers, blacksmiths, leather makers and every other known trade. If only we keep this in mind when we speak of 'professional criminals', we shall the realise what the term really does mean. It means a tribe whose *ancestors were criminals from time immemorial* (sic) who are themselves *destined by the usage of caste* to commit crime and whose dependents will be offenders against the law, until the whole tribe is exterminated or accounted for in the manner of the thugs."[165]

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[163] Anastasia Piliavsky, 'The "Criminal Tribe" in India before the British' (2015) 57 Comparative Studies in Society and History 323.

[164] Meena Radhakrishna, *Dishonoured by History: 'Criminal Tribes' and British Colonial Policy* (Orient Blackswan 2001).

[165] Government of India Legislative Proceedings November 1871, No. 62 *quoted in* Sanjay Nigam, 'Disciplining and Policing the "Criminals by Birth", Part 1: The Making of a Colonial Stereotype— The Criminal Tribes and Castes of North India' (1990) 27 The Indian Economic & Social History Review 131. (emphasis added)

This was not a mere opinion of an individually prejudiced district officer, it in fact formed an important part of the Home Member of the Viceroy's Council's introductory speech with which he announced the draft bill on the surveillance of the criminalised communities.[166] The criminalisation of certain communities by the British was influenced by the recent armed pacification campaigns undertaken to root out groups designated as thugs, pirates, and dacoits and enforce British sovereignty. The "thug" or the "criminal tribe" were threatening not because they posed a challenge to British colonial rule, but because their mode of life circumvented British ideas of a governable subject.[167] Moreover, the categorising of "criminals" was entirely based on identifying social practices considered "sinful" by Brahmins that were followed by lowered-caste, trans, and itinerant communities.[168] The confluence of Victorian and Brahmanical perceptions of hereditary criminality located within an intersection of racialisation and caste were codified into the 1871 Criminal Tribes Act that was applied to nomadic pastoralists, itinerant traders, *Adivasi* communities, and other communities deemed "immoral" in the North West Frontier and Punjab.[169]

The codification processes of military handbooks and criminal codes made caste a measurable category of analysis. Particularly the tools of anthropography provided the means for affixing social and cultural characteristics to differences of flesh. Using these techniques to demarcate caste communities, whose self-description was socially and culturally contingent, into fixed bio-centric typologies aided the effective recruitment of the native army and informed the practice of small wars. It was believed that these tools would yield especially good results in the subcontinent given the presumable ethnological stability of caste due to endogamous practices of marriage and procreation which excluded the apparent crossing of physical differences.[170] H.H. Risley as the director of ethnography of India and Edgar Thurston, superintendent of the Madras museum, produced expansive work that put into practice anthropography as the "animal point of view".[171] Anthropometry as a branch of anthropography enfleshed the differences between Brahmins, lowered-caste communities, and *Adivasi*s as visually

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[166] Ibid, 136

[167] Joseph McQuade, *A Genealogy of Terrorism: Colonial Law and the Origins of an Idea* (Cambridge University Press 2020), 39.

[168] Memon, "'English in Taste, Indian in Blood'" (n 146).

[169] Ibid.

[170] Dirks (n 159).

[171] Ibid, 185

verifiable biological material in the form of nasal and cephalic indices, which the British connected to measures of intelligence and bestiality in their system of racialisation.[172]

Thurston noted the importance of anthropometry for identifying criminals and lectured the colonial police on adopting the practice for identifying "habitual criminals". Given the shared Brahmanical and British belief that caste characteristics were inheritable, it was accepted that most crime was committed by circumscribed groups of people, and that anthropometry provided the best means for apprehending the suspects.[173] However, it was a time-consuming practice that required significant training of the officers in using the specialist and expensive equipment. Additionally, the casteist practice of untouchability meant that Brahmin and other dominating caste measurers objected to touching the lowered-caste men. By the beginning of the twentieth century, fingerprinting replaced anthropometry as the practice of indexing caste difference through physiology.[174] Following 1905, adults registered under the Criminal Tribes Acts were fingerprinted as a matter of course, a power expanded by the 1911 Criminal Tribes Act to cover the entirety of the subcontinent. Despite this change in method, the scientific method of measurement provided the means for containing the subjectivity of fluid identities within caste categories. Caste became defined as the genetic boundary within the subcontinent's hierarchy of humans, measured and explained through British categorisation into racialised humanity. As I will show in the following section, the racialisation of caste through its translation into biological fact by anthropometry and fingerprinting, played a crucial role in determining the means for waging small wars in the subcontinent.

b) *Applying 'minimum force' in small wars through camps and expanding bullets*

The racialised knowledge of caste was suffused into all aspects of British governance in the subcontinent including the practice of warfare. In particular, the campaigns against the "well-armed fanatical cut-throat of the hills" occupying the North-Western and North-Eastern frontier of the subcontinent contributed to the specialised body of knowledge on waging irregular

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[172] For a good overview of how anthropometric practices in the late nineteenth century reiterated the racist hierarchy see Stephen Jay Gould, *The Mismeasure of Man* (W W Norton 2008).

[173] Dirks (n 158) 185-187

[174] Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Bloomsbury 2004), 167; see also: Mira Rai Waits, 'The Indexical Trace: A Visual Interpretation of the History of Fingerprinting in Colonial India' (2016) 17 Visual Culture in Britain 18.

wars.[175] As I have shown in the scenes on the conquest of Virginia and the war against the Jamaican Maroons, developing particularly racialised practices of warfare for the colonial context had been an ongoing effort. However, it wasn't until the late-nineteenth century when these practices started to be uniformly codified and disseminated.

The period of the late-nineteenth and early-twentieth century was a crucial time for the codification of humanitarianism in the regulation of practices of warfare as exemplified by the 1868 St Petersburg Declaration prohibiting the use of bullets which were "explosive or charged with fulminating or inflammable substances".[176] The project of codifying warfare also extended itself beyond its European purview towards systematising the practices of colonial warfare and establish a doctrine of "small wars". First published in 1896, C. E Callwell's *Small Wars* is one such crucial document of military history and practice. It describes the various campaigns of colonial warfare waged by the British to illustrate the key challenges faced by officers and provide manoeuvres to address them. For Callwell, small wars comprised "the expeditions against savages and semi-civilised races by disciplined soldiers", and could be categorised as either campaign of conquests, suppression of insurrections, acts of retaliation, and interventions in non-European polities to unseat dangerous enemies.[177]

Small Wars compiled the common knowledge of that time on savage warfare amongst colonial officers and reiterated the racialised knowledge about the bestial savage on the colonial frontier.[178] The text is especially influenced by the experiences of the British officers in the subcontinent, containing a section on the "special risk to officers in Indian frontier fighting". Only a year prior to its publication, in 1895, troubling reports emerged regarding the British incapacity against the tribesmen of Chitral. It is most likely those reports which led Callwell to name the various Pashtun tribes such as the Afridi, Mohmand, Miranzai, and Bunerwals as the "most formidable foemen" of the North Western frontier of the subcontinent. Their "naturally

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[175] C E Callwell, *Small Wars: Their Principles And Practice* (HMSO 1896) <http://archive.org/details/in.ernet.dli.2015.201641> accessed 13 January 2025.

[176] Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, in force 29 November 1868, 138 CTS 297 ("St Petersburg Declaration"). First operative paragraph: "The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances".

[177] C E Callwell (n 174).

[178] Kim A Wagner, 'Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency' (2018) 85 History Workshop Journal 217.

war-like character" made them "active, cunning, determined", and their familiarity with the hilly terrain allowed them to utilise it by rolling down boulders and stones as in Chitral.[179]

This concern dominated the development and justification of techniques and equipment, and frequently arose in the discussion on legal limitation of conduct in warfare. In a revelatory passage from the 1899 Hague Conference proceedings, Sir John Ardgah, who served as the British military delegation's technical adviser, argues:

> "In civilised war a soldier penetrated by a small projectile is wounded, withdraws to the ambulance, and does not advance any further. It is very different with a savage. Even though pierced two or three times, he does not cease to march forward, does not call upon the hospital attendants, but continues on, and before anyone has time to explain to him that he is flagrantly violating the decision of the Hague Conference, he cuts off your head."[180]

Ardgah's above statement at the Hague Conference in 1899 reveals that the British were hesitant to sign a ban on all expanding bullets, which would legally limit their ability to develop and deploy such ammunition in future conflicts.[181] The 1895 campaign in the Chitral had been instructive, and the expanding bullet, known as the Dum-Dum bullet, was explicitly developed from 1896 onwards as a projectile for savage warfare.[182] Until that campaign, the British had been equipped with the Lee-Metford rifle, which fired a small-calibre ammunition, the Mark II. However, in the Chitral these weapons were less deadly than had been expected, unless the bullet hit bone or internal organs it seemed to pass right through the enemy.[183] The minimal nature of the wounds and reports of severely wounded enemies walking nine miles to get treatment and recovering quickly after was alarming for the Major-General Gerald de Courcy Morton, the Adjutant-General in India who consequently requested that experiments be undertaken to improve the disabling power of the Mark II.[184]

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[179] C E Callwell (n 174).

[180] James Brown Scott, *The Hague Peace Conferences of 1899 and 1907* (Johns Hopkins Press 1909), 343 <http://archive.org/details/haguepeaceconfer02scotuoft> accessed 13 January 2025.

[181] Kim A Wagner, 'Expanding Bullets and Savage Warfare' (2019) 88 History Workshop Journal 281.

[182] ibid

[183] ibid

[184] Edward M Spiers, 'The Use of the Dum Dum Bullet in Colonial Warfare' (1975) 4 The Journal of Imperial and Commonwealth History 3.

The Indian ordnance department in Dum Dum, Calcutta, developed a bullet that expanded on impact like big-game hunting bullets. The similarity between the dum-dum bullet and a big-game hunting bullet wasn't simply one of design, their similitude also influenced its discourse. In an article in the *British Medical Journal*, the Surgeon-Major-General J.B Hamilton remarked in his commentary on the evolution of the Dum-Dum bullet, regarding the limits of the Mark II:

> "In European warfare this was of comparatively little consequence, as
> civilised man is much more susceptible to injury than savages. As a rule,
> when a "white man" is wounded he has had enough and is ready to drop out
> of the ranks and go to the rear; but the savage, like the tiger, is not so
> impressionable, and will go on fighting even when desperately wounded."[185]

The comparison with the tiger, a popular animal for the British to hunt as sport in the subcontinent, illustrates the recognition of the tribal communities of the Chitral and the Northwest frontier of the subcontinent within the vernacular of racialised humanity as a type of human endowed with bestial ferocity. Despite frequent suspicion that the Dum Dum bullet had contravened international law, its defenders argued that it was similar to other ammunition insofar as it disabled the enemy with the least possible suffering. Ministers repeated departmental advisers' downplaying of Dum Dum wounds, with Surgeon-Colonel Stevenson and the Director-General of Ordnance claiming that the wounds were exaggerated and that the bullet did not always expand on contact.[186] The need of the expanding bullet had been demonstrated in the Chitral, and its use successfully allowed the British to pacify the Afridis on the North-Western frontier of the Indian Subcontinent during the Tirah campaign. The nature of savage warfare meant "committing havoc which the laws of regular warfare do not sanction".[187] The animalistic nature of the "fanatical Asiatic" occupying the highlands required "no purely humanitarian sentiment" to interfere with the use of munitions when "at war with people of this class".[188] Thus, the animal human of the Northern frontiers of the subcontinent could only be successfully engaged by the British through the use of weapons with a destructive force or scorched earth tactics.[189]

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[185]JB Hamilton, 'The Evolution of the Dum-Dum Bullet' (1898) 1 British Medical Journal 1250, 1251.
[186]Spiers (n 184)., 5-6.
[187] C E Callwell (n 175), 45
[188] Surgeon-Col J. Stevenson, 'Statement on the General Question of the "Stopping Power'' of Modern Small-Bore Bullets' *quoted in* Wagner (n 181).
[189] Kaushik Roy, 'Small Wars and Pacification in the British Empire: A Case Study of Lushai Hills, 1850–1900' (2023) 51 The Journal of Imperial and Commonwealth History 265. In this historical study,

But weapons such as the Dum-Dum bullets weren't the only technique for applying an "irreducible minimum of force" in coercive campaigns in the subcontinent.[190] While the Pashtun, Chitrali, and Sikh communities of the North and North-Western frontier faced the use of destructive force, the lowered caste and *Adivasi* communities were transformed into a "fugitive army of bandits" through criminalisation and concentrated into settlement camps.[191] Following the 1871 Criminal Tribes Act, concentration camps emerged in the subcontinent as a military strategy for pacifying the countryside that was "infested by swarms" of lowered-caste communities such as Ahirs, who were on the "prowl in search of prey".[192] The animalisation of criminalised tribal and caste communities necessitated their "watching, taming, and hunting up".[193] Measures were developed for restricting the movement of the tribes through a conjoined effort between the military and police, often acting alongside local dominant caste *zamindars* (landlords). The establishment of camps for the disciplining and "reformation" of the criminalised communities and their successive generations concretised the boundaries of caste purity and pollution while also acting as a system of far-reaching surveillance and graded punishment.[194]

Once rounded-up and corralled into settlement camps, the criminalised groups were "domesticated" through labour, in particular agricultural and pastoral.[195] The commonality between agriculture and concentration as tools for disciplining is palpable in one British official's statement, to whom the tribespeople appeared as "just cattle".[196] During periods of famine, these concentration camps also provided the necessary means for managing wandering populations under the pretence that famine wanderers harboured diseases.[197] Mass detention rapidly became a common tool of colonial warfare and social hygiene, both connected by the vernacular of racialising humanity juridified into the Criminal Tribes Act, where the nature of the criminalised tribe is expressed as a pollutant according to the

Roy maps the small wars between the British and the tribal communities of the Lushai hills on the Northeastern frontier of the subcontinent.

[190] Callwell (n 175), 107.

[191] Aidan Forth, *Barbed-Wire Imperialism: Britain's Empire of Camps, 1876-1903* (University of California Press 2017), 37.

[192] Nigam (n 165).

[193] Ibid.

[194] Ibid, 142-143

[195] Roy (n 189).

[196] *Quoted in* Radhakrishna (n 164).

[197] Forth (n 191), 58-61.

Brahmanical episteme of caste purity and as animalistic in the British episteme of racialisation.[198]

Apart from the practices of using force, the doctrine of small wars also extended the utilisation of particular types of racialised communities for warfare and pacification, as I previously noted in my study of the war against the Maroons. In the pacification of the Lushais, the British relied upon paramilitary forces comprised of "martial races" such as the Sikhs and Gurkhas as well as co-opting the Kukis and transforming their villages into the first line of defence.[199] By the end of the nineteenth century, the waging of small wars by the British in their colonies in Africa and Asia came to be characterised by systematic utilisation of destructive force, scorched earth tactics, and containment within a continuum of extreme violence.[200] Thus, the interfacing of the caste system with racialisation yielded a distinct juridification of racialised humanity to enable the categorisation of socially contingent caste communities into biologically verifiable "martial races" and "criminal tribes". This naturalisation of the socio-cultural reality of caste by the British alongside the Brahmins, calcified the oppressive hierarchy of the caste system and humanised certain caste communities as beast-like by subjecting them to forms of excessive force and containment.

Conclusion

In this chapter I have shown across three scenes how a racialisation of the human was central to the formation of a doctrine of savage warfare which authorised extreme violence against the bestial human in the colonies and on the plantation. This process of race-making identified the bestial human as a *kind* of human and juridified it for inclusion into the regulation of warfare. Importantly, the bestialisation of the human was constitutive to race-making, as the process of

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[198] For an overview of how concentration camps developed towards the end of the nineteenth century as a particular technique of European warfare in colonised spaces see: Aidan Forth and Jonas Kreienbaum, 'A Shared Malady: Concentration Camps in the British, Spanish, American and German Empires' (2016) 14 Journal of Modern European History 245. For how practices of carrying out colonial massacres were steadily systematised amongst various imperial actors see: Benjamin Madley, 'Tactics of Nineteenth-Century Colonial Massacre: Tasmania, California and Beyond' in Philip Dwyer and Lyndall Ryan (eds), *Theatres Of Violence: Massacre, Mass Killing and Atrocity throughout History* (Berghahn Books 2012); Tom Menger, 'Of "Golden Bridges" and "Big Bags": Thinking the Colonial Massacre in British, German and Dutch Manuals of Colonial Warfare, c. 1860–1910' in Noëmie Duhaut and Johannes Paulmann (eds), *Europe Across Boundaries* (De Gruyter Oldenbourg 2022).
[199] Roy (n 189).
[200] Michelle Gordon, *Extreme Violence and the 'British Way': Colonial Warfare in Perak, Sierra Leone and Sudan* (Paperback edition, Bloomsbury Academic 2022).

categorising and ordering hierarchically humankind, which unfolded contingently to questions of conquest, security, and disciplining faced by the British across distinct spatial and temporal contexts. Ultimately, the processes of racialisation and the bestial humans it produced were distinct to its geography and period, nonetheless the logic of differentiating and organising hierarchically according to the human-animal boundary reiterated itself.

As I show in the first scene that traces the English colonisation of Virginia through waging a war of conquest against the Algonquin, the rendering of native lands as conquerable was through a combination of Adamic right and utilitarianism. In particular, the English identified the Powhatan as incapable stewards of their lands within their universalising knowledge of human nature. The English understood the Powhatan relationship to land only through how the peoples made use of the land through hunting, foraging, growing, and seasonal settlements to grow crops. This limited use of land was only recognisable to the English through approximation to animals, which acted as the index for including native humanity into the emerging taxonomy of racialised humanity and justified the expropriation of native land through unrestrained violence under the law of nations. Although the doctrine of perpetual war elucidated by Gentili and Coke and pursued by the Virginia Company claimed divine Christian right, this claim was appended by a focus on the universality of correct human nature through the secular notion of culture. By classifying the Powhatan way of being as monstrous and enfleshing that monstrosity as belonging to a distinct physiological essence, the English departed from a purely Christian description of the human towards an increasingly biological one.

This concern with a biologic description of the human matured by the beginning of the eighteenth century. The proliferation of theorising phenotypical difference as 'race', and in particular the biological nature of blackness, produced various modes of racialisation to categorise and fix difference to the human body. As I show in the second scene on the Jamaican plantocracy's war against the Maroons and other rebellious African slaves, the indexing of blackness was a fraught exercise. On one end, racial theories of polygenism and monogenism aimed to fix blackness as a biological fact of African being, positioning the black body as the essential indicator of humanity around which the volatile binary of humanity and animality could cohere itself. On the other hand, however, the exigencies of plantation security treated blackness as fungible and elastic in drawing distinctions between the creolised Maroons and the enslaved Akan. The instability of blackness coupled with the constant threat of insurrection from the captive enslaved population against Jamaican plantation society set the terms for juridifying blackness and producing the aporia of slave humanity. Restraining the fugitivity of blackness required the whole of Jamaican society to be at war, devising new methods of surveillance and warfare that conscripted all of the plantation society. While warfare against the

Maroons was motivated by ending the threat they posed to the security of the plantation system, unlike the annihilation of the Powhatan by the English settlers, the planters eventually assimilated the Maroons to suppress future slave rebellions.

Approaching the hierarchical ordering of humanity through racialisation as a flexible process of inclusive categorisation enabled the British to use race-making as a convenient tool for satisfying various demands of colonial governance. By adapting their particular understanding of racialised humanity to the local context, the British were able to make sense of internal hierarchies within their colonies. The third scene shows this through the juridification of caste by the collaborative efforts of the British and the dominant castes and its application in small wars in the South Asian subcontinent. Here the local graded hierarchy predicated on Brahmanical notions of purity was subsumed within the universalising concept of racialised humanity, and caste communities were transformed into discrete kinds of human identifiable through inheritable social and biological characteristics. These caste communities, whether "martial", "criminal", or both, necessitated different forms of disciplining and control across a continuum of extreme violence. The doctrine of small wars in the subcontinent shows a maturation of how racialising humanity dictated the practice of warfare. In particular, the identification of specific caste communities as "martial" or "criminal" racialised their modes of being and their living environments. This contributed to the refining of the doctrine of savage warfare into modes such as "bush warfare" and "hill warfare", each necessitating its own tactical considerations.

By understanding racialisation as an already inclusionary process and recognising how it acts to assimilate non-European practices of fighting into a universalising regulation of warfare, this chapter takes us beyond the critique of Eurocentrism against the laws of war. Enunciating the vernacular of racialising humanity through the juridical frame of savage warfare engendered a practice of establishing techniques of using force corresponding to specific environments and the peoples inhabiting it. This fundamentally racialised practice is noticeable in the pejorative reference to the Maroons way of fighting as "bush fighting", but by the time of Callwell's publication of *Small Wars*, these racialised labels shed their pejorative nature and become representative of a factual context where European tactics of using force were inadequate. Similarly, the use of the Miskito Indians against the Maroons, and the eventual incorporation of the Maroons into the militarised force of Jamaica's plantation society shows the logic of racialising warfare in action. The belief that particular kinds of humans were better suited due

to their naturalised physical and social characteristics for the practice of savage warfare reached a high-point with the specialised recruitment of martial races.[201]

The complex processes of racialising humanity in warfare demonstrates the different means through which the "savage" nature of the bestial human was incorporated into the practice and regulation of warfare. As the discussion on the Dum Dum bullets at the 1899 Hague Conference in the final scene of this chapter exemplifies, the juridification of racialised humanity into savage warfare by the codification of small wars went hand-in-hand with the nineteenth century regulation of warfare towards humanising battlefield conduct. This shows how the regulation of warfare conceives of humanity in limited terms, as well as, that the juridical frame of small wars provides the means for processes of racialisation to materialise through the demarcation of particular types of humans against whom particular forms of excessive violence are authorised. The processes of racialisation and the kinds of humans it produced echo today in continuing practices of demarcation and violent discipling within postcolonies like India.[202]

In the following chapter, I will show how racialising humanity to authorise extreme violence in the colonial context made way for utilising asymmetric force in the form of counterinsurgency warfare during the period of decolonisation. The codification of practices of savage warfare into a systematised set of techniques to be used in small wars provided much of the early frame for how to tackle large scale insurrections and rebellions. In particular the focus on pacification as a longer-term mode of warfare practiced through a mixture of containment and extreme violence provided the original model for the methods of violent containment typical of counterinsurgency. Furthermore, the plasticity of racialised humanity as a particular mode of being defined through phenotypical difference became globalised in the twentieth century as *the* signifier of difference in the emergence of the international society.[203] As I demonstrate in the next chapter, processes of racialisation complemented theories of social and economic development for the sake of a secured humanity.

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[201] The practice of recruiting martial races went beyond the South Asian subcontinent. For instance, the Kamba peoples of East Africa were another "marital race", see: Timothy Parsons, '"Wakamba Warriors Are Soldiers of the Queen": The Evolution of the Kamba as a Martial Race, 1890-1970' (1999) 46 Ethnohistory 671.

[202] Sarah Gandee, 'Criminalizing the Criminal Tribe: Partition, Borders, and the State in India's Punjab, 1947–55' (2018) 38 Comparative Studies of South Asia, Africa and the Middle East 557; Ajay Verghese and Emmanuel Teitelbaum, 'Conquest and Conflict: The Colonial Roots of Maoist Violence in India' (2019) 47 Politics & Society 55.

[203] Daniel Gorman, *The Emergence of International Society in the 1920s* (Cambridge University Press 2012).

Chapter 3: Securing Humanity

Counterinsurgency warfare in the permanent security present

Introduction

In this chapter, I will explore how the remaking of colonial populations into sovereign nation-states put forward a new episteme for fashioning humanity through regimes of securitisation. In the previous chapter, I showed how security as a logic begins to emerge in the eighteenth century for the use of extreme force in colonial and plantation territories to maintain 'order'. By the early twentieth century, the transposition of savage warfare into a doctrine of small wars engendered a proliferation of practices of irregular warfare aimed increasingly at containing certain peoples and target them with extreme violence.[1] These practices of imperial irregular warfare were the forebears of the practices of counterinsurgency warfare I discuss in this chapter. As I will show, the armed movements for decolonisation emerged as a distinct threat to the security of imperial states, and in response these states implemented a doctrine of counterinsurgency warfare combining armed force with socioeconomic development to securitise colonial populations.[2] I show how both development and security operate as rationales with a logic of futurity towards the shaping of society and human life specifically, which is to be secured for development in perpetuity, giving rise to a vernacular of securitised humanity. This vernacular of humanity is established as a totalising mode of life that acts in a hyper-assimilatory manner through the juridical frame of counterinsurgency warfare, utilising armed force hand-in-hand with socio-economic development to apprehend and destroy threats, producing compliant and passive populations invested in maintaining their security.

