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Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror

Two basic forms of 'lawfare' are employed by the United States in its enactment of the war on terror; both of which have a biopolitical focus. The first strategy has been well documented.[1] It involves the indefinite detention and sometimes extraordinary rendition of enemy combatants, legally sanctioned and politically justified by the 'exceptional' circumstances of late modern war and terrorist violence. Geography plays a central role in strategy number one: the legal statuses of detainees, whose lives and bodies are cast out and denied basic juridical rights, are bounded, identified and allowed for in extra-territorial spaces throughout the world, from Guantanamo Bay to Bagram Air Force Base. Such exceptional biopolitical spaces are essentially 'defensive' and operate at the local scale. On the contrary, the second seldom-discussed legal strategy conditions and protects the US military in 'offensive' mode, operates at the national and transnational scale, and involves the careful legal designation and protection of US military personnel in forward deployed areas.[2] This paper is centrally concerned with strategy number two – a strategy that can be defined as 'forward juridical warfare' and involves the US military's mobilization of the law in the waging of war along the 'new frontiers' of its war on terror. The paper seeks to expound the legal and biopolitical constitution and operation of the current US military's forward presence overseas, and begins by drawing on recent work on biopolitics that has sought in various ways to critique the proliferation of practices of liberal lawfare and securitization in our contemporary world.

Keywords: biopolitics, geopolitics, war on terror, lawfare, US military, juridical warfare

"At the Direction of the President, we will defeat adversaries at the time, place, and in the manner of our choosing – setting the conditions for future security".[3]

- *National Defense Strategy of the United States of America*, 2005

"For too long, the law has not been understood as a critical instrument of foreign policy".[4]

- Harvey Rishikof, former Chair, Department of National Security Strategy, National War College, 2008

"If, therefore, conclusions can be drawn from military violence [...] there is inherent in all such violence a lawmaking character".[5]

- Walter Benjamin, *Critique of Violence*, 1921

"[S]ecurity is a way of making the old armatures of the law and discipline function".[6]

- Michel Foucault, Lecture at the Collège de France, 1978

Foucault's 'society of security': towards a biopolitical critique of the war on terror

What does it mean to place 'life' at the centre of political inquiry? What is achieved in this move? Is it possible to speak of a 'spatiality of biopolitics', which not only pays attention to scale but also to the complex constellation of sovereign and biopolitical power? And if so, is it helpful any longer to speak of 'biopolitics' and 'geopolitics' separately? In recent years, such questions have featured prominently in reflections across the social sciences that have sought to theorise the relations between 'territory' and 'sovereign power', 'populations' and 'biopolitical power'.[7] Though 'biopolitics' is a much contested term, deployed differently in an array of contexts, a key focus of examination in the increasingly extensive literature on the subject has nonetheless been on the spatial politics through which life is constituted and governed; in other words, how life is incorporated into modern forms of governmentality. And this, of course, is a particularly geographical concern.

For geographers, putting 'life' at the centre of political critique poses a number of intriguing theoretical challenges that have been taken up in a variety of ways.[8] Many have drawn on the work of Foucault and particularly his recently translated lectures on security, territory and population at

the Collège de France in 1978.[9] For Foucault, geography was, of course, pivotal to his thinking on biopower;[10] and, together with the figure of 'population', was central too in the advancement of what Derek Gregory has called his "biopolitical imaginary".[11] In *Security, Territory, Population*, Foucault outlines what he saw as the eighteenth-century[12] move from power primarily directed over 'territory' to power increasingly focused on 'population'. From this point, Foucault argues a new "general economy of power" began to emerge, dominated by "mechanisms" or "technologies" of security whose endgame was the identification, regulation and circulation of populations; and this new "society of security" was enabled by "making the old armatures of the law and discipline function".[13] The new regulatory "apparatuses (*dispositifs*) of security" reflected for Foucault a shift in the sovereign's concerns from: "the safety of his territory" to the "security of the population"; from "what limit to impose" to "facilitating the proper circulation of people"; from traditional "sovereign power" to modern "biopolitical power".[14] Foucault's outlining of the governmental shift towards the security and securitization of whole "populations" is especially instructive to the argument I want to make later concerning the biopolitical strategies of US military commanders on the new frontiers of the war on terror. For commanders, the 'population' under their command – including especially US troops – presents a dialectic of what Foucault calls "juridical-political" subjects and "technical-political" objects of "management and government".[15]

In theorising the confluence of 'security, territory, population' in early 1978, Foucault introduced the concept of 'governmentality' for the first time, and indeed acknowledged his preference for "a history of "governmentality"" as a more apposite title for his lecture course that spring. 'Governmentality' was formulated as both a "problematic" that marks the entry of the "modern state in a general technology of power", but also as an analytical tool that involves a "methodological principle" of going behind or outside the 'state' (a move away, in other words, from an "institutional-centric" approach) to conceive of a wider perspective on "the technology of power".[16] 'Governmentality', for Foucault, is understood first and foremost as an assemblage of "institutions, procedures, analyses and reflections, calculations, and tactics" that capacitate a form

of power that "has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument".[17] And the era of modernity is marked not by the state's "takeover" of society but rather by how the state became gradually "administrative" and "governmentalized" and "controlled by apparatuses of security".[18]

Foucault's envisioning of a more governmentalized and securitized modernity, framed by a ubiquitous architecture of security, speaks on various levels to the contemporary US military's efforts in the war on terror, but I want to mention three specifically, which I draw upon through the course of the paper. First, in the long war in the Middle East and Central Asia, the US military actively seeks to legally facilitate both the 'circulation' and 'conduct' of a target population: its own troops. This may not be commonly recognized in biopolitical critiques of the war on terror but, as will be seen later, the Judge Advocate General Corps has long been proactive in a 'juridical' form of warfare, or lawfare, that sees US troops as 'technical-biopolitical' objects of management whose 'operational capabilities' on the ground must be legally enabled. Secondly, as I have explored elsewhere, the US military's 'grand strategy of security' in the war on terror – which includes a broad spectrum of tactics and technologies of security, including juridical techniques – has been relentlessly justified by a power/knowledge assemblage in Washington that has successfully scripted a neoliberal political economy argument for its global forward presence.[19] Securitizing economic volatility and threat and regulating a neoliberal world order for the good of the global economy are powerful discursive touchstones registered perennially on multiple forums in Washington – from the Pentagon to the war colleges, from IR and Strategic Studies policy institutes to the House and Senate Armed Services Committees – and the endgame is the legitimization of the military's geopolitical and biopolitical technologies of power overseas.[20] Finally, Foucault's conceptualization of a 'society of security' is marked by an urge to 'govern by contingency', to 'anticipate the aleatory', to 'allow for the evental'.[21] It is a 'security society' in which the very language of security is promissory, therapeutic and appealing to liberal improvement. The lawfare of the contemporary US military is precisely orientated to plan for the 'evental', to anticipate a

series of future events in its various 'security zones' – what the Pentagon terms 'Areas of Responsibility' or 'AORs' (see figure 1).[22] These AORs equate, in effect, to what Foucault calls "spaces of security", comprising "a series of possible events" that must be securitized by inserting both "the temporal" and "the uncertain".[23] And it is through preemptive juridical securitization 'beyond the battlefield' that the US military anticipates and enables the necessary biopolitical modalities of power and management on the ground for any future interventionary action.