The US-allied invasion of Afghanistan and Iraq under the banner of the 'War on Terror' has brought renewed attention to counterinsurgency warfare as a mode of war which disturbs

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[1] The literature on twentieth century imperial irregular wars is dominated by the development of British practices, see for example: J Newsinger, *British Counterinsurgency: From Palestine to Northern Ireland* (Springer 2001); Stanislav Malkin, 'From Small Wars to Counterinsurgency: C.W. Gwynn, "Imperial Policing" and Transformation of Doctrine' (2019) 30 Small Wars & Insurgencies 660; Charles Anderson, 'When Palestinians Became Human Shields: Counterinsurgency, Racialization, and the Great Revolt (1936–1939)' (2021) 63 Comparative Studies in Society and History 625. A good study of non-British approaches to irregular warfare is Bart Luttikhuis and A Dirk Moses, *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia* (Routledge 2014).
[2] Moritz Feichtinger and Stephan Malinowski, 'Transformative Invasions: Western Post-9/11 Counterinsurgency and the Lessons of Colonialism' (*Humanity Journal*, 12 June 2014) <https://humanityjournal.org/issue3-1/transformative-invasions-western-post-911-counterinsurgency-and-the-lessons-of-colonialism/> accessed 13 January 2025.

settled doctrines of conducting warfare and regulating battlefield conduct. Lawyers of armed conflict have sought to approach counterinsurgency warfare as a type of asymmetrical warfare designed to influence the civilian population, implicating the legal regimes of international humanitarian law and international human rights law.[3] Within these legal fields, the focus remains on how counterinsurgency problematises current doctrinal applications of principles of proportionality and military necessity, especially when counterinsurgency operations target the civilian population, and addressing shortcomings of the international legal framework governing such operations. This literature does not inquire into how counterinsurgency warfare is implicated in practices of governance, a concern taken up by scholars of international development and security. Here, counterinsurgency warfare and other forms of armed intervention are understood as producing regimes of security interfacing with projects of statecraft and global governance, generally directed towards states in the Global South.[4] This interdisciplinary understanding views the nexus between warfare, security, and development as a cyclical system which is renewed through various techniques of making and unmaking the state which sustains the political economy of the capitalist state by ensuring the security of private investments and international developmental aid.[5]

My intervention in this chapter bridges the gap between the fields of law of armed conflict and international development and security to demonstrate how the legal regulation of warfare is

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[3] The literature analysing counterinsurgency warfare within the law of armed conflict is narrow, some key texts are: Travers McLeod, *Rule of Law in War: International Law and United States Counterinsurgency in Iraq and Afghanistan* (Oxford University Press 2015); William Banks (ed), *Counterinsurgency Law: New Directions in Asymmetric Warfare* (Oxford University Press 2013); Ganesh Sitaraman, 'Counterinsurgency, the War on Terror, and the Laws of War' (2009) 95 Virginia Law Review 1745; David E Graham, 'Counterinsurgency, the War on Terror, and the Laws of War: A Response Response' (2009) 95 Virginia Law Review in Brief 79; Chukwuma CC Osakwe, 'Laws of Armed Conflicts, Counterterrorism and Counterinsurgency : Emerging Conceptual and Empirical Contours in the Battle Space', *Routledge Handbook of Counterterrorism and Counterinsurgency in Africa* (Routledge 2021); Chris De Cock, 'Counter-Insurgency Operations in Afghanistan. What about the "Jus Ad Bellum" and the "Jus in Bello": Is the Law Still Accurate?' in MN Schmitt, Louise Arimatsu and T McCormack (eds), *Yearbook of International Humanitarian Law - 2010*, vol 13 (T M C Asser Press 2011).

[4] The literature on the 'security and development nexus' is expansive, some key texts include: Mark R Duffield, *Development, Security and Unending War: Governing the World of Peoples* (Polity 2007); Mark Duffield, *Global Governance and the New Wars* (Zed Books 2009); Björn Hettne, 'Development and Security: Origins and Future' (2010) 41 Security Dialogue 31; Maria Stern and Joakim Öjendal, 'Mapping the Security—Development Nexus: Conflict, Complexity, Cacophony, Convergence?' (2010) 41 Security Dialogue 5; Simon Reid-Henry, 'Spaces of Security and Development: An Alternative Mapping of the Security–Development Nexus' (2011) 42 Security Dialogue 97.

[5] Duffield, *Development, Security and Unending War* (n 4).

co-constituted through regimes of development and securitisation. Instead of viewing development and security as incidental to the conduct of warfare, I show how participatory forms of economic and social reform and securitising surveillance are incorporated into the doctrine of counterinsurgency warfare. Thus, my intervention sits alongside and expands the critical engagements with security and development by scholars of international law.[6]

So far, the inquiry into how rules of international law materialise through security and development has centred the nation-state as the main site where logics of developmental security actualise. My intervention shifts the focus to how a vernacular of securitised humanity is enunciated in the juridical frame of counterinsurgency warfare, a doctrine realising the imperatives of security and development through force, to juridify a form of life that is securitised for development in perpetuity. Recently, the concept of 'human security' has emerged as a site of inquiry within security and development literature, but much of this literature considers the human as an individuated recipient of the security and development agenda instead of considering how the human comes to be through these regimes of creating and discipling forms of life.[7] Privileging the human as a site of inquiry into the doctrine of counterinsurgency warfare enables me to reinterpret security and development as epistemic frames of articulating human life across the domestic, transnational, and international terrains. My emphasis on the human as an accretion of security's developmental drive complicates the jurisdictional boundaries of domestic/international, war/peace, *ad bellum*/*in bello* upheld by international law's regulation of warfare.

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[6] The literature in international law that critically engages security as well as its relationship to development is growing, see for example: Luis Eslava and Lina Buchely, 'Security and Development? A Story about Petty Crime, the Petty State and Its Petty Law' [2019] Revista de Estudios Sociales 40; Ntina Tzouvala, 'The "Unwilling or Unable" Doctrine and the Political Economy of the War on Terror' (2023) 14 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 19; Gavin Sullivan, *The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law* (Cambridge University Press 2020).

[7] For an overview of the concept on human security within security studies see Shahrbanou Tadjbakhsh and Anuradha Chenoy, *Human Security: Concepts and Implications* (Routledge 2007). The concept has been criticised by feminist scholars, for example see: Anuradha M Chenoy, 'A Plea for Engendering Human Security' (2005) 42 International Studies 167; Fiona Robinson, *The Ethics of Care: A Feminist Approach to Human Security* (Temple University Press 2011; Natasha Marhia, 'Some Humans Are More Human than Others: Troubling the "Human" in Human Security from a Critical Feminist Perspective' (2013) 44 Security Dialogue 19.

The US 'War on Terror' has been analysed as de-territorialising sovereignty, rendering it contingent,[8] and instead reconfiguring the population in risk-management terms.[9] This has serious implications for the settled norms of *jus ad bellum* and *jus in bello,* as noted by Kendall, where state consent becomes immaterial to the violence of US counterinsurgency and "some populations" are coerced to tolerate this violence for "the benefit of others."[10] Recognising that the violence of security and development exceeds the frame of warfare as taking place between states allows us to reckon with the full scope of counterinsurgency warfare as unfolding through various "warlike relations".[11] Recent analysis of the War on Terror as a civilising offensive demonstrating the conjunction of war with policing has explored how contemporary armed conflict acts as globalised policing.[12] This sustained critique of the interrelationship between war and policing has been long noted in Black radical thought to connect racist violence in the ghetto to global systems of colonial domination, and present an analytic of 'domestic warfare'.[13] Thus, applying the lens of domestic warfare clarifies counterinsurgency as a doctrine of racialised social control with expansive reach, and unsettles the bifurcation of domestic and international, war and peace.

In this chapter, I've explored the unfolding of securitised humanity through counterinsurgency warfare across three scenes. The first scene traces the origins of counterinsurgency warfare through the works of certain key theorists of its doctrine. These theorists produced numerous "lessons-learned" literature synthesising their experience of suppressing colonial insurrections through a combination of policing, militarised expeditions, and methods of population control. The writings of these theorists of counterinsurgency showcases a shared repertoire of practices developed to violently pacify population, many of which found practical application in the US

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[8] Stuart Elden, 'Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders' (2006) 26 The SAIS Review of International Affairs 11; Stuart Elden, *Terror and Territory: The Spatial Extent of Sovereignty* (University of Minnesota Press 2009).

[9] Duffield, *Development, Security and Unending War* (n 4), 69.

[10] Sara Kendall, 'Cartographies of the Present: "Contingent Sovereignty" and Territorial Integrity' in Martin Kuijer and Wouter Werner (eds), *Netherlands Yearbook of International Law 2016*, vol 47 (TMC Asser Press 2017).

[11] Nivi Manchanda and Chris Rossdale, 'Resisting Racial Militarism: War, Policing and the Black Panther Party' (2021) 52 Security Dialogue 473.

[12] Mark Neocleous, 'The Police of Civilization: The War on Terror as Civilizing Offensive' (2011) 5 International Political Sociology 144; Mark Neocleous, *War Power, Police Power* (Edinburgh University Press 2014).

[13] Dylan Rodriguez, *White Reconstruction: Domestic Warfare and the Logics of Genocide* (First edition, Fordham University Press 2021); Orisanmi Burton, 'Captivity, Kinship, and Black Masculine Care Work under Domestic Warfare' (2021) 123 American Anthropologist 621, 622-624.

war in Vietnam. The latter part of the first scene shows how counterinsurgency as a practice comprised of invasive surveillance, countersubversion through participatory development, and a continuum of coercive force was applied against the Vietnamese peasantry to incorporate them into the mould of modernised citizenry envisaged by liberal securitised humanity.

The second scene showcases how counterinsurgency against armed decolonisation transformed as a means of counterterrorism in the Global War on Terror. By reading the *Counterinsurgency Field Manual 3-24*, the doctrine of the counterinsurgency operations of Iraq and Afghanistan, against the grain I demonstrate how these operations internalised the neoliberal logic of risk. I finish the scene by showing how this logic of risk was interpreted into an anthropological construction of Iraqi and Afghan society as 'tribal' and deployed through technical interventions, that ranged from coercive biometric surveillance to kinetic force through drone strikes, for modifying social behaviour to forcibly assimilate Iraqi and Afghan modes of life into securitised humanity.

The final scene establishes how counterinsurgency acts as a model of racialised social control by foregrounding the relationship of policing, prisons, and militarism to securitisation. The scene brings together recent literature on the police-military continuum, black radical theorisation of internal colonisation and incarceration as domestic warfare, as well as perspectives theorising securitisation through the location of the postcolony to show how counterinsurgency elides boundaries of domestic and international in pursuit of universalising securitised humanity as pacifying, and pacified.

Altogether, these three scenes depict the juridification of a particular mode of human, securitised through the coercive use of violence and humanitarianism underpinning counterinsurgency warfare. The shaping of the 'population' as the object of securitisation by counterinsurgency warfare demonstrates the hyper-assimilatory nature of securitised humanity, where the threats to this form of life can be individuated for targeting with force and modes of containment. Ultimately, the juridification of securitised humanity through counterinsurgency warfare operates to forcibly inculcate within populations a logic of securitised development to be rehearsed perpetually towards maintaining permanent security.[14]

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[14] I draw the term 'permanent security' from Dirk Moses' recent work on how disproportionate armed force is utilised against civilians to achieve and maintain the constant security of the nation-state formation. See A Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge University Press 2021).

1) Decolonisation, development, and 'internal defence' against communist insurgency

Throughout the twentieth century, large-scale resistance within colonies and their metropolises shaped a radical rupture in the history of modern international society – the collapse of territorial empires and the four-century-long project of European colonialism. Decolonisation posed a security concern. The breaking up of European colonial empires jeopardised a world economy which had so far sustained itself through the expropriation of raw materials and labour from the colonies, both of which became crucial for post-war reconstruction in Western states.[15] Beyond economic insecurity, decolonisation threatened the order of racialised humanity. Demands for national liberation, undoing the dependencies of colonial domination, and a radical challenge to Euro-modern worldmaking destabilised the global "color line",[16] and made apparent empire as a structure of international racial hierarchy.[17]

Securing the post-war global economy and the order of racialised humanity in the face of decolonisation's radical challenge to both necessitated the recalibration of force into an instrument for governing the re-ordering of the imperial world. Unlike the use of scorched-earth tactics which marked the doctrine of savage warfare, as explored in the previous chapter, the move towards a liberal international order required the devising of new techniques of control in the battlefield. Theories of 'revolutionary warfare' and 'population-centric counterinsurgency' provided the framework for connecting visions of a global Cold War with regional aspects of a dying colonialism under an overall narrative of modernisation.[18] Within this framework, a desire for overthrowing colonial domination through political and armed insurgency was explainable as the hijacking of the turbulences caused by a social transition from tradition to modernity by communist guerillas. Instead of slaughter, practitioners of counterinsurgency theorised new modes of containment in the battlefield through social planning and transformation of the population itself. As Khalili notes, confinement and incarceration became the central motif of

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[15] Central Intelligence Agency, 'The Break-Up of the Colonial Empires and its Implications for US Security' (3 September 1948). <https://www.cia.gov/readingroom/docs/DOC_0000258342.pdf> Accessed 13 January 2025

[16] The full quotation is "The problem of the twentieth century is the problem of the color line – the relation of the daker to the lighter races of men in Asia and Africa, in America and the islands of the sea." WEB Du Bois, *The Souls of Black Folk* (Bantam classic ed, Bantam Books 1989), 10.

[17] Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2020), 14-22.

[18] Moritz Feichtinger, '"A Great Reformatory": Social Planning and Strategic Resettlement in Late Colonial Kenya and Algeria, 1952–63' (2017) 52 Journal of Contemporary History 45.

liberal counterinsurgency.[19] Theorists of liberal counterinsurgency warfare envisioned and advertised it as more humane and liberal by advocating methods of confinement and social engineering instead of outright slaughter. This theorising of counterinsurgency as a humanitarian mode of warfare readily invoked law and legality as structuring the conduct of war and repeatedly concerned itself with a mandate of improvement. Thus, the focus of liberal counterinsurgency was coercive discipling of colonized societies through "humane" and developmental warfare to persuade social engineering of the population towards robustly defending the security of modernizing development.

The early coordinates for the shaping of a post-war liberal securitised humanity emerged through the counterinsurgencies which took place between 1950s to 1970s. Steeped in the deep well of colonial warfare, practitioners of liberal counterinsurgency theorised new means for foreclosing, limiting, or entirely eradicating the free movement of populations rendered suspicious for harbouring insurgents. As I will show in the first part of this scene, an epistemic community dedicated to the idea of promoting "internal defence" within newly decolonising territories began to form during this period. Comprising of men with experience of colonial policing and warfare, economic and political theorists, as well as bureaucrats, this epistemic community was of a transnational nature aligned around the central premise of suppressing anticolonial resistance movements.

In the following section I trace the development of this doctrine in the works of Robert Thompson, Frank Kitson, David Galula, and Roger Trinquier whose ideas came to dominate the practice of counterinsurgency warfare.[20] These men drew on their experience of suppressing anti-colonial insurgencies across various sites of British and French colonial control and published them as semi-autobiographical narratives with a pedagogical utility. The writings of Thompson, Kitson, Galula, and Trinquier provide insight on how the population was understood

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[19] Laleh Khalili, *Time in the Shadows: Confinement in Counterinsurgencies* (Stanford University Press 2013), 3. On war as a mode of liberal governance also see: Michael Dillon and Julian David McHardy Reid, *The Liberal Way of War: Killing to Make Life Live* (Routledge 2009).

[20] Khalili's above cited book provides a detailed critical study tracing the influence of these theorists of counterinsurgency on the contemporary war-making practices of the United States and Israel. Following the War on Terror there has been a renewed interest in exploring the writings of these men as part of evaluating US practices in Afghanistan and Iraq and rethinking "lessons learned" in irregular warfare, for example see: Carter Malkasian and Daniel Marston (eds), *Counterinsurgency in Modern Warfare* (Bloomsbury 2010); Ganesh Sitaraman, *The Counterinsurgent's Constitution: Law in the Age of Small Wars* (Oxford University Press 2014).

as *the* battle-space in counterinsurgency operations during this period, exemplified by the war in Vietnam.

a) *Revolutionary warfare and shaping the population as the 'battle space'*

In April 1962, the still-fledgling Research and Development (RAND) corporation organised a 5-day 'Symposium on Counterinsurgency' under its social science department.[21] The symposium was amongst many other symposia, seminars, and training activities coordinated by the Special Group Counterinsurgency (SGCI), set up by the Kennedy administration to make counterinsurgency warfare an inter-agency collaboration.[22] The April 1962 symposium was different from the others, its participants included the who's who of liberal counterinsurgency warfare: Frank Kitson (Britain, Kenya), David Galula (France, Algeria), Edward Landsdale (United States, Philippines and Vietnam), amongst many others with illustrious careers of suppressing insurgencies.[23] This bringing together of "men with firsthand and successful experience" across key areas of insurgency such as Malaya, Algeria, Kenya, and South Vietnam was an opportunity to distil their various insights to shape the future of counterinsurgency warfare.[24] The symposium formally represented the coming together of an epistemic community dedicated to conceptualising the doctrine of counterinsurgency warfare, as recollected by Kitson:

> "Although we came from such widely divergent backgrounds, it was as if we had all been brought up together from youth. We all spoke the same language. Probably all of us had worked out theories of counter-insurgency procedures at one time or another which we thought were unique and original."[25]

Crucial in the vocabulary of this common vernacular was the 'population'. Each theorist of counterinsurgency warfare located their practices in the central premise of controlling the population. By determining the population as the central objective of insurgency, and therefore devising strategies to control it for the purposes of counterinsurgency, these practitioners redefine who and what the population is in relation to the insurgency. This step of (re)defining

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[21] Sibylle Crane and Stephen Hosmer, 'Counterinsurgency: A Symposium, April 16-20, 1962' (RAND 2006).

[22] Jeffrey H Michaels, 'An Education in Counterinsurgency' (2020) 8 International Politics Reviews 11.

[23] Hosmer and Crane (n 21), xix-xxiii.

[24] Ibid, vii

[25] Frank Kitson, *Bunch of Five* (Faber and Faber 1977), 200.

the population is crucial to the epistemic exercise of envisioning permanent security achieved through counterinsurgency warfare.

In the counterinsurgent's logic, the population is the key to finding and defeating the insurgent. As Trinquier notes in his analysis of "modern warfare", an insurgency is not like an "army organised along traditional lines", instead it is "a few armed elements acting clandestinely within a population manipulated by a special organization".[26] Accordingly, the main aims of an insurgency is to gain control over the population through political subversion and terrorism, destroy governmental authority, and neutralise the government's armed forces from restoring order.[27] The insurgents' campaign to seize control will first target the population in villages in the remoter valleys and near jungles and swamps, according to Thompson, due to "their inaccessibility to government forces".[28] As surmised by Trinquier,

> "in the unprotected regions that comprise the major portion of the national territory, particularly the vast area of inhabited countryside where police forces are small or nonexistent, terrorist action encounters no opposition at the beginning of a conflict and is most effective."[29]

Thus, through campaigns of 'terrorism' the insurgency grows from the villages to encircle the towns, inhibiting the government's forces and gaining the silent collusion of the unprotected population. Fed, informed, and protected by the manipulated population, the insurgents "are able to strike without difficulty against the forces of order".[30] To put an end to this nightmare scenario of violent disorder, the counterinsurgent must aim to separate the insurgency from the population while regaining its allegiance. As Kitson notes, the primary obstacle to "destroying enemy armed groups consists largely of finding them".[31]

By framing the insurgency as a discrete, separable social phenomenon from the population, these theorists of counterinsurgency collapse the significant political and social relationships

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[26] Roger Trinquier, *Modern Warfare: A French View of Counterinsurgency* (Praeger Security International 2006) Originally published 1964, 5-7.

[27] Robert Thompson, *Defeating Communist Insurgency; The Lessons of Malaya and Vietnam* (FA Praeger 1966), 29-30. Thompson's description of an insurgency's main aims is reiterated by other theorists such as Galula, Trinquier, and Kitson.

[28] Ibid, 31-32

[29] Trinquier (n 26), 17.

[30] Ibid.

[31] Frank Kitson, *Low Intensity Operations: Subversion, Insurgery, Peace-Keeping* (Paperback ed, Faber and Faber 1991), 95.

underpinning anticolonial liberation struggles.[32] Instead, they co-opt them into a liberal frame of an amorphous power struggle and a racialising gaze in which the colonised people only materialise through abstract emotions of resentment, boredom, and fanaticism.[33] The prism of counterinsurgency operations rejects the possibility of popular movements having a base in the people, and instead objectifies the peoples into a population without political commitments and motivated purely by self-interest. Most crucially, the peoples' material struggle for self-determination and land redistribution, as well as an end to racist colonial subjection, is elided by the securitising gaze which insists on neutrality and order. Galula expresses succinctly the message of neutrality which counterinsurgents ought to inculcate in populations – "stay neutral and peace will soon return to the area. Help the insurgent, and we will be obliged to carry on more military operations and thus inflict more destruction".[34] But the neutrality is farcical, because the population, and the individual members comprising it, are compelled by the counterinsurgency to participate in its operations for their survival. The coercive nature of securitised humanity manifests itself through a structured organization encompassing the whole population.[35]

The gridding of and gradual conquest of rural and urban populations – *quadrillage* – is one such 'organizing' tactic presented by Galula and Trinquier, central to the conduct of French counterinsurgency operations in Algeria. The practice of 'gridding' reorders the inhabitants of rural and urban places into rational unitary individuals within the administrative grasp of the counterinsurgency. The objectification of the peoples is complete as they are transformed into

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[32] The importance of the socio-political relationship between the people and the armed fighters has been theorised as a crucial aspect of waging revolutionary warfare, see as examples: Kwame Nkrumah, *Handbook of Revolutionary Warfare: A Guide to the Armed Phase of the African Revolution* (Panaf Books Limited 1968); Patrick Chabal, *Amilcar Cabral: Revolutionary Leadership and People's War* (C Hurst & Co Publishers 2002); Frantz Fanon, *The Wretched of the Earth* (Constance Farrington tr, Penguin Books 1990).

[33] The works of Kitson, Thompson, Galula, and Trinquier are full of references to "fanatic" natives regardless of the context of Kenya, Malaya, or Algeria. Although not forming part of the discussion in this chapter, anti-colonial resistance was frequently pathologized by European "ethnopsychiatrists" who located the desire to use violence to overthrow colonial rule in parts of the native brain. A well-known example is Carothers' study of the Kikuyu peasantry in Kenya to identify their motivations to join the Mau Mau as a result of so-called differences in the frontal lobe of Africans, see: J.C Carothers, 'The Psychology of Mau Mau' (Government of the Colony and Protectorate of Kenya) <https://ufdc.ufl.edu/UF00023305/00001/images> Accessed 13 January 2025.

[34] David Galula, *Counterinsurgency Warfare: Theory and Practice* (Praeger Security International 2006), 77.

[35] Trinquier (n 26), 28.

either a source of intelligence or a widespread militia against the guerillas.[36] The objectifying gaze of counterinsurgency, while careful to not antagonise the population, regardless sees the inhabitants as combatants,[37] and utilises force as the precondition for their relation.[38] As the "stablest element",[39] the inhabitant is already considered a participant in the counterinsurgency and becomes the locus around whom the practice of *quadrillage* can take form. The reorganisation of society to separate the insurgency from any popular support is suffused with a language of 'defence' as the key motivator for all operational steps taken by the counterinsurgency.

Through the combining of military operations with civilian measures, the reorganisation of the built environment and social relations masks pacification as defensive security for the benefit of the population. To ensure that the restructuring of rural life proceeded methodically, it was required to take into consideration of population density, their attitude to the counterinsurgency, the physical geography, as well as the building of and maintenance of roads to promote connectivity with the rest of the country. Galula prescribes the counterinsurgent to,

> "lead the inhabitants gradually, if only in a passive way, to participate in the fight
> against the insurgent by such work as building roads of military interest, helping in
> the construction of the village's defensive installations, carrying supplies to military
> detachments, providing guides and sentries."[40]

This program of defensive labour to "get all the little fishes out of the water and keep them out",[41] is the leitmotif of counterinsurgency warfare to achieve permanent security. The construction of civilian structures, referred to euphemistically as 'strategic hamlets', 'camps', 'new villages', or 'agrovilles', for enforcing control over the population reappear consistently as a key strategy across the writings of Thompson, Trinquier, and Kitson. While each theorist has their own vision of what these structures ought to look like, some common elements include the regrouping of houses in close proximity with each other, surrounded by a barbed wire fence or other bordering techniques, and fortified by armed blockhouses.[42] These civilian structures materialise the

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[36] Galula (n 34), 79.

[37] Trinquier (n 26), 27.

[38] Galula (n 34), 80.

[39] Trinquier (n 26), 27.

[40] Galula (n 34), 82.

[41] Thompson (n 27), 124.

[42] The clearest description of "strategic hamlets" can be found in Roger Trinquier's *Modern Warfare* , Trinquier (n 26), 62. The invention of the term is attributed to Robert Thompson, who as secretary for

"security framework",[43] envisaged by practices of organising the population such as *quadrillage*, into the built environment. Concentrating the population of villages into tightly organised settlements allowed counterinsurgent administration to take place efficiently and established control over the movement of the inhabitants of the village, making it theoretically possible to isolate and "cleanse" the area of anyone believed to be insurgents. Crucially, these practices of forcibly resettling and cordoning peoples in rural and suburban areas provided an opportunity to reshape peasant life in the countryside for better control over land, resources, and the population.

Forced resettlement, as Feichtinger notes, went further than simply resolving the operational imperative of separating the insurgency from the population. It was also a counter-revolutionary attempt of transforming the entire rural society and the structure of production.[44] For instance, Thompson's remarks on the objectives achieved through forced resettlement, especially with relation to the peasantry, are revealing,

> "Peasants the world over are individualists, even more so when they live in scattered communities. Many would be content to live quietly in their own houses on their own land, ..., and to ignore, except for some of the necessities of life, the rest of the world. This attitude is no longer in keeping with the times nor with the general aspiration for progress and advancement. If this aspiration is to be realized, the peasant must accept that he has obligations and responsibilities to his own community."[45]

Thus, the 'peasant', is transformed into an object of knowledge emanating from a particular mode of ordering society and is forcibly resettled into a set of relations underpinned by affective concepts such as "community spirit" and "national solidarity" defined by the likes of Thompson and his cadre.[46] Reordering rural society through violent means, as significant force was usually required to remove people from their land and resettle them far away from their farms, served the dual purposes of securitisation and development towards the goal of promoting colonial

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Chinese affairs in Malaya played a crucial role in establishing and administering the 'New Villages', which formed the basis of the strategic hamlet concept he helped execute in the US counterinsurgency in Vietnam. See Thompson, *Defeating Communist Insurgency ; The Lessons of Malaya and Vietnam* (n 27); Khalili, *Time in the Shadows* (n 18).

[43] Thompson (n 27), 121.

[44] Feichtinger (n 18), 51.

[45] Thompson (n 27), 155.

[46] ibid

assimilationist sentiments over national liberation. The peasant mode of life is forcibly assimilated into the vernacular of securitised humanity as juridified through counterinsurgency warfare.

Once concentrated into these prison camps, its inhabitants were subjected to being recorded by the census, with responsibility for updating any changes resting on the most senior male member of the family as the perceived head of the family. To counter any possible sabotage of this system by insurgents, Galula recommends that every able-bodied male subject to the census ought to be vouched for by two guarantors outside his family, who under severe penalty of death and torture would provide veracity of his statements.[47] This instrumentalization of social relationships to bolster the surveillance practices of counterinsurgency placed individuals in the awful position of being targeted for their collaboration, straining pre-existing relations. The resettlement areas were also zones of re-education towards Euro-modern modes of social being through propaganda. For example, social programs targeted Kikuyu women as part of suppressing the revolt by the Kenyan Land and Freedom Army, or Mau Mau, to prepare them for the "new way of life" following the policy of villagisation.[48] Similarly, 'feminist' social organisations founded by the wives of high-ranking French army officers in Algeria and supported by the French army's division for propaganda and psychological warfare aimed to politically educate rural Muslim Algerian women to convince them to vote, unveil themselves and reject their perceived subordination by Islam.[49] Apart from serving the utility of intelligence gathering and promoting civic administration, these social programs remade gendered subjectivities of Kenyan and Algerian women and sought to assimilate them into a universalising mode of womanhood conceived by late Euro-modernity.

Through their writings, these theorists of counterinsurgency articulate it as a practice of reshaping the social life of colonised communities. As late-colonial governance sought out technical responses to the political crises engendered by decolonisation, directors of colonial operations responding to these crises turned towards a diagnosis which located itself in seeking deeper causes for social upheaval and developmental tendencies of social organisation. The combining of liberation ideology with guerilla tactics forced the colonial state to focus urgently on the population. Counterinsurgency as a mode of 'sociological warfare'[50] practiced new and

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[47] Galula (n 34), 82.
[48] Caroline Elkins, *Legacy of Violence: A History of the British Empire* (Vintage 2023); See also Feichtinger (n 18).
[49] Ibid, 65.
[50] Grégor Mathias, *Galula in Algeria: Counterinsurgency Practice versus Theory* (Praeger 2011), 36.

powerful means of collective punishment and reward through social regulation and government which took control of the life processes of colonial populations.[51] The destruction of existing village life, followed with the reconstruction of small-scale homes integrated together within punitive camps operated as a strategy of domestication where, as noted by Owens, the detained populations intimate relations of dependency were a matter of colonial-social regulation. The removal of peasants from their communal households and extended families took place in parallel to the ascendance of the bourgeois family home as the basis of civilisation.[52] Thus, the pacification of the colonised rural populations becomes intimately tied to the violent remaking of their domestic spaces and subjectivities. It unravels communal modes of life and restructures them into a mode of individuated existence presumed to be universally natural, stable, and secure as well as desirable of modernity. As I show in the following section, the doctrine of counterinsurgency warfare pursued by the United States in Vietnam was aimed at restructuring Vietnamese village life by pathologizing it as a threat to security which could only be resolved through modernising the peasantry to embrace a liberal capitalist national society.

b) *The US Overseas Internal Defense Policy and modernising the Vietnamese peasant*

Historian Matthew Connelly observes that President Eisenhower and his advisers frequently pictured Third World national liberation movements as "a force of nature, often using the imagery of a flood, a tide, or a wave."[53] As such forces cannot be stopped or repelled, they would need to be contained, managed, and directed towards an orderly transition from an imperial world to a world of US *global* hegemony. The use of a natural metaphor to describe anticolonial movements was intentional, for they emerged organically in societies racialised as disordered and existing in a state of natural irrationality or backwardness. By portraying decolonisation as taming nature, the Eisenhower administration made it part of modernisation. 'Modernization' became the social evolutionary theory of comparative political and economic development underpinning the US-led efforts to shape a postwar, postcolonial order.[54]

Modernization theory was the overarching analytical rubric for understanding anti-colonial insurgencies. For instance, as one of the factors of insurgency, the 1962 US Overseas Internal Defense Policy (OIDP) states that "the revolution of modernization can disturb, uproot, and daze

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[51] Patricia Owens, *Economy of Force: Counterinsurgency and the Historical Rise of the Social* (Cambridge University Press 2015), 175.

[52] Ibid, 201

[53] Matthew Connelly, *A Diplomatic Revolution: Algeria's Fight for Independence and the Origins of the Post-Cold War Era* (Oxford University Press 2003), 189.

[54] Owens (n 51), 219.

a traditional society."[55] Insurgency was theorised as a negative consequence of rapid adjustment to economic development in countries designated as 'developing', where the shift towards a modern capitalist consumer economy put pressure on traditional society leading to disorder and instability.[56] In the context of Vietnam, the long-running anticolonial war of liberation by the People's Army of Vietnam against France had been contained through the Geneva Accords of 1954 which partitioned the country into two, communist North Vietnam and the authoritarian US-client state of South Vietnam. From the American perspective, the issue wasn't that Vietnamese village life was disintegrating in the face of modernity. Rather, the problem seemed to be that communism, an apparent perversion of modernity, was providing political and militant coherence to the village.[57] The 'village' represented stubborn resistance to modern social reorganisation, and therefore a threat to stability and order which had to be overcome through a commitment to the use of coercive, lethal force.[58]

Economic historian Walt Rostow's *Stages of Economic Growth: A Non-Communist Manifesto* (1960), presented a particularly militarised version of modernisation theory which defined the Kennedy and Johnson administrations policies in Vietnam. All societies, according to Rostow, evolved along distinct stages of economic development which were observable and objective. This linear, universal trajectory of socioeconomic development unfolded across five successive stages, beginning with the "traditional society" which progresses to a society with the "preconditions for take-off".[59] The "take-off" is where the "old blocks and resistances" to stable economic growth are overcome, following which the society exhibits a "drive to maturity" by further developing an industrialised economy which can support the final stage of growth – "the age of mass high consumption".[60] This model of stages of growth first appeared in a document prepared by Max Millikan and Walt Rostow for President Eisenhower in 1954.[61]

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[55] United States Agency for International Development, 'Overseas Internal Defense Policy' (1962), 3 <https://pdf.usaid.gov/pdf_docs/pcaac471.pdf> accessed 13 January 2025.

[56] Austin G Long, *On 'Other War': Lessons from Five Decades of RAND Counterinsurgency Research* (RAND, National Defense Research Institute 2006), 22.

[57] Owens (n 51), 212.

[58] Michael E Latham, *The Right Kind of Revolution: Modernization, Development, and U.S. Foreign Policy from the Cold War to the Present* (1. printing, Cornell paperbacks, Cornell University Press 2011), 123.

[59] Walt W Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (3rd ed, Cambridge University Press 1997), 4-7.

[60] Ibid, 8-11

[61] Janeen M Klinger, *Social Science and National Security Policy: Deterrence, Coercion, and Modernization Theories* (Palgrave Macmillan 2019), 153.

Rostow's economic thinking was a blend of psychological stage thinking and racialised civilisational progress narratives, wherein the socioeconomic development of the nation was tied to the psychosocial development of its population. This is obvious from his emphasis on understanding society as "the essentially biological field of economic growth".[62] Societies were natural, organic, "interacting organisms" advanced through economic changes as a result of human motivation for industrial and capitalist development.[63] The optimum growth and health of national societies could be disrupted by "a disease of the transition" in the form of Third World liberation movements, whom Rostom likened to "scavengers of modernization", leading to the developmental disease of communism.[64] For progress to the 'take-off' stage, which required, recall, the overcoming of obstacles to stable capitalist economic growth, Rostow notes the importance of "external intrusion" by more advanced societies.[65] Rostow and his theory of modernization as unfolding across progressive stages of growth was fundamentally a liberal internationalist vision that envisioned US hegemony as global leadership and not as a continuation of imperialism.[66] Thus, instead of socialist anti-colonialism, revolution could be achieved through planned capitalism and foreign aid, infusing the postcolonial world with modernization theory's capitalist spirit.

It's not my aim to suggest that Rostow, or modernization theory, is singularly responsible for influencing US counterinsurgency practice during the Cold War, which drew inspiration from the practices of late-colonial British and the French counterinsurgencies and was directed by various institutional actors with divergent beliefs. Nonetheless, the impact of Rostow and the theory he promoted cannot be understated. Aside from his participation in numerous Kennedy Administration committees, especially the NSC Counter-Guerrilla Warfare Task Force, which established the Special Group Counter-Insurgency, and his pivotal role in creating the counterinsurgency seminar based at the Foreign Services Institute that trained senior officials, Rostow and modernization theory's imprint is clearest in the OIDP.

The OIDP started its life as a US State Department Policy Planning Committee report titled "Internal Defense of Less Developed World" published in 1961.[67] Yet, it wasn't until a year later,

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[62] Rostow (n 59), 36.

[63] ibid, 2.

[64] ibid, 162; Walt W Rostow, 'Countering Guerrilla Attack' in Richard A Falk, *The Vietnam War and International Law, Volume 1* (Princeton University Press 1968), 128-129.

[65] Rostow (n 59), 6.

[66] Khalili (n 19), 40.

[67] James Dingeman, 'The Special Group (Counterinsurgency) from January 18, 1962, to November 21, 1963' (1964) Memorandum 12-M–3087, 5.

with the maturation of the Kennedy administration's counterinsurgency apparatus, the Special Group Counter-Insurgency (SGCI), which approved the OIDP for "the use of all departments concerned with internal defense of the less developed world" and as the doctrine "for countering subversive insurgency and prevent its outbreak in countries with weak and vulnerable societies".[68] It views the societies of 'underdeveloped nations' through a pathological gaze, where social relations and institutions are "extremely malleable", existing as "shapeless, frequently illogical political units".[69] This purported incoherence of society becomes stressed through the developmental process of modernisation and the global power contest between communism and capitalism, vying for control over the trajectory of the developmental process, leading to the breakdown of internal security by communists.[70] Furthermore, the "psychological gap between the government and the people" is unable to address the "false hopes" encouraged by communism amongst students, the urban under-privileged, and the rural dispossessed, which exacerbates the vulnerability of developing states to communist subversion.[71] Therefore, the role of the US was to support the "immunization of vulnerable societies" through the establishment and strengthening of intelligence and internal security organisations, as well as defeating insurgencies with military and non-military means.[72]

The programme of armed social work envisioned by the OIDP was to be directed towards the local population, where all the resources, motives, and targets of struggle could be found. "Society itself" was at war.[73] The prophylaxis for this insurgent virus prescribed by the OIDP was "the development of indigenous capabilities" to address irruptions of internal subversion and insecurity. [74] The US strategy was a two-shot combination of a "rapid and incisive" local military response with civil reforms directed towards "ameliorating the conditions contributing to the

<https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/MDR_Releases/FY12/12-M-3087%20The%20Special%20Group%20(Counterinsurgency)%20from%20January%2018,%201962,%20to%20November%2021,%201963.pdf> Accessed 13 January 2025.

[68] National Security Action Memorandum 182: Counterinsurgency Doctrine (13 August 1962) <https://www.jfklibrary.org/asset-viewer/archives/jfknsf-338-010#?> Accessed 13 January 2025. For a detailed institutional history of the emergence of Special Group Counterinsurgency and the US OIDP see Jeffrey H Michaels, 'Managing Global Counterinsurgency: The Special Group (CI) 1962–1966' (2012) 35 Journal of Strategic Studies 33.

[69] OIDP (n 55), 2.

[70] Ibid, 4-5.

[71] Ibid, 6.

[72] Ibid, 9

[73] Ibid, 7

[74] Ibid, 3

insurgent outbreak." Conducted in parallel, these operations would provide the necessary safeguarding of the developmental process of the country. To ensure that the trajectory of modernisation unfolded safely and avert any future crises generated by the transformation, the OIDP enumerated methods of support US interdepartmental 'Country Teams' could undertake. These methods, which targeted agrarian society, included land reform to address the "primitive forms of tenancy and oppressive conditions" of peasants, civic action through road construction and irrigation projects, community development to establish "two-way channels of communication between the rural sector and the government," social projects to resolve mass discontent, and education and training programs aimed at labour and youth. [75] Importantly, the modernisation of agricultural society would occur alongside the shaping of local leader groups favourable to US objectives. These leader groups would comprise of "political leadership, the intelligentsia, the military and police, the civil bureaucracy" and the middle class in general.

The shaping of a professionalised middle-class is key to the vision of permanent security put forward by the OIDP, where this class of leaders would act as the first line of defence against communist insurgency. The securitised human which emerges through the US design of liberal internal defence within modernising Third World societies is mimetic in its orientation towards a global free-market driven and consumer-oriented Western European model of being. This particular mode of economic being, which Wynter refers to as *homo oeconomicus*, projects itself onto and incorporates within itself "all those who belong to the now economically Westernised middle classes; their working classes; and their criminalized and jobless underclasses."[76]

This figure of liberal securitised humanity, as produced through the logics of capitalist socio-economic development, in-turn ensures the "*symbolic death*" of those dysgenic to its survival.[77] For counterinsurgency, this logic is manifested through the reconceptualization of depopulation and concentration as protection, development, and improvement – exemplified by the US counterinsurgency campaign in Vietnam. By the time the OIDP became the doctrine for counterinsurgency operations, the war with the National Liberation Front (NLF) was emerging as a crucial test case of America's capability to suppress wars of national liberation.

Villages, which represented the critical social and political organizational level in the anthropological knowledge on Vietnamese society became the key site for honing the pillars of internal defence and development to achieve the modernisation of the Vietnamese peasantry.

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[75] Ibid, 12-13

[76] Katherine McKittrick and Sylvia Wynter, 'Unparalleled Catastrophe for Our Species?', *Sylvia Wynter: On Being Human As Praxis* (Duke University Press 2014), 19.

[77] Ibid.

The NLF fighters were clearly being supported by the rural communities who provided cover, armaments, intelligence, and staple resources. Yet ascribing social and political agency to the rural peasantry challenged American claims to legitimacy. Once again, like in the context of late-colonial counterinsurgencies discussed in the previous section, anxieties regarding peasant agency were managed through sociological generalisation which denied any such political coherence. Instead, the rural population was seen as pliable through the application of "revolutionary development", a program which sought to provide the rural population into a "new life" under the control of the South Vietnamese client-government of Ngo Dinh Diem.[78]

The Strategic Hamlets were the cornerstone of the nation-building programme to give shape to the "molten mass" of Vietnamese peasantry's social existence.[79] Operationally, the Strategic Hamlets program served, to an extent, the same purpose as the carceral resettlements conceived by Thompson, Kitson, Galula, and Trinquier as part of their strategies to control the population.[80] But unlike its predecessors, the Strategic Hamlets programme as implemented in Vietnam was larger in scale and more efficient. Millions of Vietnamese were forcibly removed. For instance, during Operation Sunrise in March 1962, one of the first implementations of the programme, a plan to create new hamlets in parts of Binh Duong resulted in the resettlement of approximately 200 families, 140 of whom were resettled at gun-point.[81] Entire villages were levelled with ploughs and bulldozers and homesteads were burned down to indicate that there was no prospect of return. The sequence of depopulation and concentration proceeded methodically. The 1968 Handbook for Pacification gives some insight into the procedure to establish a New Life Hamlet, one of the later versions of the Strategic Hamlet, beginning with military operations using heavy force to 'clear' the area of Viet Cong fighters. Villagers were then marched to a 'secure' space where they were forced to build new homes, dig trenches, and create a defensible perimeter with barbed wire. Liberal models of land reform were applied to the territory within the new villages, which was distributed as plots to which families held individual legal title and on which they were mandated to build their new accommodation and farms.

These efforts to build the Strategic Hamlets were part of the modernising labour to transform the Vietnamese peasantry into ideal citizens committed to national development across the stages of economic growth. As a Joint United States Public Affairs Official (JUSPAO) explained to

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[78] United States Army, 'Handbook for Military Support of Pacification' (1968), 7.

[79] Owens (n 51), 231.

[80] The programme in fact drew inspiration from Robert Thompson's strategic hamlets plans used in Malaya, Thompson also served as the head of the British Advisory Mission (BRIAM) in Saigon.

[81] Latham (n 58), 140.

Mary McCarthy in her recollection, "we're teaching them free enterprise"; by demanding displaced families invest their own labour and their own money to build a house, instead of providing them with a new free house, it would make them feel that the house was *really theirs*.[82] Once concentrated within the hamlets, Rural Reconstruction Teams took a census of all the families, distributed identity cards, and developed a photographic map that included key information on all inhabitants, such as past connections to communist politics. These measures enabled Americans to craft a "front in a frontless war".[83] The hamlets provided the necessary contrast to the Vietnamese agricultural landscape, by juxtaposing the concrete strategic hamlet with the abstract village.

The official policy on strategic hamlets imagined an idealised liberal existence for the Vietnamese peasantry within these secured spaces "where a new life would be developed… and where improved standard of living will prevail for all."[84] This vision did not come to pass, as the outcome of the strategic hamlets program was disastrous and accelerated the deterioration of American and South Vietnamese government control over the countryside. When the programme of modernising resettlement failed to combat the purported isolation of Vietnamese villages, fighter bombers were tasked with eradicating 'enemy structures', consisting of any shelter visible from above.[85] While in the early 1960s modernisation had been framed as an alternative to direct U.S military involvement, its practice soon pivoted towards massive bombing campaigns and the deployment of troops, ultimately resulting in the stationing of half-million soldiers in South Vietnam. [86] The move from building towards bombing was a natural progression of modernization theory, with Rostow subsequently becoming an arch supporter of carpet-bombing villagers to shape their behaviour.[87]

Modernising the Vietnamese peasant into securitised humanity's particular mode of existence, that is to make them into subjects appropriately assimilated into a nation driven by accumulation in the name of freedom, was a task worthy of international support as provided by the UN Development Program, World Health Organisation, and UN Children's Fund.[88] The carpet

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[82] Mary McCarthy, *Vietnam* (New York, Harcourt, Brace & World 1967), 20 <http://archive.org/details/vietnammccarich> accessed 13 January 2025.
[83] Nick Cullather, '"The Target Is the People": Representations of the Village in Modernization and U.S. National Security Doctrine' (2006) 2 Cultural Politics 29,41.
[84] United States Army Handbook for Military Support of Pacification (n 79), 7.
[85] Cullather (n 83), 42-43.
[86] Latham (n 58), 142.
[87] Khalili (n 19), 39.
[88] Owens (n 51), 235.

bombing, environmental destruction, and the decimation of all aspects of Vietnamese rural life was instead a cruel, albeit unfortunate, consequence of Vietnamese resistance. Despite its cruelty and consistent failure, the depopulation of villages and forced concentration of peasants into settlements remained at the heart of US counterinsurgency strategy, validated by newer forms of social technocratic governance such as 'Hamlet Evaluation Worksheets'.[89] By the 1968 Tet Offensive, it was clear that the US would not defeat the NLF by fighting for control over the population in the countryside, instead the rural population would have to be driven into government-controlled cities through the systematic depopulation of the countryside through aerial bombardment and use of chemical weapons. This forced expulsion into cities was still understood as a "modernization experience" as it eliminated the conditions of rural life which made resistance possible.

The failures of modernising warfare pursued by the US in Vietnam shadowed the practice of achieving internal defense in decolonising nation-states through counterinsurgency warfare. Nonetheless, the key elements for securing humanity for continuous development through counterinsurgency warfare as armed social work emerge within this scene. In particular, the practices of concentration and surveillance utilised against the rural population of Vietnam, the infusion of coercive violence into humanitarian activities, and the embedding of anthropological knowledge into a form of socio-technical governance all became key techniques of counterinsurgency warfare. As this scene has shown, the development of counterinsurgency warfare as a particular doctrine of using force in nations undergoing decolonisation provided the means through which modes of life existing at odds with securitised humanity were coercively assimilated into it. In this manner, counterinsurgency warfare, through its forceful application of the modernising agenda, shaped and facilitated the over-representation of securitised humanity as universal. In the next scene, I will demonstrate how the above techniques of counterinsurgency warfare were refined further and deployed in Afghanistan and Iraq as part of the twenty-first century War on Terror to secure populations harbouring terrorists and other risks to good governance.

2) Securing risky populations in the Global War on Terror

The so-called 'Global War on Terror' (GWOT), with its regimes of rendition, extrajudicial torture, and militarised intervention into South-West Asia and North Africa, has been described as an

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[89] Moritz J Feichtinger, 'Computing Counterinsurgency: The Hamlet Evaluation System (HES) and Databasing During the Vietnam War' (2022) 44 IEEE Annals of the History of Computing 28.

"everywhere war" unfolding "forever".[90] It has been characterised by its suturing of disparate geographies inhabited by an "unseen enemy" with a temporal arc extending from pre-emption towards the indefinite. The execution of this generation-long war has linked places like Yemen, Iraq, Afghanistan, Pakistan, Somalia, and Palestine, as well as peoples who are sometimes Arab but mostly Muslim, to the 'fact' of terrorism.

The US-NATO invasion of Afghanistan in 2001 and the invasion of Iraq soon after, in 2003, resuscitated the ghosts of liberal modernisation theory, discussed in the previous section, under the moniker of 'counterterrorism'. The move towards counterterrorism was more than a discursive shift away from the language of insurgencies that characterised the period of decolonisation. Counterterror operations retained the key ethos of counterinsurgency warfare as securitised development, but complemented it with the use of covert operations, remote warfare, and intelligence gathering.[91] Consequently, for the purpose of this section, counterterrorism is best understood as "full spectrum" counterinsurgency.[92]

By locating the events of September 11, 2001, in "the poverty, weak institutions, and corruption" of Afghanistan, the Bush Administration presented the proliferation of terrorism as the new danger facing civilisation.[93] This discourse spatialised the shadowy terrorist as existing within spaces of uneven development, coupling a notion of 'risk' with the security of economic

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[90] Derek Gregory, 'The Everywhere War' (2011) 177 The Geographical Journal 238.

[91] Laleh Khalili, 'Counterterrorism and Counterinsurgency in the Neoliberal Age' in Amal Ghazal and Jens Hanssen (eds), *The Oxford Handbook of Contemporary Middle-Eastern and North African History* (Oxford University Press 2018). The difference between counterterrorism and counterinsurgency has been theorised in various ways, for example see: Jason Rineheart, 'Counterterrorism and Counterinsurgency' (2010) 4 Perspectives on Terrorism 31; Jonathan Gilmore, 'A Kinder, Gentler Counter-Terrorism: Counterinsurgency, Human Security and the War on Terror' (2011) 42 Security Dialogue 21; Michael J Boyle, 'Do Counterterrorism and Counterinsurgency Go Together?' (2010) 86 International Affairs 333. There's a general agreement that counterterrorism represents an extension of counterinsurgency warfare through the use of 'shadowy' practices that prioritise kinetic force.

[92] "full spectrum dominance and "full spectrum operations" are terms utilised by the US defense and security establishment to describe the form and extent of militarised operations and strategy to ensure US hegemony. For academic literature engaging the term critically see: R Brian Ferguson, 'Full Spectrum: The Military Invasion of Anthropology' in Neil L Whitehead and Sverker Finnström (eds), *Virtual War and Magical Death* (Duke University Press 2013); Maria Ryan, '"Full Spectrum Dominance": Donald Rumsfeld, the Department of Defense, and US Irregular Warfare Strategy, 2001–2008' (2014) 25 Small Wars & Insurgencies 41; John Morrissey, 'Securitizing Instability: The US Military and Full Spectrum Operations' [2015] Environment and Planning D: Society and Space.

[93] White House, 'The National Security Strategy' (September 2002), 4 <https://2009-2017.state.gov/documents/organization/63562.pdf> Accessed 13 January 2025

development. While the discourse on modernisation and its implementation into practice by Cold War liberal counterinsurgencies, as previously discussed, was based on the interrelationship between security and development - achieving one guaranteed the other - the concept of 'risk' itself is absent from this discourse. The rendering of peoples and the places they inhabit as 'risky', and the regulation of that risk through military strategies of securitization, is key to the permanent interventionism envisaged by counterterror operations. As Morrisey notes, a pre-emptive "geopolitical and geoeconomic logic of risk management" underpins the current United States Central Command (CENTCOM) strategy, coupling global economic risk with a Western responsibility to intervene, police, and regulate.[94]

Although the counterterror counterinsurgency campaigns of Afghanistan and Iraq have been described as campaigns of neoliberal securitisation, the focus of such descriptions has generally rested upon the use of private military companies, new technologies of remote warfare, and surveillance through Big Data.[95] Apart from a focus on neoliberal practices of war-making, the nation-building projects in Iraq and Afghanistan as developed by the US coalition forces have also been understood as an expression of neoliberal economics and governance.[96]

However, viewing these counterinsurgency operations through the lens of global economic risk management reveals the pernicious workings of neoliberalism as a rationale operating to transform modes of being deemed inherently risky into secure and economically viable. To some extent, Owens' analysis of the US counterinsurgency as a form of militarised household management "organised around the administration of life processes" anticipates my argument of understanding counterinsurgency warfare as a practice which shapes human life.[97]

Crucially, unlike Owens, my analysis of counterinsurgency warfare is interested in identifying how its doctrine juridifies the particular vernacular of securitised humanity which, when put in

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[94] John Morrissey, 'Closing the Neoliberal Gap: Risk and Regulation in the Long War of Securitization' (2011) 43 Antipode 874, 890-893. For an inter-disciplinary overview of theorising 'risk' in the context of the War on Terror and its regimes of securitisation see Louise Amoore and Marieke de Goede (eds), *Risk and the War on Terror* (Routledge 2008).

[95] Khalili, 'Counterterrorism and Counterinsurgency in the Neoliberal Age' (n 91).

[96] On the twinning of neoliberal militarisation and neoliberal economics in the operations in Iraq and Afghanistan see Michael Schwartz, 'Military Neoliberalism: Endless War and Humanitarian Crisis in the Twenty-First Century' (2011) 6 Societies Without Borders 190. On a detailed study of how neoliberal logics of privatisation influenced the restructuring of Iraq's economy and subsequent governance see Kamil Mahdi, 'Neoliberalism, Conflict and an Oil Economy: The Case of Iraq' (2007) 29 Arab Studies Quarterly 1; Yousef K Baker, 'Global Capitalism and Iraq: The Making of a Neoliberal State' (2014) 40 International Review of Modern Sociology 121.

[97] Owens (n 51), 252.

practice, reproduces itself as a universal mode of being into which 'administered' populations are to be assimilated. This is an important shift, especially for understanding the gendered and racialised violence which underlies counterterrorism. Instead of understanding this violence as an outcome of counterinsurgency campaigns, improperly executed or not, my argument is that this violence is foundational to the construction of populations as risky and in need of targeted securitisation to be transformed into members of stable neoliberal societies. Transformation into secure and economically productive subjects act as the terms for humanisation and incorporation into securitised humanity, achieved through the violence of counterinsurgency warfare. Understood in this way, counterinsurgency warfare provides the doctrinal frame for authorising force to administer and assimilate modes of being constructed as inherent vectors of risk into a securitised humanity.