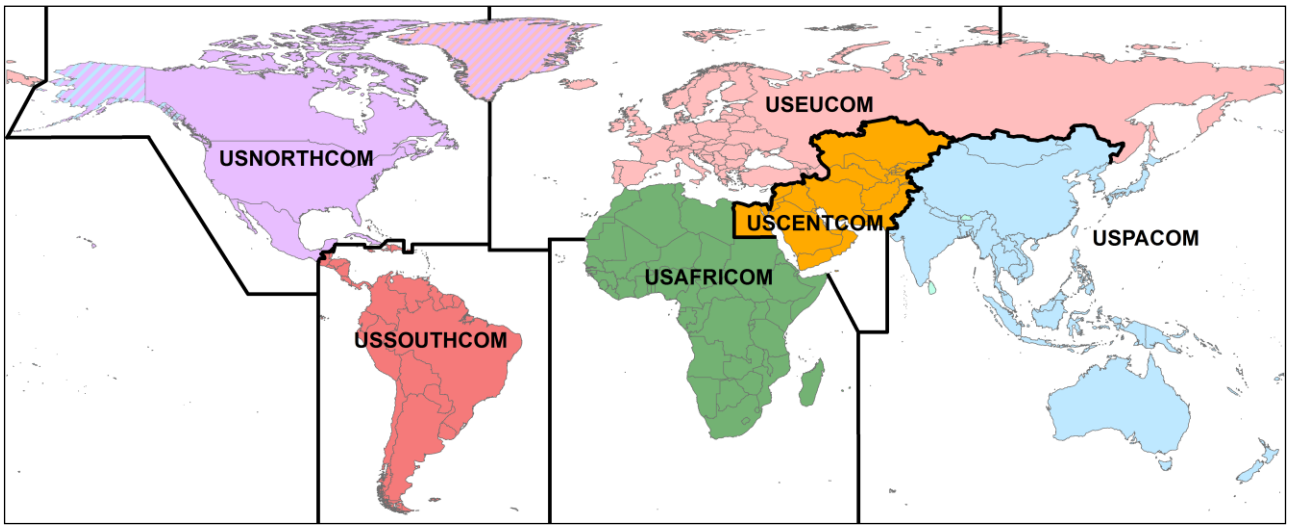

Figure 1: **"The World with Commanders' Areas of Responsibility", 2010** [24]

AORs and the 'milieu' of security

For CENTCOM Commander General David Petraeus, and the other five US regional commanders across the globe, the 'population' of primary concern in their respective AORs is the US military personnel deployed therein. For Petraeus and his fellow commanders, US ground troops present perhaps less a collection of "juridical-political" subjects and more what Foucault calls "technical-political" objects of "management and government".[25] In effect, they are tasked with governing "spaces of security" in which "a series of uncertain elements" can unfold in what Foucault terms the "milieu".[26] What is at stake in the 'milieu' is "the problem of circulation and causality", which must be anticipated and planned for in terms of "a series of possible events" that need to "be regulated within a multivalent and transformable framework".[27] And the "technical problem" posed by the eighteenth-century town planners Foucault has in mind is precisely the same technical problem of

space, population and regulation that US military strategists and Judge Advocate General Corps (JAG) personnel have in the twenty-first century.

For US military JAGs, their endeavours to legally securitize the AORs of their regional commanders are ultimately orientated to "fabricate, organize, and plan a milieu" even before ground troops are deployed (as in the case of the first action in the war on terror, which I return to later: the negotiation by CENTCOM JAGs of a Status of Forces Agreement with Uzbekistan in early October 2001).[28] JAGs play a key role in legally conditioning the battlefield, in regulating the circulation of troops, in optimizing their operational capacities, and in sanctioning the privilege to kill. The JAG's milieu is a "field of intervention", in other words, in which they are seeking to "affect, precisely, a population".[29] To this end, securing the aleatory or the uncertain is key. As Michael Dillon argues, central to the securing of populations are the "sciences of the aleatory or the contingent" in which the "government of population" is achieved by the regulation of "statistics and probability".[30] As he points out elsewhere, you "cannot secure anything unless you know what it is", and therefore securitization demands that "people, territory, and things are transformed into epistemic objects".[31] And in planning the milieu of US ground forces overseas, JAGs translate regional AORs into legally-enabled grids upon which US military operations take place. This is part of the production of what Matt Hannah terms "mappable landscapes of expectation";[32] and to this end, the aleatory is anticipated by planning for the 'evental' in the promissory language of securitization.

The ontology of the 'event' has recently garnered wide academic engagement. Randy Martin, for example, has underlined the evental discursive underpinnings of US military strategy in the war on terror; highlighting how the risk of future events results in 'preemption' being the tactic of their securitization.[33] Naomi Klein has laid bare the powerful event-based logic of 'disaster capitalism';[34] while others have pointed out how an ascendant 'logic of premediation', in which the future is already anticipated and "mediated", is a marked feature of the "post-9/11 cultural landscape".[35] But it was Foucault who first cited the import of the 'evental' in the realm of biopolitics. He points to

the "anti-scarcity system" of seventeenth-century Europe as an early exemplar of a new 'evental' biopolitics in which "an event that could take place" is prevented before it "becomes a reality".[36] To this end, the figure of 'population' becomes both an 'object', "on which and towards which mechanisms are directed in order to have a particular effect on it", but also a 'subject', "called upon to conduct itself in such and such a fashion".[37] Echoing Foucault, David Nally usefully argues that the emergence of the "era of bio-power" was facilitated by "the ability of 'government' to seize, manage and control individual bodies and whole populations".[38] And this is part of Michael Dillon's argument about the "very operational heart of the security dispositif of the biopolitics of security", which seeks to 'strategize', 'secure', 'regulate' and 'manipulate' the "circulation of species life".[39] For the US military, it is exactly the circulation and regulation of life that is central to its tactics of lawfare to juridically secure the necessary legal geographies and biopolitics of its overseas ground presence.

US forward presence in the war on terror: the enduring import of 'land power'

In considering the US military's legal tactics to empower its specifically 'biopolitical project of security' overseas, it is important to firstly sketch out the recent historical geographical evolution of the contemporary 'milieu' of US ground forces abroad – or what some refer to as the American 'leasehold empire'.[40] In doing so, I want to especially underline the evolving import of 'land power' – defined by 'land access', not territorial control – increasingly identified by military strategists in Washington from the early 1980s, which in turn behoved US military JAGs to foreground the legal terrain of any planned for ground presence. They were tasked with forecasting the evental, forestalling the uncertain; preconfiguring, in other words, the biopolitical modalities of US operations on the ground. And this expressly biopolitical project of securitization works in tandem, of course, with a broader geopolitical and geoeconomic project of securitization. It is the biopolitical enabling of land power.

US grand strategy in the war on terror is chiefly built upon a network of bases in the Middle East and Central Asia, the area militarily managed by the aforementioned US CENTCOM. Its AOR, seen in figure 2, extends from Egypt across the Arabian Gulf to Iraq, Iran and Afghanistan. It calls this vast area the 'Central Region' and, at the beginning of 2010, it had over 225,000 armed services personnel forward deployed therein.[41] Historically, the current extent of both CENTCOM forces and bases represents a high point of US geostrategic presence in the region. However, in the early years of the command's inception in the 1980s, the contemporary scenario could only have been dreamed of by foreign policy strategists in Washington.[42]

Figure 2: **CENTCOM Area of Responsibility, 2010**

In early 1980, apart from the tiny atoll of Diego Garcia in the Indian Ocean, some 2000 miles southwest of the coast of Oman, the United States held no military bases anywhere in the Middle East, from Turkey to the Philippines. At this juncture, as then Undersecretary of Defense Robert Komer communicated in Congress, Persian Gulf countries "most emphatically do not want formal security arrangements with us".[43] By the time CENTCOM came into being in 1983, 'prepositioning' at sea of military arsenals, logistical supports and subsistence supplies was the principal US national security strategy overseas.[44] However, a marked concern of contemporary military planners in Washington was that prepositioning on ships was ultimately a limited war strategy on its own; particularly for the new military thinking behind 'rapid deployment forces'. A range of government advisory think-tanks in strategic studies lamented the perennial bigger challenge: the 'problem of access'. Jeffrey Record, at the Institute for Foreign Policy Analysis, for example, saw "[s]ecure military access ashore in the Persian Gulf" as essential for US foreign policy in the region.[45] For Record, the imperative of 'land access' was clear:

> To get ashore, intervention forces must have access to ports, airfields, and other reception facilities. To stay ashore, they require continued access to proximate logistical support bases.[46]

Such concerns were, of course, driven too by the Cold War geopolitical context of the early 1980s, which saw the prevailing view of "American deterrent capabilities" against the Soviet Union in the Middle East as "frighteningly pessimistic", given that the Soviets had twenty-four infantry divisions based north of Iran, while the US had four divisions "based thousands of miles away" in the continental United States.[47]

Consequently, a proactive Department of Defense strategy for forging military links in the broader Persian Gulf region was vigorously pursued in the early 1980s by firstly initiating 'joint training exercises' with host countries. Egypt was originally the main target, and the establishment of the military training exercise, *Bright Star*, there in late 1980 was heralded by the Carter administration as the first step in the necessary ground forces access for the US military in the

Middle East.[48] The Department of Defense simultaneously pursued a policy of securing 'access rights' for its armed forces with various countries across the Persian Gulf and Horn of Africa through the course of the 1980s (typically via bilateral agreements involving arms sales as a key component);[49] and the growing US military capabilities in the region culminated in the capacity to rapidly respond to Saddam Hussein's invasion of Kuwait in 1990. In the wake of success in the Gulf War, a new US deterrence strategy, which tasked CENTCOM with the military-economic securitization of the Persian Gulf, emerged in the 1990s and this prompted the command to rigorously seek to secure more permanent access rights and extend its basing structure and land prepositioning across the region.[50] By 1994, the US had forged close relationships with all six Gulf Cooperation Countries (GCC), signing broad bilateral defense and access agreements, including classified Status of Forces Agreements, with each state.[51]

The import of 'land access' for the US military's contemporary projects of security overseas continues to be cited in the corridors of power in Washington today. In their 2005 report to Congress, the US Overseas Basing Commission, for instance, not only reaffirmed the enduring significance of land access for the military, but also divulged the preemptive logic driving current US basing strategy:

> The U.S. overseas basing structure must serve both in the near term and for decades to come […] any base structuring cannot be designed to deal only with the threats of today. The base structure we develop in the near future must enable us to meet the threats that will emerge over the next quarter century and beyond.[52]

And the commission were at pains to underline, in particular, the imperative of "maintaining a forward presence" for CENTCOM's geopolitical and geoeconomic mission.[53] A year after the review, the then CENTCOM Director of Logistics Major General Brian Geehan outlined how the command supported a staggering 128 operating bases across its AOR;[54] and the concentration of these mirror some of the key nodes in the political economy of oil production in the Persian Gulf.