In the first part of this scene, I turn towards the 2006 United States *Counterinsurgency Field Manual* (FM 3-24) to provide a diagnosis of the operating doctrine for the counterterror counterinsurgency campaigns in Afghanistan and Iraq. I demonstrate that its central ethos of promoting "security and the rule of law" through the establishment of social services and economic growth is not merely an iron fist of military strategy cloaked by the velvet glove of promised economic development. Instead, it is the epistemic bedrock upon which counterinsurgency operations are designed, executed, and evaluated. My analysis of the *Field Manual* shows how the counterinsurgency campaigns in Iraq and Afghanistan were designed with an explicit rationale of neoliberal development as the purveyor of security. These campaigns acted as an exercise to acquiesce the subjectivity of Iraq and Afghanistan's population to the particular vision of a self-regulating economy housed within a liberal democratic state, rendered universal within the pages of the manual. The use of a precise mix of "offense, defense, and stability operations" to counter and co-opt the insurgency is accompanied by a discourse of counterinsurgents assuming "more risk".[98] This risk is naturalised as part of operating in a tribal context where the insurgent hides in the population, necessitating the use of techniques which make visible the 'human terrain' for the appropriate assimilation of compliant 'noncombatants' and the elimination of resistant insurgents.[99]

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[98] The rhetoric of counterinsurgents assuming more risk is consistent throughout FM 3-24 and in fact forms the basis of the operational trade-off gained from integrating populations through humanitarian activities into combat operations.

[99] As I discuss in the second section of this scene, the "human terrain" system aimed at making the US operations in Iraq and Afghanistan "culturally sensitive". For critical engagements with the use of "human terrain" teams see: James Der Derian, 'The Desert of the Real and the Simulacrum of War' (2008) 84 International Affairs 931; Anna Stavrianakis and Jan Selby, 'War Becomes Academic: Human Terrain, Virtuous War and Contemporary Militarism. An Interview with James Der Derian',

The second part of this scene considers the intertwining of anthropological expertise with technocratic practices utilised to map Iraqi and Afghan society. The recognition of Iraqi and Afghan life as 'tribal' was an epistemic exercise to establish the population as an unchanging, immovable object. As Manchanda has noted, the epistemic fiction of "tribes" in Afghanistan is rooted in the British colonial categories of tribal and martial identities in the Northwest of the South Asian subcontinent, a process of racialisation that I discuss in the previous chapter.[100] In the US counterinsurgency operations, "tribe" acts as a metonym for differentiating and organising Iraqi and Afghan modes of life and social relation into patterns of hierarchic difference legible to American and European ways of organizing society. The insistence on viewing Afghan and Iraqi societies as "naturally tribal" collapses various linguistic and cultural differences into neat silos for the purpose of knowability. While the notion of 'tribal life' is orientalising and reiterates racial essentialism, recognising that the specificity of the perspective it is located within tells us more about the lenses through which such knowledge is produced and its weaponization in counterterror surveillance, confinement, and extrajudicial assassination.

a) _Counterinsurgency Field Manual (FM 3-24) and the 'precise and discriminate use of force'_

The US invasion of Afghanistan in 2001, so-called 'Operation Enduring Freedom', initially employed an array of techniques including the embedding of Joint Special Operation Command (JSOC), aerial bombardment, and provision of financial and military aid to the Afghan Northern Alliance fighters.[101] It transitioned to a counterinsurgency mode in 2003 under the joint

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Militarism and International Relations (Routledge 2012); Maja Zehfuss, 'Culturally Sensitive War? The Human Terrain System and the Seduction of Ethics' (2012) 43 Security Dialogue 175; Paul Joseph, _"Soft" Counterinsurgency: Human Terrain Teams and US Military Strategy in Iraq and Afghanistan_ (Springer 2014).

[100] Nivi Manchanda, _Imagining Afghanistan: The History and Politics of Imperial Knowledge_ (Cambridge University Press 2020). See Charles Tripp, _A History of Iraq_ (Cambridge University Press 2007) for an account of how the British drew on their experience in Afghanistan to handle and often make-up tribal difference during their Mandate in Iraq, and often implemented policies that aligned with their idea of 'indigenous tribal authority'.

[101] This multi-pronged strategy is characteristic of the previously mentioned idea of "full-spectrum dominance". Especially the novelty of JSOC as a "networked unit", which has been described as made up of hybrid blends of hierarchies and networks across previously compartmentalized US military commands and agencies who share information and combine in shadowy targeted operations around the world. For a fantastic overview on the transformation of JSOC away from an elite strike team to a networked form of organisation and warfare see Steve Niva, 'Disappearing Violence: JSOC and the Pentagon's New Cartography of Networked Warfare' (2013) 44 Security Dialogue 185.

command of US-NATO and local Afghan forces. The invasion of Iraq in 2003, Operation Iraqi Freedom, was by contrast closer to conventional (though asymmetric) military operations resulting in the rapid defeat of the Iraqi military, the execution of Saddam Hussein, and the US occupation of Iraq's territories and major cities. The campaign shifted to a counterinsurgency with an emphasis on killing the irregular forces of Al-Qaeda and the Ba'athist Party.

The shift towards counterinsurgency was precipitated by the escalation in attacks against US-NATO forces, public criticism of rendition and torture by the US in Abu Ghraib and Bagram, and scrutiny over the escalation of civilian deaths in Iraq.[102] FM 3-24 is an artefact of this shift towards a "kinder and gentler counterinsurgency". It takes account of the criticisms levied at the US campaigns, shows an awareness of the colonial legacy of counterinsurgency operations which can nonetheless be surmounted by an appeal to international rights standards, and presents itself as politically neutral regarding the choice of war.[103] By and large, FM 3-24 is a manual dedicated to the management of the risks posed by 'population-centric' warfare through a calibration of force enabling the securing and controlling of the local population.

Echoing late-colonial theories of population-centric counterinsurgencies, in the shifting "mosaic war" unfolding between insurgents and counterinsurgents, the population is yet again articulated by the *Field Manual* as the key site for competition. "In *almost every* case", the manual stipulates,

> "counterinsurgents face a populace containing an active minority supporting the government and an equally small militant faction opposing it. Success requires the government to be accepted as legitimate by most of that uncommitted middle."[104]

The figment of mobilising a passive or neutral population and winning their legitimacy is crucial to realising the counterinsurgent vision for security contained within FM 3-24, as victory is only achieved when the population consents to the legitimacy of the government and stops actively or passively supporting the insurgency.[105] A passive, uncommitted, population represents a

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[102] Khalili (n 91), 367

[103] Sarah Sewall, 'A Radical Field Manual' in United States Army and Marine Corps, *Counterinsurgency Field Manual U.S. Army Field Manual No. 3-24/Marine Corps Warfighting Publication No. 3-33.5* (University of Chicago Press 2007).

[104] FM 3-24, 36 (emphasis added). See also figure 1-2 for a visual description of the proportional division of the population across levels of support.

[105] FM 3-24, 6

potential carrier of risk, which can only be contained through the full-spectrum of counterinsurgency warfare.

The execution of counterinsurgency operations is analogous to a serious medical procedure in FM 3-24. Organised across three phases, the first phase aims to "stop the bleed" with an emergency first-aid procedure of limited offensive operations targeting insurgents complemented by stability operations focused on civil society.[106] The next phase, "recovery", is the middle stage characterised by restoring the health of the 'host nation' towards achieving long-term stability through the development of governance institutions, provision of essential services, and simulation of economic development.[107] The final stage is the "move to self-sufficiency", characterised by the expansion of stability operations and integration of local police and military forces in the carrying out of counterinsurgency operations, leading ultimately to a government with legitimacy gained through providing security and good governance.[108] The medical analogy is not simply a rhetorical device to convey the surgical nature of these operations, it also reiterates the necessarily bio-centric view of nation-building contained within FM3-24. The body of the nation becomes legible through the health of the population which is measured through their participation in civil and economic life.

Within FM 3-24, the establishing of security is intrinsically linked to an assumption that once secure, populations will readily participate in public economic activity and become workers seeking employment. Moreover, the popular participation in civil and economic life will establish an "environment that attracts outside capital for further development."[109] This assumption can be seen at play in an example of 'success' in the manual provided by General James Mattis – well-known for leading the initial US counterterror operations in Afghanistan and Iraq, and the May 2004 targeting of a wedding party in the Anbar province of Iraq near the Syrian border which killed 45 people. Recounting the operations led by him in the Anbar province, he notes the importance of putting the "populace to work" in establishing a secure environment.[110] Unemployment, especially of 'military-aged-males', was believed to contribute to the insurgency and could be tackled by employing the young men in large-scale infrastructure rebuilding projects.[111] As Mattis reiterates, "Simply put, an Iraqi with a job was less likely to succumb to

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[106] FM 3-24, para 5-3 – 5-4, 152-153

[107] FM 3-24, para 5-5, 153

[108] FM 3-24, para 5-6, 154

[109] FM 3-24, para 5-12, 157

[110] FM 3-24, 148

[111] Lin Todd, 'Iraq Tribal Study – Al-Anbar Governorate' (United States Department of Defense 2006) <https://www.comw.org/warreport/fulltext/0709todd.pdf>, 6-47.

pressure to support the insurgency."[112] The forms of employment specified by the manual include fossil fuel mining and refining, transportation, manufacturing, building, food processing, and, education and training. These industries and the types of economic activities associated with them are specific to the development of an industrialised state with a commodity-dependent economy.

The neoliberal vision of FM 3-24 provides a particular understanding of society as a network of market-based relations, where the population is divisible into individual entrepreneurs and families living within a state whose key functions include "the authority to regulate social relationships, extract resources, and take actions in the public's name."[113] The end logic of the counterinsurgency operations is to instil in the population a belief that "peace pays".[114] The interrelationship between economic development and securitised governance is central to the nation-state building project envisaged within Iraq and Afghanistan. In some ways this interrelationship was also important to the liberal counterinsurgencies of the Cold War, as my discussion of the US war in Vietnam in the previous section shows. However, unlike those campaigns waged to repress national liberation movements through modernisation, the campaigns in Iraq and Afghanistan fulfilled the specific purpose of developing an industrialised state with citizens acting as rational actors who see the economic benefit in security and consequently support the counterinsurgency.

The task of creating "a government in a box, ready to roll in", as General Stanley McChrystal referred to the counterinsurgency operations in Afghanistan,[115] necessitated the careful calibration of force to produce individual subjects acquiescent to the norms of a healthy neoliberal democratic society. Persuading people's 'hearts' that their success is connected to the success of the counterinsurgency, as well as their 'minds' to understand that the counterinsurgency force can protect them and that resistance is pointless, was to be achieved through the use of measured force. This insistence on "kindness and compassion" and an attitude of friendliness and openness towards the population is, at first glance, incongruent to the violence implicit in the operations described in FM 3-24 and our memory of the explicit violence the conduct of these operations in Iraq and Afghanistan amounted to. These affective practices are geared towards managing the presumed neutral and passive population. Yet these efforts at

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[112] FM 3-24, 148

[113] FM 3-24, para 1-115, 37

[114] FM 3-24, table 5-6, 173

[115] Dexter Filkins, 'Afghan Offensive Is New War Model' *The New York Times* (12 February 2010) <https://www.nytimes.com/2010/02/13/world/asia/13kabul.html> accessed 13 January 2025.

intimacy and relation, as Khalili notes, are not neutral.[116] In fact, they are an approach rooted in "calculated self-interest, not emotion".[117]

The belief that Iraqi and Afghan peoples' subjectivity is malleable and could be assimilated into the universalising vernacular of securitised humanity through the coercive use of force is evidence of how counterinsurgency warfare acts by dominating and extracting collaboration from the population. Through the practice of "clear-hold-build" tactics, the counterinsurgent can "restructure the environment to displace the enemy from it."[118] The implementation of these tactics, and evaluating their success, is wholly dependent upon the ability to co-opt the population. During the 'clear' stage, counterinsurgents operationalise their relationship with the population to identify and isolate the insurgents through the controlling of nearby borders and the encirclement of existing homes. As Steve Niva in his assessment of the 'surge strategy' in Iraq states, the surge in military personnel directly resulted in a 'surge' of walls, mirroring Israel's strategic approach of wall building and enclavisation within occupied Palestinian territory.[119] Encircling and controlling existing family homes rendered them as immovable sites against which populations were to be fixed, and insurgents were drawn in to be 'neutralised'.[120] Conscripting the people's attachments to their homes, landholdings, relatives, businesses and so on allows the counterinsurgent to wield them with coercive power. While house to house searches combined with a "carefully controlled application of violence" cleared the insurgents, it is the quotidian attachments to the domestic space which, as Owens notes, "hold the centre of the conflict in place".[121]

Once the area was cleared of the insurgents, it needs to be 'stabilised' through the setting up of checkpoints and barriers. Unlike the Strategic Hamlets of Vietnam, where peasants were forcibly relocated to new settlements behind barbed wire, the establishing of 'gated communities' took the reverse approach. Referred to as "urban tourniquets", gated communities enabled the concentration of the existing population for surveillance and the identification and elimination of

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[116] Laleh Khalili, 'The Uses of Happiness in Counterinsurgencies' (2014) 32 Social Text 23, 38.

[117] David Kilcullen, '"Twenty-Eight Articles": Fundamentals of Company-Level Counterinsurgency' [2006] Military Review 103, 105.

[118] Ibid, 107

[119] Steve Niva, 'Walling Off Iraq: Israel's Imprint on U.S. Counterinsurgency Doctrine' (2008) 15 Middle East Policy 67,74.

[120] Owens (n 51), 272.

[121] Ibid.

any remaining insurgents.[122] For example, the enclavisation of Tal Afar under Colonel McMaster, cited as an example within FM 3-24, consisted of erecting a high berm around the city, requiring all traffic to pass through checkpoints staffed with informants.[123] A mass sweep of 'military-aged males' was conducted, wherein a masked informant gave lines of detainees a thumbs-up or -down to signal their guilt or innocence.[124] The operations recovered little more than "kitchen knives, wood saws, some ragged old pistol belts, and empty bottles of antibiotics", which were photographed and passed as 'evidence' of the insurgency.[125]

In Iraq these gated communities materialised the ethno-sectarian divides the United States had projected upon the population, "determining societal relationships" into the built environment through blast walls, barriers, and checkpoints. These ethnic enclaves soon became criticised as 'ghettos', a criticism Kilcullen dismissed as Al Qaeda propaganda,[126] and were sites of grave violence between Sunni insurgents and US funded and trained, predominantly Shia, police commando forces – entrenching the narrative of incorrigible sectarian divisions between 'extremist Islam' and 'moderate Islam'. The mass incarceration of populations within existing inhabited areas or by resettling them into new townships with monitored entries and exits, like in Camp Fallujah, positioned them either as hostages or as sources of intelligence on insurgent forces engaged in fighting the US military and its coalition forces. Moreover, "food control" in the form of either confiscating or rationing food, and the destruction of most agricultural products reinforced to the population that supporting the insurgency created a risk for themselves and their neighbours.[127] Despite the difference of strategy between enclavisation in Iraq and Strategic Hamlets in Vietnam, both pursued the same objective of concentrating populations for the practical imperatives of surveillance and isolation from the insurgency, alongside transforming Iraqi social identity and family structures towards individualisation like in Vietnam.

The application of clear-hold-build tactics in counterterror insurgencies undoes the artificial separation between insurgents and the passive population, with consequences for the attendant

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[122] David Kilcullen, 'The Urban Tourniquet -- "Gated Communities" In Baghdad' (27 April 2007) <https://smallwarsjournal.com/blog/the-urban-tourniquet-gated-communities-in-baghdad>.
[123] FM 3-24, 182.
[124] FM 3-24 182-184; this account is further corroborated by the testimony of Iraq War veteran Scott Ewing in Aaron Glantz and Iraq Veterans Against the War, *Winter Soldier: Eyewitness Accounts of the Occupation* (Haymarket Books 2009), 70-73.
[125] *Winter Soldier*, 72
[126] Kilcullen, 'The Urban Torniquet' (n 122)
[127] Derek Gregory, 'Dis / Ordering the Orient' in Tarak Barkawi and Ketih Stanski (eds), Orientalism and War (Oxford University Press 2014), 158

discrimination between civilians and combatants in military operations required by international humanitarian law. FM 3-24 uses the ambiguous distinction of 'noncombatant' to identify those who are neither insurgents nor counterinsurgents. Whether or not they pose a threat themselves, mosques, religious schools, political parties, and businesses are folded into the targeting logics of counterinsurgency operations, on the basis of their potential passive or active support of the insurgency in the future.[128] As the manual clarifies, "the focus for targeting is on people",[129] it differentiates between 'lethal' and 'nonlethal' targets, although some targets such as populated areas where insurgents are believed to be operating are labelled as a mix of lethal and nonlethal targets.[130] These mix targets reiterate the oft-cited issue of distinguishing between combatants and civilians in counterinsurgencies, and to resolve this issue the manual invents a broad and permissive interpretation of proportionality expressed not in the terms of "how many insurgents are killed" but rather "which enemies" are killed.[131] Simply put, this radical interpretation of the principle of proportionality instructs that the number of civilian lives lost, and property destroyed ought to be measured against the amount of harm the targeted insurgent *could* do if allowed to escape. As the section on proportionality concludes, apart from deciding between targets, the counterinsurgent should determine the "acceptable risk" to the bystander population.[132] The emphasis on the speculative future impact of terroristic violence is an apprehension of risk, which is diffused across the population despite claims of a neutral majority.

Belcher's study on the razing and rebuilding of Taroke Kalacha village in Afghanistan brings to the fore the consequences of how the above reasoning morphed 'population-centric' warfare into a warfare centred on homes. US forces turned towards Afghan village life and the household for their indirect rule. Beyond the level of discourse, this 'soft' infiltration into homes took on and facilitated harder forms which included night raids, house-to-house searches and targeted drone strikes. US forces destroyed acres of pomegranate and grape orchards, not only to clear improvised explosive devices (IEDs) but to create breaches and roads for patrolling vehicles. Homes and mosques were also destroyed for the removal of IEDs, to deny a "safe haven" for insurgents and to create sightlines for targeting and surveillance.[133] This form of armed violence

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[128] FM 3-24, para 1-90, 30

[129] FM 3-24, para 5-102, 192

[130] FM 3-24, table 5-8, 193

[131] FM 3-24, para 7-32, 247

[132] FM 3-24, para 7-33 – 7-36, 248

[133] Oliver Belcher, 'Anatomy of a Village Razing: Counterinsurgency, Violence, and Securing the Intimate in Afghanistan' (2018) 62 Political Geography 94.

materialises practices of warfare at an intimate scale, where these domestic spaces which 'hold' the counterterror operations also provide the contours for the final 'build' phase of counterinsurgency. As noted at the end of the example using Tal Afar's clear-hold-build campaign, the success of the campaign was evident through the return of the families that had fled the area. Here the return of people to their homes is co-opted into a success narrative for a campaign which violently disrupted their home lives and the people in their homes become analogous to the holding of the terrain they occupy. The occupied terrain becomes defined through the domestic "relation to life and the needs of life", which provide the necessary coordinates to map out the 'human terrain' against which fugitive insurgents can be fixed and tracked for capture.

b) *Mapping the 'human terrain' and the modification of social behaviour through force*

Counterinsurgency is a type of warfare that attaches social meaning to the administration of life, as evidenced by the insistence of the 'war on terror' on locating the cause of terrorism primarily in sociological and psychological terms, ignoring the historical arc of political relationships between the Arab world and the United States in particular and Europe in general. Amongst the many theories for insurgency in Iraq and Afghanistan, the trope of 'Islamic extremism' has endured and occupies a psychic life of its own, acting as both the context and subtext of counterterrorism. This concept of 'Islamist' violence is specifically associated with the disorder of 'tribal society', characterised by "general anomie and a sense of being victimised by a vaguely-defined West".[134] This perspective attributes the prominence of movements such as Al Qaeda and Taliban to a "series of internal dynamics within the Muslim world", specifically the existence of corrupt and autocratic regimes which suppress democracy, "a dysfunctional relationship between the sexes", and oil-dependent economies unable to provide adequate employment.[135] In sum, large groups of young Muslim men are ascribed as emasculated by a state struggling to adapt to the norms of liberal society, causing them to join 'Islamic extremists' to reclaim their traditional manhood.

Knowledge pathologizing 'Islamic' and 'tribal' society proliferated during the counterinsurgencies in Iraq and Afghanistan, which devised new practices for collecting and integrating information about society and culture into various civil and military operations. Unlike liberal counterinsurgencies, where knowledge about society and culture was utilised to

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[134]David Kilcullen, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One* (Oxford University Press 2011), 16.

[135] ibid

reshape pre-existing social norms towards accepting modernization, culture is presented as a fixed variable to be understood and operationalised in the neoliberal campaigns in Iraq and Afghanistan.[136] Consequently, counterinsurgency operations give coherence to the conceptualisation of Iraqi and Afghan life as 'tribal', materialising the terms through which this mode of living is included within a securitised humanity.

It is within this context the 'tribe' emerges as a specific object of knowledge around which the armed social work of counterinsurgency ought to be carried out. As Hanifi's Pashtun counter-narrative compellingly articulates, the pathological focus on Pashtun society and *Pashtunwali* within the militarised anthropological knowledge underpinning American counterinsurgency in Afghanistan emerged from a negligible interaction with the Pashtun communities. He shows how the construction of Afghanistan by American anthropologists as a tribal society with a Pashtun-dominant identity was favourable for designing counterinsurgency operations because it presented Afghan society as historically static, burying the various forms of historic migration and cross-border lingual and cultural exchange underpinning Afghan life.[137] Similarly, González shows how the anthropological studies of Iraqi social and cultural life constructed tribal identities and reinforced sectarian divides as "ethnographic fictions" to pit local armed groups against Al Qaeda.[138] Through these practices of entrenching identities in service of tactical needs, the counterinsurgency campaign in Iraq further fragmented the contingencies of collective identity sustaining Iraqi beingness through historical references to Mesopotamia, pan-Arabism, and pan-Islamism.[139]

As discussed in the previous section of this scene, FM 3-24 provides an insight into how the executioners of counterterror operations view society as a network of relations between rational self-reliant individuals. The basic premise of social network analysis is that the structure of relationships determines the content of those relations, providing a structural method for mapping relationships between various individuals.[140] The interaction between

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[136] On the operationalising of culture by the US counterinsurgency campaign in Iraq see Keith Brown, '"All They Understand Is Force": Debating Culture in Operation Iraqi Freedom' (2008) 110 American Anthropologist 443.

[137] Shah Mahmoud Hanifi, 'The Pashtun Counter-Narrative' (2016) 25 Middle East Critique 385.

[138] Roberto J González, 'On "Tribes" and Bribes' (2009) Focaal: Journal of Global and Historical Anthropology
105, 109-111.

[139] Eric Davis, *Memories of State: Politics, History, and Collective Identity in Modern Iraq* (University of California Press 2005).

[140] Owens (n 51), 254.

these 'nodes' of a social structure, particularly the type of connection between them and their degree of dependence on each other, is meant to reflect the 'density' of the network and the 'centrality' of an individual 'node' to the overall social structure being mapped.[141] As a result, a social network is "a picture of the population", who it is comprised of and how its members interact with each other.[142] Social network analysis becomes the tool for making visible the obscured relations between the insurgency and the population, allowing the materialisation of a visual reality when human vision is not up to the task. Thus, as Ansorge notes, the function of the network becomes the "representation and simulation of the social ontology of the foe."[143]

The move towards 'networks' as the visual manifestation of social relations which are not readily observable produces a depoliticised practice where the nodes and the relations between them are rendered as empty receptacles of information on kinship and friendship ties.[144] Yet this depoliticised gaze is inherently politically situated in a particular view of social relations as autonomous and elastic, making it adaptable to any social reality. From this point of view, Iraqi and Afghan society is best understood as a "traditionally networked society" organised in "tribal terms".[145] Major Jim Gant of the United States Special Forces describes the nature of Afghan society as:

> "The central cultural fact about Afghanistan is that it is constituted of tribes. Not individuals, not Western-style citizens—but tribes and tribesmen … When one says, "Afghan people" what I believe they are really saying is "tribal member". Every single Afghan is part of a tribe and understands how the tribe operates and why."[146]

The centrality of the 'tribal' structure, "the oldest, most enduring and controversial social entity in the Middle East", is reiterated by the Iraq Tribal Study conducted in the Anbar province and written under contract to the Pentagon to provide necessary ethnographic knowledge to correct

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[141] FM 3-24, 317-323.

[142] FM 3-24, B-47, 324

[143] Josef Teboho Ansorge, 'Orientalism in the Machine' in Tarak Barkawi and Ketih Stanski (eds), *Orientalism and War* (Oxford University Press 2013), 141

[144] For a critique of networks as a modality of organising knowledge which entrenches the violence of international law see Ahmed Raza Memon, 'Networks, International Law and Violence: A History of a "Dialogical Interplay"' (Unpublished thesis, University of Kent 2021) <https://kar.kent.ac.uk/id/eprint/86579> accessed 13 January 2025.

[145] FM 3-24, 325

[146] Major Jim Gant, *One Tribe at a Time: A Strategy for Success in Afghanistan* (Nine Sisters Imports 2009), 8-10.

the shortcomings of the early operations in Iraq.[147] The reification and universalisation of fluid and complicated social relations into 'tribes' renders Iraqi subjectivity knowable only through the manufactured 'Sunni Arab' identity, fixed to the definable attributes of "ethnicity and language, religion, tribal roots, and membership". These fixed identities provide the coordinates along the contours of which the 'tribe' can be mapped, and counterinsurgency operations can be tailored to fit the 'human terrain'. Furthermore, the inflexible repetition of the "tribe" across Afghanistan and Iraq, irrespective of their distinct geographies and cultural histories, does the work of conflating both locations and its peoples under the banner of a racially essentialised Islamic and tribal identity.

The Human Terrain System (HTS), as initially developed by Montgomery McFate and Andrea Jackson in 2005, sought to provide this specialist knowledge to US forces through Human Terrain Teams that integrated civilian social scientists, alongside experienced and non-commissioned officers, within regiments and brigades. Packaged as 'kinder, gentler counterinsurgency', HTS as militarised anthropology provided thin and unreflexive crude data which materialised the social and cultural contours of the 'human terrain'.[148] For instance, human terrain analysts and geospatial intelligence analysts projected population attitudes, social dynamics, and ethnic groups onto physical terrain to create 'culture maps' that aided operational planning. A report on the aforementioned maps describes their method:

> "Human terrain maps are assembled in layers so that analysts can correlate previously unrelated qualities of an area to each other. One map might show the locations of all the tribes in a region. A second map of that same region might depict the known locations of all the suspected insurgents. By superimposing one over the other, an analyst might discover that the bad guys are in a single tribe."[149]

The structure of tribes gives coherence to the above cartographic exercise. As immovable units around whom social life was structured, 'tribes' assisted in embedding unknowable Iraqi life into the knowable physical terrain. 'Tribal' identity became operative to the successful countering of 'Islamic extremism' in Iraq and Afghanistan, emerging as a particularly racialised

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[147] Todd (n 111), 1-2.

[148] On the Human Terrain System as militarised anthropology see David H Price, *Weaponizing Anthropology: Social Science in Service of the Militarized State* (AK Press 2011).

[149] Grace V Jean, '"Culture Maps" Becoming Essential Tools of War' <https://www.nationaldefensemagazine.org/articles/2010/1/31/2010february-culture-maps-becoming-essential-tools-of-war> accessed 7 January 2025.

object of knowledge through which counterinsurgency operations could be planned, targeted, executed, and reviewed.

Both Gant's pitch for 'tribal engagement teams' and the Iraq Tribal Study advocate the co-option of Iraqi and Afghan social structures for a form of indirect rule of the population which is distrustful of the counterinsurgents. As the "cultural framework" of tribal systems is already "in place", the counterinsurgency effort should "leverage traditional tribal structures" such as *jirga* gatherings and influential sheikhs and integrate them into the operations.[150] The essentialising of criteria such as "tradition", "honour", "shame", and "dignity" defines Iraqi and Afghan society as static, unaffected by and averse to change, and simple in its motivations.[151] It also allows for the facile exercise of approximating equal relations, "one tribe to another", between counterinsurgents and the populations they are administering through coercive violence. Most interestingly, the focus on the 'tribal' identity places it in opposition to an ill-defined 'Islamic' identity, where the violence is attributable to a contest of "tribalism versus Talibanism". In Gant's vision of tribal control, "Islamic fundamentalism" poses a threat to the survival of 'tribes' as a unit of Afghan society.[152] In the Iraq Tribal Study, 'Islam' is held at arms-length, as a category overlaid on the organic nature of 'tribal' society, and thus provides a more operational view of Iraqis' relationship to their Muslimness in a dedicated appendix,

> "Politics, economics, and religion are closely linked in Islam ... The well-being of the people is often the basic determinant of religious and political orientation. A perception that alliance with the US would improve that well-being would be a powerful tool. That tool can be wielded with success by those who come to understand the cultural milieu in which they work."[153]

The abstraction of an 'Islamic identity' as either a threat or a strategic parameter is stark against the concrete representation of 'tribal' identity. Islam becomes understood through rigid political terms as a religious ontology unfolding uniformly and neatly divisible into sects, but unable to provide real insight into the organic nature of social being in Iraq and Afghanistan – only determinable through the framework of 'tribes'. Like religion, gendered subjectivities are also mediated through the 'tribal' lens. The integration of "neutral or friendly women" into the counterinsurgency through gender-focused interventions, like encouraging women into

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[150] Iraq Tribal Study, 7A-8 – 7A-10
[151] Ibid, see also Gant (n 146).
[152] Gant (n 146), 30
[153] Todd (n 111), A2-4.

industries such as traditional embroidery, was billed as a crucial strategy. As Kilcullen states, "Win the women, and you own the family unit. Own the family, and you take a big step forward in mobilizing the population."[154] Integration of the subjectivities of Afghan and Iraqi women into counterinsurgency operations is not mere assimilation into the patriarchal vision of feminine domesticity, that Owens notes, where women are reduced to "objects of social administration".[155] In fact Iraqi and Afghan womanhood is co-produced through the interaction of their specific racialisation with a universalised notion of gender, as demonstrated by the use of "culturally-sensitive" 'Female Engagement Teams' and tactical provision of healthcare to women and maternal aid in exchange for information in Afghanistan.[156] Furthermore as Daulatzai has shown, the focus on Afghan women in counterinsurgency strategy as well as feminist critiques of counterinsurgency's violence inscribe an overdetermination of gender. This makes exceptional the suffering of Afghan women vis a vis the ostensible patriarchal violence of traditional tribal societies and places them in opposition to Afghan men instead the American-led occupation.[157]

Apart from gathering and operationalising ethnographic knowledge to understand the 'human terrain', demography through techniques of measurement and surveillance provided another way to fix the people of Iraq and Afghanistan to the vernacular of securitised humanity, the epistemic frame through which they become known. While militarised anthropological knowledge aided in making the 'human terrain' knowable for the purpose of securitised development, the use of biometric technologies and tools for data aggregation materialised the securitised human at the level of the physical body. The operations in Afghanistan and Iraq utilised techniques of taking the census, registering ID cards, and putting in place checkpoints and a pass system to monitor the movements of the population, like late-colonial and Cold War counterinsurgencies, but with the use of biometric technology.

Between 2003 and 2011, the US counterinsurgency in Iraq collected fingerprints, iris scans, and DNA from suspected insurgents and civilians to produce biometric ID cards. As a result, the Pentagon now has one of the world's largest databases of biometric information ever collected

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[154] David Kilcullen, 'Twenty-Eight Articles' (n 117), 137
[155] Owens (n 51), 271.
[156] Khalili, *Time in the Shadows* (n 19), 198.
[157] Anila Daulatzai, 'Acknowledging Afghanistan: Notes and Queries on an Occupation' (2006) 18 Cultural Dynamics 293; Anila Daulatzai, 'The Discursive Occupation of Afghanistan' (2008) 35 British Journal of Middle Eastern Studies 419.

during wartime.[158] Operation Close Encounters accumulated personal, photographic, and biometric information on the entire population of Baghdad,[159] and similar operations in Fallujah following the end of Operation Phantom Fury provided the population with badges listing kinship affiliations, place of work and residence, and any detention history. Coupled with the ethnographic data collected through programs such as HTS, these ID cards facilitated the ability to assign a given person to a given ethnic or religious community based on physical markers, in this case badge identifiers, by including such extensive mapping of kinship and familial relationships. The goal was to achieve dominance through linking "an enemy combatant or similar national security threat to previously used identities and past activities". [160]

As Simone Browne reminds us, biometrics operate inherently as a technique of "racializing surveillance", whereby they reproduce race as a classificatory regime and encode the body as evidence against which the 'truth' about the subject can be uncovered – regardless of the subject's claim.[161] By recognising bodily presence through empirical data, biometrics ask: *are you who you say you are?* Nonetheless, when translated for racialized bodies or in this case Iraqis, this sounds closer to: *You are whatever I say you are.*[162] The construction of identities produced through these digitizing instances needs to also be understood as produced within specific sites and by specific "enunciative strategies".[163] These sites are productive of and necessitate, what Browne refers to as, "ontological insecurity", where the body is shrouded in a "certain uncertainty".[164] The use of photography and the Handheld Interagency Identity Detection Equipment allowed the squads of counterinsurgents in Baghdad to overcome the purported operational advantage of the enemy's ability to hide in plain sight by "inundating the community with tip cards" to build trust.[165] The practice of taking group photos of community members and generally men of a 'military age' produced an innocuous intimacy, as Sills recounts, where the

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[158] Ariana Dongus, 'Galton's Utopia - Data Accumulation in Biometric Capitalism' (2019) 5 Spheres Journal for Digital Cultures, 11

[159] Maj. Thomas J Sills, 'Counterinsurgency Operations in Baghdad' [2009] Military Review 97.

[160] John D. Woodward Jr., 'Using biometrics to achieve identity dominance in the Global War on Terrorism', [2005] Military Review 30.

[161] Simone Browne, *Dark Matters: On the Surveillance of Blackness* (Duke University Press 2015), 109. See also: Simone Browne, 'Race and Surveillance', Routledge Handbook of Surveillance Studies (2012), 76

[162] Dongus (n 158) 3

[163] Stuart Hall, 'Introduction: Who Needs "Identity"?' in Stuart Hall and Paul Du Gay, *Questions of Cultural Identity* (SAGE Publications Ltd 2011).

[164] Browne (n 161), 110.

[165] Sills (n 159), 100.

approach could resemble "a tourist taking a photo on vacation rather than an occupying force implementing a population control measure or searching for wanted criminals".[166]

While Afghans and Iraqis are subjected to these techniques of being seen and made visible at exceedingly intimate scales, American and Coalition forces personnel get to maintain an opacity productive of and produced by a white normativity casted as racially invisible. The disembodied gaze of biometric technology in Iraq brings forth digital epidermalisation as a particular form of knowledge-vision deployed within neoliberal counterinsurgencies.[167] Visual technologies and databases such as the Command Post of the Future (COPF) and the Tactical Ground Reporting Network (TIGR), combined with biometric surveillance and aerial vision through unmanned aircrafts provide various streams of data which aggregate to form an intimate and corporeal portrait of Iraqi and Afghan social life.[168] It is these modes of visualisation coupled with ethnographic data which forms the 'disposition matrix' that acts as the basis of identifying, locating and visualising targets to kill or capture. Critically, the knowledge-vision of the 'disposition matrix' consolidates social network analysis, the 'tribal' human terrain, and the body as evidence to become a behaviour-orienting tool. As Parsa remarks,

> "As the disposition matrix targets individual patterns of life, the targeted population adapt their lives to patterns that, they come to understand, do not trigger the lethal algorithms of the disposition matrix ... as drones strike certain patterns of life, they eventually produce, favour, or impose *other* patterns of life as normal and unthreatening ones."[169]

Ultimately, the counterinsurgency operations in Iraq and Afghanistan sought to influence the *behaviour* of the population as a whole. The elasticity of social networks combined with the fixity of 'tribal' society ensured that the distinction between insurgents and the population was organised by degrees of proximity as opposed to a strict separation. Yet the fiction of a neutral and passive population continues to animate the conduct of neoliberal counterinsurgencies,

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[166] Ibid, 101

[167] The term digital epidermalisation is theorised by Simone Browne through reading Fanon's concept of epidermalisation into how digital technologies acts as tools to reinforce and accelerate racialisation. Browne (n 160); See also: Simone Browne, 'Digital Epidermalization: Race, Identity and Biometrics' [2010] Critical Sociology.

[168] Gregory (n 127), 159-162.

[169] Amin Parsa, *Targeting in International Law: Counterinsurgency and the Legal Materiality of the Principle of Distinction* (Routledge 2024), 136.

where it is believed that the people can be swayed by bare social and material necessity to support the twinned precepts of security and development underlying securitised humanity.

As I will show in the following scene, the paradigm of US counterinsurgency has expanded itself through technical, financial, and military collaboration with states across the global north and south to militarise border crossings, environmental conservation, as well as everyday life.[170] Especially, the domestication of counterterrorism through policing in the US, UK, and European states has entrenched war-like relations in society.[171] In postcolonial states such as India, the domestication of counterterrorism has reshaped the discursive and legal practices of militarised occupation of Kashmiri and *Adivasi* lands.[172] Yet the domestication of counterinsurgency warfare

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[170] On the militarisation of borders see: Reece Jones and Corey Johnson, 'Border Militarisation and the Re-Articulation of Sovereignty' (2016) 41 Transactions of the Institute of British Geographers 187; Dean Wilson, 'Border Militarization, Technology and Crime Control', *The Routledge Handbook on Crime and International Migration* (Routledge 2014); With regards to the incorporation of counterterrorism into immigration governance in Europe and UK see: Christopher Baker-Beall, 'The Discursive Construction of EU Counter-Terrorism Policy: Writing the "Migrant Other", Securitisation and Control' (2009) 5 Journal of Contemporary European Research 188; Mark Maguire, Catarina Frois and Nils Zurawski (eds), *The Anthropology of Security: Perspectives from the Frontline of Policing, Counter-Terrorism and Border Control* (Pluto Press 2014); Lucia Zedner, 'The Hostile Border: Crimmigration, Counter-Terrorism, or Crossing the Line on Rights?' (2019) 22 New Criminal Law Review 318.
On the expansion of counterterrorism and militarism into environmental conservation see: Nancy Lee Peluso and Peter Vandergeest, 'Political Ecologies of War and Forests: Counterinsurgencies and the Making of National Natures' (2011) 101 Annals of the Association of American Geographers 587; Megan Ybarra, 'Taming the Jungle, Saving the Maya Forest: Sedimented Counterinsurgency Practices in Contemporary Guatemalan Conservation' (2012) 39 The Journal of Peasant Studies 479; Elizabeth Lunstrum, 'Green Militarization: Anti-Poaching Efforts and the Spatial Contours of Kruger National Park' (2014) 104 Annals of the Association of American Geographers 816; Elizabeth Lunstrum, 'Conservation Meets Militarisation in Kruger National Park: Historical Encounters and Complex Legacies' (2015) 13 Conservation and Society 356.
[171] The literature understanding the war on terror as domestic counterinsurgency in the UK is developing, some key examples are: Rizwaan Sabir, 'Blurred Lines and False Dichotomies: Integrating Counterinsurgency into the UK's Domestic "War on Terror"' (2017) 37 Critical Social Policy 202; Sanjay Sharma and Jasbinder S Nijjar, 'Post-Racial Politics, Pre-Emption and in/Security' (2024) 27 European Journal of Cultural Studies 275; Jasbinder S Nijjar, 'Racial Warfare and the Biopolitics of Policing' (2022) 28 Social Identities 441.
[172] On counterterrorism and the ongoing occupation of Kashmir see: Peer Ghulam Nabi and Jingzhong Ye, 'Of Militarisation, Counter-Insurgency and Land Grabs in Kashmir' (2015) 50 Economic and Political Weekly 58; Mona Bhan and Nishita Trisal, 'Fluid Landscapes, Sovereign Nature: Conservation and Counterinsurgency in Indian-Controlled Kashmir' (2017) 37 Critique of Anthropology 67; Dilnaz Boga, 'Locating Counterinsurgency in Media on Kashmir in a Post-Neo-Liberal Framework' (2024) 59 Journal of Asian and African Studies 2505. On the ongoing Indian occupation and counterinsurgency against *Adivasi* movements to reclaim their land see: Pavan Kumar Malreddy, 'Domesticating the "New Terrorism": The Case of the Maoist Insurgency in India'

precedes counterterrorism and has been a dialogical relationship of steady precipitation of military logics into day-to-day governance through policing and prisons since at least the 1950s. Although the continuum of militarisation and policing was foundational to colonialism, I demonstrate that in the aftermath of decolonisation it became concretised to suppress a growing international front connecting anti-colonial revolution in the colonies with organised rebellion against racist domination in the metropole. Experiences of counterinsurgency abroad gave assurance that similar practices of separating insurgent risks from the overall population through forms of carceral social control would maintain the stability of securitised humanity at home.

3) Domesticating counterinsurgency as racialised social control

In 1989, Black Panther Dhoruba al-Mujahid bin Wahad described the FBI's Counterintelligence Program as "a program of war waged by a government against a people...a program of domestic warfare" during an interview at Eastern Prison in Napanoch, New York.[173] The Counterintelligence Program, better known by its acronym COINTELPRO, was established in 1956 to destabilise the Communist Party USA. In 1967, it was expanded to target so-called "Black Nationalist-Hate Groups" in order to "expose, disrupt, misdirect, discredit, or otherwise neutralise the activities" of Black radical and anti-imperial organisations.[174] Until 1971, the FBI used a variety of methods to facilitate the assassination, exile, and political incarceration of an unknown number of activists in order to counter black independent political thought. Almost twenty years later, in another prison interview in 2004, Marshall Eddie Conway, also a Black Panther, reiterates the nature of systemic anti-black violence in the wake of COINTELPRO as institutionalised within the police and the prison-industrial complex as "low-intensity warfare".[175] The invocation of 'war' is pervasive in the examination of the materiality of incarceration and policing by Black imprisoned radicals, who situate their experience in the

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(2014) 19 The European Legacy 590; Crispin Bates and Alpa Shah (eds), *Savage Attack: Tribal Insurgency in India* (Routledge 2017); Anwesha Dutta, 'Forest Becomes Frontline: Conservation and Counter-Insurgency in a Space of Violent Conflict in Assam, Northeast India' (2020) 77 Political Geography 102117.

[173] Dhoruba Bin Wahad and others, *Still Black, Still Strong: Survivors of the U.S. War against Black Revolutionaries* (Semiotext(e); Distributed by MIT Press 1993), 18.

[174] Federal Bureau of Investigation, 'Counterintelligence Program Black Nationalist – Hate Groups Internal Security' (25th August 1967) <https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists> Accessed 13 January 2025

[175] Marshall Eddie Conway, 'Domestic Warfare: A Dialogue' in Joy James (ed), *Warfare in the American Homeland* (Duke University Press 2007).

afterlives of transatlantic slavery, akin to an "intergenerational, historical war".[176] This scene's aim is to attend to this schema of war and take it seriously as an analytic of, not mere rhetoric about, the intersection between policing, incarceration, and warfare.

Following the 'War on Terror' there has been a renewed analysis of how international wars increasingly replicate modes of policing to enforce subjection for economic accumulation.[177] But, as I mentioned in the introduction to this chapter, theorising the convergence between policing, carcerality, and warfare has been a sustained concern within Black radical thought, theorised variously as a form of "class warfare" against racialised surplus populations,[178] counterinsurgency against Black radical activists,[179] and racial genocide.[180]

Resulting from a renewal of the demands for police and prison abolition over the last ten years, there has been a return to exploring this radical lineage of thought and the ways in which it expands our current understanding of policing and its attendant carceral regime in relation to the practice of counterinsurgency warfare. Recent scholarship by Orisanmi Burton, who conceptualises the counterinsurgency project of repression targeting the subjectivity and organisation of incarcerated black radicals as a form of "domestic warfare,"[181] alongside Dylan Rodriguez's extensive examination of the United States' social formation through the dual mechanisms of policing and incarceration that engender genocidal conditions via gendered and

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[176] 2018 letter from Absolute, quoted in Burton (n 13), 623.

[177] Neocleous, *War Power, Police Power* (n 12). See also, Illan rua Wall, 'War Power, Police Power: A Paradigmatic Book' (2015) 3 London Review of International Law 322.

[178] Ruth Wilson Gilmore, *Abolition Geography: Essays towards Liberation* (Brenna Bhandar and Alberto Toscano eds, 2022); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (University of California Press 2007); Ruth Wilson Gilmore, 'Fatal Couplings of Power and Difference: Notes on Racism and Geography' (2002) 54 The Professional Geographer 15.

[179] Jordan T Camp, *Incarcerating the Crisis: Freedom Struggles and the Rise of the Neoliberal State* (University of California Press 2016); Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement* (Routledge 2017); Joy James, *Imprisoned Intellectuals: America's Political Prisoners Write on Life, Liberation, and Rebellion* (Rowman & Littlefield 2003).

[180] Safiya Bukhari, *The War Before: The True Life Story of Becoming a Black Panther, Keeping the Faith in Prison & Fighting for Those Left Behind* (The Feminist Press at CUNY 2010); George Jackson, *Blood in My Eye* (Black Classic Press 1990); Joy James, *Warfare in the American Homeland: Policing and Prison in a Penal Democracy* (Duke University Press 2007).

[181] Orisanmi Burton, *Tip of the Spear: Black Radicalism, Prison Repression, and the Long Attica Revolt* (University of California Press 2023); Orisanmi Burton, 'Targeting Revolutionaries: The Birth of the Carceral Warfare Project, 1970–78' (2023) 2023 Radical History Review 11.

racialised violence,[182] offers an avenue to rethink the dissemination of counterinsurgency warfare inter/nationally to juridify a securitised humanity.

The 'police-military continuum', as it emerged over the twentieth century, was central to colonial governance.[183] This interrelationship cemented itself in the period of decolonisation following the Second World War to suppress and dismantle the organising of an internationalist front demanding an end to colonial and racist domination.[184] The post-war global legal order formalised the jurisdictional distinction between the 'domestic' and 'international', as well as bifurcating 'war' from 'peace'. While this separated the legal frames of policing and armed force, as the former was a domestic activity carried out by states during times of peace and the latter was generally an international act of armed conflict, the intimate relation between both continued through a transference of ideas, practices, and technologies. As the above statements by Panthers Wahad and Conway show, the material elements of counterinsurgency warfare–

[182] Rodriguez (n 13); Dylan Rodríguez, '"Mass Incarceration" as Misnomer: Chattel/ Domestic War and the Problem of Narrativity' in Moon-Kie Jung and João H Costa Vargas (eds), *Antiblackness* (Duke University Press 2021); Dylan Rodriguez, *Suspended Apocalypse: White Supremacy, Genocide, and the Filipino Condition* (University of Minnesota Press 2010); Dylan Rodríguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (University of Minnesota Press 2006)

[183] Schrader introduces the concept of the police-military continuum as a way to productively think about the inter-relationship between police and military, see: Stuart Schrader, '"Global Counterinsurgency and the Police-Military Continuum: Introduction to the Special Issue"' (2022) 33 Small Wars & Insurgencies 553. However, the relationship between policing and militarised violence as constitutive of "imperial policing" that was key to colonial governance has also been explored by other scholars see: Mike Brogden, 'The Emergence of the Police—The Colonial Dimension' (1987) 27 The British Journal of Criminology 4; David M Anderson and David Killingray (eds), *Policing the Empire: Government, Authority and Control, 1830–1940* (Manchester University Press 1991); Laleh Khalili, 'The Location of Palestine in Global Counterinsurgency' (2010) 42 International Journal of Middle East Studies 413; Martin Thomas, *Violence and Colonial Order: Police, Workers and Protest in the European Colonial Empires, 1918-1940* (Cambridge University Press 2012); Julian Go, 'The Imperial Origins of American Policing: Militarization and Imperial Feedback in the Early 20th Century' (2020) 125 American Journal of Sociology 1193. For how colonial policing during the inter-war period became crucial to the actualisation of international law see: Ahmed Raza Memon, 'The League of Nations as an Imperial Assemblage: Coloniality, Indirect Rule and the Actualization of "International Law"' [2024] International Journal of Law in Context 1.

[184] In the context of convergence between British militarisation in the colonies and policing at home during the period of decolonisation see: Georgina Sinclair and Chris A Williams, '"Home and Away": The Cross-Fertilisation between "Colonial" and "British" Policing, 1921–85' (2007) 35 The Journal of Imperial and Commonwealth History 221; Nicole M Jackson, 'Imperial Suspect: Policing Colonies within "Post"-Imperial England' (2016) 39 Callaloo 203; Julian Go, 'From Crime Fighting to Counterinsurgency: The Transformation of London's Special Patrol Group in the 1970s' (2022) 33 Small Wars & Insurgencies 654; David Anderson and David Killingray, *Policing and Decolonisation* (Manchester University Press 1992).

intelligence gathering and participatory developmental assistance combined with the killing or capturing of insurgents – were redeployed as part of the expansion of Cold War domestic policing. The porosity between domestic policing and global counterinsurgency warfare has been heightened through the successive militarisation of counter-narcotics and counter-terrorism characterised by collaboration between policing and military units across jurisdictions. My interest in this scene is to theorise this conflation of policing and counterinsurgency as domestic warfare and show how securitised humanity coercively pacifies, contains, and assimilates modes of being which destabilise it.

a) *Waging domestic warfare through prisons and policing as tools of counterinsurgency*

The connection between counterinsurgency warfare and prisons and police as domestic forms of social control is not just evidenced in radical analysis. In fact, the previously discussed counterinsurgency doctrines such as the OIDP and FM 3-24 are explicit in stating the importance of establishing a police force and an associated penal system as part of the nation-building project to provide security. Within the design of counterinsurgency operations, police "constitute the first line of defence against subversion and insurgency" due to their proximity to the population through frequent contact.[185] Police and the penal system uphold the 'rule of law' which is necessary for the functioning of a (neo)liberal nation-state, and around whom a "coherent and transparent system that imparts justice" can be organised. [186] Additionally, police are better suited to respond to 'civil' disturbances such as riots and strikes, as well as, tracking down criminals whose activities directly or indirectly support the insurgency. It is believed that the presence of police projects security and order, which in turn, increases the legitimacy of the domestic government backed by the counterinsurgents. Ultimately, policing and the related system of prisons, detention, and courts, is central to the maintenance of the nation-state built and secured by counterinsurgency. As the OIDP declares, police are the "keepers of order over a long period of time", and consequently essential to maintaining the stability of the newly modernised state.[187] This is also demonstrated in practice. In the aftermath of the invasion of Iraq the US counterinsurgency professionalised Iraq's police into the Iraqi Security Force and expanded the carceral infrastructure for the torture of suspected terrorists.

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[185] OIDP (n 55), 13. Variations of this framing are visible in other manuals on counterinsurgency warfare such as the 1963 US Army Counterinsurgency Forces Field Manual 31-22.
[186] FM 3-24, para 6-90, 229
[187] OIDP (n 55), 13

Yet, the centrality of policing to counterinsurgency is not an American innovation. In many ways British and French counterinsurgents such as Thompson and Galula, discussed in the first section, also insisted on the integration of colonial policing within counterinsurgency warfare. Thompson, in particular was an early enthusiast of professionalising local systems of colonial policing, emphasizing "the importance of police expansion and training programme and of the establishment of a coordinated intelligence organization" to support the British counterinsurgency in Malaya.[188] Ensuring postcolonial nation states enroute to independent statehood possessed a professionalised police and penal system to maintain internal order, and the protection of property rights was critical to Britain's 'decolonisation' strategy.[189] The orderly handover of power, as emblematic of British colonial withdrawal, was only made possible through an embedding of the ability for absolute rule in postcolonies by putting in place structures of policing and incarceration maintained by a local elite appropriately assimilated into the securitised humanity of capitalist modernization.