Apart from the operational infrastructure necessary to sustain the ongoing wars in Iraq and Afghanistan, the bulk of CENTCOM's long-term facilities architecture on the ground is in the energy-rich GCC countries of the Arabian Peninsula (see table 1).

Country	Facility [55]	Description
Bahrain	- *Al Manamah Port* (CENTCOM Navy and Marine HQs) - *Mina al-Sulman Port* - *Muharraq Airfield* - *Sheik Isa Air Base*	Bahrain hosts the US Navy's HQ in the Persian Gulf at its capital, Al Manamah; access to the US Navy is also granted at Mina al-Sulman port and Muharraq airfield, and pre-positioned equipment is sited at Shaikh Isa Air Base; Al Manamah hosts the Navy and Marine HQs of CENTCOM (NAVCENT and MARCENT).[56]
Kuwait	- *Ahmed Al Jaber Air Base* - *Ali Al Salem Air Base* - *Camp Arifjan* (CENTCOM Army HQ) - *Camp Buehring/Udairi Range* - *Camp Doha* - *Kuwait Naval Base*	Kuwait hosts thousands of troops and supporting personnel for Operation Iraqi Freedom at Camp Arifjan, Camp Buehring, Camp Doha, Kuwait Naval Base and Ali al-Salem Air Base; it has also granted the US Air Force access to Ahmed al Jaber Air Base; Camp Arifjan hosts the Army HQ of CENTCOM (ARCENT).
Oman	- *Khasab Air Base* - *Masirah Air Base* - *Muscat Port* - *Salalah Port* - *Seeb Air Base* - *Thumrait Air Base*	Oman accommodates prepositioned equipment and gives access rights to the US Air Force at Khasab, Masirah, Thumrait, and Seeb Air Bases, where it also hosts some US Air Force personnel; the ports of Muscat and Salalah also provide facilities.
Qatar	- *Al Udeid Air Base* (CENTCOM Air Force HQ) - *Camp As Sayliyah* (CENTCOM HQ and CENTCOM Special Operations HQ) - *Doha fuel storage location* - *Umm Said Port*	Qatar hosts CENTCOM's forward HQ in the Gulf at Camp As Saliyah, which also hosts the Special Operations HQ of CENTCOM (SOCENT), and pre-positioned US Army materials; Al Udeid Air Base hosts the hub of the US Air Force operations in the Gulf and is the Air Force HQ of CENTCOM (CENTAF); Doha and Umm Said are also used for fuel storage and port facilities.
Saudi Arabia	- *Eskan Village Compound, Riyadh* - *Jeddah Air Base* - *King Abdul Aziz Air Base, Dhahran* - *King Abdul Aziz Naval Base, Jubail* - *King Khalid Air Force Base, Khamis-Mushayt* - *USMTM Compound, Tabuk*	After the launch of Operation Iraqi Freedom, the US withdrew and relocated to Qatar most of its Saudi-based forces by September 2003; US military personnel are still actively deployed, however, at various bases in Saudi Arabia directing the ongoing 'United States Military Training Mission to Saudi Arabia' (USMTM) initiated in 1953 in the aftermath of the Roosevelt-Aziz agreement on USS *Quincy* in 1945.
UAE	- *Al Dhafra Air Base* - *Jebel Ali Port* - *Fajairah International Airport*	The UAE hosts US supporting military personnel for Operations Iraqi Freedom and Operation Enduring Freedom at Al Dhafra Air Base; Jebel Ali port facilitates US ships resupplying Al Dhafra Air Base.

Table 1: **US access facilities in GCC countries in the Persian Gulf, 2010**

Geopolitics and biopolitics: the 'toxic combination'

The sheer extent of the current US military forward presence in the GCC/Persian Gulf region is new in the American experience. For the first time, there now appears the contours of a continuous US ground presence, which has been further facilitated by the ongoing Iraq War and broader war on terror. And, of course, a host of US foreign policy strategists and security experts have enthusiastically scripted the geostrategic and geoeconomic opportunities attained under the rubric of the long war.[57] Indeed, as Asli Bâli and Aziz Rana underline, both the Republicans and Democrats "continue to take as given the centrality of pacification and global omnipresence for the promotion of American interests, despite the extent to which the experience of the last decade underscores the counter-productivity of these policies".[58] Today, as the long war continues unabated across the Middle East and Central Asia, the United States holds an unprecedented number of bases and access facilities across the most energy-rich region on earth. In Iraq, the US military has 45 major bases and well over 100 forward operating bases in total; in Afghanistan, it utilizes over a dozen major base and airfield facilities; and, in addition, key bases and access facilities are maintained in Bahrain, Djibouti, Egypt, Jordan, the Kyrgyz Republic, Oman, Pakistan, Qatar, Saudi Arabia and the United Arab Emirates.[59] It has become clear too that the Pentagon is intent on establishing at least 14 "enduring bases" as the spoils of the Iraq War;[60] and there are various other 'projects of securitization' being planned for that reveal the 'long-term' vision for a permanent US ground presence across the Persian Gulf.[61] For the 'long war of securitization', the Pentagon's contingency plans for maintaining and extending its global ground presence – what it calls 'full-spectrum dominance' – can be read as a stark warning that on the US military's Zulu Time the sun never sets. But all of its 'land power' must still be secured and capacitated by extending the architecture and operation of the US military's biopolitical power on the ground. This is where biopolitics merges with geopolitics.

The US military's geostrategic forward presence in the Persian Gulf and elsewhere becomes only fully realised when its 'geopolitical operational capacity' is paralleled by a 'biopolitical

operational capacity' on the ground. The latter must be enabled by a legal architecture allowing for, and governing, land access, troop circulation and conduct. This is the "toxic combination of geopolitics and biopolitics" that Michael Dillon has in mind when he observes the securitization practices of the war on terror.[62] For Dillon, the "geopolitics of security" revolve around the space of "territory", while the "biopolitics of security" revolve around the space of "population", yet both are indelibly intertwined.[63] Dillon's observation has been echoed by many. For Derek Gregory, for example, "biopolitics is not pursued outside the domain of sovereign power but is instead part of a protracted struggle over the right to claim, define and exercise sovereign power".[64] Of course, it could be argued that geo-politics has always centrally involved bio-politics too and that any recent drawing out of the multiple overlaps between the two simply reflects inadequate prior definitions of both classical and critical geopolitics.[65] In any case, what undoubtedly remains a challenge is the task of revealing and expounding how biopolitical strategies "relate to broader scale issues such as geopolitics and national economic and political policy, and vice versa".[66] It is this theorizing of the complex relations between 'micro' and 'macro' scales of power that is key to Schlosser's call to "avoid dualistic notions of bio-political and sovereign power".[67]

Reflecting on the character of late modern war, Derek Gregory draws a useful distinction between the 'object-ontology' of traditional geopolitics, with its customary territorial concerns, and the 'event-ontology' of contemporary biopolitics, where battlefields are "*composed* of events rather than objects" and biopolitical arguments are concerned with making interventionary military violence "appear to be intrinsically therapeutic".[68] The battle zones of the war on terror may well be "visibly and viscerally alive with death" (when, as Gregory observes, 'biopolitics' becomes 'necropolitics') but the US military are adept at navigating such potentially damning biopolitical registers in its dealings with the media. Long scripted geopolitical registers quickly become mobilised at press briefings, which reinstate "optical detachment" by reductively re-mapping battle spaces back into "an abstract geometry of points".[69] Discursively, the US military is certainly attuned to an expedient entwining of its biopolitical and geopolitical operations. And as I argue

below, this discernible conflation of biopolitical and geopolitical strategies also applies to the material securitization practices of the US military as well.