Following the end of the Second World War and the consolidation of American hegemony, the United States took leadership in the globalisation of professionalised policing as a core component of its internal defense and counterinsurgency programs. Still, the US is at the forefront of funding police assistance, reaching 138 countries and totalling over 174 billion USD.[190] Stuart Schrader's pathbreaking historical inquiry into the expansion of US police assistance shows that the development of global counterinsurgency in the 1970s went hand-in-hand with the expansion of domestic policing, the practices of which are then integrated and internationalised through counterinsurgency warfare.[191] This circuitous relationship between counterinsurgency warfare and the expansion of domestic policing cohered around the problem of suppressing anti-colonial revolt across borders. Even today, the intimacy of policing and

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[188] Robert Thompson, *No Exit from Vietnam* (D McKay Co 1970), 154; For how the colonial police in Malaya was transformed and incorporated within the counterinsurgency to suppress the Malayan National Liberation Army see Thompson (n 27). For a historical account of the Malayan Police Force during the Emergency see AJ Stockwell, 'Policing during the Malayan Emergency, 1948–60' in David Killingray and David M. Anderson (eds), *Policing and decolonisation: Politics, Nationalism and the Police, 1917–65* (1992).

[189] Owens (n 51), 186.

[190] Cameron Mailhot, Michael Kriner and Sabrina Karim, 'International Involvement in (Re-)Building Police Forces: A Comparison of US and UN Police Assistance Programs around the World' (2022) 33 Small Wars & Insurgencies 819.

[191] Stuart Schrader, *Badges without Borders: How Global Counterinsurgency Transformed American Policing* (University of California Press 2019).

counterinsurgency finds itself oriented around cross-border and 'global' threats, described instead in the language of transnational risk and crime.[192]

 As Schrader elaborates, following the wave of urban uprisings between 1964 and 1972, inspired by Third World national liberation movements, officials across the federal US government, state capitals, and city halls committed to a project of police reform to prevent further uprisings. This project of domestic police reform was focused on enhancing its technical apparatus, an approach already taken by the US in Latin America, Africa, and Asia, through the Office of Public Safety (OPS). OPS was an outgrowth of the modernizing counterinsurgency doctrine, discussed in the first scene of this chapter, and provided assistance to police forces in at least fifty-two countries and officers from seventy-seven countries attended its training academy funded by USAID, CIA, and the countries themselves.[193] Counterinsurgency provided the form to the function of policing to achieve social order amid domestic insurrections against racist socioeconomic structures, and acted as a comparative framework to understand domestic liberatory movements against the backdrop of guerilla warfare in the Third World.

This comparative reflex clarifies that the program of policing was always understood in relation to and as an extension of global counterinsurgency. More importantly, it illustrates how war-making practices, especially those aimed at containing and pacifying populations— characteristic of counterinsurgency—were domesticated into the carceral system, with policing serving as the point of inception. The congealing of global security across domestic and international planes is well represented by the itinerary of a public safety officer with OPS, Donald Bordenkircher, whose career spanned distinct yet connected sites of incarceration and warfare. Bordenkircher started his career in the US Navy during the Korean War, moving on in

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[192] For example, transnational crimes such as cross-border movement of illicit goods, and persons, as well as material support for terrorism, has instigated the combined use of police and military to govern the borderlands. For example, see: Peter B Kraska, 'Crime Control as Warfare: Language Matters' in Peter B Kraska (ed), *Militarizing the American Criminal Justice System* (Northeastern University Press 2001); Nicholas S Bolduc, 'Global Insecurity: How Risk Theory Gave Rise to Global Police Militarization' (2016) 23 Indiana Journal of Global Legal Studies 267; Philippe M Frowd and Adam J Sandor, 'Militarism and Its Limits: Sociological Insights on Security Assemblages in the Sahel' (2018) 49 Security Dialogue 70; David Sausdal, 'A Fighting Fetish: On Transnational Police and Their Warlike Presentation of Self' (2021) 25 Theoretical Criminology 400.

[193] Schrader's book provides an archival deep-dive into the emergence of the Office for Public Safety as part of the Kennedy and Eisenhower administrations' institutionalisation of counterinsurgency. See in particular, Chapter 3 'How Counterinsurgency Became Policing' Schrader (n 191). On the relationship of OPS with other aspects of USAID strategy in the Vietnam War, see also: Wesley Attewell, 'Ghosts in the Delta: USAID and the Historical Geographies of Vietnam's "Other" War' (2015) 47 Environment and Planning A: Economy and Space 2257.

1957 to work as a prison officer at San Quentin Prison and quickly rose through the ranks, eventually establishing a prison-based Special Weapons and Tactics team, before being tapped to serve as a technical officer to the South Vietnamese Directorate of Corrections. Over the subsequent five years, his works was crucial to the expansion of the CIA's Phoenix Program in Vietnam under which thousands of Vietnamese peasants were targeted and assassinated. Bordenkircher's contribution through classification and segregation of militants, the use of indefinite detention, and the employment of 're-education' programmes as part of psychological warfare transformed South Vietnamese prisons into a site of counterinsurgency. Between 2005 to 2009, years after his tour of Vietnam and a stint at the International Police Academy in Washington DC, Bordenkircher was deployed to Iraq at the height of US counterinsurgency in the country to manage the fallout of the revelations of torture and sexual abuse of detainees in Abu Ghraib by American personnel, many of whom were wardens in America's domestic prisons.[194]

This interrelationship was understood, named, and condemned by Black radical thinkers, sometimes referring to it as "internal colonialism".[195] As the targets of domestic warfare they advanced analytical vocabulary which identified the police as an occupying force mimicking the American troops abroad, [196] and the 'ghetto' as a space of racialised containment marked by disenfranchisement, economic exploitation, and state violence through policing.[197] Within this analytical framing, predominantly Black, as well as, Puerto Rican, Latinx, and Asian communities are understood as a subject population hyper-assimilated into securitised humanity through coercive force. Consequently, this understanding produced a radical political consciousness of

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[194] Burton, 'Targeting Revolutionaries' (n 181), 20; see also Schrader (n 191), 142-43.

[195] Robert L Allen, *Black Awakening in Capitalist America: An Analytic History* (Anchor Books 1969). Although 'internal colonialism' as a term emerged within Latin America in the 1960s, initially tied to Dependency Theory, see Casanova P Gonzalez, 'Internal Colonialism and National Development' (1965) 1 Studies in Comparative International Development 27; its key conclusions regarding practices of domination and segregation experienced by populations in the aftermath of decolonisation have been extended by scholars within the field of Black Studies to theorise the particular economic, social and cultural subjugation of black communities and Native American populations through 'white rule' and the afterlife of slavery in the United States of America, see Robert Blauner, 'Internal Colonialism and Ghetto Revolt' (1969) 16 Social Problems 393; James M Blaut, 'The Ghetto as an Internal Neo-colony' (1974) 6 Antipode 37; Kwame Ture and Charles V Hamilton, *Black Power: The Politics of Liberation in America* (Random House 1967).

[196] Bobby Seale, 'The Coming Long Hot Summer', Black Panther (1967) quoted in Joshua Bloom and Waldo E Martin, *Black against Empire: The History and Politics of the Black Panther Party* (University of California Press 2016), 82-83.

[197] Blauner (n 195); See also Donald J Harris, 'The Black Ghetto as Colony: A Theoretical Critique and Alternative Formulation' (1972) 2 The Review of Black Political Economy 3.

"revolutionary nationalism", with self-defence and armed resistance at the centre of it, which supplanted the framework of the Civil Rights movement.[198]

Suppressing of the development of this radical consciousness and praxis is corroborated by the extensive assemblage of repressive state agencies which applied counterinsurgency strategies developed to suppress armed movements for decolonisation. While programmes like COINTELPRO and police "red squads" played an important role in hunting down radicals under the pretext of law enforcement, it was the setting up of the Law Enforcement Assistance Administration (LEAA), modelled after OPS, which embedded counterinsurgency warfare wholesale into the domestic terrain.[199] For instance Conway recalls the intertwining of counterinsurgency practice within policing through the intimidation of the communities in which the Black Panthers lived and served through their community programs.[200] The expansion of the capacity to surveil and arrest radical activists went hand in hand with the transformation of prisons in to key sites for the unleashing of domestic warfare. The incarceration of radicals brought rebellions from the street into the prison, beginning with Ohio in 1968. As Burton states, forty-eight prison uprisings erupted in 1972, the most in a single year in US history up to that point.[201] The American Correctional Association responded to the wave of prison rebellions by issuing a new manual in 1970 which put in practice familiar strategies of counterinsurgency, stressing the use of riot squads to "split up the rioters into manageable groups", detailed maps of the physical layout of the prison to assert tactical control, and the swift identification of 'rebel leaders' who should be "eliminated or rendered ineffective".[202] As Burton argues, the ACA manual reflects the "the insinuation of counterinsurgency into the normalized routines of prison management".[203]

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[198] Huey P Newton, *The Huey P. Newton Reader* (David Hilliard and Donald Weise eds, A Seven Stories Press 1st ed, Seven Stories Press 2002). While the Black Panther Party is one of the well-known advocates for African-American armed struggle, the recent works of Akinyele Omowale Umoja, *We Will Shoot Back: Armed Resistance in the Mississippi Freedom Movement* (NYU Press 2013), and, Charles E Cobb Jr, *This Nonviolent Stuff'll Get You Killed: How Guns Made the Civil Rights Movement Possible* (Hachette UK 2014), excavates the history of armed resistance and self-defence as part of the Black Freedom Struggle in Mississippi and the US South.

[199] Schrader (n 191). See also: Brendan Hornbostel, '"Public Order Is the First Business of Government": The Law Enforcement Assistance Administration and the Making of a Liberal Counterinsurgent Police-Industrial Complex' (2022) 33 Small Wars & Insurgencies 607.

[200] Conway (n 175), 102.

[201] Burton, *Tip of the Spear* (n 181), 13.

[202] American Corrections Association, 'Causes, Preventive Measures, and Methods of Controlling Riots and Disturbances in Correctional Institutions' (1970), quoted in ibid, 14-15.

[203] ibid

The infusing of policing and prisons with discourses, strategies, and practices that comprise the doctrine of counterinsurgency warfare cultivates, in the words of Rodríguez, "declared, undeclared, and culturally normalized asymmetrical warfare" that renders all other modes of being human contrary to securitised humanity as "actual or potential targets of domestication, expropriation, liquidation, occupation, (coerced) assimilation, and generalized subjection".[204] These zones of undeclared domestic warfare enmesh with zones of imperial and officially declared warfare to reify the universality of the figure of securitised humanity which in turn operates to assimilate those forms of life which pose a risk to its stability through force. Understanding the vernacular of securitised humanity, as substantiating a mode of life oriented towards coercive hyper-assimilation of all other ways of being it considers as existential threats to its survival, as cutting across national, international, and transnational terrain is relevant today. In particular, given the domestication of the GWOT through counter-terrorism legislation that pre-emptively marks communities for racialised social control through violence, coercion, surveillance, incarceration, and deportation.[205]

Therefore, the schema of internal colonialism is a productive reorientation that makes colonialism legible beyond particular geographies and the generalised North-South binary. It specifically urges us to focus on how colonial continuities are reconfigured and occluded through liberal statecraft that obscures the racial violence sustaining our colonial present.[206] This diagnosis is particularly applicable to the 'postcolony', as a space structured by the continuities of colonial violence and domination, where the nature of counterinsurgency as racialised social control becomes explicit.[207]

b) *Locating the postcolony as a space of convergence for securitised humanity*

As noted previously, the US is the current leader in developing and transferring knowledge and practice on policing and incarceration globally, thus an analysis of domestic warfare in the US is

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[204] Rodriguez (n 182), 3.

[205] For a good overview of how pre-emptive racialisation of Muslim communities through logics of 'risk' forms the basis of counterterrorism practices such as Prevent see Suhaiymah Manzoor-Khan, *Tangled in Terror: Uprooting Islamophobia* (Pluto Press 2022). On the intertwined racial production of Muslimness and blackness through the domestication of the 'War on Terror' see Hishaam Aidi, 'Jihadis in the Hood: Race, Urban Islam, and the War on Terror' in Joy James (ed), *Warfare in the American Homeland* (Duke University Press 2007).

[206] Joe Turner, 'Internal Colonisation: The Intimate Circulations of Empire, Race and Liberal Government' (2018) 24 European Journal of International Relations 765.

[207] Achille Mbembe, *On the Postcolony* (University of California Press 2001); Anthony Bogues, 'Politics, Nation and PostColony: Caribbean Inflections' (2002) 6 Small Axe 1.

incomplete without considering its importation of domestic war-making capacity globally. The 2018 United States Foreign Internal Defense Policy provides one such snapshot through its discussion of "Plan Colombia", a program of internal defense to suppress the Revolutionary Armed Forces of Colombia (FARC) insurgency.[208] Resuscitating the ghosts of modernisation, "Plan Colombia" connected economic development and security to the peace process through the provision of combined assistance in the areas of "judicial reform, expansion of counter-narcotics operations, alternative economic development, and increased interdiction and assistance to Columbian police forces". The provision of technical assistance to professionalise the police overseas resulted in, what Schrader calls, "re-racialisation" through the firming of socio-cultural distinction between the police and the policed. As shown by Lesley Gill's inquiry into the notorious School of Americas, developed as a facility for the training of Latin American police and military personnel, the training and arming of a caste-like group of professional soldiers exploited existing racial and economic hierarchies and aggravated processes of social and economic differentiation in many Latin American countries.[209] Moreover, the circulation and refinement of new technologies of policing within the postcolony, such as the 911 emergency number first used in Caracas, and two-way radios designed for Vietnam and Honduras, created new racialised subjectivities and intimacies between the police and the policed.[210]

By engaging the postcolony as a space of convergence between policing and warfare my intention is not to collapse the specific materialisation of armed violence through police, military, and paramilitary within countries of the so-called Global South with the forms of violent militarised policing recognisable in the so-called Global North. Instead, my aim is to understand these distinct forms of violence relationally to attend to how the continuum of policing and militarisation acts as *the* modality for risk-management and the universalisation of securitised humanity's coercion by expanding military and police training, technological and communications infrastructure, and surveillance and intelligence assistance as part of developmental assistance in the Global South.

For example, regional counter-terrorism interventions in Africa, supported by European, American, and local partners, clarify how these operations act as racialised social control by reinforcing colonial-era logics of demographic construction, intensifying racial determinism

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[208] Joint Chiefs of Staff, Joint Publication 3-22 'Foreign Internal Defense' (2018), 1-4 – 1-5. <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_22.pdf> Accessed 13 January 2025.
[209] Lesley Gill, *The School of the Americas: Military Training and Political Violence in the Americas* (Duke University Press 2004).
[210] Schrader (n 191), 151-155.

particularly in developmental initiatives, and exploiting local ethnic divisions for the purposes of securitisation. In the West African Sahel, the conceptualisation of it as a problematic environment, rooted in colonial descriptions of arid spaces as degraded, disastrous, and in need of foreign rule, by the Trans-Sahara Counterterrorism Project (TSCTP) has instrumentalised racial determinism through developmental and environmental indicators to naturalise a predisposition to violence that maintains the long-term presence of Western actors such as AFRICOM, USAID, and the European Union.[211] Similarly, the drastically different urban environment of Kenyan cities of Mombasa and Nairobi has been refigured by the domestication of the War on Terror that inscribes military concepts of tracking, identifying, and targeting citizen-suspects in to everyday urban environments.[212] The militarisation of daily life through pop-up police tactics of checkpoints, house raids, and daylight abductions and production of 'citizen-suspects' in Kenya as well as use of biometric ID cards reinforces British-colonial identities that distinguish Muslimness by ascribing it to external populations such as Somalians, perceived as threats to security, consequently entrenching historical processes of value differentiation, including a persistent investment in whiteness.[213] The entrenchment of racialisation through occluding its logics within militarised technologies such as drones has also materialised itself in the South African use of Seeker drones, originally used for Apartheid-era counterinsurgency to maintain White domination.[214] Following 1994, Seeker drones were rapidly turned into tools for wildlife management and international development to track 'illegal immigrants,' 'feared tribal war lords,' 'gang leaders,' and 'cattle and livestock thieves' instead of an enemy target.[215]

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[211] Brittany Meché, 'Bad Things Happen in the Desert: Mapping Security Regimes in the West African Sahel and the "Problem" of Arid Spaces' in Rachel Woodward (ed), *A Research Agenda for Military Geographies* (Edward Elgar Publishing 2019). The indicators used include rainfall variability, outward migration, food insecurity, and low literacy rates amongst the people. On the "emptiness" of desert geographies and colonial as well as postcolonial efforts of ordering and securitising them see Samia Henni (ed), *Deserts Are Not Empty* (Columbia University Press 2022).

[212] The work of Samar Al-Bulushi is crucial to understanding Kenya's role in materialising the regimes of the Global War on Terror in East Africa. See: Samar Al-Bulushi, *War-Making as Worldmaking: Kenya, the United States, and the War on Terror* (Stanford University Press 2024); Samar Al-Bulushi, 'Citizen-Suspect: Navigating Surveillance and Policing in Urban Kenya' (2021) 123 American Anthropologist 819.

[213] Samar Al-Bulushi, 'From the Sky to the Streets, and Back: Geographies of Imperial Warfare in East Africa' (2022) 40 Social Text 37, 43.

[214] Katherine Chandler, 'Apartheid Drone: Infrastructures of Militarism and the Hidden Genealogies of the South African Seeker' (2022) 52 Social Studies of Science 512.

[215] Ibid.

Understanding the postcolony as a relationally unfolding space of securitisation, shows how postcolonial actors are interrelated in securitised humanity's coercive hyper-assimilatory drive. The above examples demonstrate how the police-military continuum characteristic of global security is domesticated within the postcolony and disrupts binarized theorisations of securitisation's violence as flowing from the Global North to the Global South. In particular, it draws our attention towards how certain postcolonial states such as Kenya act as transnational enactors of American security regimes in their respective regions, while simultaneously enforcing security logics as part of domestic rule. The domestication of militarism has also been constitutive to the projection of postcolonial states as liberal democracies, in particular where internal socio-political contingencies, such as in India, threaten the expression of homogenising sovereignty. The utilisation of counterinsurgency warfare to suppress armed liberation movements in Punjab, Kashmir, and Eastern India in the decades following the end of British-rule was geared towards assimilating these radical subjectivities into a subordinate subjecthood.[216] Today, the Indian state continues its de-facto occupation of these lands through domestic warfare, while disciplining those it considers "antinationalists" – journalists, activists, Muslims, Dalits, Adivasis, farmers – to maintain the fiction of democratic inclusion.[217] Ultimately, placing the postcolony as a relational space to the Global North clarifies that current imperial formations are informed and shaped by pre- and postcolonial modes of rule and visions of worldmaking.[218]

Conclusion

This chapter's focus has been to show how the power of security as the dominant force for ordering social life today came to be through counterinsurgency warfare that instituted a form of life sustained by coercive pacification and hyper-assimilation. This mode of being, expressed in the vernacular of securitised humanity, uses armed force hand-in-hand with social development to pacify and neutralise populations to collaborate in the apprehension and destruction of threats to security. Understood in this way, the full extent of securitised humanity includes agents of pacification such as counterinsurgents, police, and prisons, as well as pacified

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[216] Rhys Machold, 'India's Counterinsurgency Knowledge: Theorizing Global Position in Wars on Terror' (2022) 33 Small Wars & Insurgencies 796.

[217] On the continuous unfolding of counterinsurgency within India as a practice of liberal democratic statecraft see Sahana Ghosh, 'Domestic Affairs: National Security and the Politics of Protest at India's "Friendly" Borderlands' (2022) 40 Social Text 61; Inderpal Grewal, Dipin Kaur and Sasha Sabherwal, 'The Security State and Securitizing Patriarchies in Postcolonial India' (2022) 40 Social Text 83.

[218] Samar Al-Bulushi, Sahana Ghosh and Inderpal Grewal, 'Security from the South: Postcolonial and Imperial Entanglements' (2022) 40 Social Text 1.

populations invested in maintaining their security. As I show towards the end of this chapter, the aggregation of counterinsurgency warfare, policing, and incarceration through programs of socio-economic renewal, legal reform, and pre-emptive threats of calculated collective violence has set the stage of our permanent security present.

As I show in the first scene through recounting the development of counterinsurgency warfare during the period of decolonisation and its disastrous deployment in the Vietnam war, the production of a neutral and passive population that could be convinced to withdraw their support from the anti-colonial insurgencies is central to the program of armed social work encompassed by counterinsurgency warfare. Through a combination of armed violence, strategies of containment, and plans for social and economic modernization targeting predominantly rural communities, theorists such as Thompson, Galula, Trinquier, and Kitson refined techniques of imperial small wars into the key elements of liberal counterinsurgency warfare. By carving out a distinct population through methods of categorisation, quantification, and administration, from the connective tissue of insurgency, counterinsurgents deliberately exposed colonised people to violent coercion in the name of their own welfare and protection. My analysis of the Strategic Hamlets Program demonstrates how Vietnamese rural life was violently reordered to assimilate the Vietnamese peasantry into securitised humanity's idealised figure of a modernised citizen. Importantly, the first scene showcases that despite the importance of liberal improvement to counterinsurgency warfare, it does not displace the omnipresence of armed force. In fact, armed force is utilised to order the population so it may benefit from the forms of liberal improvement advanced as part of the security strategy. Thus, armed force goes hand-in-hand with humanitarianism to shape the ideal subjects of securitised humanity.

The dovetailing of humanitarianism, in the form of socio-economic development, with counterinsurgency warfare is shown in the second scene, where I analyse the *Counterinsurgency Field Manual 3-24* as part of the wider US-led War on Terror in Afghanistan and Iraq. As I show, the shift towards counterterrorism advanced a foregrounding of risk as a modality for aligning neoliberal counterinsurgency warfare. Like Cold War counterinsurgencies, the neoliberal counterinsurgency against terrorism reenchanted discourses of improvement, alongside human rights. Yet unlike its predecessors, the counterinsurgencies in Iraq and Afghanistan deployed an overtly neoliberal vision of society conceived of as a network of market relations to be managed through a calculated use of coercive force alongside economic reform to serve the extractive capacities of global capitalism. Furthermore, the counterinsurgency campaigns of Iraq and Afghanistan saw the utilisation of new technologies of social control that operationalised thin anthropological knowledge through drones, biometric surveillance, and specialist engagement

teams. Ultimately, the US War on Terror adapted the vernacular of securitised humanity as an affective paradigm comprised of techniques that shape social behaviour to naturalise the existence of pacified populations.

The final scene of this chapter clarifies the affective nature of securitised humanity produced by counterinsurgency warfare's domestication as a system of racialised social control. By connecting the role of policing and prisons in counterinsurgency theory with the transference of counterinsurgency practices to domestic policing and carceral institutions, I showed how the police-military continuum has shaped security regimes at home and abroad. I situate myself in recent literature on the American police and carceral-industrial complex as well as Black radical critique of internal colonialism to advance the concept of domestic warfare as a way to understand the conflation of policing and military logics. I complement this analysis by turning to the postcolony as another site for the convergence of counterinsurgency warfare and policing to resituate the universality of securitised humanity's mode of life through postcolonial interventions.

Overall, my aim has been to show that securitisation is something lived and felt, particularly by those who experience its compulsive need for violent inclusion, but also by those who assert its omnipotence. As sovereignty is increasingly expressed through security in the form of surveillance and the diffusion of war-like relations into policing and border enforcement, new grammars of risk are made available for securitised humanity to neutralise and assimilate. Despite this grammar's attempts at deracinating securitised humanity from raciality, through innovating post-racial techniques for managing risk, securitisation is unable to escape racialisation.[219] Instead, the living of securitised humanity newly entangles processes of race-making, gendering, and queering. Viewing securitisation as a form of life, where human life is ordered and made recognisable only through adherence to security's divergent modes of power, makes its materiality apparent beyond political and economic transformations engendered by permissive interpretations of legal doctrine.[220] Rather, it asks us to attend to how other modes of life interface with securitised humanity, and their contingencies of negotiation and collaboration with, or disavowal against it. These modes of living – in many cases, of surviving – raise new questions to interrogate the universalism of securitised humanity and theorise an international abolitionism against it

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[219] David Theo Goldberg, *Are We All Postracial Yet?* (John Wiley & Sons 2015).
[220] Tzouvala (n 6).

A Conclusion: Abolishing the Human to Make Room for Life

"I need to talk about living room

because I need to talk about home"

June Jordan, *Moving Towards Home*[1]

"Abolition geography starts from the homely premise that freedom is a place."

Ruth Wilson Gilmore, *Abolition Geography*[2]

Much of this thesis was completed in-between shifts as a legal observer, community liaison, and facilitator at the Gaza Solidarity Encampment at the University of Bristol, where I teach law. The three-month-long student-led occupation became a site for all of us who opposed our institution's complicity in the genocide of Palestinians to commune, mourn, and plot together. In its indictment of the University's support of and participation in maintaining Israel's illegal occupation of Palestine, the Encampment brought into relation disparate geographies and temporalities. This creation of a relational space breached the separation and passiveness enforced by various institutions, from universities to the local and national government, through policing and counter-terrorism legislation. The Encampment represented 'demonic ground', in Wynter's terms, a location from where to think and practice beyond our current mode of existence towards life.[3]

As this thesis has shown, our ongoing model of existence as human has emerged from and remains rooted within a particular description of being that has reinstated itself through the use of force as the *only* natural form of life. It has continually yoked itself in an isomorphic manner to the *homo sapiens* species through a sacrificial logic, where all other modes of being are violently assimilated to maintain the stability of the human, and sustain its existence conflated with/as life. The ongoing genocide in Gaza, and the relational acts in opposition to it – encampments, blockades, boycotts, self-immolation, and militant disobedience – have further fractured the smooth overrepresentation of this human. These acts have readily made apparent that this

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[1] June Jordan, *Living Room: New Poems* (Thunder's Mouth Press 1985), 132.

[2] Ruth Wilson Gilmore, *Abolition Geography: Essays towards Liberation* (Brenna Bhandar and Alberto Toscano eds, 2022), 120.

[3] Sylvia Wynter, '"Beyond Miranda's Meanings: Un/Silencing the "Demonic Ground" of Caliban's "Woman"' in Carol Boyce Davies and Elaine Savory Fido (eds), *Out of the Kumbla: Caribbean Women and Literature* (Africa World Press 1990). See also: Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle* (University of Minnesota Press 2006).

mode of being with its totalising aspiration to violently assimilate, and eliminate, is always already genocidal.[4]

My core argument in this thesis, that the juridification of humanity through the legal regulation of warfare acts to reify a particular mode of being, the human, as the universal mode of being, resonates in making sense of the current violence being unleashed against Palestinians. The international legal battle, on whether Israel's wholesale targeting of Gaza's people as part of its violent suppression of Hamas' use of force to end the Zionist occupation constitutes genocide, has once again clarified the contradiction of humanity and the international legal order it animates.[5] The genocide in Gaza has been diffused into disciplinary debates within the disciplines on the use of force, law of armed conflict, and international criminal law on the questions of distinguishing acts of genocide from acts of using force against 'legitimate' targets and, whether the use of force by Israel and the Palestinian resistance have crossed the thresholds of distinction, proportionality, and necessity to be illegal.[6] These debates have been

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[4] Zoé Samudzi, 'Genocide: When Does State Violence Pass the Threshold?' [2023] The Funambulist <https://thefunambulist.net/magazine/redefining-our-terms/genocide-when-does-state-violence-pass-the-threshold> accessed 13 January 2025.

[5] There is significant consensus that Israel is committing a genocide in Gaza, for example see: TWAIL Review, 'Public Statement: Scholars Warn of Potential Genocide in Gaza' (TWAILR, 17 October 2023) <https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/> Accessed 13 January 2025; UN OHCHR, 'Gaza: UN experts call on international community to prevent genocide against the Palestinian people' (OHCHR, 16 November 2023) <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against> Accessed 13 January 2025; UNHRC 'Anatomy of a genocide: Report of the Special Rapporteur on the Occupied Palestinian Territories' (1 July 2024) UN Doc A/HRC/55/73; Amnesty International, 'You feel like you are subhuman: Israel's Genocide Against Palestinians in Gaza' (2024).
The International Court of Justice has also upheld in its order of provisional measures on 26th January 2024 that there is "a real and imminent risk that irreparable prejudice will be caused to the rights" of Palestinians in Gaza to be protected from acts of genocide under the Genocide Convention due to Israel's conduct, see: *Application of The Convention on The Prevention And Punishment of The Crime of Genocide In The Gaza Strip (South Africa v Israel)* Order for Provisional Measures 26th January 2024.

[6] This is a growing body of analysis responding to the various legal issues arising from Israel's continued use of force and violation of international humanitarian law. See for example: Raphaël van Steenberghe, 'The Armed Conflict in Gaza, and Its Complexity under International Law: Jus Ad Bellum, Jus in Bello, and International Justice' (2024) 37 Leiden Journal of International Law 983; Luigi Daniele, 'A Lethal Misconception, in Gaza and beyond: Disguising Indiscriminate Attacks as Potentially Proportionate in Discourses on the Laws of War' (*EJIL: Talk!*, 7 November 2023) <https://www.ejiltalk.org/a-lethal-misconception-in-gaza-and-beyond-disguising-indiscriminate-attacks-as-potentially-proportionate-in-discourses-on-the-laws-of-war/> accessed 13 January 2025; Eliav Lieblich, 'On Civilians' Return to North Gaza: What International Humanitarian Law Requires' (*Just Security*, 12 February 2024) <https://www.justsecurity.org/92138/on-civilians-return-to-north-gaza-what-international-humanitarian-law-requires/> accessed 13 January 2025; Just Security, 'Top Legal Experts on Why Aid to Gaza Can't Be Conditioned on Hostage Release, in Response to Remarks by

prompted by the deliberate obfuscation by Israel of its genocidal acts through mobilising juridical claims of carrying out legitimate targeting operations, or fulfilling its humanitarian obligations by creating 'safe zones'.[7] Consequently through conflating its acts as armed operations, governed by international humanitarian law, Israel has sought to entrench the bifurcation between 'war' and 'genocide', with the latter argued to be taking place only in peacetime.[8] In response, international humanitarian lawyers have reiterated that indiscriminate attacks by both parties, particularly those targeting civilian populations, cannot legitimately meet the normative threshold for proportionate targeting and thus amount to war crimes, distinct from genocide.[9] While these debates hold normative value for the application of law, they also reify a certain perspective of reality that obfuscates the experience of Palestinian life under Zionist settler-colonialism.

What is placed out of sight in this disciplinary discourse is the centrality of the annihilation of Palestinianess, a distinct and indigenous mode of being in steadfast relation to the land between the Mediterranean Sea and the Jordan River, to the consolidation of Israeli statehood in the present and future. The juridical boundaries presumed between these bodies of law obscure the

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US Official' (*Just Security*, 20 November 2023) <https://www.justsecurity.org/90196/top-experts-on-why-aid-to-gaza-cant-be-conditioned-on-hostage-release-in-response-to-remarks-by-us-official/> accessed 13 January 2025; Marko Milanovic, 'Does Israel Have the Right to Defend Itself?' (*EJIL: Talk!*, 14 November 2023) <https://www.ejiltalk.org/does-israel-have-the-right-to-defend-itself/> accessed 13 January 2025.

[7] For example, the oral arguments made by advocates on behalf of Israel in the case of South Africa v Israel at the International Court of Justice utilised juridical claims of carrying out a legitimate armed operation in Gaza in a difficult urban environment that results in "unintended, but lawful" civilian casualties. See: *Application of The Convention on The Prevention And Punishment of The Crime of Genocide In The Gaza Strip (South Africa v Israel)* Verbatim Record of Public sitting held on Friday 12 January 2024 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf> Accessed 13 January 2025. On how Israel has used 'safe zones' and other humanitarian methods to carry out forced displacement, other war crimes, and genocide see the following two excellent reports by Forensic Architecture: Forensic Architecture, 'Humanitarian Violence: Israel's Abuse of Preventative Measures in Its 2023-2024 Genocidal Military Campaign in the Occupied Gaza Strip' (Forensic Architecture 2024) <https://content.forensic-architecture.org/wp-content/uploads/2024/03/Humanitarian-Violence_Report_FA.pdf> accessed 13 January 2025; Forensic Architecture, 'Inhumane Zones: An Assessment of Israel's Actions with Respect to the Provision of Aid, Shelter, Safe Passage, and Assistance to Evacuees in Gaza; Response to Questions Raised in the ICJ on 17 May 2024' (Forensic Architecture 2024) <https://content.forensic-architecture.org/wp-content/uploads/2024/05/Inhumane-Zones-Report-Forensic-Architecture_WEBSITE.pdf> accessed 13 January 2025.

[8] Ibid.

[9] Daniele (n 6), this distinction between war crimes, crimes against humanity, genocide has also prominently featured in the International Criminal Court's decision to issue arrest warrants against Israel's head of State and Defence Minister as well as the leaders of Hamas, Mohammed Deif and Ismail Haniyeh, both of whom have now been killed by Israel in the battlefield, for war crimes and crimes against humanity, side-stepping the claim of genocide.

genocidal nature of warfare in the settler colonial context, where elimination of the indigenous population is the constitutive rationale for using armed force. Critical scholars in the law of armed conflict have pointed out how, in its destruction of healthcare facilities, Israel obscures its genocidal intention by relying on the objective and technical language of IHL.[10] My thesis extends this thinking further by showing how the regulation of warfare is itself structured towards preserving a mode of being that naturalises the necessary destruction of certain lifeworlds so that others may live and thrive. Reckoning with the deathly and Janus-faced nature of the human, [11] exposes that the legal norms regulating warfare do not act as mere alibi for licensing genocidal conduct. In fact, the legal norms themselves, in their orientation towards preserving a unitary form of life, realise the genocidal violence needed to sustain the category of the human. Thus, if the world is structured around a regime of humanity poised on the annihilation of other modes of being, we must face the question that Samudzi poses: "what, then, is the crime of genocide in a world where masses of people were never meant to survive?"[12]

In this concluding chapter, I want to show how this assimilatory and annihilatory model of being and its juridification into the regulation of warfare has blinkered the view within the discipline of international law and the law of armed conflict of the ongoing catastrophe in Gaza. I show how law cannot bear life, Palestinian or otherwise. Rather than invest in a transformation of the law, I ask us to move towards life through an abolitionist praxis against the human and the normative frames which sustain it, by reaching for practices that rehearse reparative futures to suture our present-future(s) anew again and again.

1) A discipline pre-occupied with itself, against life

The introduction to this thesis recapped the master narrative regarding the doctrinal regulation of warfare. I showed how it has been informed by a history of humanitarianism, in particular following the nineteenth century shift towards the humanisation of battlefield conduct by constraining the suffering of armed conflict through legal codification. This story of humanising warfare is a potent one. It continues to structure our current understanding of what conduct is allowed for belligerents in war by bringing its vocabularies, particularly "civilians" and

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[10] Nicola Perugini and Neve Gordon, 'Medical Lawfare: The Nakba and Israel's Attacks on Palestinian Healthcare' (2024) 53 Journal of Palestine Studies 68.

[11] Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, after Man, Its Overrepresentation - An Argument' [2003] New Centennial Review.

[12] Zoé Samudzi (n 4).

"combatants", into common parlance and reiterating their normativity through repeated invocation to make sense of intensely organised violence.[13]

In the last twenty-two months of Israel's annihilatory war against Palestinians in Gaza and the rest of Occupied Palestine, and Lebanon, this story of humanising warfare has been at the forefront of academic, and increasingly public, debate. On one hand, Israel has invoked its right to self-defence and the laws of armed conflict to justify its operations in Gaza as lawful. On the other hand, numerous experts have demonstrated that Israel's actions in Gaza disproportionately target the population. In both cases, the underlying presumptions of this body of law materialise to provide an objective and neutral interpretive frame of technical compliance during war as well as a "tool to save lives as long as the fighting goes on".[14] The interpretative possibilities provided by the language of this body of law are towards predetermined outcomes that inevitably reproduce the pre-occupation of the discipline with its own survival – analogous to the 'human' it juridifies and sustains. Carrying out the task of interpretation through the lens of regulating warfare acts as a trap, only yielding room for interpretation that is violating to life. Ultimately, the perspective that emerges from within the knowledge frames of international humanitarian law is a diorama that flattens the relations of force structured through and in the wake of Zionist settler-colonial annihilation and instead draws moral and legal equivalence between the violence of the colonising entity and the violent resistance of the colonised, making them equally culpable. A form of "reality-bending".[15] This view enables the international humanitarian lawyer to hold themselves at a distance from the unfolding catastrophe to provide an assessment preoccupied with its own conclusions of legal and moral validity.[16]

Yet, we continue to see, in real-time, the repeated massacring of displaced Palestinian men, women, and children sheltering in tents and makeshift living spaces, turned to flesh and blood through bulldozers and 2000-pound bombs, starved, maimed, buried under rubble, stripped

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[13] I am grateful to Abdelghany Sayed for thinking through this with me. See also: Jake Romm and Dylan Saba, 'Acts Harmful to the Enemy' (*n+1*, 12 January 2024) <https://www.nplusonemag.com/online-only/online-only/acts-harmful-to-the-enemy/> accessed 13 January 2025.

[14] Adil Ahmad Haque, 'Enough: Self-Defense and Proportionality in the Israel-Hamas Conflict' (*Just Security*, 6 November 2023) <https://www.justsecurity.org/89960/enough-self-defense-and-proportionality-in-the-israel-hamas-conflict/> accessed 13 January 2025.

[15] Lara Sheehi and Stephen Sheehi, *Psychoanalysis Under Occupation: Practicing Resistance in Palestine* (Routledge 2021).

[16] Janina Dill, 'Our Shared Horror' (*EJIL: Talk!*, 13 October 2023) <https://www.ejiltalk.org/our-shared-horror/> accessed 13 January 2025. Dill's blog post is archetypical of the objective legal view presented as a collective moral assessment by international humanitarian lawyers in the wake of Hamas' armed operation on October 7 2023 and Israel's response.

naked and held hostage, subjected to indescribable horror.[17] These horrifying scenes, and the scenes recounted in the previous chapters, illuminate the shadow narrative of humanising warfare. The shadowed narrative clarifies how the law doesn't humanise warfare to constrain suffering and dehumanisation in war, instead it authorises forceful violence and abjection as the threshold for entry into the regime of humanity. The juridification of other modes of life into a mono-humanity through the use of force also comes at the cost of (mis)recognition. As Esmeir notes, juridical humanity enacts recognition through bestowing personhood as an individual legal status analogous to property.[18] Not only does this maintain the domains of Man and its attendant modes of demarcating and categorising humanness according to its particular frames of knowing,[19] but in settler-colonial contexts where the dispossession of the native is achieved through erasing any claims to property, personhood becomes another frontier of erasure.[20] Thus the refrain of evacuate or die, or more accurately, leave or be killed, directed towards the Palestinians in Gaza and across historic Palestine by Israel in some manner or the other over the last 76 years rehearses the (mis)recognition of Palestinian life through the continuation of the Nakba.[21]

A continuity of the Nakba particularly acute within the discipline of international law of armed conflict is the (mis)recognition of Palestinian resistance. The vernacular of securitised humanity, which I described in chapter 3, has been articulated by Israel to pacify Palestinians through a host of securitised infrastructure and juridical roadblocks to contain, apprehend, and destroy any resistance to Zionist settler colonialism.[22] The built and legal architecture seeks to transform

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[17] I want to pause here to note my discomfort of rehearsing the account of the many horrific ways Israel has sought the annihilation of Palestinian life in Gaza and Occupied Palestine over the last 76 years of settler-colonialism. As Black studies scholar Katherine McKittrick notes, "description is not liberation" for it reproduces the unthinkability of black life and reifies its abjection and objectification. See: Katherine McKittrick, *Dear Science and Other Stories* (Duke University Press 2021), 44-45.

[18] Samera Esmeir, 'On Making Dehumanization Possible' (2006) 121 PMLA 1544; See also Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press 2012).

[19] Alexander G Weheliye, *Habeas Viscus* (Duke University Press 2014).

[20] Here I am thinking alongside Brenna Bhandar's work on the intertwined nature of colonialism and property structured through racialised regimes of ownership and possession in settler colonies. See Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press 2018).

[21] Rabea Eghbariah, 'Towards Nakba as a Legal Concept' (2024) 124 Columbia Law Review.

[22] On the securitised architecture of occupation see: Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation* (Verso 2007); Léopold Lambert, *Weaponized Architecture: The Impossibility of Innocence* (dpr-barcelona 2012). On how Palestinians evade and resist this architecture of oppression see Yara Sharif, *Architecture of Resistance: Cultivating Moments of Possibility within the Palestinian/Israeli Conflict* (Routledge 2017).On the legal architecture of Israel's occupation of Palestine see: Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (University of California Press 2005); Noura Erakat, *Justice for Some: Law and the Question of*

Palestinians into compliant and passive subjects through modes of indirect rule over the population and coerce their investment in the security of the settler colony.[23] And yet, Palestinians resist through a commitment to life enacted through cultural, political, and armed struggle. The politicised use of violence by Palestinian armed groups is often odiously labelled as terrorism, I refuse to entertain the premise of this claim.[24] My interest is instead in pointing out how critical analyses of the legitimacy of Palestinian armed resistance under international law perform the (mis)recognition inherent to humanity and its attendant legal regimes.

International humanitarian lawyers have characterised the fighting between Israel and the Palestinian armed group Al-Qassam Brigades and Palestinian Islamic Jihad as a non-international armed conflict. The affording of recognition to these armed groups characterises them as legitimate actors within the armed conflict while simultaneously eliding their enmeshment with the people of Gaza as a material condition of the existence of the armed groups, and *their* political commitment to the armed struggle. In pursuit of legal legitimacy that enforces the separation of armed actors from those "outside of combat," the commitment of the people of Gaza to their liberation, which has animated and fortified armed struggle, is placed outside of the legal frame regulating warfare. The continually unfolding structure of the Nakba

Palestine (Stanford University Press 2019); John Reynolds, 'Apartheid and International Law in Palestine' in Nada Kiswanson and Susan Power (eds), *Prolonged Occupation and International Law* (Brill Nijhoff 2023).

[23] On the rearrangement of Palestinian demands for self-governance as indirect rule through the Palestinian Authority post Oslo Accords see: Elia Zureik, 'Constructing Palestine through Surveillance Practices' (2001) 28 British Journal of Middle Eastern Studies 205; Mouin Rabbani, 'Palestinian Authority, Israeli Rule' in Joel Beinin and Rebecca L Stein (eds), *The Struggle for Sovereignty: Palestine and Israel, 1993-2005* (Stanford University Press 2006); Dana El Kurd, *Polarized and Demobilized: Legacies of Authoritarianism in Palestine* (, Hurst & Company 2022); Diana B Greenwald, *Mayors in the Middle: Indirect Rule and Local Government in Occupied Palestine* (Columbia University Press 2024); Lisa Bhungalia, *Elastic Empire: Refashioning War through Aid in Palestine* (Stanford University Press 2023).

[24] My intention to not engage this premise is two-fold: Firstly, in the ongoing structuring of the world through islamophobia, accelerated through the War on Terror, the notion of terrorism inevitably reiterates the construction of Muslimness as abjectly violent and gives rise to bad-faith arguments. Secondly, reading the strategic use of political violence by armed resistance as and through the juridico-political category of 'terrorism' negates the existence of political and armed strategy within resistance groups and presents them as motivated by a vague ideology of violence. Such a perspective reproduces imaginaries of reciprocal violence and revenge, while simultaneously eliding the existing constraints that preconditions the routes and forms of political violence available to armed resistance groups. This is not a blanket condoning of violence, but a means to focus our attention to the conditions that determine the use of violence as part of armed resistance. On the importance of centring the Palestinian armed resistance and other concrete forces resisting Israel and the US as politicised actors with strategic imperatives in our anti-Zionist analysis see: Max Ajl, 'Palestine and the Ends of Theory' [2024] Middle East Critique 1.

and the war-like relations it inscribes into Palestinian livingness becomes the context to the armed conflict, disturbingly distorting the decades of asymmetry into a faux symmetry.

Recent critiques of the legal regulation of warfare's inability to grasp Palestinian armed resistance have hinged themselves on the internalisation of the binary between the 'civilised' and the 'uncivilised' in the law of armed conflict. For example, Knox notes how the means of armed force available to Palestinian armed groups are understood as *per se* unlawful as these means represent 'indiscriminate attacks', whereas the technical capabilities of the precision weaponry deployed by Israeli forces predetermines their compliance with thresholds of targeting and distinction. This calculus of determining whose means of using force are legitimate concretises Israel's claim to self defense in the absolute formulation of a 'right to exist', while subjecting Palestinian life to measurement against the standard of proportionality.[25] A similar critique is presented by Romm and Saba, who argue that the legal framework of *jus in bello* presumptively legitimises state action while action by the oppressed, a non-state entity such as Hamas and Palestinian armed resistance groups, is presumed illegitimate leading to the marginalisation of Palestinian national formations and overshadowing the justness of revolutionary warfare by Palestinians.[26] These are compelling critiques, particularly because they foreground the hypocrisy within this body of law's uneven application and show how the uneven invocation of international humanitarian law reinforces the racialised abstractions underpinning the categories of civilisation.

Yet, for me, these critiques re-signify the interpretative vice of the regulation of armed conflict by forcing engagement on its terms and show how critiquing the underlying presumptions of this body of law doesn't necessarily enable a move away from its sense-making framework. I find the slot of the 'uncivilised' as a hovering *fait accompli* within which to (critically) recognise Palestinian armed struggle discomforting. Even though this critical recognition operates to indict the hypocrisy of the normative framework, it inevitably reinscribes the predetermined outcomes for recognising Palestinians within the legal frame as either abjectly violent or abjectly violated.

As I show in the second chapter of this thesis, the racialisation of humanity through warfare operationalised the categorisation of forms of being within and outside of the species category of *Homo sapiens*, and forcefully disciplined life into the hierarchical order of humans, not-quite-humans, and non-humans. This exercise of speciation and hierarchical categorisation forms the bedrock of the production of the figure of the savage and the standard of civilisation that Knox,

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[25] Robert Knox 'Hypocrisy, race and international law' *in* Tor Krever and others, 'On International Law and Gaza: Critical Reflections' (2024) 12 London Review of International Law 217.
[26] Jake Romm and Dylan Saba (n 13).

as well as Romm and Saba critique. However, in their critique of the raciality of the standard of civilisation, they inadvertently naturalise the human and its descriptive abjectness that categorises Palestinians as "human-animals". To be clear, I am not claiming that the above critiques of how Palestinian resistance is made illegible within the law of armed conflict are incorrect. I am only pointing out that their overdetermination of Palestinians as oppressed and exploited subjects of Israeli imperialism condemned to rightlessness in perpetuity rehearses the abjection constitutive of humanity. My claim is that viewing the armed struggle of Palestinians through a vernacular of rights and legal recognition is unable to bear the vastness of resistant Palestinian life which sustains despite fragmentation and under conditions of siege.[27]

In the end, the law reiterates the particular mode of human existence incipient from the catastrophic violence of coloniality and anti-blackness. By establishing an international division of humanity to assimilate other modes of being into this peculiar mono-humanism through force, it grants subjectivity through limited claims to personhood while fortifying the regime of a universal humanity.[28] Ultimately, the regulation of warfare cannot conceive of what remains outside of its frames, the modes of being it cannot capture within its system of knowing. Yet in its continued quest for validating reality through its own particular way of seeing, and an inability to accommodate other perspectives that challenge its ontology, the juridical frame half-digests what is external into its internal logic and provides a view from nowhere. Thus, we are in critical need to not lose sight of that which remains outside of the law – life itself.

As poet Rafeef Ziadah reminds us, Palestine teaches life again, and again.[29] Viewing *Toufan-al-Aqsa*, the military operation carried out by the Al-Qassam Brigades on 7th October 2023, from a life-affirming perspective allows us to grasp the Nakba as not just the context of the armed struggle but as the foundational material circumstance which prompts militant revolution. "As long as there's occupation, there must be resistance".[30] The overcoming of the "Iron Wall" barrier fence that has enclosed Palestinians in Gaza since 1996, allowed many, some for the first time, to touch the land they have been generationally displaced from forcibly by Israeli settler-colonialism. In that moment where the enclosure was breached through violent struggle, the people and land severed by the catastrophes of the Nakba and the Oslo Accords sutured themselves briefly to make room for Palestinian life that could exist outside of the spatio-

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[27] Mezna Qato and Kareem Rabie, 'Against the Law' <https://jacobin.com/2013/04/against-the-law/> accessed 13 January 2025.

[28] Weheliye (n 19), 79.

[29] Rafeef Ziadah, 'We Teach Life' (2015) <https://rafeefziadah.bandcamp.com/album/we-teach-life> accessed 13 January 2025.

[30] Interview with Jeremy Scahill and Mohammed Al-Hindi, 'Palestinian Islamic Jihad: "Oslo Is Over"' (6 November 2024) <https://www.dropsitenews.com/p/oslo-is-over> accessed 13 January 2025.

temporal hold of Zionist colonisation. From this vantage point, the resistance by Palestinian armed groups doesn't exist as distinct from the Palestinian people, both affirm the other to embody the resistive spirit of *sumud* as an active striving towards overturning the material conditions that sustain Zionist settler-colonialism. This act of struggle for life's sake is then not a simple assertion of the right to resist colonial occupation,[31] or an exercise in self-determination through decolonisation. It is in fact an effacing of the present ordering of humanity and a proclamation of "we know more than the abjectness projected upon us ... we know ourselves".[32]

The need to go beyond the law, and in particular beyond the vernaculars of monohumanity that underpin the juridical frame, is necessary to refuse the fortifications that enclose life and distribute premature death.[33] This is an urgent task for those of us who study the legal framework regulating armed conflict, primarily to ensure that we do not participate in the obfuscation of life under annihilatory violence by reaching for technical and objective terms that discipline us into self-negation. As McKittrick notes, discipline is empire, and any commitment to anti-colonial thought requires our starting point to be "one of disobedient relationality".[34] This form of relationality always questions and eschews normative academic logics for a deciphering practice attuned to the praxis of livingness.[35] Given that the law materialises itself through the definition and adjudication of what it means to be human or dehumanised, its conceptual terms are limited to its own predetermined reference points. This not only places at stake the kinds of dialects available to those subjected to the annihilatory violence of humanisation, but also how this subjection is seen and heard by those of us who bear witness. A turmoil being felt acutely right now is the incapacity of legal vocabularies to describe the many horrifying ways Israel has violated and traumatised Palestinians in Gaza, and the futility of description itself. Instead of reaching for new legal terminologies that descriptively recount the violation of life, "the data-of-dispossession",[36] and presuppose that the political vision of the oppressed is a teleological desire of moving from oppression to emancipation, the turn towards deciphering vernaculars of life necessitates steering clear of understanding suffering through the reductive frame of bare life.[37] Rather, turning to how life persists in spite of and against

[31] 'For Life's Sake' (*Parapraxis*) <https://www.parapraxismagazine.com/articles/for-lifes-sake> accessed 13 January 2025.

[32] McKittrick (n 17), 46.

[33] I draw the term 'premature death' from Ruth Wilson Gilmore, 'Fatal Couplings of Power and Difference: Notes on Racism and Geography' (2002) 54 The Professional Geographer 15.

[34] McKittrick (n 17), 45.

[35] Sylvia Wynter, 'Rethinking "Aesthetics": Notes towards a Deciphering Practice' in Mbye Cham (ed), *Ex-iles: essays on Caribbean cinema* (Africa World Press 1992).

[36] McKittrick (n 17), 49.

[37] Weheliye (n 19), 126.

suffering, opens us to a relational witnessing that indicts mono-humanity and presents an epistemological intervention that envisions its own utopia – summoning surreal dreams of freedom.[38]

2) Beyond the human, towards an unknown that doesn't terrify[39]

If alternate forms of life, what Wynter refers to as genres of the human beyond the confines of Man, can thrive only after the obliteration of the law, then it follows that our current mode of existence stands and falters with the existing legal categories that fortify the codification of monohumanity. Abolishing the human necessitates the abolition of law, and charting lines of flight in the form of practices, existences, desires, dreams, and sounds that persist in the shadows of humanity's juridical machinery, "…where there is no law, only that which is right…"[40]. My practice of Black Study in this thesis to retell the story of humanising warfare provides a means to understand a world where violent subjection forms neither an exclusion from humanity nor an ultimate evaluative viewpoint of oppression. Instead, this relational, intertextual, multidisciplinary approach performs a rebelliousness that goes beyond simply producing some kind of truth about racial oppression in situations of extreme violence and the amelioration of that truth.[41] Black Study provides us a roadmap towards a new episteme that would finally "unspeak Man" by telling new stories that unsettle the "ground of our present order of knowledge" anchored by the premise that the human is a purely natural and biological being.[42]

Wynter's project of provincializing Man as an object of knowledge produced by the epistemic revolution of Western knowledge through the New World encounter with blackness redescribes the naturalisation of the human as a narrative exercise. By reading the human as a combination of *bios* and *mythoi*, Wynter encourages us to read radically through the vantage point of struggle and how our present order of knowledge, a biocentric model of knowing sustained through capitalist accumulation, acts as a self-referential loop.[43] This liminal perspective from the demonic ground unveils the conditions through which this feedback loop is breached, and

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[38] Here I am thinking with Robin D.G Kelley's concept of "freedom dreams" and their surreal potential in refiguring our current terms of knowing towards liberation. See: Robin DG Kelley, *Freedom Dreams: The Black Radical Imagination* (Beacon Press 2002).