Juridical warfare: forward deployment beyond the battlefield

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a "continuation of political commerce" by "other means".[70] Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it "has become a key aspect of modern war".[71] For Dunlap and his colleagues in the JAG corps, the law is a "force multiplier", as Harvard legal scholar, David Kennedy, explains: it "structures logistics, command, and control"; it "legitimates, and facilitates" violence; it "privileges killing"; it identifies legal "openings that can be made to seem persuasive", promissory, necessary and indeed therapeutic; and, of course, it is "a communication tool" too because defining the battlefield is not only a matter of "privileging killing", it is also a "rhetorical claim".[72] Viewed in this way, the law can be seen to in fact "contribute to the proliferation of violence rather than to its containment", as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.[73]

In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalize its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined 'juridical warfare' (his preferred designation over 'lawfare') as a pivotal "legal instrument" for insurgents in the asymmetric war on terror.[74] For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak 'against' the United States; it is never acknowledged as a legal strategy 'of' the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a

renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritizing and mobilizing the law as an active player in the war on terror.[75]

Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.[76] For Dunlap, imposing legal restraints on the battlefield as a "matter of policy" merely "play[s] into the hands of those who would use [international law] to wage lawfare against us".[77] Dunlap's counter-strategy is simply "adhering to the rule of law", which "understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants"; indeed, he implores that "this tenet of international law be thoroughly understood".[78] But 'the' rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.[79] As David Kennedy illuminates so brilliantly in *Of War and Law*:

> We need to remember what it means to say that compliance with international law "legitimates." It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified".[80]

The recent 'special issue on juridical warfare' in the US military's flagship journal, *Joint Force Quarterly*, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of "[w]hich international conventions govern the confinement and interrogation of terrorists and how".[81] The use of the term 'terrorists' instead of suspects sets the tone for the ensuing debate: in an impatient defense of 'detention', Colonel James Terry bemoans the "limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006" (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that "requirements inherent in the war on terror will likely warrant expansion of habeas

corpus limitations";[82] considering 'rendition', Colonel Kevin Cieply asks the shocking question "[i]s rendition simply recourse to the beast at a necessary time";[83] Colonel Peter Cullen argues for the necessity of the "role of targeted killing in the campaign against terror";[84] Commander Brian Hoyt contends that it is "time to re-examine U.S. policy on the [international criminal] court, and it should be done through a *strategic lens*";[85] while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title 'The International Criminal Court: A Concept Whose Time Has *Not* Come'.[86] These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit "real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power".[87] And such thinking is entirely consistent with the defining *National Defense Strategy* of the Bush administration, which signalled the means to win the war on terror as follows: "we will defeat adversaries at the time, place, and in the manner of our choosing".[88]

If US warfare in the war on terror is evidently underscored by a 'manner of our choosing' preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive 'juridical warfare' that must be simultaneously pursued to legally capacitate, regulate and maximize any, and all, military operations. The 2005 *National Defense Strategy* underlined the challenge thus:

> Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.[89]

It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of 'Status of Forces Agreements' –

to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.[90]

A ‘Status of Forces Agreement’ (SOFA) is “an agreement that defines the legal position of a visiting military force deployed in the territory of a friendly state”.[91] Each of the SOFAs secured by the US military with its host countries in the war on terror are classified. However, the vital components of any SOFA serve to primarily define the legal designation of military personnel to negate accountability to both national and international law.[92] And this is all done a priori, of course; SOFAs anticipate the ‘aleatory’ and plan for the ‘evental’. Their essential purpose, indeed, echoes resoundingly Foucault’s theorization of the ‘biopolitical apparatus of security’: to “fabricate, organize, and plan a milieu”.[93] In practical terms, the critical importance of a SOFA is well summed up by US Air Force JAG Lieutenant Colonel Jeffrey Walker in his blunt assertion that “without a SOFA, you’re just a group of heavily armed tourists”.[94] The key role of Military JAGs, then, is to legally condition and safeguard the deployment of US forces overseas. As one Assistant Staff Judge Advocate at US Southern Command set out in considerable detail in *The Army Lawyer* in 2000, the basic JAG responsibility is to “keep military personnel from going to jail for doing the right thing”;[95] or more specifically for doing what is legally enabled.

For CENTCOM, securing SOFAs with various Middle Eastern countries has been a critical element of theater strategy since the early 1980s.[96] Since the war on terror began, however, the command has broadened negotiations with various countries in its AOR to formalize military ties. Uzbekistan is one such country. Just three weeks after the September 11 attacks, “concerted negotiations involving teams of CENTCOM JAGs and State Department lawyers” culminated in the Uzbeks signing a crucial SOFA for the US military, which permitted US forces access to Uzbekistani territory and airspace in preparation for the then imminent attack on Afghanistan.[97] This was the first action in the war on terror – on the legal battlefield. The US has since signed defense pacts and SOFA agreements with various other allies in its long war against terrorism, including Kuwait, Bahrain, Qatar and Djibouti.[98]

The most important element of any SOFA is the establishment of the legal jurisdiction within which foreign armed personnel operate in host countries. SOFAs, in effect, define the "legal status of the foreign troops" by "setting forth the rights and responsibilities between the basing and hosting power with regard to such matters as criminal and civil jurisdiction".[99] In the war on terror, the Bush administration consistently signalled its intentions to exempt US forces from accountability to the jurisdiction of both host governments and international law.[100] On the national level, this resulted in the protection of US personnel, such as Airman Zachary Hatfield who fatally shot a Kyrgyz civilian at a checkpoint at Manas Air Base in December 2006, from local prosecution; Hatfield was sent home to the United States and hence out of the jurisdiction of the Kyrgyz Republic in March 2007.[101] On the international level, the unilateral Bush agenda routinely resulted in the bypassing and refusal of international legal jurisdiction in the governance of US military action. Any checking of US violations of international law was vitriolically resisted. In 2005, for example, just a few days after DePaul Professor of International Law, M. Cherif Bassiouni, released a UN report criticizing the US military for committing human rights abuses in Afghanistan, intense US pressure saw him removed as 'UN independent expert on human rights' in the country.[102]

Under the rubric of 'Transforming the US Global Defense Posture', initiated in 2003, the Department of Defense factored the careful negotiation of SOFAs that eschew the jurisdiction of international law centrally into its long-term military strategy overseas. Speaking at the Center for Strategic and International Studies in Washington in December 2003, the then Under Secretary of Defense for Policy, Douglas Feith, set out the "transformation" in "longer-term thinking about U.S. defense strategy", which revolved around developing "rapidly deployable capabilities" worldwide – capabilities that rely upon legal-biopolitical technologies of power.[103] Feith outlined the necessary lawfare required to facilitate such a grandiose strategy:

> For this deployability concept to work, US forces must be able to move smoothly into, through, and out of host nations, which puts a premium on establishing legal and support arrangements […] We are

> negotiating or planning to negotiate with many countries legal protections for US personnel, through Status of Forces Agreements and agreements (known as Article 98 agreements) limiting the jurisdiction of the International Criminal Court with respect to our forces' activities.[104]

Feith intimated too the financial trade-off for countries willing to participate: "we are putting in place so-called cross-servicing agreements so that we can rapidly reimburse countries for support they provide to our military operations".[105] Like all warfare, 'juridical warfare' pays someone.

The rapid deployability concept was officially codified with the publication and report to Congress of the *Global Defense Posture Review* in 2004.[106] Therein, "bilateral and multilateral legal arrangements" are underlined as critical components of "global defense posture", which allow for the "necessary flexibility and freedom of action to meet 21st-century security challenges".[107] Defense Under Secretary Feith's previously announced design to bypass international law and specifically the International Criminal Court in future negotiations of access agreements is also explicitly signalled.[108] The 2005 *National Defense Strategy* further reinforced the US unilateral position; its bold warning that "our strength as a nation will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism" representing a stark illustration of the Bush administration's contempt for international institutions and international law.[109] If we were in any doubt as to the Bush administration's anticipated 'milieu' for Iraq, a situation the Obama administration has inherited, we got a clear confirmation of it in Patrick Cockburn's outlining of leaked details of a "secret deal" negotiated in Baghdad in the summer of 2008 that would "perpetuate the American military occupation of Iraq indefinitely, regardless of the outcome of the US presidential election": "Bush wants 50 military bases, control of Iraqi airspace and legal immunity for all American soldiers and contractors".[110] This is the US military's securitization endgame overseas: territorially secured land power and legally enabled biopower.

Security, not liberty: the 'permanent emergency' of the security society

The US military's evident disdain for international law, indifference to the pain of 'Others' and endless justifying of its actions via the language of 'emergency' have prompted various authors to reflect on Giorgio Agamben's work, in particular, on bare life and the state of exception in accounting for the functioning of US sovereign power in the contemporary world.[111] Claudio Minca, for example, has used Agamben to attempt to lay bare US military power in the spaces of exception of the global war on terror; for Minca, "it is precisely the absence of a theory of space able to inscribe the spatialisation of exception that allows, today, such an enormous, unthinkable range of action to sovereign decision".[112] This critique speaks especially to the excessive sovereign violence of our times, all perpetrated in the name of a global war on terror.[113] Minca's argument is that geography as a discipline has failed to geo-graph and theorise the spatialization of the 'pure' sovereign violence of legitimated geopolitical action overseas. He uses the notion of the camp to outline the spatial manifestation and endgame of a new global biopolitical 'nomos' that has unprecedented power to except bare life.[114]

In the 'biopolitical nomos' of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, "an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists".[115] However, it is a mistake to characterize as 'exceptional' the US military's broader biopolitical project in the war on terror. Both Minca's and Agamben's emphasis on the notion of 'exception' is most convincing when elucidating how the US military has dealt with the 'threat' of enemy combatants, rather than how it has planned for, legally securitized and enacted, its 'own' aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from

designating a 'space of exception', the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its 'operational capacities of securitization'.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially 'exceptional' in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in 'spaces of exceptions' or are they, in fact, simply contemporary examples of Foucault's 'spaces of security' that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the "liberal project of 'liberty'" not always been, in fact, a "project of security"?[116] This 'project of security' has long invoked a powerful political *dispositif* of 'executive powers', typically registered as 'emergency powers', but, as Neocleous makes clear, of the permanent kind.[117] For Neocleous, the pursuit of 'security' – and more specifically 'capitalist security' – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the 'rule of law', but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military's extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who "carries the briefcase of rules and restrictions" has long been replaced by the lawyer who "participate[s] in discussions of strategy and tactics".[118]

The US military's liberal lawfare reveals how the rule of law is simply another securitization tactic in liberalism's 'pursuit of security'; a pursuit that paradoxically eliminates fundamental rights and freedoms in the 'name of security'.[119] This is a 'liberalism' defined by what Michael Dillon and Julian Reid see as a commitment to waging 'biopolitical war' for the securitization of life – 'killing to make live'.[120] And for Mark Neocleous, (neo)liberalism's fetishization of 'security' – as both a discourse and a technique of government – has resulted in a world defined by anti-democratic technologies of power.[121] In the case of the US military's forward deployment on the frontiers of

the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been made possible by constant reference to a neoliberal 'project of security' registered in a language of 'endless emergency' to 'secure' the geopolitical and geoeconomic goals of US foreign policy.[122] The US military's continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a 'permanent emergency',[123] the new 'normal' in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic 'need' to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

> "Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force" – David Kennedy, *Of War and Law* [124]

Can a focus on lawfare and biopolitics help us to critique our contemporary moment's proliferation of practices of securitization – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military's war on terror, I have argued above that it can. If, as David Kennedy points out, the "emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts", this also includes, of course, 'warfare'; and for some time, the US military has recognized the "opportunities for creative strategy" made possible by proactively waging lawfare beyond the battlefield.[125] As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a "lawmaking character".[126] And it is this 'lawmaking character' that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare focuses "the attention of the world on this or that excess" whilst simultaneously arming "the most heinous human suffering in legal privilege", redefining horrific violence as "collateral damage, self-defense, proportionality, or necessity".[127] It involves a mobilization of the law that is precisely channelled towards "evasion", securing

classified Status of Forces Agreements and "offering at once the experience of safe ethical distance and careful pragmatic assessment, while parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war".[128]

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its 'operational capacities' in its multiples 'spaces of security' across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American 'leasehold empire'. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and legally condition the 'milieux' of military commanders; and in so doing they render operational the pivotal spaces of overseas intervention of contemporary US national security conceived in terms of 'global governmentality'.[129] In the US global war on terror, it is lawfare that facilitates what Foucault calls the "biopolitics of security" – when life itself becomes the "object of security".[130] For the US military, this involves the eliminating of threats to 'life', the creating of operational capabilities to 'make live' and the anticipating and management of life's uncertain 'future'.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of 'security', 'precarity' and 'risk' function centrally in the governing *dispositifs* of our contemporary world.[131] In a society of (in)security, such discourses have a profound power to invoke danger as "requiring extraordinary action".[132] In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where 'risk', it seems, has become permanently binded to 'securitization'. As Claudia Aradau and Rens Van Munster point out, the "perspective of risk management" seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.[133] US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing

of international law, and the securing of SOFAs – are vital security *dispositifs* of a broader 'risk-securitization' strategy involving the deployment of liberal technologies of biopower to "manage dangerous irruptions in the future".[134] It may well be fought *beyond* the battlefield in "a war of the pentagon rather than a war of the spear",[135] but it is lawfare that ultimately enables the 'toxic combination' of US geopolitics and biopolitics defining the current age of securitization.

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Notes

1. See, for example: D. Gregory, 'The Black Flag: Guantánamo Bay and the space of exception', *Geografiska Annaler B* 88/4 (2006) pp. 405-427; S. Reid-Henry, 'Exceptional sovereignty? Guantanamo Bay and the re-colonial present', *Antipode* 39/4 (2007) pp. 627-648; G. Kearns, 'The geography of terror', *Political Geography* 27/3 (2008) pp. 360-364; A. D. Barder, 'Power, violence and torture: making sense of insurgency and legitimacy crises in past and present wars of attrition', in F. Debrix and M. Lacy (eds), *The Geopolitics of American Insecurity: Terror, Power and Foreign Policy* (New York: Routledge 2009) pp. 54-70; and A. Macklin, 'Transjudicial conversations about security and human rights', in M. B. Salter (ed.), *Mapping Transatlantic Security Relations The EU, Canada and the War on Terror* (New York: Routledge 2010) pp. 212-235.
2. Both strategies work in concert with each other of course, with various locations acting as both 'base' and 'prison'.
3. US Department of Defense, *The National Defense Strategy of the United States of America 2005* (Washington, DC: Department of Defense 2005) p. 9.
4. H. Rishikof, 'Juridical warfare: the neglected legal instrument', *Joint Force Quarterly* 48 (2008) p. 11.
5. W. Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings* (Trans. E. Jephcott. New York: Harcourt Brace Jovanovich 1978) p. 283.
6. M. Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978* (Trans. G. Burchell. Basingstoke: Palgrave Macmillan 2007) p. 10.
7. L. Amoore, 'Biometric borders: governing mobilities in the war on terror', *Political Geography* 25/3 (2006) pp. 336-351; M. Dillon, 'Governing through contingency: the security of biopolitical governance', *Political Geography* 26/1 (2007) pp. 41-47; J. Donzelot, 'Michel Foucault and liberal intelligence', *Economy and Society* 37/1 (2008) pp. 115-134; J. Reid, *The Biopolitics of the War on Terror* (Manchester: Manchester University Press 2009).
8. J. W. Crampton and S. Elden (eds), *Space, Knowledge and Power: Foucault and Geography* (Farnham, Surrey: Ashgate 2007); K. Schlosser, 'Bio-political geographies', *Geography Compass* 2/5 (2008) pp. 1621-1634; M. Coleman and K. Grove, 'Biopolitics, biopower, and the return of sovereignty', *Environment and Planning D: Society and Space* 27/3 (2009) pp. 489-507.
9. See, for example, M. Dillon and A. W. Neal (eds), *Foucault on Politics, Security and War* (Basingstoke: Palgrave Macmillan 2008).
10. "Problems of space" and the "treatment of space" were focal to his theorizing of sovereignty, discipline and security, and their complex relational "multiplicities"; see Foucault (note 6) pp. 11-23.
11. D. Gregory, 'Seeing red: Baghdad and the event-ful city', *Political Geography* 29/5 (2010) pp. 266-279.