[39] This subtitle is drawn from Édouard Glissant, *Poetics of Relation* (Betsy Wing tr, University of Michigan Press 1997),9. The complete quotation is "We know ourselves as part and as crowd, in an unknown that does not terrify."

[40] Words by poet Mariahadessa Ekere Tallie quoted in Kelley (n 38), 35.

[41] McKittrick (n 17), 44.

[42] Sylvia Wynter, 'A Black Studies Manifesto' (1994) 1 Forum NHI.

[43] Sylvia Wynter, 'The Ceremony Must Be Found: After Humanism' (1984) 12 boundary 2 19.

liberation is made possible.[44] Wynter's renarration of Man establishes that the human is not a singular figure, but in fact a particular manifestation of ways of relating between modes of life that emerges from an interspecies schema.[45] Following Wynter's transformation of the human from an *a priori* natural figure into a relational object of knowledge, we are introduced to the potential for developing new grammars and vernaculars for relation and unveiling a route beyond critique towards reinvention.[46] As Fanon states in the closing chapter of *Black Skin, White Masks* – "I should constantly remind myself that the real *leap* consists in introducing invention into existence. In the world through which I travel, I am endlessly creating myself. I am a part of Being to the degree that I go beyond it".[47] Hence, a part of our task is to work out how different modes of being relate to each other and open up new ways in which we come to know ourselves *in relation to* each other.

The Fanonian leap of reinvention sidesteps the flattening nature of universalism, while also rejecting radical particularism. Rather it chooses to go beyond Being as a natural biological state towards the notion of sociogeny, social genesis within culturally-specific terms of self-description.[48] Fanon's concept of sociogeny and Wynter's extension of it to the biocentric normalisation of the human, brings us into the realm of experience which is constructed through the disjunctive feeling of being both the norm (Man) and its Other.[49] Feeling the disjuncture and simultaneously knowing the disjuncture overcomes the enforced Cartesian divide of mind/body at the centre of Western epistemic thought. Fanon shows that knowing is feeling is knowing, and that the psychic response to colonialism's violence is itself culturally mediated through a socialised sense of self as well as the social situation in which this self is actualised. Relatedly, if our present system of knowledge can only cast humanity through its disjunctive gaze which makes liberation an impossibility, then we ought to engender and honour already existing complex alternative and radical modes of collective being in this world.[50] As McKittrick conveys,

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[44] Sylvia Wynter (n 3).

[45] Katherine McKittrick and Sylvia Wynter, 'Unparalleled Catastrophe for Our Species?', *Sylvia Wynter: On Being Human As Praxis* (Duke University Press 2014).

[46] Here I am talking of Wynter's insurrectory reading of the human as *Homo Narrans,* and her call for a Third Event that produces a redescription of Man towards the human. See: Bedour Alagraa, 'Homo Narrans and the Science of the Word: Toward a Caribbean Radical Imagination' (2018) 4 Critical Ethnic Studies 164; Interview with Sylvia Wynter and Bedour Alagraa, 'What Will Be the Cure?: A Conversation with Sylvia Wynter' (7 January 2021) <https://offshootjournal.org/what-will-be-the-cure-a-conversation-with-sylvia-wynter/> accessed 13 January 2025.

[47] Franz Fanon, *Black Skin, White Masks* (Richard Philcox tr, Grove Press 1967), 229.

[48] ibid

[49] Sylvia Wynter, 'Towards the Sociogenic Principle: Fanon, Identity, the Puzzle of Conscious Experience, and What It Is Like to Be "Black"', *National Identities and Socio-Political Changes in Latin America* (Routledge 2001).

[50] Kelley (n 38), 35.

the praxis of liberation through the aesthetic labour of reinvention – in music, art, text, poem, photo, provides the means to imagine and live outside of the predetermined descriptions of truth affixed on us by dominant epistemic codes.[51] This praxis to "feel-with" does not assume a resolved outcome.[52] Rather, forging relational knowledge allows us to posit the many divergent and relational voices of unfreedom as analytical and intellectual sites that can go beyond the quantification of marginalisation and seeking reparation through centring their objectification, instead tell us something new about our anticolonial futures.[53]

Crucially, a praxis of engendering interhuman-interspecies relationalities presents another avenue to destabilise the human while carefully negotiating the spatio-temporality of the "post". Over the last few years, the turn to the "post", in the form of the posthuman,[54] postdisciplinary,[55] and postcritique,[56] as well as new materialist approaches to international law has begun a broad inquiry into the repercussions of defining international law's human as a stable ontological figure. By repositioning the human as a figure enmeshed in an assemblage of technological and ecological relations with the non-human, these approaches aim to make apparent the myriads of ways in which the human is entangled in the making of international law and its ontological claims of recognition and personhood. Yet the exigencies of racialisation that construct the volatile categories of the "human" and the "non-human" remain unbothered in the rush to the "post". As Jackson argues, much of the recent scholarship within posthuman theory, animal studies, and new materialism refigures race as a by-product of the negation of the non-human by the human, thereby maintaining the co-evolved relationship between "race" and "species".[57] Furthermore, while these approaches aim to interrogate and undermine the certainty of humanity's ontological integrity, the orientation towards how the non-human

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[51] McKittrick (n 17), 70.

[52] McKittrick (n 17), 70.

[53] Ibid 120-121

[54] I have provided an overview of this literature in the introduction to this thesis, but for the purposes of this section see: Emily Jones, *Feminist Theory and International Law: Posthuman Perspectives* (Routledge 2023); Matilda Arvidsson and Emily Jones (eds), *International Law and Posthuman Theory* (Routledge 2024).

[55] On 'postdisciplinary' methodology in international law see: Outi Korhonen, 'Chapter 20: From Interdisciplinary to x-Disciplinary Methodology of International Law' (2021)

[56] The move towards 'post-critique' has precipitated recently in international law scholarship, see for example: Fleur Johns, 'From Planning to Prototypes: New Ways of Seeing Like a State' (2019) 82 The Modern Law Review 833; Dimitri Van Den Meerssche and Geoff Gordon, 'Is This the Rhizome? Thinking Together with Fleur Johns' (2022) 33 Law and Critique 237; Dimitri Van Den Meerssche, 'The Multiple Materialisms of International Law' (2023) 11 London Review of International Law 197; Arvidsson and Jones (n 50).

[57] Zakiyyah Iman Jackson, *Becoming Human: Matter and Meaning in an Antiblack World* (NYU Press 2020), 12.

technology/animal/plant life bears on the human assumes the idealisation of this figure as opposed to plasticising it.[58] Thus, calls for going beyond or post the figure of the human need to contend with how the challenges of animality and thingification persist in the reach of antiblackness into the (non)human.[59]

In response to Jackson's critique of posthuman theory's continued imbrication in the production of blackness and disavowal of its role, Jones reiterates how posthuman feminist theory refuses to side-line the inequalities between humans by incorporating within itself the multiple epistemic contributions of those rendered as subaltern to White, heteronormative, capitalist, able-bodied Man.[60] In presenting this inclusive move towards knowledges rooted in the subjectivity of alterity, Jones aims at displacing the bio-normativity of the human yet also risks consolidation of this bio-normativity through reinscribing gendered-racial categories by positioning them as concrete domains of analysis to explain injustice.[61] Acknowledging the difficulty for those purportedly banished from the realm of the human to adopt an affirmative relation to the call of posthumanism's collective becoming, she restates that it is precisely this exclusion from humanity that posthuman feminism is challenging.[62] However, as I have shown in this thesis, the idea that violence enacts exclusion from humanity misreads the violence of humanisation which manifests itself through forceful assimilation into its particular modes of

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[58] Ibid,16. See also: Zakiyyah Iman Jackson, 'Animal: New Directions in the Theorization of Race and Posthumanism' [2013] Feminist Studies.

[59] Zakiyyah Iman Jackson, 'Outer Worlds: The Persistence of Race in Movement "Beyond the Human"' (2015) 21 GLQ: A Journal of Lesbian and Gay Studies 215.

[60] Jones (n 50).

[61] I draw this critique from McKittrick's analysis of how identity-disciplines, i.e. black studies, queer studies, gender studies, etc risk reproducing Man's biocentric frames of knowledge. See McKittrick (n 16), 45; Katherine McKittrick, 'Mathematics Black Life' (2014) 44 The Black Scholar 16. The risk of consolidating the human's bio-normativity, which cannot help but render all other modes of knowing and living as abject, is increasingly perceptible in the recent attempts to reach for indigenous and Black ways of knowing as 'alternate paradigms' by scholars of international law. For example, see: Marie Petersmann, '"Re/de/Composing" International Law' [2024] Völkerrechtsblog <https://voelkerrechtsblog.org/re-de-composing-international-law/> accessed 13 January 2025; Marie Petersmann, 'In the Break (of Rights and Representation): Sociality beyond the Non/Human Subject' (2024) 28 The International Journal of Human Rights 1279; Interview with Diane Otto and Emily Jones, 'Thinking through Anthropocentrism in International Law: Queer Theory, Posthuman Feminism and the Postcolonial' (17 June 2019) <https://www.lse.ac.uk/women-peace-security/assets/documents/2020/Final-Jones-and-Otto-Anthropocentrism-Posthuman-Feminism-Postcol-and-IL-LSE-WPS-Blog-2019-002.pdf>. The focus on translating embodied ways of knowing into 'theory' risks enacting the abstraction inherent to the Cartesian divide. Pitching them as "alternatives" reiterates the particularity of Black and indigenous life as *outside* the world of Man, that can then be drawn upon or included to rehabilitate the very violence of humanity's legal regimes these critical moves in international legal scholarship aim to disavow. I want us to resist this temptation for inclusion altogether.

[62] Jones (n 54), 15.

reference. Furthermore, the focus on how Black, queer, indigenous, feminised, and colonised subjectivities have fought for the "basic right to be considered human" predetermines the imaginaries of liberation available to us and forecloses possibilities of life outside of the regime of humanity.

My critique of posthumanism isn't aimed at diminishing its contribution to how we can rethink the project of humanity and its realisation into law. Instead, following Jackson, my intent is to ask that we critically build on its insights to attack the Western metaphysical matrix through which matter comes to have meaning, and meaning comes to have materiality. [63] This is the project of Black Study that I have aimed to articulate throughout this thesis and especially in this closing chapter. Numerous thinkers have argued that our critique of the human should not be fixated on a mere attempt to go beyond or overcome the human or ourselves, but should instead focus on a reorientation of our terms, including that of going 'beyond'.[64] Through the Black speculative praxis of Black women mystics such as Sojourner Truth, musicians Sun Ra and Alice Coltrane, and writer Octavia E. Butler, Brown develops a utopic vision that responds to and extends Wynter's demand of creating new genres of the human from our liminal existence. Brown engages Afrofuturism as practices that cultivate entirely different modes of material being and becoming. These practices move our liberatory visions outside of the confines of the human, spurring us to view ourselves as decentred, destabilised, dispersed as particles, energy, and vibrations.[65] Such a paradigm shift makes it possible to see ourselves as made of the same elements as the rest of the universe, looking towards radical relationalities to remain part of the material world but detached from earthbound meanings of the human.

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[63] Zakiyyah Iman Jackson (n 59); Jackson (n 57).

[64] Apart from Wynter, I have found the following works crucial for my own understanding of how the human materialises through epistemes of coloniality and antiblackness: Aimé Césaire, *Discourse on Colonialism* (Monthly Review Press 1972); Hortense J Spillers, 'Mama's Baby, Papa's Maybe: An American Grammar Book' [1987] Diacritics; Hortense J Spillers, *Black, White, and in Color: Essays on American Literature and Culture* (University of Chicago Press 2003); Neil Badmington, 'Theorizing Posthumanism' [2003] Cultural Critique 10; Christina Sharpe, *Monstrous Intimacies: Making Post-Slavery Subjects* (Duke University Press 2010). On how the meanings of materiality shape law, I have been especially influenced by the work of Hyo Yoon Kang and Sara Kendall, see: Hyo Yoon Kang and Sara Kendall, 'Legal Materiality' in Simon Stern, Maksymilian Del Mar and Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Oxford University Press 2019); Sara Kendall and Hyo Yoon Kang, 'Introduction' (2019) 23 Special Issue: Legal Materiality Law Text Culture 1; Kamari Maxine Clarke and Sara Kendall, '"The Beauty...Is That It Speaks for Itself": Geospatial Materials as Evidentiary Matters' (2019) 23 Law Text Culture 91.

[65] Jayna Brown, *Black Utopias: Speculative Life and the Music of Other Worlds* (Duke University Press 2021), 158-159.

3) Leaving behind Man's futures: new directions of life outside law

Breaching the confines of the human towards new modes of practicing the "*livedness of being*"[66] provides us the heretic possibility of leaving behind the futures predetermined within the terms of humanity. Law's materialisation of the human through its consigning of premature death in the present already orders these futures and bolts shut any recourse to liberation. For those on the receiving end of the violence of humanisation the future will have been now, since humanity marks this group's present as parenthetical.[67] To leave behind these "plantation futures", I have shown that what is needed from us is plotting new directions oriented towards life, and away from the law.[68] Failing to leave behind the hold of the human and its juridical imaginary impoverishes our ability to reinvent the meanings of freedom and reparation, providing us instead the motif of justice repackaged within the stale terms of statehood and personhood.

As we grasp at ways of existing and surviving in the future anterior time of converging catastrophes, across global souths and norths, we are at a critical juncture to rethink the emancipatory limits of political assertion achieved through the limited inclusion of black, indigenous, and Third World peoples into international law's regime of humanity. This requires us to give up our agnostic belief in the potential of the law and recognise that the fraught engagements with it as a tool by the oppressed has resulted only in the bequeathing of limited recognition masquerading as justice while still shrouded in unfreedom.[69] Re-evaluating our investment in the belief system of international law asks us to answer the question of what does it mean to believe in something that cannot bear life? To be clear, I am not dismissing the various ways those forced into humanity through negation of their actual terms of being have engaged with the law and the important, yet always contingent, gains such engagements have provided. I am also not sidelining the transformations in international legal scholarship generated through studying and theorising these subaltern negotiations with the law. In asking us to leave behind

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[66] Rinaldo Walcott, *The Long Emancipation: Moving toward Black Freedom* (Duke University Press 2021), 9.

[67] Weheliye (n 19), 138.

[68] Katherine McKittrick, 'Plantation Futures' (2013) 17 Small Axe: A Caribbean Journal of Criticism 1.

[69] By 'agnosticism' I refer to a reflex within critical international legal scholarship that, while critiquing the universal claims of international law, interprets its contingencies as opportunities for transformation away from its purported universality to nonetheless reify the horizon of international law. See for example: Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011); Upendra Baxi, *The Future of Human Rights* (3. ed, Oxford University Press 2012); Boyd van Dijk, *Preparing for War: The Making of the Geneva Conventions* (First edition, Oxford University Press 2022); Umut Özsu, *Completing Humanity: The International Law of Decolonization, 1960–82* (Cambridge University Press 2023).

our agnosticism towards law, my request is that we see this utilitarian relationship to law within the broader schema of how these groups have lived life within, against, and outside the law.

The call to overcome our agnosticism in the human and its attendant materialisation in/through/as law enables a move towards what Kalulé refers to as "*being with*, elsewhere".[70]Through a critical conceptualisation of human rights as producing a coercive subjecthood of being *rights-with*, she shows us that claiming a right constrains one within the pre-calculated juridical limits and its quotidian violence. Justice is unable to overcome this violence, instead ensuring the promise of the repetition of law's own violence.[71] It is in the practice of opacity, that which the law cannot apprehend, Kalulé locates the improvisatory poetics of freedom that does not require those rendered vulnerable to the violence of humanisation to plead rights, but they are cared for and are always already free.[72]

This abolitionist imaginary of a freedom yet to come, but also already here, brings our focus to the flights of desire, marronage, and fugitivity that momentarily breach the carcerality of our current mode of being.[73] Focusing on marronage beyond its representations of enslaved resistance, Grovogui theorises it as an expression of a political subjectivity underpinned by cognitive, material, and symbolic conditions.[74] By reading the revolt of Palmares relationally with the Dutch Revolt, he interjects into our dominant conceptions of what political actions constitute expressions of freedom, and especially how they influence our conceptions of self-determination beyond Westphalian notions. This relational reading, a "recounting of time", achieved by foregrounding the Quilombos, based on imaginaries that exceed the initial repudiation of enslavement, charts a route towards new understandings of world-historic revolutions within our pre-existing knowledge of freedom.[75] Yet as Walcott reminds us, a sole focus on understanding the possibilities of black abolitionist freedom through the practices of marronage runs the risk of entrapping us in unfreedom, as marronage acts as a *temporary* break

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[70] Petero Kalulé, 'Being Right-With: On Human Rights Law as Unfreedom' (2023) 31 Feminist Legal Studies 243, 259.

[71] Ibid.

[72] Ibid, 259-261

[73] The following works have influenced my understanding of 'fugitivity' and 'marronage' as conceptual frames of living against, within, and alongside forms of enclosure: Fred Moten, *In The Break: The Aesthetics Of The Black Radical Tradition* (University of Minnesota Press 2003); Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning & Black Study* (Minor Compositions 2013); Neil Roberts, *Freedom as Marronage* (The University of Chicago Press 2015); Celeste Winston, *How to Lose the Hounds: Maroon Geographies and a World beyond Policing* (Duke University Press 2023).

[74] Siba N'Zatioula Grovogui, 'The Myth of Westphalian Common Sense: Abjuration and Republicanism in Quilombos's Palmares' (2024) 123 South Atlantic Quarterly 529.

[75] Ibid, 544-547

from conditions of enclosure.[76] I understand his call as asking us to keep our eye on desiring, dreaming, and designing reparative futures which extend the horizon of our liberation apart from practices that give us temporary relief by holding the violence at bay. [77]

In her critical reading of international criminal law (ICL), Bluen shows how the current legal categories and narratives of that discipline, usurp grammars of futurity that disobey the preconditions of justice within its narrow frames.[78] What is needed then, she argues, is a performance of reparative reading that occupies the vantage point of the "tightrope" to displace the ontological ghostly presence of ICL's Nuremberg origin narrative, towards a Jewish liminality that also resists Zionist capture.[79] Similarly, Samudzi demonstrates how our current legal, political, and ethical notions of reparations are incapable of addressing the various forms of genocidal violence underpinning coloniality by foregrounding the Ovaherero and Nama community's ongoing demand for reparations that exceed the bilateral negotiations between Namibia and Germany.[80] In articulating the demand for the repatriation of ancestral human remains as the *basis* of reparation, the Ovaherero and Nama peoples indict the entire necropolitical structure of colonial dispossession through property and ownership claims inscribed within colonial, and now postcolonial statecraft.[81] As Samudzi argues, these demands of reparation are far reaching in their recognition of the afterlife of genocide that articulates a "grammar of futurity" expressed in demands for dignified burial of ancestors, repatriation of

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[76] Walcott (n 60), 106-107.

[77] The work of Ruha Benjamin has been transformative for me to imagine how we can design our reparative futures in their multiplicities yet always in relation. See: Ruha Benjamin, *Race After Technology: Abolitionist Tools for the New Jim Code* (Wiley 2019) Ruha Benjamin, *Captivating Technology: Race, Carceral Technoscience, and Liberatory Imagination in Everyday Life* (Duke University Press 2019); Ruha Benjamin, *Viral Justice: How We Grow the World We Want* (Princeton University Press 2022).

[78] Jo Bluen, 'Humanity, Expropriation, Janus-Faced Tightrope Dancing' (*THE FUNAMBULIST MAGAZINE*, 31 August 2021) <https://thefunambulist.net/magazine/against-genocide/humanity-expropriation-janus-faced-tightrope-dancing> accessed 13 January 2025.

[79] Ibid.

[80] Zoé Samudzi, 'Looting the Archive: German Genocide and Incarcerated Skulls' (2021) 19 Social and Health Sciences <https://unisapressjournals.co.za/index.php/SaHS/article/view/10490> accessed 13 January 2025.

[81] Ibid. The demands of the Ovaherero and Nama peoples for the restitution of land and ancestral remains are materially intertwined given that the communities have been continually denied the ability to give their ancestors dignified burials, and that locations such as Shark Island where many Ovaherero and Nama peoples were killed in a German concentration camp and are consequently buried are sites for rapacious postcolonial development. See for example: Caroline Kimeu, 'Call for Port Extension to Be Halted as Genocide Remains Are Found on Namibia's Shark Island' *The Guardian* (6 May 2024) <https://www.theguardian.com/global-development/article/2024/may/06/port-extension-call-halted-genocide-remains-namibia-shark-island> accessed 13 January 2025.

land and ancestral territories, and the restitution of other material objects, which transcend the purview of nation-state bilateralism and exculpatory reconciliation.[82]

Reparative futurities provide a distinct lexicon within which the continuing harms of being forcibly assimilated into humanisation can be expressed in their multiplicities. In the case of Vietnamese peasants, they assert their political community and just relation through the "power of dân (common people)" against the continuities of French, American, and postcolonial forces that dispossess them from their ancestral lands.[83] This assertion reaffirms their continually thwarted visions of self-determination to reveal the stakes of villagers' refusal to give up land, and instead defend their agrarian life while also worlding just relations that are not static but enacted through shared meanings and practices that change over time.[84] These practices of "earth-making", as Temin refers to the expressions of anticolonial agency within treaty-making practices of indigenous communities in Turtle Island, realise nonexploitative and care-based relations that displace self-other relations with interdependent relations between 'kin'.[85] These open-ended relationalities pursue alternate visions of social being outside of the anti-relational conceptual logics of sovereignty and repair the harm of "abduction", i.e. the loss of land and the resultant violation of indigenous life.[86] Recognising the multiplicities of the futures imagined beyond Man foregrounds the essential material praxis of reparation that evades the essentialising character of legal categories. As Memon notes in his relational theorisation of how processes of caste and race were inscribed into international law, the prefigurative demand of annihilating caste intersects with and does not contradict the abolition of racial capitalism, without one needing to subsume the other.[87] In her novel theorising of the "no state solution", Azeb upends the currently accepted international legal discourse on 'two-states' and/or 'one-state' 'solutions' to the Israeli occupation of Palestine. She grounds herself in the revolutionary demand of return by the Palestinian diaspora and the many practices through which Palestinians in Palestine make themselves "inconveniently visible" to overcome the matrices of

[82] Zoé Samudzi, 'Reparative Futurities: Thinking From the Ovaherero and Nama Colonial Genocide' (*THE FUNAMBULIST MAGAZINE*, 29 June 2020) <https://thefunambulist.net/magazine/reparations/reparative-futurities-thinking-from-the-ovaherero-and-nama-colonial-genocide-by-zoe-samudzi> accessed 13 January 2025.

[83] Quỳnh N Phạm, 'Nông Dân Being Wronged: Fighting for the World in a Place' [2024] The International Journal of Human Rights

[84] ibid

[85] David Myer Temin, *Remapping Sovereignty: Decolonization and Self-Determination in North American Indigenous Political Thought* (University of Chicago Press 2023).

[86] Ibid.

[87] Ahmed Memon, '"English in Taste, Indian in Blood": Caste Hegemony in the Making of British International Legal Thought' [2024] London Review of International Law.

hypervisibility and invisibility of Zionist colonisation to work towards a future beyond statehood.[88]

Placing emphasis on these future, often furtive, visions and practices of livingness is an important aspect of abolitionist theorising and praxis, ones that current scholarship on abolition and international law should engage with more closely.[89] While the emphasis on carceral practices within international law is understandably the focus of these recent works, it is vital to pay attention to how carcerality materialises through the human as form of life and its anti-social relations entrenched in and reproduced by international law – even when it acts for and in the name of justice. Drawing this extended horizon for our abolitionist imaginaries makes it possible to dream the demise of international law as a world-ordering paradigm.

Through a shift in our terms of reference we can enact a break in our thinking and narration of both, the persistent violence of coloniality and anti-blackness and the desires of freedom, reparation, and liberation, outside of the frame of law and its human. We can understand international law as an integral component of our "interminable catastrophe" that narratively condemns Black, indigenous, and the structurally and globally impoverished as *les damnés* within its schema of truth.[90] International law acts as the frame through which the many catastrophes of coloniality repeatedly realise in our current mode of existing and confine the possibilities of liberatory futures. Yet this confinement is never total and is always at the cusp of being breached by a praxis of livingness, giving rise to an epistemic transformation that throws existing categories into crisis so that we might refuse them and chart new truths that liberate life – from the many rivers, across the many seas.

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[88] Sophia Azeb, 'The "No-State Solution": Decolonizing Palestine Beyond the West Bank and East-Jerusalem' (*THE FUNAMBULIST MAGAZINE*, 27 February 2017) <https://thefunambulist.net/magazine/10-architecture-colonialism/no-state-solution-decolonizing-palestine-beyond-west-bank-east-jerusalem> accessed 13 January 2025.

[89] The current turn to abolitionist theory within international law is particularly visible in the field of international criminal law, see for example: Sophie Rigney, 'Building An Abolition Movement for International Criminal Law?' (2024) 22 Journal of International Criminal Justice 211; Michelle Burgis-Kasthala and Barrie Sander, 'Contemporary International Criminal Law After Critique: Towards Decolonial and Abolitionist (Dis-)Engagement in an Era of Anti-Impunity' (2024) 22 Journal of International Criminal Justice 127.

[90] Bedour Alagraa, 'The Interminable Catastrophe' (1 March 2021) <https://offshootjournal.org/the-interminable-catastrophe/> accessed 13 January 2025.

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