12. Such transitions were certainly taking place earlier in the Early Modern Period (particularly with the onset of the expansion of the major European centralised states of England and Spain to their various new colonial populations); in Foucault's extensive canon of work, however, colonial societies have been largely overlooked. Foucault's thinking and lines of political inquiry were not, of course, without various other lacunae and unresolved problematics, as Michael Dillon and Andrew Neal have recently pointed out; see Dillon and Neal (note 8) introduction.
13. Foucault (note 6) pp. 10, 11.
14. Ibid., pp. 8-23; Donzelot (note 7) p. 118.
15. Foucault (note 6) p. 70.
16. Ibid., pp. 116, 117, 120.
17. Ibid., p. 108.
18. Ibid., pp. 109, 110.
19. J. Morrissey, 'Closing the neoliberal gap: risk and regulation in the long war of securitization', *Antipode* 43/4 (2011) in press. In theorizing the securitization strategy of the contemporary US military, I have drawn especially upon the Copenhagen school of security studies use of the term 'securitization', understood as a powerful discourse through which 'security risks' come to legitimize the use of 'emergency powers' and 'apparatuses of security'; see, for example, B. Buzan, O. Wæver and P. de Wilde P, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner 1997) and M. Williams, *Culture and Security: Symbolic Power and the Politics of International Security* (London: Routledge 2007). See also S. Dalby, *Security and Environmental Change* (Cambridge: Polity 2009) pp. 46-49.
20. I have recently explored this powerful assemblage of what are, in effect, classical geopolitical knowledges, advanced by what can be termed Washington's 'military-strategic studies complex': J. Morrissey, 'Architects of empire: the military-strategic studies complex and the scripting of US national security', *Antipode* 43/2 (2011) pp. 435-470.
21. Foucault (note 6) pp. 20-21.
22. The US military's six regional commands are: US Northern Command (NORTHCOM); US Southern Command (SOUTHCOM); US Pacific Command (PACOM); US European Command (EUCOM); US Central Command (CENTCOM); and US Africa Command (AFRICOM; the most recently established command, attaining 'full operational capabilities' in October 2008).
23. Foucault (note 6) p. 20.
24. Source: US Department of Defense, 'U.S. Africa Command', briefing slide (7 February 2007) http://www.defenselink.mil/dodcmsshare/briefingslide%5C295%5C070207-D-6570C-001.pdf (retrieved 9 February 2008).
25. Foucault (note 6) p. 70.
26. Ibid., pp. 20, 21.
27. Ibid..
28. Ibid., p. 21.
29. Ibid..
30. Dillon (note 7) p. 46.
31. M. Dillon, 'Governing terror: the state of emergency of biopolitical emergence', *International Political Sociology* 1/1 (2007) p. 12.
32. M. Hannah, 'Torture and the ticking bomb: the war on terrorism as a geographical imagination of power/knowledge', *Annals of the Association of American Geographers* 96/3 (2006) p. 622.
33. R. Martin, *An Empire of Indifference: American War and the Financial Logic of Risk Management* (Durham: Duke University Press 2007).
34. N. Klein, *The Shock Doctrine: The Rise of Disaster Capitalis*m (New York: Metropolitan Books 2007).
35. R. Grusin, 'Premediation', *Criticism* 46/1 (2004) p. 19; M. de Goede, 'Beyond risk: premediation and the post-9/11 security imagination', *Security Dialogue* 39/2-3 (2008) p. 158.
36. Foucault (note 6) p. 33.
37. Ibid., pp. 42-43.
38. D. Nally, 'The biopolitics of food provisioning', *Transactions of the Institute of British Geographers* (forthcoming).
39. Dillon (note 31) p. 9.
40. A. Krepinevich and R. O. Work, *A New Global Defense Posture for the Second Transoceanic Era* (Washington, DC: Center for Strategic and Budgetary Assessments 2007). Cf. Morrissey (note 20).
41. US Department of Defense, *Active Duty Military Personnel Strengths by Regional Area and by Country* (31 December 2009) http://siadapp.dmdc.osd.mil/personnel/MILITARY/history/hst0912.pdf (retrieved 10 June 2010).

42. See J. Morrissey, 'The geoeconomic pivot of the global war on terror: US Central Command and the war in Iraq', in D. Ryan and P. Kiely (eds), *America and Iraq: Policy-Making, Intervention and Regional Politics* (New York: Routledge 2009) pp. 103-122.
43. US Department of Defense, *Authorization for Appropriations for Fiscal Year 1981: Hearings of the Senate Armed Services Committee* (Washington, DC: Senate Armed Services Committee 1980) p. 484.
44. US Congressional Budget Office, *Rapid Deployment Forces: Policy and Budgetary Implications* (Washington, DC: US Congressional Budget Office 1983) p. 38. In the contemporary world, prepositioning continues to be a key tool in advancing US geostrategic capabilities overseas – its current aim is to "keep the capacity to quickly fill out up to eight ground combat brigades with equipment stored overseas"; see M. O'Hanlon, *Unfinished Business: U.S. Overseas Military Presence in the 21st Century* (Washington, DC: Center for a New American Security 2008) p. 14.
45. J. Record, 'The Rapid Deployment Force: problems, constraints, and needs', *Annals of the American Academy of Political and Social Science* 457 (1981) pp. 109, 112.
46. Ibid., p. 112.
47. J. M. Epstein, 'Soviet vulnerabilities in Iran and the RDF deterrent', *International Security* 6/2 (1981) p. 127. See also: T. L. McNaugher, *Arms and Oil: U.S. Strategy and the Persian Gulf* (Washington, DC: Brookings Institution 1985); and J. M. Epstein, *Strategy and Force Planning: the Case of the Persian Gulf* (Washington, DC: Brookings Institution 1987).
48. Further *Bright Star* exercises in 1981, 1983, 1985 and 1987, saw up to 10,000 US troops at a time training in the desert with troops from Egypt, Jordan, Oman, Somalia and Sudan. From *Bright Star* 1983 onwards, Egypt emerged as the most committed military partner in the region in the 1980s, and therefore its role in "American preparations for the defense of Southwest Asia" became a "key component"; see D. Gold, *America, the Gulf and Israel: CENTCOM (Central Command) and Emerging US Regional Security Policies in the Middle East* (Jerusalem: Jaffee Center for Strategic Studies 1988) p. 41. With the Department of Defense focused on deterring an imminent Soviet attack in the region (that never of course materialised), the Egyptian army's use of Soviet military equipment made it an excellent training partner for the first CENTCOM forces deployed in the Middle East. Egypt's importance to US grand strategy in the Middle East continues to this day; it was the only African country retained in CENTCOM's AOR upon the initiation of the new Africa unified command, AFRICOM, in 2008.
49. J. Record, *The Rapid Deployment Force and U.S. Military Intervention in the Persian Gulf* (Washington, DC: Institute for Foreign Policy Analysis 1981) p. 58. In Oman, US access was given at Muscat airfield and port, Seeb airfield and port, Masirah airfield, Salalah airfield and Thumrait airfield; Somalia granted use permissions at Berbera airfield and port and Mogadishu airfield and port; while Kenya approved access at Mombasa port, Nairobi airfield and Nanyuki airfield; see ibid., p. 59.
50. See Krepinevich and Work (note 40) pp. 149-150; see also D. Priest, *The Mission: Waging War and Keeping Peace with America's Military* (New York: W. W. Norton and Co. 2003) pp. 78-98.
51. S. G. Hajjar, *U.S. Military Presence in the Gulf: Challenges and Prospects* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College 2002) p. 20.
52. Overseas Basing Commission, *Commission on Review of the Overseas Military Facility Structure of the United States Report to the President and Congress* (Arlington, VA: Commission on Review of Overseas Military Facility Structure of the United States 2005) pp. iii, 6-7.
53. Ibid., p. G5.
54. US CENTCOM Director of Logistics Major General Brian Geehan, 'Current operations in the long war', *National Defense Transportation Association Forum and Expo* (Memphis, TN, 23-27 September 2006).
55. Various sources attribute a far greater number of bases and access facilities to each GCC country; for example, Global Security (globalsecurity.org) puts the number of US major bases in Kuwait at 16. However, this table is conservatively based on official US Government data, compiled from the following sources: Overseas Basing Commission (note 52); K. Katzman, *The Persian Gulf States: Issues for U.S. Policy, 2006* (Washington, DC: Congressional Research Service Report for Congress 2006); US Department of Defense, *Base Structure Report Fiscal Year 2007 Baseline* (Washington, DC: Office of the Deputy Under Secretary of Defense (Installations and Environment) 2007); and United States Military Training Mission to Saudi Arabia, 'USMTM Welcome Package' (13 June 2010) http://www.usmtm.sppn.af.mil/newFRG2/Documents/Newcomer-booklet.pdf (retrieved 12 July 2010).
56. Prior to the current Iraq war, NAVCENT was the only component command of CENTCOM permanently located in its AOR.
57. See, for example, B. A. Thayer, *The Pax Americana and the Middle East: U.S. Grand Strategic Interests in the Region after September 11* (Bar-Ilan University: The Begin-Sadat Center for Strategic Studies 2003) and, more

recently, R. D. Kaplan, 'The revenge of Geography', *Foreign Policy* (May/June 2009) http://www.foreignpolicy.com/story/cms.php?story_id=4862 (retrieved 6 May 2009).

58. A. Bâli and A. Rana, 'American overreach: strategic interests and millennial ambitions in the Middle East', *Geopolitics* 15/2 (2010) p. 233.

59. See: Overseas Basing Commission (note 52) Appendix G; Katzman (note 55) pp. 7-11; and O'Hanlon (note 44) pp. 28-32.

60. J. Gerson, ''Enduring' U.S. bases in Iraq: monopolizing the Middle East prize', *Common Dreams News Center* (19 March 2007) http://www.commondreams.org/views07/0319-26.htm (retrieved 12 February 2008). In a showing of its renewed confidence for the success of Operation Iraqi Freedom, the US also announced plans of a further military base just four miles short of the Iraq-Iran border; see BBC News, 'US plans base on Iraq-Iran border' (10 September 2007) http://news.bbc.co.uk/2/hi/middle_east/6987306.stm (retrieved 25 January 2008). Furthermore, the figure of 14 'enduring bases' appears to be quite a conservative estimate, as Patrick Cockburn recently revealed in *The Independent*; Cockburn details leaked press reports that put the number of long-term bases being planned for by the US military in Iraq at 50; see P. Cockburn, 'Revealed: secret plan to keep Iraq under US control', *The Independent* (5 June 2008).

61. In March 2006, for example, the Pentagon announced a ten-year plan for 'deep storage' of weapons, munitions, equipment and supplies in six countries in the CENTCOM AOR, and by 2016 the tonnage of air munitions alone, stored at sites outside Iraq, will be double the 2006 levels; see W. M. Arkins, 'U.S. plans new bases in Iraq', Early Warning Blog, *The Washington Post* (22 March 2006) http://blog.washingtonpost.com/earlywarning/2006/03/us_plans_new_bases_in_the_midd.html (retrieved 25 January 2008).

62. Dillon (note 31) p. 9.

63. Dillon (note 7) p. 46.

64. D. Gregory, 'The biopolitics of Baghdad: counterinsurgency and the counter-city', *Human Geography* 1/1 (2008) p. 19.

65. This is part of Bruce Braun's argument about why it is "necessary to trace the ways that biopolitics has merged with geopolitics"; see B. Braun, 'Biopolitics and the molecularization of life', *Cultural Geographies* 14/1 (2007) p. 8. For Agamben, "Western politics", at its very heart, equated to a form of "bio-politics from the very beginning"; see G. Agamben, *Homo Sacer: Sovereign Power & Bare Life* (Stanford: Stanford University Press 1998) p. 181.

66. Schlosser (note 8) p. 1624. As Steve Legg argues, the very concept of governmentality is "trans-scalar"; see S. Legg, 'Foucault's population geographies: classification, biopolitics and governmental spaces', *Population, Space and Place* 11/3 (2005) p. 142.

67. Schlosser (note 8) p. 1631.

68. Gregory (note 11).

69. Ibid..

70. C. von Clausewitz, *On War* (Trans. J. J. Graham and intro. J. W. Honig. New York: Barnes and Noble 2004) p. 17.

71. C. J. Dunlap, 'Lawfare amid warfare', Op-Ed, *The Washington Times* (3 August 2007) http://www.washingtontimes.com/news/2007/aug/3/lawfare-amid-warfare (retrieved 10 July 2008).

72. D. Kennedy, *Of War and Law* (Princeton: Princeton University Press 2006) pp. 37, 121, 122, 148, 167.

73. E. Weizman, 'Lawfare in Gaza: legislative attack', *openDemocracy* (1 March 2009) http://www.opendemocracy.net/article/legislative-attack (retrieved 10 July 2009). Weizman soberly concludes that "[r]ather than moderation and restraint, the violence and destruction of Gaza might be the true face of international law" and urges anyone "concerned with the interests and rights of people affected by war" to employ a "double, even paradoxical strategy" that "uses international humanitarian law, while highlighting the dangers implied in it and challenging its truth claims and thus also the basis of its authority" (ibid.). Weizman's argument here echoes strongly David Kennedy's concerns about the recent "emergence of a powerful legal vocabulary for articulating humanitarian ethics in the context of war" (Kennedy (note 73) p. 8). Kennedy asks how do we react when we "find the humanist vocabulary of international law mobilised by the military as a strategic asset" or when the military "legally conditions the battlefield" by "informing the public that they *are entitled* to kill civilians" or when "our political leadership justifies warfare in the language of human rights" (ibid.).

74. Rishikof (note 4) p. 11. The term 'lawfare' was one of several alternative war-making concepts outlined by two Chinese People's Liberation Army officers in 1999: Q. Liang and W. Xiangsui, *Unrestricted Warfare* (Beijing: PLA Literature and Arts Publishing House 1999).

75. The Department of Defense's Defense Legal Services Agency received a staff increase of 100 FTEs from FY 2005 to FY 2006; see US Office of the Secretary of Defense, *Fiscal Year (FY) 2007 Budget Estimates, Volume II, Defense*

Wide Data Book (Washington, DC: Office of the Secretary of Defense 2006) p. 26. The proliferation of 'lawfare' of course does prompt the question posed by the Comaroffs regarding what does the fixation on legalities in times of disorder really mean. Does the contemporary fetishization of the law simply mask (as throughout colonial history) the contemporary American empire's relative impotence? See J. Comaroff and J. L. Comaroff, 'Law and disorder in the postcolony: an introduction', in J. Comaroff and J. L. Comaroff (eds), *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press 2006) pp. 1-56.

76. Dunlap (note 71).

77. Ibid..

78. Ibid..

79. As the war on terror began, the international Geneva Conventions, for example, were quickly identified as restrictive for the 'new paradigm' of modern warfare. In January 2002, Attorney General Alberto Gonzales, as White House Chief Legal Counsel, advised President Bush that the war on terrorism "render[ed] obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions"; see Center for American Progress, *Memorandum on the Geneva Conventions* (18 May 2004) http://www.americanprogress.org/issues/kfiles/b79532.html (retrieved 1 July 2008).

80. Kennedy (note 72) p. 8.

81. Rishikof (note 4) p. 12. The 2007 conference, *New Battlefields, Old Laws*, held in Washington and jointly organized by the Institute for National Security and Counterterrorism (INSCT) at Syracuse University and Institute for Counter Terrorism (ICT) in Herzliya, Israel, addressed similar issues. The joint concern of the INSCT and ICT is that "[r]ecent conflicts underscore the continuing shortcomings of international law and policy in responding to asymmetric warfare mounted by non-state terrorist groups in the 21st century" (http://insct.syr.edu/Battlefields/overview.htm – retrieved 10 July 2008). The conference and goals of both institutes has stirred considerable controversy; see, for example, Howard Friel's article 'Changing the laws of war: conference seeks to legitimize civilian casualties' in the *National Catholic Reporter* (5 October 2007) available online at http://ncronline.org/index1005.htm (retrieved 10 July 2008).

82. J. P. Terry, 'Habeas Corpus and the detention of enemy combatants in the war on terror', *Joint Force Quarterly* 48 (2008) p. 18.

83. K. M. Cieply, 'Rendition: the beast and the man', *Joint Force Quarterly* 48 (2008) p. 20.

84. P. M. Cullen, 'The role of targeted killing in the campaign against terror', *Joint Force Quarterly* 48 (2008) p. 22.

85. B. A. Hoyt, 'Rethinking the U.S. policy on the International Criminal Court', *Joint Force Quarterly* 48 (2008) p. 34 (my emphasis).

86. J. P. Terry, 'The International Criminal Court: a concept whose time has *not* come', *Joint Force Quarterly* 48 (2008) pp. 36-40.

87. Dunlap (note 71).

88. US Department of Defense (note 3) p. 9.

89. Ibid., p. 19.

90. Ibid., p. 20.

91. US Department of Defense, *Dictionary of Military and Associated Terms, Joint Publication 1-02* (Washington, DC: Department of Defense 2007) p. 512. This definition derives from various Department of Defense (DoD) directives and instructions dating back to the late 1970s: DoD, Instruction 2050.1, 6 July 1977; DoD Directive 5525.1, 7 August 1979; DoD Directive 5530.3, 6 December 1979; and DoD Directive 3310.1, 22 October 1982; see also the recently amended Chairman of the Joint Chiefs of Staff Instruction 2300.01D, *International Agreements* (2007) http://www.dtic.mil/cjcs_directives/cdata/unlimit/2300_01.pdf (retrieved 7 July 2008).

92. SOFAs also typically serve to legally securitize facilities access and lethal and non-lethal U.S. equipment pre-positioning; they commonly set out too commitments to joint training exercises; and finally a key component secures arms sales; see Katzman (note 55) p. 7.

93. Foucault (note 6) p. 21.

94. Quoted in: W. C. Smith, 'Lawyers at war', *American Bar Association Journal* 89/2 (2003) p. 14. Smith outlines the multiple imports of a SOFA as follows: "SOFAs govern mission-critical and mundane matters including base access and security; provision or purchase of food, fuel, electricity and other supplies; taxes, visas and customs regulations; and criminal jurisdiction over U.S. personnel"; see ibid..

95. W. A. Stafford, 'How to keep military personnel from going to jail for doing the right thing: jurisdiction, ROE and the rules of deadly force', *The Army Lawyer* (November 2000) p. 1. *The Army Lawyer*, published by The Judge Advocate General's School of the US Army at Charlottesville, Virginia, has been in publication since 1971; its stated purpose is "to provide practical, how-to-do-it information to Army lawyers" (*The Army Lawyer* (August 1971) p. 1).

96. See Overseas Basing Commission (note 52).
97. J. S. Robbins, 'U.S. Central Command: where history is made', in D. S. Reveron (ed.), *America's Viceroys: The Military and U.S. Foreign Policy* (New York: Palgrave Macmillan 2004) p. 180.
98. Overseas Basing Commission (note 52). In the case of both Afghanistan and Iraq, all local jurisdiction was removed when both host governments fell subsequent to the US-led invasions. See the comments of M. Cherif Bassiouni, quoted in A. Fahim, 'The perils of colonial justice in Iraq', *Asia Times* (6 July 2005) http://www.atimes.com/atimes/Middle_East/GG06Ak02.html (retrieved 1 July 2008).
99. Krepinevich and Work (note 40) p. 33.
100. This coincides with the established trend of the US military keeping its overseas troops based in isolated compounds away from local residents – a policy which Mark Gillem (2007) has shown inhibits any chance of even the most basic fostering of cross-cultural understanding; see M. Gillem, *America Town: Building the Outposts of Empire* (Minneapolis: University of Minnesota Press 2007).
101. Global Security, 'U.S. serviceman accused of killing Kyrgyz sent home' (3 May 2007) http://www.globalsecurity.org/military/library/news/2007/05/mil-070503-rianovosti02.htm (retrieved 1 July 2008). As M. Cherif Bassiouni, explains, with most SOFAs, the US has the "primary jurisdiction" and "obligation" to prosecute, and if it fails to do so, the host country gets the opportunity; see Fahim (note 98). Despite various Kyrgyz protests, no prosecution has been undertaken to date in this case, and Kyrgyz President Kurmanbek Bakiyev has belatedly demanded that US forces in the country be stripped of their diplomatic immunity.
102. Democracy Now, 'UN human rights investigator in Afghanistan ousted under U.S. pressure' (28 April 2005) http://www.democracynow.org/2005/4/28/un_human_rights_investigator_in_afghanistan (retrieved 1 July 2008). See also UN News Centre, 'Afghanistan: UN expert denounces abuses in illegal prisons' (24 August 2004) http://www.un.org/apps/news/story.asp?NewsID=11703&Cr=Afghanistan&Cr1= (retrieved 1 July 2008).
103. US Under Secretary of Defense Douglas J. Feith, *Transforming the U.S. Global Defense Posture* (Washington, DC: Center for Strategic and International Studies 3 December 2003) http://www.defense.gov/speeches/speech.aspx?speechid=590 (retrieved 5 July 2010).
104. Ibid..
105. Ibid..
106. US Department of Defense, *Strengthening U.S. Global Defense Posture* (Washington, DC: Department of Defense 2004).
107. Ibid., p. 8. For a summation of the report to Congress and a discussion of some its implications, see R. Henry, 'Transforming the U.S. Global Defense Posture', *Naval War College Review* 59/2 (2006) pp. 12-28.
108. US Department of Defense (note 106) p. 15. Feith's SOFA agreement plans have been challenged on the grounds that they have not adequately consulted the State Department, US Congress or key US allies. Critics include Michael O'Hanlon at the Brookings Institute and former US Deputy Secretary of Defense, John Hamre, at the Center for Strategic and International Studies; see J. D. Klaus, *U.S. Military Overseas Basing: Background and Oversight Issues for Congress* (Washington, DC: Congressional Research Service Report for Congress 2004) pp. 4-6.
109. US Department of Defense (note 3) p. 5.
110. Cockburn (note 60).
111. Agamben (note 65); G. Agamben, *State of Exception* (Chicago: University of Chicago Press 2005).
112. C. Minca, 'Agamben's geographies of modernity', *Political Geography* 26/1 (2007) p. 92. See also C. Minca, 'The return of the camp', *Progress in Human Geography* 29/4 (2005) pp. 405-412.
113. Many others have pointed out, of course, the manner in which "exceptional events" are "used to legitimate authority to exceptional practices", as Andrew Neal most recently underlines; see A. Neal, *Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security and the War on Terror* (New York: Routledge 2010) p. 1.
114. Minca, 'Agamben's geographies of modernity' (note 112) pp. 93, 94.
115. US CENTCOM Commander General John P. Abizaid, *Statement before the Senate Armed Services Committee on the Posture of United States Central Command* (Washington, DC: Senate Armed Services Committee 2006).
116. M. Neocleous, *Critique of Security* (Edinburgh: Edinburgh University Press 2008) p. 13. On this, see also Neal (note 113) p. 2, where he asks "[h]ow can the sovereign state make exceptions to liberty in the name of liberty, or exceptions to the law in the name of the law" and argues that "the discourse of liberty is used both to oppose illiberal security practices and to legitimate them".
117. By drawing on the twentieth-century history of government in the US and UK, in particular, Neocleous rigorously exemplifies why we should reject any theorization of contemporary Western society portrayed in terms of periodic episodes of 'emergency' in otherwise 'normal' times.

118. Kennedy (note 72) p. 170.
119. On this point, see J.-C. Paye, *Global War on Liberty* (Trans. J. H. Membrez. New York: Telos Press 2007) pp. 1-3.
120. M. Dillon and J. Reid. *The Liberal Way of War: Killing to Make Live* (New York: Routledge 2009).
121. Neocleous (note 116).
122. I have outlined elsewhere how US military commanders have, in recent years, consistently utilised a powerful and persuasive neoliberal 'risk-securitization discourse' to legitimize command strategies; see Morrissey (note 19).
123. Or what Jean-Claude Paye defines as a 'permanent state of exception', arrived at from the perpetual invoking of the 'state of emergency'; see Paye (note 119) pp. 40-48.
124. Kennedy (note 72) p. 165.
125. Ibid., pp. 8, 10, 12
126. Benjamin (note 5) p. 283.
127. Kennedy (note 72) p. 167
128. Ibid., p. 169
129. See D. Grondin, 'The new frontiers of the national security state: the US global governmentality of contingency', in M. Doucet and M. de Larrinaga (eds), *Security and Global Governmentality* (London: Routledge 2010) pp. 79-95.
130. Foucault (note 6); see also M. Dillon, 'Underwriting security', *Security Dialogue* 39/2-3 (2008) p. 309.
131. U. Beck, *Risk Society: Towards a New Modernity* (London: Sage 1992); M. Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage 1999); P. O'Malley, *Risk, Uncertainty and Government* (London: Glasshouse Press 2004); G. Mythen and S. Walklate (eds), *Beyond the Risk Society: Critical Reflections on Risk and Human Security* (Maidenhead: Open University Press 2006).
132. Dalby (note 19) p. 47.
133. C. Aradau and R. Van Munster R, 'Governing terrorism through risk: taking precautions, (un)knowing the future', *European Journal of International Relations* 13/1 (2007) p. 108. Cf. Y.-K. Heng, *War as Risk Management: Strategy and Conflict in an Age of Globalised Risks* (New York: Routledge 2006).
134. Aradau and Van Munster (note 133) p. 108.
135. Kennedy (note 72) p. 165.